End User License Agreement

Last Updated: April 27, 2020

This Trilio License Agreement (**"Agreement"**) is incorporated by reference into each order form, purchase order or other ordering document (**"Order(s)"**), 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, 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.

If you or the company you represent is a vendor of data protection solutions for OpenStack, KVM, bare metal server, cloud or other virtualization environments, you may not purchase a license for or use 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. **"Basic Edition License"** shall have the meaning assigned to such term in Section 3.

1.3. **"Basic Edition Software"** means a free edition, limited commercial use version of the Software as further described at https://www.trilio.io/plans/.

1.4. **"Enterprise Edition Software"** means a fee based, commercial use version of the Software as further described at https://www.trilio.io/plans/.

1.5. **"Documentation"** means any generally available customer documentation accompanying the Program.

1.6. **"Enterprise Edition License"** shall have the meaning assigned to such term in Section 4.

1.7. **"Evaluation License"** shall have the meaning assigned to such term in Section 2.

1.8. **"Evaluation Software"** means a "not for resale" or evaluation version of the Software.

1.9. **"Feedback"** shall have the meaning assigned to such term in Section 15.

1.10. **"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.

1.11. **"License(s)"** shall mean either an Evaluation License, a Basic Edition License or an Enterprise Edition License as further described at https://www.trilio.io/plans/.

1.12. **"License Scale Limits"** means the limitations on permitted use of the Software under an applicable License, as further described and limited at https://www.trilio.io/plans/ and in an Order. License Scale Limits may include, but are not limited to, limitations on the number of virtual servers or nodes per Kubernetes cluster.

1.13. **"Order(s)"** has the meaning given to that term in the first paragraph of this Agreement.

1.14. **"Program"** means the Trilio computer software identified in each applicable Order and any updates, upgrades, modifications and error corrections thereto provided to you by Trilio, but excluding open source software components, each of which has its copyright notice and license included in the license file and Documentation.

1.15. **"Software"** means the Program together with the Documentation.

1.16. **"Term"** shall have the meaning assigned to such term in Section 9.

1.17. **"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. Evaluation License. If you install the Evaluation Software then, subject to the terms and conditions set forth in this Agreement, Trilio hereby grants to you a limited, non–exclusive, non-transferable, revocable license to use the Evaluation Software for the sole purpose of evaluating its functionality and performance (the **"Evaluation License"**). Your use of the Evaluation Software shall be limited to the License Scale specified at https://www.trilio.io/plans/ or in the Order. You are not allowed to use the Evaluation Software for any commercial, productive or training purpose. The Term of the Evaluation License is thirty (30) days or the Term identified by Trilio in the Order. If you wish to

continue using the Evaluation Software beyond expiration of the Evaluation License, you must pay the applicable license fee and your use will be governed by the terms of this Agreement. If you fail to pay the license fee, then your license to use the Evaluation Software terminates and you must immediately discontinue its use and delete and destroy all electronic copies of thereof including, but not limited to, all Documentation.

3. Basic Edition License

3.1. **License Grant.** If you choose to install the Basic Edition Software, subject to the terms of this Agreement, your Order Form and any other applicable Additional Terms, Trilio hereby grants to you a limited, non–exclusive, non–transferable, revocable license to use the Basic Edition Software (a **"Basic Edition License"**) solely in connection with your internal operations. Your use of the Basic Edition Software shall be limited to the License Scale Limits specified at https://www.trilio.io/plans/ and as specified in the Order.

3.2. **Changes and Discontinuation.** Trilio reserves the right, in its sole discretion, to deny, restrict, suspend, discontinue or terminate your Basic Edition License with or without prior notice or explanation, for any or no reason, without any liability to you. Trilio further reserves the right to change or modify the License Scale Limits for the Basic Edition License at any time and in its sole discretion. If Trilio makes any changes to the License Scale Limits, Trilio will provide notice of such changes by revising the information at https://www.trilio.io/plans/ and, in some cases, may provide additional notice (such as by sending an email or other notification). Any changes or modifications will be effective seven (7) days after Trilio provides notice that License Scale Limits have been modified (the "Notice Period"). Your continued use of the Software following the Notice Period will constitute your acceptance of such changes or modifications.

4. Enterprise Edition License. If you choose to install the Enterprise Edition Software, subject to the terms of this Agreement, your Order Form and any other applicable Additional Terms, Trilio hereby grants to you for the Term a limited, non–exclusive, non–transferable, revocable license to use the Enterprise Edition Software (an **"Enterprise Edition License"**) solely in connection with your internal operations. Your use of the Enterprise Edition Software shall be limited to the License Scale specified at https://www.trilio.io/plans/ and as specified in the Order.

5. 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, provided that Trilio will notify you of any Revisions that materially degrade the functionality or performance of the Software and you shall have the right to terminate this Agreement and receive any refund of prepaid fees covering the remainder of the Term. Any such Revisions that Trilio notifies you are to be included under this Agreement shall be considered part of the Software for all purposes of this Agreement. In addition, Trilio reserves the right to discontinue the Software at any time. Trilio Data will only support the current release of its solution as well as the previous release of the Software (N-1). Any version of the product outside of the supported range will require a new License.

6. Access Requirements. Ongoing access to a License 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 and support materials available at

https://trilio.force.com/io/login. 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.

7. General Restrictions on Use

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

7.1.1. redistribute, resell, transfer, rent, lease, or sublicense the Software or use the Software (or any portion thereof) for time sharing, hosting, service provider or like purposes;

7.1.2. 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;

7.1.3. use, copy, or install the Software other than as permitted by your License Scale;

7.1.4. modify the Software or create any derivative work of the Software or incorporate the Software into or with other software or use the Software (or any part thereof) to provide any product or service to a third party. Derivative works include but are not limited to translations. You may not alter any files or libraries in any portion of the Software;

7.1.5. 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;

7.1.6. use the Software if you are a competitor of Trilio;

7.1.7. remove any product identification, proprietary, copyright or other notices contained in the Software (including any reports or data printed or exported from the Software);

7.1.8. publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software;

7.1.9. use the Software for or on behalf of public cloud service providers; or

7.1.10. offer the Software as part of Your solution within Your client environment, where You are a consulting company.

8. Responsibility for Access

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

9. Term and Termination

The term of the License granted you under this Agreement (the "Term") is as specified in your Order, provided, however that if no term is specified, the license term for the Enterprise Edition shall be one (1) year, renewable automatically (unless either Party provides notice of non-renewal thirty (30) days prior to the expiration of a Term), the license term for the Basic Edition shall be at the discretion of Trilio, and the license term for the Evaluation Software shall be thirty (30) days. Trilio may immediately terminate this Agreement, including all licenses granted hereunder, if you fail to comply with any of the terms and conditions of contained herein. 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.

10. Audit & Retention of Records

Trilio shall have the right to audit and inspect Customer's and its Authorize User's usage of the Software and to verify Customer's compliance with the provisions of this Agreement (including all payment terms, if any) during Customer's normal business hours. Customer shall promptly remedy any underpayments that are discovered, and if any underpayment exceeds 5% of the amount owed over the audited period, then Customer shall reimburse Trilio for the costs of the audit. Customer shall retain the applicable records pertaining to its performance obligations for seven (7) years after the termination or completion of such obligation.

11. Warranties and Warranty Disclaimers

11.1. THE EVALUATION SOFTWARE AND THE BASIC EDITION SOFTWARE ARE LICENSED 'AS IS'. YOU BEAR THE RISK OF USING THEM. TRILIO WILL HAVE NO LIABILITY WHATSOEVER FOR ANY HARM OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THE EVALUATION SOFTWARE AND THE BASIC EDITION SOFTWARE. TRILIO GIVES NO EXPRESS WARRANTIES, GUARANTEES OR CONDITIONS. YOU MAY HAVE ADDITIONAL RIGHTS UNDER YOUR LOCAL LAWS WHICH THIS AGREEMENT CANNOT CHANGE. TO THE EXTENT PERMITTED UNDER YOUR LOCAL LAWS, TRILIO EXCLUDES THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

11.2. Except with respect to the Evaluation Software and the Basic Edition Software, Trilio warrants solely to you that the Software will perform substantially in accordance with the accompanying written materials for a period of ninety (90) days after the date on which you purchase the License for the Software. 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 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. If such remedy fails of its essential purpose, Customer's sole remedy and Trilio's maximum liability shall be a refund of the paid purchase price for the defective Software only. This limited warranty is only valid if Trilio Data receives written notice of breach of warranty no later than thirty (30) days after the warranty period expires. 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.

11.3. 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. 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 FROM THE FURNISHING, PERFORMANCE, INSTALLATION, OR USE OF THE SOFTWARE, 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. IN ANY CASE, THE ENTIRE LIABILITY OF TRILIO AND ITS DIRECTORS, OFFICERS, EMPLOYEES. RESELLERS OR AGENTS UNDER ANY PROVISION OF THIS AGREEMENT 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 THE EVALUATION LICENSE OR THE BASIC EDITION LICENSE 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 the Enterprise Edition License only, 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 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 the pro-rata portion of fees that Customer 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 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 Software in violation of this Agreement or any applicable law and (ii) allegations that software, content or data used by you in connection with the Software, infringes a third party's intellectual property right shall indemnify the Trilio Parties for any Losses.

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, that 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 the you containing protections no less stringent than those herein. You agree to assist Trilio in remedying such unauthorized use or disclosure of the 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 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 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. Payment and Taxes

You will pay undisputed fees and reimburse any business expenses as set forth on and in accordance with an Order Form. Your payment for Licenses is non-refundable and you may not terminate or cancel an Order Form except as stated in this Agreement. 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.

17. Export Controls

You acknowledge that the Software is 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. Customer acknowledges and agrees that it will not import, export, re-export, transfer or use, directly or indirectly, the Software 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 Software, 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 Software, the intellectual property embodied in the Software, and any trademarks or service marks of Trilio that are used in connection with the Software 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. 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.

25. 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.

26. 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.

27. 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.

28. 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.