KASTEN END USER LICENSE AGREEMENT

This End User License Agreement (the "EULA" or "Agreement") is a binding agreement between Kasten, Inc. ("Kasten") and you ("Licensee"), and establishes the terms and conditions under which Licensee may use the Software and Documentation (as defined below), including, without limitation, the terms and conditions relating to the license grant, intellectual property rights, disclaimers /exclusions / limitations of warranty, indemnity and liability, governing law and limitation periods associated with the Software and Documentation.

LICENSEE ACKNOWLEDGES IT HAS HAD THE OPPORTUNITY TO REVIEW THIS AGREEMENT, PRIOR TO ACCEPTANCE OF IT. LICENSEE'S ACCEPTANCE OF THIS AGREEMENT IS EVIDENCED BY LICENSEE'S DOWNLOADING, COPYING, INSTALLING OR USING THE KASTEN SOFTWARE. IF YOU ARE ACTING ON BEHALF OF A LICENSEE THAT IS A COMPANY, YOU REPRESENT THAT YOU ARE AUTHORIZED TO BIND THE COMPANY FOR WHICH YOU ARE DOWNLOADING, COPYING, INSTALLING OR USING THE SOFTWARE AND DOCUMENTATION. IF YOU DO NOT AGREE TO ALL TERMS OF THIS AGREEMENT, DO NOT DOWNLOAD, COPY, INSTALL, OR USE THE SOFTWARE, AND YOU MUST PERMANENTLY DELETE THE SOFTWARE.

1. DEFINITIONS

1.1 "Authorized Persons" means trained technical employees and contractors of Licensee who are subject to a written agreement with Licensee that includes use and confidentiality restrictions that are at least as protective as those set forth in this Agreement.

1.2 "Authorized Reseller" means a distributor or reseller, including cloud computing platform providers, authorized by Kasten to resell licenses to the Software through the channel through or in the territory in which Licensee is purchasing.

1.3 "Confidential Information" means all non-public information disclosed in written, oral or visual form by either party to the other. Confidential Information may include, but is not limited to, services, pricing information, computer programs, source code, names and expertise of employees and consultants, know-how, and other technical, business, financial and product development information. "Confidential Information" does not include any information that the receiving party can demonstrate by its written records (1) was rightfully known to it without obligation of confidentiality prior to its disclosure hereunder by the disclosing party; (2) is or becomes publicly known through no wrongful act of the receiving party; (3) has been rightfully received without obligation of confidentiality from a third party authorized to make such a disclosure; or (4) is independently developed by the receiving party without reference to confidential information disclosed hereunder.

1.4 "Documentation" means any administration guides, installation and user guides, and release notes that are provided by Kasten to Licensee with the Software.

1.5 "Intellectual Property Rights" means patents, design patents, copyrights, trademarks, Confidential Information, know-how, trade secrets, moral rights, and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.6 "<u>Node</u>" means a single physical or virtual computing machine recognizable by the Software as a unique device. Nodes must be owned or leased by Licensee or an entity controlled by, controlling or under common control with Licensee.

1.7 "<u>Edition</u>" means a unique identifier for each distinct product that is made available by Kasten and that can be licensed, including summary information regarding any associated functionality, features, or restrictions specific to the Edition.

1.8 "<u>Open Source Software</u>" means software delivered to Licensee hereunder that is subject to the provisions of any open source license agreement, which may include, without limitation, the GNU Lesser General Public License and the Mozilla Public License.

1.9 "<u>Software</u>" means any and all software product Editions licensed to Licensee under this Agreement, all as developed by Kasten and delivered to Licensee hereunder. Software also includes any Updates provided by Kasten to Licensee. For the avoidance of doubt, the definition of Software shall exclude any Third-Party Software and Open Source Software.

1.10 "<u>Third-Party Software</u>" means certain software Kasten licenses from third parties and provides to Licensee
with the Software, which may include Open Source Software.

1.11 "<u>Update</u>" means a revision of the Software that Kasten makes available to customers at no additional cost. The Update includes, if and when applicable and available, bug fix patches, maintenance release, minor release, or new major releases. Updates are limited only to the Software licensed by Licensee, and specifically exclude new product offerings, features, options or functionality of the Software that Kasten may choose to license separately, or for an additional fee.

1.12 "<u>Use</u>" means to install activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

2. LICENSE GRANT AND RESTRICTIONS

2.1 <u>Enterprise License</u>. Subject to Licensee's compliance with the terms and conditions of this Agreement, Kasten grants to Licensee a non-exclusive, non-transferable (except in connection with a permitted assignment of this Agreement under Section 14.10 (Assignment)), non-sublicensable, limited term license to install and use the Software, in object code form only, for internal business purposes (and not for managing third party data), unless terminated in accordance with Section 4 (Term and Termination).

2.2 <u>Starter License</u>. This section shall only apply when Licensee licenses the Starter Edition of the Software. The license granted herein is for a maximum of 5 Nodes and for a period of 12 months from the date of the Software release that embeds the specific license instance. Updating to a newer Software (minor or major) release will always extend the validity of the license by 12 months. If Licensee wishes to upgrade to an Enterprise License instead, Licensee will be required to place an order with an authorized Reseller. Licensee is required to provide accurate email and company information, if representing a company, when accepting this Agreement. Under no circumstances will a Starter License be construed to mean that the Licensee is authorized to distribute the Software to any third party for any reason whatsoever.

2.3 <u>Evaluation License</u>. This section shall only apply when Licensee has licensed the Software for an initial evaluation period. The license granted herein is valid only one time 30 days, starting from date of installation, unless otherwise explicitly designated by Kasten ("<u>Evaluation Period</u>"). Under this license the Software can only be used for evaluation purposes. Under no circumstances will an Evaluation License be construed to mean that the Licensee is authorized to distribute the Software to any third party for any reason whatsoever. If Licensee wishes to upgrade to an Enterprise License instead, Licensee will be required to place an order with an authorized Reseller. If Licensee does not wish to upgrade to an Enterprise License at the end of the Evaluation Period Licensee's rights under this Agreement shall terminate, and Licensee must delete all Kasten Software.

2.4 <u>License Restrictions</u>. Except to the extent permitted under this Agreement, Licensee will not nor will Licensee allow any third party to: (i) copy, modify, adapt, translate or otherwise create derivative works of the Software or the Documentation; (ii) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software; (iii) rent, lease, sell, assign or otherwise transfer rights in or to the Software or Documentation; (iv) remove any proprietary notices or labels from the Software or Documentation; (v) publicly disseminate performance information or analysis (including, without limitation, benchmarks) relating to the Software. Licensee will comply with all applicable laws and regulations in Licensee's use of and access to the Software and Documentation.

2.5 <u>Responsibility for Use</u>. The Software and Documentation may be used only by Authorized Persons and in conformance with this Agreement. Licensee shall be responsible for the proper use and protection of the Software and Documentation and is responsible for: (i) installing, managing, operating, and physically controlling the Software and the results obtained from using the Software; (ii) using the Software within the operating environment specified in the Documentation; and; (iii) establishing and maintaining such recovery and data protection and security procedures as necessary for Licensee's service and operation and/or as may be specified by Kasten from time to time.

2.6 <u>United States Government Users</u>. The Software licensed under this Agreement is "commercial computer software" as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms and this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulations ("<u>FAR</u>") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("<u>DOD</u>"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

3. SUPPORT

3.1 During the Term (as defined below) and subject to Licensee's compliance with the terms and conditions of this Agreement, Licensee may submit queries and requests for support for Enterprise Licenses by submitting Service Requests via Veeam Support Portal (https://my.veeam.com). Support is not provided for Starter and Evaluation Licenses. Licensee shall be entitled to the support service-level agreement specified in the relevant order form or purchase order ("Order Form") between Licensee and the Reseller and as set forth in Kasten's Support Policy, a copy of which can be found at

https://www.kasten.io/support-services-policy. Licensee shall also be permitted to download and install all Updates released by Kasten during the Term and made generally available to users of the Software. Software versions with all updates and upgrades installed is supported for six months from the date of release of that version.

3.2 <u>Starter Edition Support</u>. If the Licensee has licensed Starter Edition of the Software, you will have access to the Kasten K10 Support Community (https://community.veeam.com/groups/kasten-k10-support-92), but Kasten cannot guarantee a service level of any sort. Should a higher level of support be needed, Licensee has the option to consider entering into a Purchase Agreement with Kasten for licensing a different Edition of the Software.

4. TERM AND TERMINATION

4.1 <u>Term</u>. Except for Starter and Evaluation licenses, the term of this Agreement shall commence on the date of download and shall, unless terminated earlier in accordance with the provisions of Section 4.2 below, remain in force for the Subscription Period as set forth in the applicable Order Form(s) (the "<u>Term</u>"). The Term for Starter and Evaluation Licenses is set forth in section 2.2 and 2.3, respectively. The parties may extend the Term of this Agreement beyond the Subscription Period or beyond the term for Starter or Evaluation Licenses by executing additional Order Form(s) with and the payment of additional licensing fees to a Reseller.

4.2 <u>Termination</u>. Either party may immediately terminate this Agreement and the licenses granted hereunder if the other party fails to cure a material breach of any material term or condition of this Agreement within thirty (30) days of receipt of written notice specifying such breach.

4.3 <u>Effects of Termination</u>. Upon expiration or termination of this Agreement for any reason, (i) any amounts owed to Kasten under this Agreement will be immediately due and payable; (ii) all licensed rights granted in this Agreement will immediately cease; and (iii) Licensee will promptly discontinue all use of the Software and Documentation in Licensee's possession or control.

4.4 <u>Survival</u>. The following Sections of this Agreement will remain in effect following the expiration or termination of these General Terms for any reason: 4.3 (Effects of Termination), 4.4 (Survival), 5 (Third Party Software), 8 (Ownership), 9.2 (Third-Party Software), 9.3 (Warranty Disclaimer), 10 (Limitations of Liability), 11.2 (Exceptions to Kasten Obligation), 12 (Export), 13 (Audit), and 14 (General).

5. THIRD PARTY AND OPEN SOURCE SOFTWARE

Certain Third-Party Software or Open Source Software (Kasten can provide a list upon request) that may be provided with the Software may be subject to various other terms and conditions imposed by the licensors of such Third-Party Software or Open Source Software. The terms of Licensee's use of the Third-Party Software or Open Source Software is subject to and governed by the respective Third-Party Software and Open Source licenses, except that this Section 5 (Third-Party Software), Section 9.2 (Third Party Software), 9.3 (Warranty Disclaimer), Section 10 (Limitations of Liability), and Section 134 (General) of this Agreement also govern Licensee's use of the Third-Party Software. To the extent applicable

to Licensee's use of such Third-Party Software and Open Source, Licensee agrees to comply with the terms and conditions contained in all such Third-Party Software and Open Source licenses.

6. FEES

Fees for licensing and use of the Software shall be set forth in separate Order Form(s) between the Licensee and a Reseller.

7. USAGE DATA

Kasten may collect, accumulate, and aggregate certain usage statistics in order to analyze usage of the Software, make improvements, and potentially develop new products. Kasten may use aggregated anonymized data for any purpose that Kasten, at its own discretion, may consider appropriate.

8. OWNERSHIP

As between Kasten and Licensee, all right, title and interest in the Software, Documentation and any other Kasten materials furnished or made available hereunder, all modifications and enhancements thereof, and all suggestions, ideas and feedback proposed by Licensee regarding the Software and Documentation, including all copyright rights, patent rights and other Intellectual Property Rights in each of the foregoing, belong to and are retained solely by Kasten or Kasten's licensors and providers, as applicable. Licensee hereby does and will irrevocably assign to Kasten all evaluations, ideas, feedback and suggestions made by Licensee to Kasten regarding the Software and Documentation (collectively, "Feedback") and all Intellectual Property Rights in and to the Feedback. Except as expressly provided herein, no licenses of any kind are granted hereunder, whether by implication, estoppel, or otherwise.

9. LIMITED WARRANTY AND DISCLAIMERS

9.1 Limited Warranty. Kasten warrants that the Software, in its unmodified form as initially delivered or made available to Licensee, will perform substantially in accordance with the then-current Documentation for a period of ninety (90) days from the date the Software is delivered to Licensee (the "Warranty Period"). This warranty does not apply to Starter and Evaluation Licenses. In the event the Software fails in a material respect to operate in accordance with the Documentation during the Warranty Period and Kasten is unable to correct the defect, Kasten's sole and exclusive liability and Licensee's sole and exclusive remedy shall be a refund of the License fee, if any, paid by Licensee for the Software. The foregoing limited warranty will not apply if failure of the Software is the result of damage or misuse caused by Licensee. In the event a reported problem with the Software is Licensee's fault, Licensee agrees to reimburse Kasten for its correction efforts in accordance with its then standard rates.

9.2 Third-Party Software. Except as expressly set forth in this Agreement, Third-Party Software (including any Open Source Software) are provided on an "as-is" basis at the sole risk of Licensee. Notwithstanding any language to the contrary in this Agreement, Kasten makes no express or implied warranties of any kind with respect to Third-Party Software provided to Licensee and shall not be liable for any damages regarding the use or operation of

the Third-Party Software furnished under this Agreement. Any and all express or implied warranties, if any, arising from the license of Third-Party Software shall be those warranties running from the third party manufacturer or licensor to Licensee.

9.3 <u>Warranty Disclaimer</u>. EXCEPT FOR THE LIMITED WARRANTY PROVIDED ABOVE, KASTEN AND ITS SUPPLIERS MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, RELATING TO THE SOFTWARE OR TO KASTEN'S MAINTENANCE, PROFESSIONAL OR OTHER SERVICES. KASTEN SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. KASTEN AND ITS SUPPLIERS AND LICENSORS DO NOT WARRANT OR REPRESENT THAT THE SOFTWARE WILL BE FREE FROM BUGS OR THAT ITS USE WILL BE UNINTERRUPTED OR ERROR-FREE. THIS DISCLAIMER SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. EXCEPT AS STATED ABOVE, KASTEN AND ITS SUPPLIERS PROVIDE THE SOFTWARE ON AN "AS IS" BASIS. KASTEN PROVIDES NO WARRANTIES WITH RESPECT TO THIRD PARTY SOFTWARE AND OPEN SOURCE SOFTWARE.

10. LIMITATIONS OF LIABILITY

10.1 <u>EXCLUSION OF CERTAIN DAMAGES</u>. EXCEPT FOR BREACHES OF SECTION 8 (OWNERSHIP), IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR RELIANCE DAMAGES, INCLUDING ANY LOST DATA, LOSS OF USE AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT, THE SOFTWARE OR DOCUMENTATION, EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF, OR COULD REASONABLY HAVE PREVENTED, SUCH DAMAGES.

10.2 <u>LIMITATION OF DAMAGES</u>. EXCEPT FOR BREACHES OF SECTION 8 (OWNERSHIP), EACH PARTY'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT OR THE SOFTWARE, DOCUMENTATION, OR SERVICES PROVIDED BY KASTEN, WILL NOT EXCEED THE AMOUNT OF FEES PAID OR PAYABLE BY LICENSEE FOR THE SOFTWARE, DOCUMENTATION OR SERVICES GIVING RISE TO THE CLAIM IN THE TWELVE (12) MONTHS FOLLOWING DELIVERY. LICENSEE AGREES THAT KASTEN'S SUPPLIERS AND LICENSORS WILL HAVE NO LIABILITY OF ANY KIND UNDER OR AS A RESULT OF THIS AGREEMENT.

10.3 <u>THIRD PARTY SOFTWARE</u>. NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY IN THIS AGREEMENT, KASTEN SHALL NOT BE LIABLE FOR ANY DAMAGES REGARDING THE USE OR OPERATION OF ANY THIRD-PARTY SOFTWARE FURNISHED UNDER THIS AGREEMENT.

10.4 <u>LIMITATION OF ACTIONS</u>. IN NO EVENT MAY LICENSEE BRING ANY CAUSE OF ACTION RELATED TO THIS AGREEMENT MORE THAN ONE (1) YEAR AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO THE LIABILITY.

11. INDEMNIFICATION

11.1 <u>Kasten Obligation</u>. Kasten shall, at its expense, defend Licensee from third party claims brought against Licensee, and shall pay or reimburse Licensee for all damages, costs and expenses payable by Licensee to such third party to the extent they are awarded in a final judgment or agreed to in a settlement, as a result of any third party claims against Licensee alleging that the Software or any component thereof infringes or misappropriates any U.S. patent issued prior to the Effective Date, copyright, or trade secret; provided that Licensee: (1) promptly notifies Kasten in writing of the claim; (2) grants Kasten sole control of the defense and settlement of the claim; and (3) provides Kasten, at Kasten's expense, with all assistance, information and authority reasonably required for the defense and settlement of the claim.

11.2 <u>Exceptions to Kasten Obligation</u>. Kasten's above indemnity obligations do not apply to, and Licensee shall indemnify, defend and hold Kasten harmless from any damages, costs, expenses and liabilities arising from (1) any use of the Software or Documentation beyond the scope of license granted herein, (2) any modification or derivative works of the Software or Documentation made by or for Licensee, (3) use of a superseded infringing version of the (or component thereof) by Licensee after release of a non-infringing version by Kasten, or (4) any use or combination of the Software with any technology, software or hardware not supplied by Kasten, if such alleged infringement would be avoided by use of the Software, alone or with other technology, software or hardware.

11.3 <u>Claim of Infringement</u>. If a claim of infringement occurs that is subject to Section 11.1 and not subject to the exceptions in Section 11.2, or if Kasten determines that a claim is likely to occur, Kasten may, in Kasten's sole discretion: (1) procure for Licensee the right or license to continue to use the affected Software, free of the infringement claim; or (2) replace or modify the affected Software, to make it non-infringing provided that the replacement Software substantially conforms to Kasten's then-current specification for such Software. If selected by Kasten, the remedy provided under this Section 11.3 shall be Licensee's sole and exclusive remedy for any claim of Intellectual Property Rights infringement.

11.4 <u>Exclusive Remedy</u>. Sections 11.1 through 11.3 state the sole and exclusive obligations and liability of Kasten for any Intellectual Property Rights infringement and are in lieu of any warranties of non-infringement, all of which are disclaimed.

12. EXPORT

The Software, Documentation and related technical data may be subject to U.S. export control laws, including without
limitation the U.S. Export Administration Act and its associated regulations, and may be subject to export or import
regulations in other countries. Licensee shall comply with all such regulations and agrees to obtain all necessary licenses to
export, re-export, or import the Software, Documentation and related technical data.

13. AUDIT

During the term of this Agreement and for a period of one year thereafter, Kasten may, during normal business hours and
upon reasonable prior notice to Licensee, inspect the files, computer processors, equipment and facilities of Licensee to

verify Licensee's compliance with this Agreement and to ensure that the Software is being used in accordance with the
quantity and type of licenses purchased by Licensee from authorized Resellers.

14. GENERAL

14.1 <u>No Agency</u>. Kasten and Licensee each acknowledge and agree that the relationship established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to: (1) give either party the power to direct or control the day-to-day activities of the other; (2) deem the parties to be acting as partners, joint venturers, co-owners or otherwise as participants in a joint undertaking; or (3) permit either party or any of either party's officers, directors, employees, agents or representatives to create or assume any obligation on behalf of or for the account of the other party for any purpose whatsoever.

14.2 <u>Compliance with Laws</u>. Each party agrees to comply with all applicable laws, regulations, and ordinances relating to their performance hereunder. Without limiting the foregoing, Licensee warrants and covenants that it will comply with all then current laws and regulations of the United States and other jurisdictions relating or applicable to Licensee's use of the Software and Documentation including, without limitation, those concerning Intellectual Property Rights, invasion of privacy, defamation, and the import and export of Software and Documentation.

14.3 <u>Force Majeure</u>. Except for the duty to pay money, neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, riots, fires, flood, storm, explosions, acts of God, war, governmental action, earthquakes, or any other cause which is beyond the reasonable control of such party.

14.4 <u>Governing Law; Venue and Jurisdiction</u>. This Agreement shall be interpreted according to the laws of the State of New York without regard to or application of choice-of-law rules or principles. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in New York County, New York and the parties hereby consent to the personal jurisdiction and venue therein.

14.5 <u>Injunctive Relief</u>. The parties agree that monetary damages would not be an adequate remedy for the breach of certain provisions of this Agreement, including, without limitation, all provisions concerning infringement, confidentiality and nondisclosure, or limitation on permitted use of the Software or Documentation. The parties further agree that, in the event of such breach, injunctive relief would be necessary to prevent irreparable injury. Accordingly, either party shall have the right to seek injunctive relief or similar equitable remedies to enforce such party's rights under the pertinent provisions of this Agreement, without limiting its right to pursue any other legal remedies available to it.

14.6 <u>Entire Agreement and Waiver</u>. This Agreement and any exhibits hereto shall constitute the entire agreement and contains all terms and conditions between Kasten and Licensee with respect to the subject matter hereof and all prior agreements, representations, and statement with respect to such subject matter are superseded hereby. This Agreement may be changed only by written agreement signed by both Kasten and Licensee. No failure of either party to

exercise or enforce any of its rights under this Agreement shall act as a waiver of subsequent breaches; and the waiver of any breach shall not act as a waiver of subsequent breaches.

14.7 <u>Severability</u>. In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, that provision will be enforced to the maximum extent permissible under applicable law and the other provisions of this Agreement will remain in full force and effect. The parties further agree that in the event such provision is an essential part of this Agreement, they will begin negotiations for a suitable replacement provision.

14.8 <u>Counterparts</u>. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered (including by facsimile), shall be deemed an original, and all of which shall constitute one and the same agreement.

14.9 <u>Binding Effect</u>. This Agreement shall be binding upon and shall inure to the benefit of the respective parties hereto, their respective successors and permitted assigns.

14.10 <u>Assignment</u>. Neither party may, without the prior written consent of the other party (which shall not be unreasonably withheld), assign this Agreement, in whole or in part, either voluntarily or by operation of law, and any attempt to do so shall be a material default of this Agreement and shall be void. Notwithstanding the foregoing, Kasten may assign its rights and benefits and delegate its duties and obligations under this Agreement without the consent of Licensee in connection with a merger, reorganization or sale of all or substantially all relevant assets of the assigning party; in each case provided that such successor assumes the assigning party's obligations under this Agreement.