

END USER LICENSE AGREEMENT (EULA)

(03/12/2018)

BY OPENING THE PACKAGE, INSTALLING, PRESSING "AGREE", OR "YES", OR "ACCEPT", OR USING THE PRODUCT, THE ENTITY OR INDIVIDUAL ENTERING INTO THIS AGREEMENT AGREES TO BE BOUND BY THE FOLLOWING TERMS. YOU ALSO ACKNOWLEDGE THAT YOU HAVE READ AND ACCEPTED OUR PRODUCT PRIVACY POLICY www.nakivo.com/support/privacy-policy/. IF YOU DO NOT AGREE WITH ANY OF THESE TERMS OR OUR PRIVACY POLICY, DO NOT INSTALL OR USE THE PRODUCT, PROMPTLY RETURN THE PRODUCT TO NAKIVO OR YOUR NAKIVO RESELLER. IF YOU REJECT THIS AGREEMENT, YOU WILL NOT ACQUIRE ANY LICENSE TO USE THE PRODUCT.

This Agreement ("Agreement") is between the entity or individual entering into this Agreement ("Customer") and the NAKIVO Entity for the applicable Territory as described in Section 19 ("NAKIVO"). In addition to the restrictions imposed under this Agreement, any other usage restrictions contained in the Product installation instructions or release notes shall apply to your use of the Product.

Territory: The country where Customer acquired the license.

1. GENERAL DEFINITIONS

"Affiliate" is an entity that controls, is controlled by or shares common control with NAKIVO or Customer, where such control arises from either (a) a direct or indirect ownership interest of more than 50% or (b) the power to direct or cause the direction of the management and policies, whether through the ownership of voting stock by contract, or otherwise, equal to that provided by a direct or indirect ownership of more than 50%.

"Documentation" means the technical publications relating to the software, such as release notes, reference, user, installation, systems administrator and technical guidelines, included with the Product.

"Licensed Capacity" is the amount of each Product licensed as established in the Order.

"Order" is an agreed written or electronic document, subject to the terms of this Agreement that identifies the Products to be licensed and their Licensed Capacity and/or the Support to be purchased and the fees to be paid.

"Product" is the object code of the software and all accompanying Documentation delivered to Customer, including all items delivered by NAKIVO to Customer under Support.

"Support" is the support services program as further specified in this Agreement.

2. SCOPE

Licenses are granted, and Support is obtained, solely by execution of Orders. Each Order is deemed to be a discrete contract, separate from each other Order, unless expressly stated otherwise therein, and in the event of a direct conflict between any Order and the terms of this Agreement, the terms of the Order will control only if the Order is executed by an authorized representative of each party. Orders may be entered under this Agreement by and between (a) NAKIVO or an Affiliate of NAKIVO; and (b) the Customer or an Affiliate of Customer. With respect to an Order, the terms "NAKIVO" and "Customer" as used in this Agreement will be deemed to refer to the entities that execute that Order, the Order will be considered a two party agreement between such entities, and NAKIVO will separately invoice the Customer named in the Order for the associated License fees and Support fees. Neither execution of this Agreement, nor anything contained herein, shall obligate either party to enter into any Orders. In the event an Order is proposed by NAKIVO and is deemed to constitute an offer, then acceptance of such offer is limited to its terms. In the event Customer proposes an Order by submitting a purchase order, then regardless of whether NAKIVO acknowledges, accepts or fully or partially performs under such purchase order, NAKIVO OBJECTS to any additional or different terms in the purchase order, other than those that establish Product, price and Licensed Capacity in accordance with this Agreement.

3. LICENSE

Subject to the terms of this Agreement, NAKIVO grants Customer a non-exclusive, non-transferable, non-sub-licensable perpetual (unless a non-perpetual license is provided on an Order) license, as specified in the relevant Order, to exercise the following rights to the Product up to the Licensed Capacity: (a) copy the Product for the purpose of installing it on Customer's owned or leased hardware at a facility owned or controlled by Customer in the Territory; (b) operate solely for Customer's and its Affiliates own internal Customer's business operations; and (c) make one copy of the Product for archival purposes only (collectively a "License"). Affiliates may use and access the Products and Support under the terms of this Agreement, and Customer is responsible for its Affiliates compliance with the terms of this Agreement.

4. RESTRICTIONS

Customer will not: (a) copy, operate or use any Product in excess of the applicable Licensed Capacity; (b) modify, delete or remove any ownership, title, trademark, patent or copyright notices ("Identification") from any Product; (c) copy any Product or any portion of any Product without reproducing all Identification on each copy or partial copy; (d) disassemble, reverse engineer, decompile or otherwise attempt to derive any Product source code from object code, except to the extent expressly permitted by applicable law despite this limitation without possibility of contractual waiver; (e) distribute, rent, lease, sublicense or provide the Product to any third party or use it in a service bureau, outsourcing environment, or for the processing of third party data; (f) provide a third party with the results of any functional evaluation, or

performance tests, without NAKIVO's prior written approval; (g) attempt to disable or circumvent any of the licensing mechanisms within the Product; or (h) violate any other usage restrictions contained in the Documentation.

5. PRODUCT PERFORMANCE WARRANTY

NAKIVO warrants that: (a) the Product will perform in substantial accordance with its Documentation for a period of thirty (30) days from the date of the first Order; and (b) NAKIVO has used commercially reasonable efforts consistent with industry standards to scan for and remove software viruses; and (c) other than passwords that may be required for the operation of the Product, NAKIVO has not inserted any code that is not addressed in the Documentation and that is designed to delete, interfere with or disable the normal operation of the Products in accordance with the License. This warranty will not apply to any problems caused by: (a) hardware; or (b) software other than the Product; or (c) use of the Product, or use of software other than the Product without installing the latest security and reliability software updates; or (d) misuse of the Product; or (e) use of the Product other than as provided by the applicable License; or (f) modification of the Product; or (g) claims made outside the warranty period; or (h) claims made not in compliance with the notice and access requirements set forth below. No warranty is provided for additional Licensed Capacity, Product provided pursuant to Support or Product provided pursuant to Section 11.

6. LIMITED REMEDIES

NAKIVO's entire liability, and Customer's exclusive remedy, for breach of the above warranty is limited to: NAKIVO's use of commercially reasonable efforts to have the Product perform in substantial accordance with its Documentation, or replacement of the non-conforming Product within a reasonable period of time. If NAKIVO cannot have the Product perform in substantial accordance with its Documentation and replace the Product within commercially reasonable time period, then NAKIVO will refund the amount paid by Customer for the License for that Product. Customer's rights and NAKIVO's obligations in this section are conditioned upon Customer's providing NAKIVO during the warranty period: (a) full cooperation; and (b) access to the Product in resolving any claim; and (c) access to Customer's hardware and software environment of the Product; and (d) written notice addressed to the NAKIVO Legal Department that includes notice of the claim, a complete description of the alleged defects sufficient to permit their reproduction in NAKIVO's development or support environment, and a specific reference to the Documentation to which such alleged defects are contrary.

7. DISCLAIMER OF WARRANTIES

DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, THE PRODUCT IS PROVIDED WITH NO OTHER WARRANTIES WHATSOEVER, AND NAKIVO, ITS AFFILIATES AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. NAKIVO DOES NOT WARRANT THAT THE OPERATION

OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFECTS CAN BE CORRECTED.

8. PAYMENTS AND DELIVERY

Customer will pay each License fee and/or Support fee upon receipt of invoice. Customer will pay, or reimburse, NAKIVO or when required by law the appropriate governmental agency for taxes of any kind, including sales, use, VAT, excise, customs duties, withholding, property, and other similar taxes (other than taxes based on NAKIVO's net income) imposed in connection with the License and/or the Support fees which are exclusive of these taxes. For Products that are delivered electronically, upon request from NAKIVO, Customer agrees to provide NAKIVO with Documentation supporting that the designated Product was received electronically. If Customer accepts any Product in a non-electronic format, there may be an additional charge and it is the sole responsibility of Customer to bear any sales/use tax obligation, penalties, and interest. The unpaid balance of each late payment bears interest at a rate equal to the lesser of 1% per month or the maximum amount permitted by law. All Products are licensed FCA ("Free Carrier" as per Incoterms 2000) shipping point. The Products are accepted on the date NAKIVO delivers the Product to the Customer either physically or by providing access codes for electronic download, whichever occurs first, however, such acceptance will not affect the Product Performance Warranty provided in this Agreement.

9. PROPRIETARY RIGHTS AND CONFIDENTIALITY

(a) NAKIVO, its Affiliates or licensors retain all right, title and interest to the Product, Support and all related intellectual property and proprietary rights. The Product and all third party software provided with the Product are protected by applicable copyright, trade secret, industrial and other intellectual property laws. Customer may not remove any product identification, copyright, trademark or other notice from the Product. NAKIVO reserves any rights not expressly granted to Customer in this Agreement. (b) "Confidential Information" means all proprietary or confidential information that is disclosed to the recipient ("Recipient") by the discloser ("Discloser"), and includes, among other things (i) any and all information relating Discloser financial information, customers, employees, products or services, including, without limitation, software code, flow charts, techniques, specifications, development and marketing plans, strategies, and forecasts; (ii) as to NAKIVO, and its licensors, the Product and any third party software provided with the Product; and (iii) the terms of this Agreement, including without limitation, Product pricing information. Confidential Information does not include information that Recipient can show: (a) was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser; (b) is or becomes a matter of public knowledge through no fault of Recipient; (c) is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or (d) is independently developed by or for Recipient. Recipient may not disclose Confidential Information of Discloser to any third party or use the Confidential Information in violation of this Agreement. The Recipient (i) will exercise the same degree of care and protection with respect to the Confidential Information of the Discloser that it exercises with respect to its own Confidential Information and (ii) will not, either directly or indirectly, disclose, copy, distribute, republish, or allow any third party to have

access to any Confidential Information of the Discloser. Notwithstanding the foregoing, Recipient may disclose Discloser's Confidential Information to Recipient's employees and agents who have the need to know provided that such employees and agents have legal obligations of confidentiality substantially the same (and in no case less protective) as the provisions of this Agreement. (c) Notification Obligation. If the Recipient becomes aware of any unauthorized use or disclosure of Discloser's Confidential Information, then Recipient will promptly and fully notify the Discloser of all facts known to it concerning such unauthorized use or disclosure. In addition, if the Recipient or any of its employees or agents are required (by oral questions, interrogatories, requests for information, or documents in legal proceedings, subpoena, civil investigative demand, or other similar process) to disclose any of Discloser's Confidential Information, the Recipient will not disclose the Discloser's Confidential Information without providing the Discloser with commercially reasonable advance prior written notice to allow Discloser to seek a protective order or other appropriate remedy or to waive compliance with this provision. In any event, the Recipient will exercise its commercially reasonable efforts to preserve the confidentiality of the Discloser's Confidential Information, including, without limitation, cooperating with Discloser to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information. Notwithstanding the foregoing, Customer agrees that NAKIVO may include Customer's name on customer lists.

10. DISCLAIMER OF DAMAGES; LIMITS ON LIABILITY

DISCLAIMER OF DAMAGES; LIMITS ON LIABILITY. EXCEPT FOR VIOLATIONS OF LICENSE (SECTION 3), LICENSE RESTRICTIONS (SECTION 4), PROPRIETARY RIGHTS AND CONFIDENTIALITY (SECTION 9) AND FOR INFRINGEMENT CLAIMS (SECTION 12), NEITHER PARTY, ITS AFFILIATES OR NAKIVO'S LICENSORS ARE LIABLE FOR (A) ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT, SUPPORT, THE PRODUCT OR ANY THIRD PARTY CODE OR SOFTWARE PROVIDED WITH THE PRODUCT (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST COMPUTER USAGE TIME, AND DAMAGE TO, OR LOSS OF USE OF DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IRRESPECTIVE OF NEGLIGENCE OF A PARTY OR WHETHER SUCH DAMAGES RESULT FROM A CLAIM ARISING UNDER TORT OR CONTRACT LAW , OR (B) DAMAGES OF ANY KIND IN AN AMOUNT GREATER THAN THE AMOUNT OF ACTUAL, DIRECT DAMAGES UP TO THE CAP. THE TERM "CAP" MEANS (I) IF NAKIVO IS THE PAYOR, THE AMOUNT PAID BY CUSTOMER FOR THE LICENSE TO THE PRODUCT GIVING RISE TO SUCH DAMAGES AND (II) IF CUSTOMER IS THE PAYOR, THE GREATER OF THE AMOUNT PAID OR PAYABLE, BY CUSTOMER FOR THE LICENSE TO THE PRODUCT GIVING RISE TO SUCH DAMAGES.

11. TRIAL LICENSE AND FREE LICENSE

NAKIVO may determine, in its sole discretion, to make products available to Customer without an Order and without charge. Such products are deemed to be "Products" pursuant to this Agreement except that (a) they are provided to Customer solely so that Customer may evaluate internally whether to acquire a license to the products for a fee; and (b) the license term for such products is fifteen (15) days or any other number of days specified by NAKIVO; and (c) the Products are provided "AS IS" and without any warranty or support; and (d) the Product cannot be put into productive use or included as part of Customer's business processes in any manner, unless or until they are expressly licensed and paid for under an Order. NAKIVO may terminate all of Customer's rights and licenses to these products for NAKIVO's convenience upon notice to Customer.

12. INFRINGEMENT CLAIMS

If a third party asserts a claim against Customer asserting that Customer's use of a Product in accordance with this Agreement violates that third-party's patent, trade secret or copyright rights ("Infringement Claim"), then NAKIVO will, at its own expense: (a) defend or settle the Infringement Claim; and (b) indemnify Customer for any damages finally awarded against Customer based on infringement by the Product. NAKIVO's obligations under this Section will not apply if: (a) NAKIVO's legal department does not receive prompt, detailed written notice of the Infringement Claim from Customer, (b) NAKIVO is not able to retain sole control of the defense of the Infringement Claim and all negotiations for its settlement or compromise, (c) NAKIVO does not receive all reasonable assistance, or (d) the Infringement Claim is based on (i) the use of Product in combination with products not approved by NAKIVO in the Product's Documentation, (ii) the failure of Customer to use any updates to such Product within a reasonable time after such updates are made available to Customer, or (iii) the failure of Customer to use the Product as permitted by the Order and in accordance with the Documentation. NAKIVO will not bind Customer to a monetary obligation in a settlement or compromise, or make an admission on behalf of Customer, without obtaining Customer's prior consent. If NAKIVO determines in NAKIVO's reasonable discretion that use of the Products should be stopped because of an Infringement Claim or potential Infringement Claim, if a court of competent jurisdiction enjoins Customer from using a Product as a result of an Infringement Claim and NAKIVO is unable to have such injunction stayed or overturned, or if NAKIVO settles an Infringement Claim on terms that would require Customer to stop using the Product, then NAKIVO will, at its expense and election: (a) modify or replace the Product, (b) procure the right to continue using the Product, or (c) if in NAKIVO's reasonable judgment, neither (a) or (b) is commercially reasonable, (i) terminate Customer's License to the Product for any perpetual licenses, and (ii) for any non-perpetual licenses, release Customer from its obligation to make future payments for the Product. This Section contains Customer's exclusive remedies and NAKIVO's sole liability for Infringement Claims.

13. TERMINATION

Upon thirty (30) days advance written notice, either party may terminate this Agreement for its convenience on a prospective basis; however, such termination will have no effect on Orders executed by the parties prior to its effective date and such Orders will remain in full force and

effect under the terms of this Agreement. NAKIVO may: (i) terminate an Order and the Licenses to the Products on that Order if Customer fails to pay any applicable fees due under that Order within 30 days after receipt of written notice from NAKIVO of non-payment; (ii) terminate any or all Orders, Licenses to the Products and/or this Agreement, without notice or cure period, if Customer violates the intellectual property rights of NAKIVO, its Affiliates or licensors, or uses the Products outside of the scope of the applicable Licenses; or (iii) terminate all Licenses and this Agreement in whole or in part if Customer commits any other material breach of this Agreement and fails to correct the breach within 30 days after NAKIVO notifies Customer in writing of the breach. Upon any termination of a License, Customer will immediately uninstall and stop using the relevant Products, and upon NAKIVO's request, Customer will immediately return such Products to NAKIVO, together with all related Documentation and copies, or certify its destruction in writing. Neither party is liable for its failure to perform any obligation under this Agreement, other than a payment obligation, during any period in which performance is delayed by circumstances beyond that party's reasonable control.

14. AUDIT

If requested by NAKIVO not more than once in thirty (30) days, Customer agrees to deliver to NAKIVO periodic product usage reports generated from specific Products (when available) or written reports, whether generated manually or electronically, specifying Customer's use of the Products. Additionally, if requested by NAKIVO not more than once in ninety (90) days, Customer agrees to allow NAKIVO to perform an audit at Customer's facilities during normal business hours to ensure compliance with the terms of this Agreement. Customer agrees to cooperate during any such audit and to provide reasonable access to its information and systems. If an audit reveals that Customer has exceeded the Licensed Capacity for a Product, Customer agrees to pay the applicable fees for additional capacity. If the understated capacity exceeds 5% of the Licensed Capacity of the applicable Products, then Customer agrees to also pay NAKIVO's reasonable costs of conducting the audit.

15. EXPORT CONTROLS

By using the Technology (as this term is defined below), Customer acknowledges that it is responsible for complying with the applicable laws and regulations of the United States and all other relevant countries relating to exports and re-exports. Customer agrees that it will not download, access, license or otherwise export or re-export, directly or indirectly, any software code (delivered as a NAKIVO Product, through support/maintenance, or through other services), any technical publications relating to the software code, such as release notes, reference, user, installation, systems administrator and technical guidelines, or services (collectively, "Technology") in violation of any such laws and regulations, including regulations prohibiting export to certain restricted countries ("Restricted Countries"), or without any written governmental authorization required by such applicable laws. The list of Restricted Countries can and does change from time to time. It currently includes Cuba, Iran, North Korea, Sudan and Syria. In particular, but without limitation, the Technology may not be downloaded, licensed, transferred or otherwise exported or re-exported, directly or indirectly, including via remote access (a) into a Restricted Country or to a national or resident of a Restricted Country; (b) to

anyone on the U.S. Treasury Department's list of Specially Designated Nationals or Other Blocked Persons, the U.S. Commerce Department's Denied Parties List, Entity List, or Unverified List; or (c) to or for any proliferation-related (nuclear weapons, missile technology, or chemical/biological weapons) end use. By downloading, licensing and/or using the Technology, Customer represents and warrants that (w) it is not located in, under the control of, acting on behalf of, or a national or resident of any Restricted Country; (x) Customer is not on any list in (b) above; (y) Customer is not involved in any end use listed in (c) above; and (z) no U.S. federal agency has suspended, revoked, or denied its export privileges. Customer agrees that all rights to use the Technology are granted on the condition that such rights are forfeited if it fails to comply with these terms.

EC No. 428/2009 sets up a Community regime for control of exports of dual-use items and technology, and it is declared that this Technology is intended for civil purposes only. Therefore, Customer agrees not to license, download or transfer, directly or indirectly any Technology controlled by it to any military entity or to any other entity for military purposes, including any State Security Forces pursuant to this Agreement, nor to knowingly transfer any Technology to end-users for use in connection with chemical, biological or nuclear weapons or missiles capable of delivering such weapons. Customer also agrees, (a) not to export or re-export any Technology to an entity that is based in China and describe themselves as "Institute(s)" or "Academy(ies)"; or (b) not to knowingly export or re-export any Technology to any country that is subject to European Union, United Nations or Organizations for Security and Co-operation in Europe sanctions without first obtaining a validated license.

16. GOVERNING LAW

This Agreement is governed by the substantive laws in force, without regard to conflict of laws principles: (a) in the State of Nevada, if you acquired the License in the United States, Puerto Rico, or any country in Central or South America; (b) in the Province of Ontario, if you acquired the License in Canada (subsections (a) and (b) collectively referred to as the "Americas Region"); (c) in Singapore, if you acquired the License in Japan, South Korea, Peoples Republic of China, Special Administrative Regions of Hong Kong or Macau, Taiwan, Philippines, Indonesia, Malaysia, Myanmar, Singapore, Brunei, Vietnam, Cambodia, Laos, Thailand, India, Pakistan, Australia, New Zealand, Papua New Guinea or any of the pacific island states (collectively, "Asia Pacific Region"); or (d) in Kiev, Ukraine, if you acquired the License in any other country not described above. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed in its entirety.

17. ARBITRATION

ANY CONTROVERSY, CLAIM OR DISPUTE BETWEEN CUSTOMER AND NAKIVO ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH OR ALLEGED BREACH THEREOF, SHALL BE SETTLED BY BINDING ARBITRATION CONDUCTED IN ENGLISH. THE ARBITRATION SHALL BE HELD IN NEVADA, CLARK COUNTY, U.S.A., UNDER THE CURRENT COMMERCIAL OR INTERNATIONAL, AS APPLICABLE, RULES OF THE AMERICAN ARBITRATION

ASSOCIATION. THE COSTS OF THE ARBITRATION SHALL BE BORNE EQUALLY PENDING THE ARBITRATOR'S AWARD. THE AWARD RENDERED SHALL BE FINAL AND BINDING UPON THE PARTIES AND SHALL NOT BE SUBJECT TO APPEAL TO ANY COURT, AND MAY BE ENFORCED IN ANY COURT OF COMPETENT JURISDICTION. NOTHING IN THIS AGREEMENT SHALL BE DEEMED AS PREVENTING EITHER PARTY FROM SEEKING INJUNCTIVE RELIEF FROM ANY COURT HAVING JURISDICTION OVER THE PARTIES AND THE SUBJECT MATTER OF THE DISPUTE AS NECESSARY TO PROTECT EITHER PARTY'S CONFIDENTIAL INFORMATION, OWNERSHIP, OR ANY OTHER PROPRIETARY RIGHTS. ALL ARBITRATION PROCEEDINGS SHALL BE CONDUCTED IN CONFIDENCE, AND THE PARTY PREVAILING IN ARBITRATION SHALL BE ENTITLED TO RECOVER ITS REASONABLE ATTORNEYS' FEES AND NECESSARY COSTS INCURRED RELATED THERETO FROM THE OTHER PARTY.

18. U.S. FEDERAL ACQUISITIONS

This Article applies to all acquisitions of the commercial Product subject to this Agreement by or on behalf of the federal government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the federal government. By accepting delivery of the Product, the government hereby agrees that the Product qualifies as "commercial" within the meaning of the acquisition regulation(s) applicable to this procurement. The terms and conditions of this Agreement shall pertain to the government's use and disclosure of the Product, and shall supersede any conflicting contractual terms and conditions. If the license granted by this Agreement fails to meet the government's needs or is inconsistent in any respect with Federal law, the government agrees to return the Product, unused, to NAKIVO. The following additional statement applies only to acquisitions governed by DFARS Subpart 227.4 (October 1988): "Restricted Rights - Use, duplication and disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (Oct. 1988)."

19. NAKIVO ENTITIES

The following licensing entities apply to this Agreement:

Territory: Worldwide

Licensing Entity: NAKIVO, Inc.

Address of Licensing Entity:

4894 Sparks Blvd.

Sparks, NV USA

89436-8202

20. ASSIGNMENT AND TRANSFERS

Customer may not assign or transfer a Product separate from the applicable Agreement and License, and may not assign or transfer an Agreement or a License, except in the event of a

merger with or into, or a transfer of all or substantially all of Customer's assets to, a third party who assumes all of Customer's liabilities and obligations under the Agreement and License, expressly agrees to be bound by and comply with all of the terms of the Agreement and License. Any attempt to assign or transfer an Agreement or License in violation of this provision will be null and void and be treated as a violation of NAKIVO's intellectual property rights or use outside the scope of the License.

21. MISCELLANEOUS TERMS

A waiver by a party of any breach of any term of this Agreement will not be construed as a waiver of any continuing or succeeding breach. Should any term of this Agreement be invalid or unenforceable, the remaining terms will remain in effect. The parties acknowledge they have read this Agreement and agree that it is the complete and exclusive statement of the agreement and supersedes any prior or contemporaneous negotiations or agreements, between the parties relating to the subject matter of this Agreement. This Agreement may not be modified or rescinded except in writing signed by both parties. The prevailing party in any litigation is entitled to recover its attorney's fees and costs from the other party. To the extent NAKIVO Products include third party code: if (a) such third party code is provided for use with a Product, it may be used only with that Product unless otherwise provided for in the Documentation; and (b) the Documentation contains terms that pertain to such third party code, those terms govern the third party code in place of the terms of the applicable Order and this Agreement; except that the third party terms will not (i) negate or amend the rights granted by NAKIVO to Customer or the obligations undertaken by NAKIVO in the applicable Order or this Agreement with respect to a Product; or (ii) impose any additional restrictions on Customer's use of the Product. In some circumstances, usually either for the convenience of its customers or in order to comply with the obligation to make source code available under specific license terms, NAKIVO distributes to customers, without charge, products that are not governed by an Order or this Agreement. Such products are distributed separately from the NAKIVO Products, are governed by the license terms that are included with them, and are provided by NAKIVO AS IS, WHERE IS AND WITHOUT WARRANTIES OF ANY KIND, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, AND EXCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. The parties have agreed that this Agreement and the documents related thereto be drawn up in the English language.

22. SUPPORT

Customer may acquire NAKIVO support services ("Support") on an Order. Once Support is acquired for a Product, Customer is automatically enrolled in Support on a monthly or on an annual basis for all Licensed Capacity of that Product, unless either party terminates Support on all Licensed Capacity of a Product upon at least thirty (30) days written notice prior to the next Support anniversary date. The monthly or annual fee for Support will be agreed upon at the time of each Order. NAKIVO may change its Support terms, to be effective upon Customer's support anniversary date. NAKIVO reserves the right to discontinue Support for a Product where NAKIVO generally discontinues such services to all licensees of that Product. Any Customer

who is not current on Support will not be issued with new license keys (including license merges and edition upgrades) until Support is renewed. If Support is terminated and Customer re-enrolls in Support, NAKIVO may charge Customer a reinstatement fee.

23. ADDITIONAL TERMS

The following additional terms are incorporated into this Agreement.

a. **DEFINITIONS.** Terms set forth below have the indicated meaning regardless of whether they are capitalized.

"Computer" or "Server" has the meaning generally given within the computer industry, which is a single machine, whether a central processing unit, such as a mainframe machine, or a distributed systems machine, such as a Unix or Intel based server. A mainframe machine would be an individual mainframe computer having single or multiple processors or engines.

"Enterprise" is the environment consisting of all hardware owned or leased by Customer in the Territory.

b. **LICENSE RESTRICTIONS.** The following restrictions apply to certain Products. Each "NAKIVO Backup & Replication" License is limited for use per CPU – Subcapacity or per Computer - Subcapacity.

c. **UNITS OF MEASUREMENT.** The following units of measurement apply to certain Products.

per CPU - Full Capacity: A license is required for the total number of active, physical CPUs in each Computer upon which the Product is performing backup or replication tasks, either remotely or locally. "CPU" means a physical processor or central unit in a designated Computer containing the logic circuitry that performs the instructions of a Computer's programs and refers to the "socket" which can contain one or more processor cores.

per CPU - Subcapacity: A license is required for all active, physical CPUs upon which the Product is performing backup or replication tasks, either remotely or locally. "CPU" means a physical processor or central unit in a designated Computer containing the logic circuitry that performs the instructions of a Computer's programs and refers to the "socket" which can contain one or more processor cores.

per Computer – Full Capacity: A license is required for all active Computers (either virtual or physical) upon which the Product is upon which the Product is performing backup or replication tasks, either remotely or locally.

per Computer - Subcapacity: A license is required for all active Computers upon which the Product is performing backup or replication tasks, either remotely or locally.

YOU AGREE THAT YOU HAVE READ THIS AGREEMENT AND INTEND TO BE BOUND, AS IF YOU HAD SIGNED THIS AGREEMENT IN WRITING. IF YOU ARE

ACTING ON BEHALF OF AN ENTITY, YOU WARRANT THAT YOU HAVE THE
AUTHORITY TO ACCEPT THE TERMS OF THIS AGREEMENT FOR SUCH ENTITY.