RACKTOP HARDWARE PURCHASE AND SOFTWARE LICENSE TERMS AND CONDITIONS
Version 2026.1, effective November 4, 2026

This RackTop Hardware Purchase and Software License Terms and Conditions ("Terms and Conditions") is entered into pursuant to the order form, quote, or invoice that references these Terms and Conditions ("Order"), and together with such Order and the Exhibits and other documents expressly incorporated herein (the "Agreement"), forms a binding legal contract between you (the legal entity identified on the Order) ("you" or "Customer") and RackTop Systems, Inc. ("RackTop"). If you do not agree to the terms of this Agreement, RackTop is not willing to sell the RackTop Hardware or license any right to use or access the RackTop Software, or any portion thereof, to you. In such event, you may not install, access, or use the RackTop Hardware or RackTop Software. Notwithstanding anything to the contrary in this Agreement, your first use of the RackTop Software, as part of the Authorized Hardware or the execution of the Order (whichever comes first), shall be deemed your express consent to this Agreement. Acceptance also occurs when Customer clicks an "I accept," "Accept," or similar control presented during installation of the RackTop Software or otherwise before Customer is permitted to access or use it. CUSTOMER SPECIFICALLY ACKNOWLEDGES AND AGREES TO THE PROVISIONS OF SECTION 3.2 (SUBSCRIPTION LICENSE, INCLUDING SUBSCRIPTION EXPIRATION AND LICENSE PERIODS), SECTION 10 (LIMITATION OF LIABILITY), AND SECTION 12.11 (GOVERNING LAW, VENUE, AND JURY WAIVER).

1. DEFINITIONS

1.1 "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with a party, where "control" means ownership of more than fifty percent (50%) of the voting interests of the entity.

1.2 "Authorized Hardware" means the third-party servers, Disk Shelves, and other hardware that RackTop has authorized in writing, including in the Documentation, for use with the RackTop Software.

1.3 "Authorized Server" means the server(s) on which Customer is authorized under an Order to install or run the RackTop Software.

1.4 "Base Storage Operating System" means the RackTop Software, together with the operating system, software interfaces, and databases included in it, as installed on an Authorized Server or Hardware, but excluding any Licensed Features and any Hardware.

1.5 "Claim" means a claim, suit or other similar proceeding.

1.6 "Cluster" means one (1) or more Authorized Servers that share the same set of Disk Shelves.

1.7 "Component Retention" means the optional Hardware Maintenance entitlement, purchased on an Order, under which Customer keeps any failed hardware component of the covered equipment, including drives, memory modules, and other server components, instead of returning it to RackTop, as described in Exhibit A. Component Retention includes Drive Retention.

1.8 "Confidential Information" means (a) any confidential, proprietary or trade secret information of the disclosing party ("Discloser") that if in tangible form is marked as confidential, secret or with a comparable legend or if disclosed orally or visually is identified as confidential at the time of disclosure; and (b) discussions relating to such information. Discloser shall use reasonable efforts to mark its confidential information in tangible form as confidential; however, tangible information that does not bear such a legend and the discussions relating thereto, will be protected hereunder as Confidential Information if the receiving party ("Recipient") knew or should have reasonably known under the circumstances that the information is confidential. Customer Data and Support Data are deemed to be Customer's Confidential Information.

1.9 "Customer Data" means all data, files, and other content that Customer or its Users store on, or process with, the System. RackTop does not host Customer Data and does not receive it, except to the extent it is included in Support Data that Customer chooses to send to RackTop or is viewed by RackTop personnel during a support session that Customer authorizes.

1.10 "Derivative Works" means any revision, modification, annotation or elaboration, whether in source or object code form, to a work which represents, as a whole, an original work of authorship.

1.11 "Disk Shelves" means disk enclosures, authorized by RackTop, that hold disk drives.

1.12 "Documentation" means the then-current, generally available, written instructions, user guides, and user manuals for the RackTop Software, if applicable, whether in electronic, paper or other equivalent form, provided by RackTop and in connection with any updates, modifications and improvements to the RackTop Software, regardless of form or media.

1.13 "Drive Retention" means the optional Hardware Maintenance entitlement, purchased on an Order, under which Customer keeps failed drives instead of returning them to RackTop, as described in Exhibit A.

1.14 "Executable Code" means the fully compiled version of a software program that can be executed by a computer and used by an end user without further compilation.

1.15 "Hardware" means the Authorized Hardware or RackTop Hardware, as applicable.

1.16 "Hardware Maintenance" means the hardware repair, replacement, and related services that Customer purchases from RackTop for the equipment, at the Hardware Maintenance level, and for the term stated on the applicable Order. It is distinct from software Support.

1.17 "Indemnified Parties" means the officers, directors, employees and agents of the party seeking indemnification.

1.18 "Intellectual Property Rights" means, collectively, all worldwide intellectual property rights in and to any works of authorship, moral rights, copyrights, trademarks, service marks, patents, designs, trade secrets and algorithms.

1.19 “Licensed Feature” means the machine-readable, object-code version of RackTop’s proprietary software that is an added feature or component of the RackTop Software not included in the Base Storage Operating System and requires a separately executed Order.

1.20 “Open Source Licenses” means the terms of use applicable to Open Source Software.

1.21 “Open Source Software” means software released under a license that guarantees a certain specific set of freedoms as to use, copying, modifications and redistribution, including any Derivative Works thereof that are released back to the licensor, project or trustee, but not including any Derivative Works by RackTop that are retained as proprietary.

1.22 “Perpetual License” means RackTop Software licensed for the operating life of the specific Device identified under Section 3.1, rather than for a fixed subscription term, subject to the termination and transfer provisions of this Agreement.

1.23 “RackTop Hardware” means RackTop-branded hardware, including all factory-installed components, subcomponents, spare parts, and replacement components supplied by RackTop, regardless of the manufacturer of any component. RackTop Hardware does not include separately sold third-party-branded products identified as such on the Order. Firmware is treated as software under this Agreement.

1.24 “RackTop Software” means BrickStor SP and any other RackTop proprietary software product identified on an Order, together with all versions and releases of BrickStor SP and each such other identified product, whether released before or after the applicable Order, and including the operating system and any software that is preloaded or otherwise installed onto the Hardware, in any deployment form RackTop makes available (pre-installed on Hardware, installed on bare metal, or run as a virtual machine or in a cloud environment), together with any firmware RackTop provides for the Hardware and all Software Updates and Software Upgrades to any of them. Third-Party Software embedded in, and supplied by RackTop as an integrated part of, the RackTop Software is covered by RackTop's warranty and Support for the integrated product while used as part of it. Embedded Third-Party Software other than Open Source Software is covered by Section 9.1 only to the extent provided in Section 9.1, and Open Source Software is not covered by Section 9.1. This does not transfer ownership of Third-Party Software or alter its applicable license, including any Open Source License.

1.25 "Service Effective Date" means the date upon which Customer first accepts this Agreement. It establishes the effective date of the Agreement and does not, by itself, establish delivery, subscription commencement, the Support Term, or the Hardware Maintenance term.

1.26 **"**Software Key" means the key provided to Customer by RackTop for each named Authorized Server or Cluster that is used to set up the functionality of the RackTop Software as part of a System in accordance with the terms set forth in Section 4.1.

1.27 "Source Code" means the human-readable version of a software program that can be compiled into Executable Code.

1.28 **"**Software Upgrade" means a new version of the RackTop Software incorporating new features and enhancements.

1.29 "Software Update**"** means a revision to the RackTop Software to provide bug fixes, corrections and minor enhancements.

1.30 "Subscription License" means any RackTop Software that is licensed based on a functional capability for a specific period of time.

1.31 "Support" means maintenance and technical support services purchased by the Customer from RackTop with respect to the RackTop Software, including Software Updates and Software Upgrades, bug fixes, repairs, modifications, improvements, and enhancements. Support does not include Licensed Features for which Customer has not paid the applicable Fees, Hardware Maintenance, or support for any Beta Features or Trial License. Hardware Maintenance is purchased and provided separately under Section 2.3.

1.32 "Support Data" means support bundles, logs, diagnostic files, screenshots, configuration information, support tickets, and other information that Customer or its Users choose to send to RackTop in connection with Support, including any Customer Data or personal data that such information contains.

1.33 "Support Fees" means those applicable annual fees for the Support of the RackTop Software.

1.34 "System" means the Hardware or other Authorized Server on which the RackTop Software is installed or run, together with the RackTop Software.

1.35 "Telemetry" means system health, performance, configuration, capacity, and usage information that the RackTop Software sends to RackTop when Customer connects the System to RackTop's support portal (myRacktop) or other cloud services operated by or for RackTop, and has not disabled that transmission.

1.36 "Third-Party Software" means any software, licensed as a standalone product or as a part of another software, that is not owned by RackTop or its Affiliates.

1.37 "Users" means the employees of Customer and its Affiliates, and contractors and agents (including systems integrators and managed service providers) acting on Customer's behalf.

2. **HARDWARE.**

2.1 **PURCHASE OF HARDWARE**. Customer may purchase RackTop Hardware to be used as part of the RackTop Software as set forth on an Order, as well as related documentation, accessories, parts, and upgrades. RackTop Hardware shall be provided to Customer by RackTop only upon the execution by Customer of an Order. Each Order shall set forth the RackTop Hardware being purchased by Customer along with the price for such Hardware and the Hardware Maintenance level and term. Every storage appliance purchased from RackTop, directly or through its authorized reseller or distributor, must include an initial Hardware Maintenance term of at least one (1) year. This Agreement, any fully executed amendments to this Agreement, and any Exhibits to this Agreement shall govern such Order. In no event shall any additional or inconsistent terms provided to RackTop supersede or modify the terms set forth in this Agreement or any Order except by a written agreement signed by both parties. Pre-printed or additional terms in any Customer purchase order, vendor registration, or similar document have no effect.

2.2 **SHIPPING; DELIVERY; TITLE.** Unless otherwise stated on an Order, all RackTop Hardware ordered by Customer will be shipped by RackTop within a reasonable time after the Order is executed by both parties. Unless otherwise expressly stated on an Order, risk of loss or damage, and title to RackTop Hardware, will pass to Customer and acceptance will occur upon delivery to the "ship to" address or, if special shipping arrangements are agreed to, upon delivery to Customer's carrier or designee.

2.3 **HARDWARE WARRANTY AND MAINTENANCE**. RackTop warrants the RackTop Hardware as set forth in Exhibit A (Hardware Warranty, Maintenance and RMA Policy), which also states the cancellation, return, and restocking terms for RackTop Hardware. Hardware Maintenance for Hardware sold by RackTop, directly or through its authorized reseller or distributor, is provided for the covered equipment, at the Hardware Maintenance level, and for the term stated on the applicable Order, as described in Exhibit A and Exhibit B. Coverage includes all hardware components of the covered equipment, including components made by third parties. Separately obtained hardware is not covered unless RackTop expressly accepts it for coverage in writing. The version of Exhibit A attached to the Terms and Conditions applicable to the Order governs that Order. RackTop may publish a summary on its website for convenience; if that summary conflicts with the Agreement, the Agreement controls.

2.4 **DISCLAIMER**. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT, THE WARRANTIES AND ANY ASSOCIATED REMEDIES FOR THE RACKTOP HARDWARE EXPRESSED IN THIS AGREEMENT, INCLUDING EXHIBIT A AND ANY EXPRESS HARDWARE MAINTENANCE OBLIGATIONS, ARE EXCLUSIVE. NO OTHER WARRANTY, WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY RACKTOP OR MAY BE INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE. TO THE EXTENT ALLOWED BY APPLICABLE LAW, RACKTOP DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

3. **SOFTWARE.**

3.1 **PERPETUAL LICENSE**. This Section 3.1 will only apply to Perpetual Licenses that Customer elects in the Order. Subject to the terms and conditions of this Agreement, RackTop grants to Customer a non-exclusive, non-transferable, license to use and operate the RackTop

Software (other than Open Source Software) in accordance with the terms hereof solely for the internal business purposes of Customer and its Affiliates in accordance with the Documentation, as integrated and indivisible components of the System. The RackTop Software associated with a Perpetual License will be assigned to a single, specific Authorized Server, Cluster, or Hardware (each a "Device"), identified by a unique serial number for each Device and the Perpetual License will terminate once such Device is permanently retired from operation. If RackTop replaces a Device, or a component that carries the Device's serial number, under Exhibit A or Hardware Maintenance, the Perpetual License transfers to the replacement at no charge and RackTop will issue a new Software Key. An authorized component repair that does not replace the licensed Device does not terminate its Perpetual License. Transfers for a hardware refresh or to separately acquired replacement equipment require RackTop's prior written consent; for any authorized virtual deployment, the Order must identify the licensed Device or instance and its retirement event. CUSTOMER MAY PERMIT ITS USERS TO USE THE RACKTOP SOFTWARE ON CUSTOMER'S BEHALF, AND CUSTOMER IS RESPONSIBLE FOR THEIR COMPLIANCE WITH THIS AGREEMENT. THE PERPETUAL LICENSE DOES NOT INCLUDE ANY RIGHT FOR ANY OTHER THIRD PARTY TO RECEIVE, ACCESS OR USE THE SOFTWARE, IN WHOLE OR IN PART. FOR THE AVOIDANCE OF DOUBT, EXCEPT AS PROVIDED ABOVE FOR REPLACEMENT DEVICES, PERPETUAL LICENSES ARE NON-TRANSFERABLE FROM ONE DEVICE TO ANOTHER AND CUSTOMER WILL NOT REASSIGN ANY PERPETUAL LICENSE TO A DIFFERENT DEVICE WITHOUT RACKTOP'S PRIOR WRITTEN CONSENT.

3.2 **SUBSCRIPTION LICENSE**. This Section 3.2 will only apply to Subscription Licenses that Customer elects in the Order. Subject to the terms and conditions of this Agreement, RackTop grants to Customer a non-exclusive, non-transferable (except as permitted in Section 12.4), non-sublicensable right, during the term set forth in the Order, solely for the internal business purposes of Customer and its Affiliates and in accordance with the limitations (if any) set forth in the Order, to access and use the RackTop Software in accordance with the Documentation. For bare metal installations, Customer may transfer Subscription Licenses from one Device to another; provided however, that Customer does not exceed its licensed capacities in doing so, deletes or removes the old copy if not licensed, and will notify RackTop prior to transferring any Subscription License. For virtual machine installations, Customer may allow the virtual machine to move across Devices or cloud infrastructure for high availability and management within the cluster; provided however, that Customer does not exceed its licensed capacities in doing so, and does not create a duplicate running instance of the virtual machine under the same license entitlement. AN ACTIVE SUBSCRIPTION IS REQUIRED IN ORDER TO USE SUBSCRIPTION SOFTWARE OR TO OBTAIN ANY SUPPORT. CUSTOMER MAY PERMIT ITS USERS TO USE THE RACKTOP SOFTWARE ON CUSTOMER'S BEHALF, AND CUSTOMER IS RESPONSIBLE FOR THEIR COMPLIANCE WITH THIS AGREEMENT. THIS ACCESS GRANT DOES NOT INCLUDE ANY RIGHT FOR ANY OTHER THIRD PARTY TO RECEIVE, ACCESS OR USE THE RACKTOP SOFTWARE, IN WHOLE OR IN PART, AND CUSTOMER WILL USE COMMERCIALLY REASONABLE EFFORTS TO PREVENT UNAUTHORIZED ACCESS TO, OR USE OF, THE RACKTOP SOFTWARE, AND NOTIFY RACKTOP PROMPTLY OF ANY SUCH UNAUTHORIZED USE KNOWN TO CUSTOMER. SCHEDULED EXPIRATION. CUSTOMER ACKNOWLEDGES THAT EACH SOFTWARE KEY FOR A SUBSCRIPTION LICENSE STATES A SCHEDULED EXPIRATION DATE AND THAT THE RACKTOP SOFTWARE ENFORCES THAT DATE AUTOMATICALLY. Where an Order provides for a multi-year term or for Fees payable in installments, RackTop may issue Software Keys that expire at the end of each period for which Fees are due and have been paid (for example, annually), and will issue the Software Key for each following period within the Order's committed term once the Fees then due for that period have been paid, other than amounts withheld under a good-faith dispute that complies with Section 5.2. The scheduled expiration of a Software Key is a stated term of the license and not a remedy for breach, and it occurs on its scheduled date whether or not a dispute is pending. If Fees due for the following period remain unpaid, RackTop will give Customer written notice at least thirty (30) days, and again at least fifteen (15) days, before the current Software Key's scheduled expiration, identifying the amount due and the expiration date. If Customer has notified RackTop in writing that a System supports healthcare delivery, emergency or public-safety services (including criminal justice systems), or critical infrastructure, those notice periods are sixty (60) and thirty (30) days, and RackTop will, on request made before expiration, issue one temporary extension of up to thirty (30) days. When a Subscription License for the Base Storage Operating System expires without a replacement Software Key or extension having been applied, the affected licensed services will stop in an orderly manner and will not restart until a valid Software Key is applied. Expiration does not delete, encrypt, or alter Customer Data, which remains stored on the System. Expiration of a separately licensed add-on Licensed Feature disables only that feature; it does not reboot the System or disable the Base Storage Operating System or other features whose licenses remain valid. The RackTop Software displays advance expiration warnings, and RackTop sends advance expiration notices by email to the Customer contacts registered in RackTop's support portal. Customer must keep its contacts and email addresses current in the support portal and is responsible for monitoring the warnings and notices and for applying renewal keys before expiration. Customer may request a temporary extension through RackTop Support before the license expires. RackTop may grant an extension in its discretion and, if it does, will confirm the extension's duration and expiration date in writing and provide the applicable Software Key. Submitting a request does not itself extend a Software Key, and renewal discussions alone do not create an extension. On Customer's written request after a Software Key expires, including while Fees are unpaid or disputed, RackTop will promptly, and in any event within one (1) business day, issue a one-time temporary Software Key of up to thirty (30) days solely so that Customer can access, export, and migrate Customer Data. That use is not a renewal, does not waive any Fees, and is not productive use of the RackTop Software. Except for the scheduled expiration of a Software Key as described in this Section 3.2, RackTop will not remotely revoke an unexpired Software Key, accelerate its scheduled expiration, or otherwise disable the RackTop Software, and will not delete, encrypt, or restrict Customer's access to Customer Data, as a remedy for a dispute or breach. RackTop does not exercise electronic self-help under this Agreement. Software Keys for government customers are also subject to Section 12.6. Except for an extension expressly granted in writing, continued technical operation after an early legal termination does not extend the license grant, and Section 11.3 requires Customer to stop using any terminated license.

3.3 **OPEN SOURCE SOFTWARE LICENSES**. The RackTop Software includes Open Source Software. Each Open Source Software component is licensed to Customer under its own Open Source License, as identified in the third-party notices file included with the RackTop Software. Nothing in this Agreement limits Customer's rights under an Open Source License, and where an Open Source License requires RackTop to make source code available, RackTop will do so as that license requires. Except as an Open Source License requires otherwise, all right, title and interest in and to Derivative Works of Open Source Software made by RackTop and not contributed back to the Open Source Software licensor, project or trustee are retained by RackTop and are subject to the Perpetual License and/or Subscription License. **Any conflict or inconsistency between the terms of any Open Source License and this Agreement, including those terms relating to Disclaimer of Warranty, Limitation of Liability and/or Indemnification, shall be governed by the applicable Open Source License but solely as to such Open Source Software**. This Section 3.3 does not limit RackTop's own warranty and Support obligations for the RackTop Software as an integrated product, and Open Source Software is not covered by Section 9.1.

3.4 **BETA FEATURES**. From time to time, RackTop may offer beta, early access, or trial software, features, or tools ("Beta Features") with

which Customer may experiment. Beta Features are offered solely for evaluation purposes, without Support and without any warranty of any kind, and may be modified or discontinued at RackTop's sole discretion.

3.5 **TRIAL AND DEMO LICENSES**. RackTop may, in its sole discretion, offer a limited license to the RackTop Software on a trial or demonstration basis only ("Trial License"), in which case, Customer must select the Trial License option in the Order. The term of any Trial License will be as set forth in the Order ("Trial License Term"). At the end of the Trial License Term, the Trial License will expire and Customer shall not further use the RackTop Software unless and until the parties enter into a new Order.

3.6 **SYSTEM INTEGRATORS AND MISSION USE**. RackTop may, in a writing signed by both parties that references this Section 3.6 (a "Mission Use Addendum"), permit Customer to (a) integrate the RackTop Software and Hardware into a system that Customer delivers to its own customer, including the U.S. Government (an "End User"), and (b) use, or permit an End User to use, the RackTop Software in an application described in Section 6.3(k)(i), including a defense, electronic warfare, or weapons system. Unless the Mission Use Addendum states otherwise: (i) Customer will deliver the RackTop Software to an End User only as part of that integrated system and under license terms at least as protective of RackTop as this Agreement; (ii) Customer will obtain an enforceable agreement from a non-government End User to comply with those terms and remains responsible for the acts and omissions of Customer and its own Users; for a U.S. Government End User, the permitted terms and rights are subject to Section 12.6 and the applicable government contract, and Customer is not required to procure the Government's agreement to terms it cannot lawfully accept; (iii) Customer and the End User are solely responsible for the design, safety review, testing, certification, and operation of the integrated system; and (iv) the Mission Use Addendum controls over this Agreement to the extent they conflict, subject to Section 12.6.

4. **DELIVERY AND SUPPORT**

4.1 **DELIVERY.** After acceptance of the applicable Order, RackTop will provide the Software Keys necessary to download and use the licensed RackTop Software in accordance with the delivery date or schedule stated in the Order, subject to payment of amounts then due under the agreed payment or credit terms. If the Order states no delivery schedule, RackTop will provide the Software Keys within a commercially reasonable time after acceptance of the Order. RackTop will provide new Software Keys for additional capacity licenses purchased by Customer. For multi-year or installment Orders, Software Keys may be issued for each paid period as described in Section 3.2. The subscription start and expiration dates are those stated in the applicable Order or, if omitted from the Order, in the entitlement RackTop issues for it. Unless the Order expressly provides otherwise, a Subscription License will not commence before RackTop makes its Software entitlement available. The Order controls over any inconsistent entitlement dates. Support commencement is governed by Section 4.2(b). Hardware Maintenance begins on the start date stated on the Order or, if none is stated, on the date Customer receives the covered Hardware.

4.2 **SUPPORT SERVICES**.

(a) Support. In consideration of the Support Fees, RackTop will provide Support for the RackTop Software as described in this Section 4.2 and in Exhibit B (Support Service Levels). Services that RackTop performs at Customer's request and that are not included in Support are chargeable at RackTop's then-current rates, plus reasonable travel and other expenses.

(b) Support Term. Support begins on the start date, and ends on the expiration date, stated in the applicable Order or in the license entitlement RackTop issues for that Order (the "Support Term"). If no dates are stated, the Support Term begins on the date RackTop delivers the Software Key or the Hardware, whichever is earlier, and lasts twelve (12) months. Support renews only by a new Order. Termination or expiration of Support shall not act as a termination of a Perpetual License. For Subscription Licenses, Support is included, an active subscription is required to obtain Support, and Support automatically ends on the termination or expiration date of such Subscription License. Customer understands that no refund, pro-rated or otherwise, will be given for termination of prepaid Support, except as stated in this Section. If Customer elects to obtain Support after Support has lapsed, Customer must pay the Support Fees for the lapsed period plus a reinstatement fee to receive the applicable Software Updates and Software Upgrades, and restart Support. RackTop may, in its sole discretion, elect to cease supporting the RackTop Software upon ninety (90) days' notice to Customer, and if RackTop decides to cease such support of the RackTop Software it will refund any prepaid but unused Support Fees on a prorated basis. Termination of a Subscription License terminates the license granted in Section 3.2 along with any related Support.

(c) Assistance. Customer shall promptly advise RackTop of any error or defect with the RackTop Software covered under Support and shall provide reasonable assistance and cooperation to allow RackTop to define and resolve such error or defect. This includes providing (i) a detailed problem description; (ii) reasonable efforts to reproduce the problem; and (iii) reasonable access to authorized customer support contacts. Where Customer cannot share Support Data because of security, classification, or regulatory restrictions, RackTop will provide Support based on the information Customer is able to provide, such as sanitized support bundles and problem descriptions. In that case the resolution-start targets in Exhibit B may not apply, and on-site support or support by cleared personnel is available only under a separate written agreement.

(d) Software Errors. RackTop shall use reasonable efforts to provide corrections to RackTop Software errors (**"**Software Error Correction**"**) in the RackTop Software in the form of patches, fixes, workarounds, Software Updates, Software Upgrades or other forms within a commercially reasonable time depending on the severity of the error as determined by RackTop under Exhibit B, and provided Customer is entitled to Support. Customer agrees not to attempt to correct errors in the RackTop Software while this Agreement is in effect, except under the direction of RackTop.

(e) Software Updates and Upgrades. When and if available, RackTop shall make available Software Updates and/or Software Upgrades to the RackTop Software which are commercially released during the term of any Support period for no additional license fee(s); however any installation/training or other services provided by RackTop will be subject to additional charges. Licensed Features are not included under this provision unless Customer has paid applicable Fees for such additional Licensed Features. RackTop shall provide support on the current release, and immediately prior Software Upgrades (**"**Supported Versions**"**). RackTop shall not be obligated to provide Support for versions that are not Supported Versions or for problems or errors caused by or related to customized RackTop Software, or the addition of, or integration to, incompatible equipment/software; provided, however, that RackTop may, at its option, provide support therefor on a chargeable basis. Customer acknowledges that new Software Updates and Software Upgrades are subject to the terms and conditions of this Agreement. In the event of any termination of Support, Customer shall not be entitled to any further Software Updates or Software Upgrades until Customer reinstates Support and pays any applicable reinstatement fee.

Nothing in this Agreement obligates RackTop to develop or create Software Updates or Software Upgrades and/or to support, maintain, upgrade, or enhance the RackTop Software or Documentation or to make any modifications or new releases thereto (except with respect to Support for the Supported Versions as described herein). Notwithstanding the foregoing, if RackTop Software is defective or fails to meet its specifications when downloaded or delivered to Customer, or if the media on which such RackTop Software is delivered is corrupted or defective upon delivery, RackTop will promptly replace such defective RackTop Software or media without charge as RackTop's sole obligation and Customer's exclusive remedy for any such defects or deficiencies. RackTop may replace any defective proprietary RackTop Software with the then-current version, in its discretion, if the defective version of proprietary RackTop Software should be a prior version. For purposes of clarity, software Support does not include Hardware Maintenance. RackTop's hardware warranty and Hardware Maintenance obligations are governed by Section 2.3, Exhibit A, and the Hardware Maintenance stated on the applicable Order. Hardware acquired independently of RackTop is not covered unless RackTop expressly agrees in writing.

5. **FEES AND PAYMENT**

5.1 **FEES**. Customer's license to use the RackTop Software is limited to the capacity purchased for the applicable System or Cluster. All licensed capacity is stated in terabytes (TB); one TB equals 1,000,000,000,000 bytes. (a) Perpetual Licenses are measured by the aggregate raw capacity of all disks assigned to storage pools in the licensed System or Cluster, excluding disks designated as spares and cache drives. Disks used for parity or mirroring are included in that raw-capacity measure. A shared pool is counted once for the Cluster, not once for each Authorized Server accessing it. (b) Subscription Licenses are subject to the maximum usable-capacity limit stated in the Order and the corresponding license entitlement, as measured and enforced by the RackTop Software in accordance with the Documentation, rather than the aggregate raw capacity of installed disks. The applicable Order or Documentation must identify the usable-capacity measurement used for the entitlement. Customer is responsible for purchasing additional capacity before exceeding the applicable licensed limit. License capacity cannot be used concurrently across Systems or Clusters beyond the entitlement stated in the Order. Customer shall pay the applicable hardware purchase charges, license fees, Support Fees, Hardware Maintenance fees, and other charges under an accepted Order, and any additional capacity fees payable under this Agreement (collectively, "Fees"), to RackTop or the authorized reseller or distributor, as applicable under Section 12.14. Additional capacity is charged at RackTop's then-current rate unless otherwise agreed in the applicable Order. Except as expressly provided in this Agreement or required by applicable law, Fees are non-refundable and accepted Order payment commitments are non-cancellable, including when billed in installments.

5.2 **PAYMENT**. Subject to Section 12.14 for indirect purchases, Customer shall pay each invoice issued by RackTop in U.S. currency within the payment terms stated on the invoice or the applicable Order or, if no payment terms are stated, within thirty (30) days after the invoice date. If Customer disputes any invoiced amount in good faith, Customer must notify RackTop in writing before the due date, with reasonable detail regarding the dispute, and pay the undisputed portion when due. The parties will attempt in good faith to resolve the dispute within thirty (30) days. While Customer complies with these requirements, RackTop will not treat the disputed amount as unpaid for purposes of Sections 3.2 and 11.2, and, pending resolution, will issue successive interim Software Keys of not less than ninety (90) days each so that no Software Key expires because of the disputed amount. If Customer fails to timely pay any amount when due, Customer shall pay, in addition, interest at the rate of one and one-half percent (1.5%) per month, but not to exceed the maximum allowed by law, on such delinquent amount.

5.3 **TAXES**. All Fees are exclusive of any sales, value-added, foreign withholding or other government taxes, duties, fees, excises, or tariffs imposed on the production, storage, licensing, sale, transportation, import, export or use of the RackTop Software or Base Storage Operating System (collectively, "Taxes"). Customer is responsible for and, if applicable, will reimburse RackTop within thirty (30) days of request for all such Taxes and any related penalties, except for taxes imposed on RackTop's net income.

6. **OWNERSHIP AND RESTRICTIONS**

6.1 **TITLE**. Customer acknowledges and agrees that, as between RackTop and Customer, title to and ownership of the RackTop Software and the Base Storage Operating System (but not any Hardware purchased by Customer, title to which passes as stated in Section 2.2), and all portions thereof, including all corrections, enhancements, or other modifications to the RackTop Software, and all Intellectual Property Rights therein, are and will at all times be deemed the sole and exclusive property of RackTop or its suppliers. All rights not expressly granted to Customer in this Agreement are reserved by RackTop.

6.2 **PROPRIETARY RIGHTS NOTICES**. Customer shall not delete, alter, cover, or distort any copyright, trademark, or other proprietary rights notice placed by RackTop on or in the RackTop Software and shall ensure that all such notices are reproduced on all copies thereof.

6.3 **RESTRICTIONS ON USE**. Customer acknowledges that the RackTop Software and its structure, organization and Source Code constitute valuable trade secrets of RackTop or its suppliers. Accordingly, Customer will not, directly or indirectly, do any of the following: (a) modify, adapt, alter, translate, or create derivative works from the RackTop Software or use modified RackTop Software to develop applications; (b) merge the RackTop Software with other software not authorized by RackTop; (c) sublicense, lease, rent, loan, distribute, sell or otherwise transfer or make available the RackTop Software or Base Storage Operating System to any third party except as specifically permitted by this Agreement; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Base Storage Operating System, or any part thereof, including the RackTop Software or evaluate the Base Storage Operating System, including the RackTop Software, in order to develop a competitive product; (e) otherwise use the Base Storage Operating System, including RackTop Software except as expressly allowed under this Agreement; (f) violate any local, state, federal or foreign law, treaty, regulation or convention applicable to Customer in connection with its Users' use of the Base Storage Operating System, including the RackTop Software; (g) circumvent, disable, or tamper with any Software Key, capacity limit, or other license or security mechanism of the RackTop Software, except that Customer may perform vulnerability scanning and security testing of its own System as part of its security program, provided such testing is not used to reverse engineer the RackTop Software or to develop a competing product; (h) publicly publish any evaluation or benchmark of the RackTop Software without RackTop's prior written consent; (i) use the RackTop Software on an unlicensed or unauthorized server or system; (j) install Customer's own or any Third-Party Software on the System that has not been released, approved or distributed by RackTop; (k) use the RackTop Software or the System, in whole or in part, (i) in any life sustaining, nuclear, weapons, or other application where a failure could result in personal injury, loss of life or catastrophic property damage, unless RackTop has approved such use in a Mission Use Addendum under Section 3.6, or (ii) on a computer or in a network environment of a type, category or specification for which the RackTop Software or the System is not compatible as determined by RackTop in its sole discretion; (l) remove,

deface, or obscure any copyright notices, trademarks, legends and/or logos in the RackTop Software or Documentation; (m) publicly disclose performance information about the RackTop Software or the System without RackTop's prior written consent, except to the extent required by law or regulation; or (n) use the RackTop Software in breach or excess of any limitations (e.g., the types, quantities, user limits, time limits, capacity limits) and other usage attributes related to the associated RackTop Software licenses or other limitations prescribed by RackTop in these Terms or the associated Order. The restrictions in subsections (a), (b), and (j) do not prohibit Customer from developing or operating external applications that access the System through supported storage protocols or documented APIs in accordance with the Documentation, without modifying the RackTop Software or installing unapproved software on the System. Subsections (h) and (m) permit non-public disclosure to Customer's advisers, auditors, procurement evaluators, and authorized integrators with a need to know and appropriate confidentiality obligations, and disclosure to regulators or governmental authorities as required or permitted by applicable law. Routine defense or government enterprise storage use does not, by itself, constitute the safety-critical use described in subsection (k)(i); actual integration into a life-sustaining, nuclear, weapons, or other such application remains subject to Section 3.6. If Customer or its Users breach this Section 6.3, RackTop may give Customer written notice of the breach and, if the breach is not cured within ten (10) days after such notice (or immediately, if the breach threatens imminent harm to RackTop's Intellectual Property Rights), suspend Support, Software Updates, Software Upgrades, and the issuance of new Software Keys, and, if the breach is not cured within thirty (30) days after such notice, terminate this Agreement. Except for scheduled expiration under Section 3.2, RackTop will not disable the RackTop Software, revoke or accelerate a Software Key, or delete or restrict access to Customer Data as a breach remedy; suspending issuance of new Software Keys under this Section applies to keys for additional capacity or new products and does not authorize revocation of an existing unexpired Software Key or withholding the Software Key for a following paid period unless this Agreement or the Order has been terminated. If this Agreement or a license is terminated, Customer must stop using the affected RackTop Software as required by Section 11.3.

6.4 **CUSTOMER'S DATA AND SECURITY**. Customer retains sole right, title, and ownership of Customer Data. Customer is responsible for the configuration, administration, and security of the System and its environment under Customer's control, including user access, administrative credentials, network and physical security, and application of supported security updates. Customer will protect Software Keys, credentials, and encryption and recovery keys; maintain appropriate authorized access; and promptly report known compromise affecting Support or RackTop access. Customer is responsible for selecting, configuring, maintaining, and testing appropriate data protection, snapshot, replication, retention, and recovery procedures for its requirements, using supported functionality and configurations. Customer is responsible for access using its credentials to the extent attributable to Customer or its Users or to their failure to fulfill these obligations; such access does not excuse a breach of this Agreement by RackTop or its service providers. Nothing in this Section reduces RackTop's express obligations concerning Support Data, Telemetry, authorized support access, warranty, Support, or Hardware Maintenance. Any liability is subject to Section 10. Customer is responsible for maintaining licenses and complying with the license terms of other software it operates.

7. CONFIDENTIALITY AND PRIVACY

7.1 **OBLIGATIONS**. Each party acknowledges that, in the course of the performance of this Agreement, it may obtain the Confidential Information of the other party. Confidential Information disclosed pursuant to this Agreement will be subject to the terms of this Agreement during the Term and for three (3) years following termination or expiration of this Agreement, except that (a) Customer Data and Support Data will remain subject to the terms of this Agreement for as long as Recipient holds them, and (b) trade secrets, including the Source Code of the RackTop Software, will remain subject to the terms of this Agreement for as long as they remain trade secrets under applicable law. Recipient shall take reasonable steps to prevent the unauthorized disclosure of and maintain the confidentiality of the Confidential Information of Discloser. Recipient shall not disclose the Confidential Information of Discloser to any employees or third parties except to employees, Affiliates, contractors, consultants, and service providers (including the service providers described in Section 7.4) of Recipient who have at least an equivalent confidentiality obligation to Recipient and who have a need to know such Confidential Information on condition that Recipient shall be liable for any breach by such individual or entity. The Confidential Information disclosed by Discloser may only be used by Recipient as necessary to perform its obligations or exercise its rights under this Agreement.

7.2 **EXCEPTIONS**. The obligations set forth herein will not apply to any information that: (a) is or becomes generally available to the public or within the industry to which the information relates other than as a result of a breach of this Agreement; (b) was known to Recipient prior to receipt from Discloser, provided such prior knowledge can be substantiated by documentary evidence antedating the disclosure by Discloser; (c) is disclosed to Recipient by a third party (other than employees or agents of either party) which in making such information available to Recipient, is not in violation of any obligation of confidentiality to Discloser; or (d) is independently developed by Recipient, provided such independent development can be substantiated by documentary evidence. A disclosure of Confidential Information (i) in response to a valid order by a court or other governmental body, or (ii) otherwise required by law, will not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that, to the extent legally permitted, Recipient will provide prompt written notice thereof to Discloser to enable Discloser to seek a protective order or otherwise prevent such disclosure.

7.3 **SUPPORT DATA AND TELEMETRY**. Sending Support Data and Telemetry to RackTop is optional and under Customer's control. Customer may disable Telemetry at any time, and nothing in this Agreement requires Customer to send any data to RackTop. RackTop will use Support Data to provide Support to Customer and as described in Section 7.4, and will use Telemetry to provide, maintain, secure, and improve its products and services. Support Data is Customer's Confidential Information, and Customer retains all rights in it. RackTop may create and use aggregated or de-identified information derived from Telemetry that does not identify Customer, its Users, or any individual, and such information is RackTop's property. RackTop will maintain reasonable administrative, technical, and physical safeguards for Support Data and Telemetry, will retain Support Data only as long as reasonably needed to provide Support or improve product capabilities, and will delete Support Data upon Customer's written request, except for copies RackTop must retain by law and information already incorporated into models trained under Section 7.4. RackTop will provide any notice of unauthorized access to Support Data or Telemetry that applicable law or a written agreement under Section 7.5 or 7.6 requires of it.

7.4 **AUTOMATED AND AI-ASSISTED PROCESSING**. RackTop may use automated tools, including artificial intelligence and machine learning tools, to analyze Support Data and Telemetry in order to provide Support. Some of these tools may be operated by third-party service providers acting on RackTop's behalf under written confidentiality and security obligations at least as protective as those in this Agreement. RackTop will not permit those service providers to use Support Data to train or improve their own models. RackTop may use Support Data to train its own models and its employees. Models and other materials RackTop develops through such training are RackTop's property, and RackTop will not use them to disclose Support Data to any third party. If Customer does not want its Support Data used as described in this Section 7.4, Customer should not send Support Data to RackTop. RackTop remains responsible for its service providers' handling

of Support Data.

7.5 **RESTRICTED DATA**. Customer will not send to RackTop, in Support Data or otherwise, any classified information, Controlled Unclassified Information, export-controlled technical data, protected health information, criminal justice information, or similarly regulated data, unless the parties have first signed a written agreement (such as a business associate agreement or a CJIS security addendum) that covers that data. Customer will not send personal data of individuals in the European Economic Area, United Kingdom, or Switzerland unless the parties first sign a data processing agreement covering it. Where available, Customer may use the sanitization features of the RackTop Software to remove such information before sending a support bundle.

7.6 **PERSONAL DATA**. To the extent Support Data or Telemetry contains personal data, RackTop processes it on Customer's behalf and in accordance with this Agreement. Customer instructs RackTop to process personal data in Support Data for the purposes in Sections 7.3 and 7.4, and Customer is responsible for providing any notices to and obtaining any consents from its Users that applicable law requires for that processing. Where applicable law requires, RackTop will enter into a data processing agreement or business associate agreement on Customer's request. RackTop's handling of business contact information it receives in connection with Orders is described in its privacy policy at https://www.racktopsystems.com/privacy.

8. **LIMITED WARRANTIES AND DISCLAIMERS**

8.1 **RACKTOP SOFTWARE**. RackTop warrants to Customer (and not any third party) that for a period of thirty (30) days following the date of delivery (the "Warranty Period"), the RackTop Software, under normal use and if installed properly on the Hardware, shall perform substantially in accordance with the Documentation. For any breach of this warranty during the Warranty Period and to the extent not otherwise covered by Support purchased by the Customer, Customer's sole and exclusive remedy and RackTop's sole and exclusive liability, will be for RackTop to use reasonable efforts to correct promptly any documented, reproducible errors and defects to make the RackTop Software operate as warranted. If RackTop cannot correct the nonconformity within a reasonable time, Customer may terminate the affected license and receive a refund of the license fees paid for the nonconforming RackTop Software and any prepaid unused Subscription or Support Fees. EXCEPT FOR HARDWARE EXPRESSLY COVERED UNDER SECTION 2.3 OR HARDWARE MAINTENANCE AND THIRD-PARTY SOFTWARE EMBEDDED IN THE INTEGRATED RACKTOP SOFTWARE AS DESCRIBED IN THE DEFINITION OF "RACKTOP SOFTWARE" IN SECTION 1, RACKTOP DOES NOT WARRANT OR UNDERTAKE TO SUPPORT AUTHORIZED HARDWARE OR SEPARATE THIRD-PARTY SOFTWARE. ANY AVAILABLE MANUFACTURER OR SUPPLIER WARRANTY FOR A SEPARATELY SOLD THIRD-PARTY PRODUCT WILL BE PASSED THROUGH TO CUSTOMER TO THE EXTENT RACKTOP IS PERMITTED TO DO SO. SUCH THIRD-PARTY WARRANTIES DO NOT REDUCE RACKTOP'S EXPRESS OBLIGATIONS FOR COVERED HARDWARE OR INTEGRATED RACKTOP SOFTWARE.

8.2 **DISCLAIMER**. EXCEPT AS EXPRESSLY WARRANTED IN SECTION 2.3 (INCLUDING EXHIBIT A) AND SECTION 8.1, THE HARDWARE, THE RACKTOP SOFTWARE, AND THE BASE STORAGE OPERATING SYSTEM, INCLUDING ALL COMPONENTS THEREOF, ARE PROVIDED "**AS IS,**" WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR NON-MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, CUSTOM, TRADE, QUIET ENJOYMENT, ACCURACY OF INFORMATIONAL CONTENT OR RESULTS, DATA LOSS, OR SYSTEM INTEGRATION, OR ANY WARRANTIES OR CONDITIONS ARISING UNDER ANY OTHER LEGAL REQUIREMENT. RACKTOP MAKES NO WARRANTY THAT THE RACKTOP SOFTWARE WILL RUN PROPERLY ON ALL HARDWARE, THAT THE RACKTOP SOFTWARE OR OTHER PRODUCTS WILL MEET THE NEEDS OR REQUIREMENTS OF CUSTOMER OR ITS USERS OR WILL OPERATE IN THE COMBINATIONS THAT MAY BE SELECTED FOR USE BY CUSTOMER OR ITS USERS, THAT THE RACKTOP SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

8.3 **NO GUARANTEE**. CUSTOMER ACKNOWLEDGES, UNDERSTANDS, AND AGREES THAT NO SECURITY PRODUCT CAN PREVENT ALL ATTACKS, AND THAT RACKTOP DOES NOT GUARANTEE OR WARRANT THAT THE HARDWARE, THE RACKTOP SOFTWARE, OR ANY OTHER RACKTOP PRODUCT OR SERVICE WILL DETECT, PREVENT, OR STOP RANSOMWARE, MALWARE, MALICIOUS SOFTWARE, DATA THEFT, INSIDER THREATS, OR ANY OTHER ATTACK ON CUSTOMER'S SYSTEMS OR DATA ("ATTACKS"). THE OCCURRENCE OF AN ATTACK DOES NOT, BY ITSELF, ESTABLISH A BREACH OF THIS AGREEMENT BY RACKTOP. THIS SECTION DOES NOT EXCUSE A FAILURE BY RACKTOP TO PERFORM AN EXPRESS OBLIGATION UNDER THIS AGREEMENT. ANY LIABILITY FOR SUCH A FAILURE REMAINS SUBJECT TO THE APPLICABLE EXCLUSIVE REMEDIES AND SECTION 10. NO PARTICULAR RECOVERY POINT, RECOVERY TIME, SECURITY OUTCOME, OR AVAILABILITY LEVEL IS GUARANTEED UNLESS EXPRESSLY AGREED IN A WRITING SIGNED BY RACKTOP AND CUSTOMER THAT IDENTIFIES THE COMMITMENT AND ITS APPLICABLE CONDITIONS.

9. **INDEMNIFICATION**

9.1 **BY RACKTOP**. For RackTop Software, subject to Sections 9.3 and 9.4 below, RackTop shall defend any Claim brought against Customer or its Indemnified Parties by any third party alleging that the RackTop Software (including embedded Third-Party Software to the extent provided in the definition of "RackTop Software" in Section 1, but excluding Open Source Software, separately licensed Third-Party Software, and Hardware) infringes, misappropriates or violates that party's patent rights, trademark rights, copyright rights or rights under trade secret laws, each as recognized in the United States, and shall pay all damages and costs awarded against Customer and its Indemnified Parties, by judgment or in settlement, in connection with such a Claim as well as any costs incurred by Customer in response to a request by RackTop to assist with the defense of the Claim. With respect to embedded Third-Party Software other than Open Source Software, RackTop's obligation under this Section 9.1 is limited to the defense and indemnity RackTop actually obtains from its supplier for the Claim; RackTop will use commercially reasonable efforts to enforce that obligation and pass through to Customer the defense and indemnity RackTop actually obtains. RackTop will have no responsibility or liability for such Claims to the extent such Claim is based upon: (a) any use of any part of the RackTop Software after notification to discontinue use; (b) modifications of the RackTop Software not made or authorized by RackTop; (c) use of the RackTop Software in combination with any products, services, or systems not supplied, authorized, or registered by RackTop; (d) Open Source Software, or Third-Party Software except embedded components to the extent provided in that definition; (e) Hardware; or (f) any use in violation of this Agreement or misuse or unauthorized use of the RackTop Software.

9.2 **BY CUSTOMER**. Subject to Section 9.3 below, Customer shall defend any Claim brought against RackTop or its Indemnified Parties by

any third party arising from or related to Customer's: (a) violations of law or regulations in connection with the use of the Base Storage Operating System, or any part thereof; (b) Customer Data, including any claim that Customer Data infringes or misappropriates a third party's rights; or (c) breach of Section 6.3. Customer has no obligation under this Section to the extent the Claim results from RackTop's or its service providers' breach of this Agreement, negligence, or willful misconduct. Customer shall pay all damages and costs awarded against RackTop and its Indemnified Parties, by judgment or in settlement, in connection with such a Claim as well as any costs incurred by RackTop in response to a request by Customer to assist with the defense of the Claim.

9.3 **CONDITIONS**. Each party's indemnification obligations are contingent upon the indemnifying party receiving: (a) prompt written notice of the Claim; (b) all reasonably necessary assistance, information and authority to defend the claim and perform its obligations under this Section; and (c) sole control of the defense and settlement of such claim and all associated negotiations. The indemnifying party agrees not to settle any claim, action, suit or proceeding for which it is indemnifying the other in a manner that would impose additional obligations on the other party without first consulting the other and obtaining its consent thereto (which shall not be unreasonably withheld or delayed); however, such consent shall not be required where the settlement results in the full and unconditional release of all claims against and obligations of the indemnified party. An indemnified party may, at its option and expense, participate in the defense or settlement of any Claim, provided that the indemnifying party retains control over the defense or settlement thereof.

9.4 **RACKTOP'S OBLIGATION FOR INFRINGEMENT INDEMNITY**. If an infringement claim within the scope of Section 9.1 is made or appears likely to be made, Customer agrees that RackTop may, in RackTop's sole discretion and at its expense: (a) procure for Customer the right to continue to use the affected portions of the RackTop Software; or (b) replace or modify the RackTop Software so that it is non-infringing and substantially equivalent in function to the allegedly infringing RackTop Software. If RackTop determines that none of these alternatives is reasonably available, then RackTop may terminate this Agreement in whole or with respect to the affected portions of the RackTop Software, and RackTop will refund (i) for Perpetual Licenses, the license fees paid for the affected RackTop Software, less straight-line amortization over five (5) years from delivery, and (ii) for Subscription Licenses and Support, any prepaid fees for the period after termination.

9.5 **ENTIRE OBLIGATION**. SECTION 9.1, SUBJECT TO SECTIONS 9.3 AND 9.4, STATES RACKTOP'S ENTIRE OBLIGATION AND CUSTOMER'S EXCLUSIVE REMEDIES FOR THIRD-PARTY INFRINGEMENT OR MISAPPROPRIATION CLAIMS WITHIN ITS SCOPE. SECTION 9.2, SUBJECT TO SECTION 9.3, STATES CUSTOMER'S INDEMNIFICATION OBLIGATIONS FOR THE THIRD-PARTY CLAIMS IDENTIFIED THERE. THIS SECTION DOES NOT ELIMINATE EITHER PARTY'S EXPRESS OBLIGATIONS ELSEWHERE IN THIS AGREEMENT OR EXPAND THE SCOPE OF EITHER INDEMNITY.

10. **LIMITATION OF LIABILITY**

10.1 **EXCLUDED DAMAGES**. SUBJECT TO SECTION 10.4 AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY NOR ITS SUPPLIERS OR SERVICE PROVIDERS WILL BE RESPONSIBLE TO THE OTHER FOR CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR FOR BUSINESS INTERRUPTION, DOWNTIME, LOST OR CORRUPTED DATA, LOST REVENUE, PROFITS, SAVINGS, OR GOODWILL, OR COSTS TO OBTAIN SUBSTITUTE PRODUCTS OR SERVICES. THIS EXCLUSION APPLIES WHETHER OR NOT THE POSSIBILITY OF SUCH LOSS WAS FORESEEABLE OR DISCLOSED, AND INDEPENDENTLY OF ANY LIMITED REMEDY, INCLUDING IF THAT REMEDY DOES NOT ACHIEVE ITS ESSENTIAL PURPOSE.

10.2 **GENERAL CAP**. SUBJECT TO SECTIONS 10.3 AND 10.4, EACH PARTY'S AND ITS SUPPLIERS' AND SERVICE PROVIDERS' COMBINED TOTAL LIABILITY TO THE OTHER UNDER OR IN CONNECTION WITH THIS AGREEMENT IS LIMITED TO DIRECT DAMAGES NOT EXCEEDING THE TOTAL FEES PAID OR PAYABLE FOR RACKTOP HARDWARE, LICENSES, SUPPORT, HARDWARE MAINTENANCE, AND OTHER RACKTOP SERVICES UNDER THE ORDER GIVING RISE TO THE LIABILITY (THE "GENERAL CAP"). FOR AN INDIRECT PURCHASE, THOSE FEES ARE CUSTOMER'S PRICE TO THE AUTHORIZED RESELLER OR DISTRIBUTOR FOR THOSE RACKTOP ITEMS. TAXES, FREIGHT, AND NON-RACKTOP ITEMS OR SERVICES ARE EXCLUDED. THE GENERAL CAP IS ONE AGGREGATE LIMIT FOR ALL CLAIMS ARISING FROM THAT ORDER, NOT A SEPARATE LIMIT FOR EACH INCIDENT, CLAIMANT, OR LEGAL THEORY.

10.3 **SUPPORT DATA AND TELEMETRY SUBLIMIT**. SUBJECT TO SECTION 10.4, TOTAL LIABILITY FOR ALL CLAIMS ARISING FROM UNAUTHORIZED ACCESS TO OR DISCLOSURE OF SUPPORT DATA OR TELEMETRY IN RACKTOP'S OR ITS SERVICE PROVIDERS' POSSESSION OR CONTROL, INCLUDING CUSTOMER DATA OR PERSONAL DATA CONTAINED IN THEM ("DATA SECURITY CLAIMS"), WILL NOT EXCEED US$50,000 OR, IF LOWER, THE GENERAL CAP. THIS IS ONE AGGREGATE SUBLIMIT, NOT AN AMOUNT PER INCIDENT, PERSON, RECORD, OR CLAIM. AMOUNTS PAID FOR DATA SECURITY CLAIMS COUNT TOWARD, AND DO NOT INCREASE, THE GENERAL CAP. THE SUBLIMIT APPLIES REGARDLESS OF WHETHER SUCH A CLAIM IS PLEADED AS BREACH OF CONFIDENTIALITY, CONTRACT, NEGLIGENCE, OR ANOTHER THEORY; IT DOES NOT OVERRIDE SECTION 10.4. CUSTOMER DATA REMAINING SOLELY ON CUSTOMER'S SYSTEM IS NOT SUBJECT TO THIS SUBLIMIT MERELY BECAUSE IT IS CUSTOMER DATA.

10.4 **EXCEPTIONS**. THE EXCLUSIONS AND LIMITS IN SECTIONS 10.1 THROUGH 10.3 DO NOT RESTRICT: (A) CUSTOMER'S OBLIGATION TO PAY FEES; (B) CUSTOMER'S BREACH OF SECTION 6.3 OR ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 9.2; (C) LIABILITY ARISING FROM A PARTY'S FRAUD OR WILLFUL MISCONDUCT; (D) A PARTY'S INFRINGEMENT OR MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; OR (E) LIABILITY THAT APPLICABLE LAW DOES NOT ALLOW THE PARTIES TO EXCLUDE OR LIMIT. FOR THIS SECTION 10, "WILLFUL MISCONDUCT" MEANS AN INTENTIONAL ACT OR OMISSION UNDERTAKEN WITH KNOWLEDGE THAT IT BREACHES THIS AGREEMENT OR WITH INTENT TO CAUSE HARM. AN ACTION TAKEN IN GOOD FAITH IN ACCORDANCE WITH SECTIONS 3.2, 5.2, 6.3, OR 11.2, INCLUDING THE SCHEDULED EXPIRATION OF A SOFTWARE KEY OR DECLINING TO ISSUE A SOFTWARE KEY FOR A FOLLOWING PERIOD FOR NONPAYMENT, IS NOT WILLFUL MISCONDUCT.

10.5 **APPLICATION**. SUBJECT TO SECTION 10.4, THESE EXCLUSIONS AND LIMITS APPLY TO ALL CLAIMS TAKEN TOGETHER, HOWEVER ASSERTED, INCLUDING CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, INDEMNITY, OTHER TORT, AND STATUTORY CLAIMS. DEFENSE COSTS, SETTLEMENTS, AND AWARDS FOR A CAPPED OBLIGATION COUNT TOWARD THE APPLICABLE LIMIT. MULTIPLE CLAIMS OR THE INVOLVEMENT OF SUPPLIERS, SERVICE PROVIDERS, AFFILIATES, USERS, OR INDEMNIFIED PARTIES DO NOT MULTIPLY THAT LIMIT. THE PARTIES ACCEPT THIS ALLOCATION OF COMMERCIAL RISK AS

PART OF THE BASIS FOR THE AGREED FEES.

11. **TERM AND TERMINATION**

11.1 **TERM**.

(a) Perpetual License. For Perpetual Licenses only, the term of this Agreement will commence upon the Service Effective Date and will continue until terminated in accordance with the provisions of this Agreement ("Perpetual Term").

(b) Subscription License. For Subscription Licenses only, the term of this Agreement will commence upon the Service Effective Date and will continue until all Orders expire ("Subscription Term", and collectively with the Perpetual Term, the "Term"). Subscription Licenses do not renew automatically; any renewal requires a new Order.

11.2 **TERMINATION**. Either party may terminate this Agreement upon written notice: (a) if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days after receiving written notice from the non-breaching party; (b) if the other party files a petition for bankruptcy, insolvency or reorganization under any bankruptcy law or is adjudicated bankrupt; (c) if a petition in bankruptcy is filed against the other party and such petition is not dismissed within sixty (60) days of the filing date; (d) if the other party becomes insolvent or makes an assignment for the benefit of its creditors pursuant to any bankruptcy or insolvency law; or (e) if a receiver is appointed for the other party or its business. In addition, if Customer fails to pay any undisputed Fees when due and does not pay them within ten (10) days after receiving RackTop's written notice that payment is past due, RackTop may (i) suspend Support, Software Updates, Software Upgrades, and the issuance of Software Keys for additional capacity or new products; (ii) after giving the notices required by Section 3.2, decline to issue the Software Key for any following period; and (iii) terminate this Agreement or the affected Order if the undisputed Fees remain unpaid thirty (30) days after the notice. Fees continue to accrue during any suspension. RackTop may also exercise the remedies stated in Section 6.3 for a breach of Section 6.3. These remedies do not authorize revocation of an unexpired Software Key, acceleration of its scheduled expiration, technical disabling, or any restriction of Customer's access to Customer Data, and are subject to Section 12.6 and applicable law. While an automatic stay under 11 U.S.C. § 362 applies to Customer, RackTop will not decline to issue a Software Key under clause (ii) without relief from the stay or an order of the bankruptcy court. If RackTop elects not to continue providing the RackTop Software, it may end Support under Section 4.2(b), and that election does not terminate any Perpetual License. Customer may terminate this Agreement for purposes of future Orders at any time by written notice under Section 12.13. Accepted Orders remain in effect for their committed terms unless separately terminated under an express right in this Agreement. Customer's termination for convenience, cessation of use, or voluntary surrender of a license does not cancel an accepted Order, entitle Customer to a refund, or discharge Fees committed for its remaining term, including future installments, which remain payable on their agreed schedule. This does not restrict Customer's express right to terminate an affected Order for RackTop's uncured material breach or any termination right that cannot lawfully be waived. Without expanding the exclusive warranty remedies in Sections 2.3 and 8.1, upon a valid termination for RackTop's uncured material breach, Customer is released from future payment commitments for the terminated portion of the affected Order and will receive a refund of prepaid Fees for undelivered products and unused Subscription License, Support, or Hardware Maintenance periods for that portion. Section 12.6 controls for government transactions.

11.3 **EFFECT OF TERMINATION**. Termination affects only the Agreement or Orders expressly terminated under Section 11.2; accepted Orders that survive a convenience termination remain subject to this Agreement. With respect to a terminated Order, (i) Customer retains ownership of purchased Hardware; (ii) Subscription Licenses terminate, and Perpetual Licenses survive subject to this Agreement unless RackTop terminated because of Customer's uncured material breach, including nonpayment, in which case the affected licenses terminate; (iii) Support and Hardware Maintenance for the terminated portion end, without cancelling coverage under unaffected Orders; and (iv) Customer must pay amounts due but unpaid and remains responsible for surviving payment commitments under Section 11.2 and the applicable payment schedule, subject to Section 12.14. Within ten (10) days after any license terminates, Customer must stop using the affected RackTop Software and, on RackTop's request, certify in writing that it has done so. Legal termination does not authorize technical disabling, revocation of an unexpired Software Key, or deletion of Customer Data as a breach remedy; Section 3.2 governs scheduled expiration, any expressly granted temporary license, and the temporary data-retrieval Software Key, which remains available after termination. On termination or Discloser's written request, Recipient will, within thirty (30) days, return or delete Discloser's Confidential Information that Recipient is not entitled to retain, and confirm completion on reasonable written request. Recipient may retain records required by law and copies in routine backup or archival systems until overwritten or deleted in the ordinary course, provided the retained information remains protected under Section 7 and is not used for another purpose. Customer may retain software and Documentation needed for surviving licenses. Support Data retention and deletion remain subject to Section 7.3. Expiration or termination does not relieve either party of accrued obligations or obligations expressly surviving it.

11.4 **SURVIVAL**. The following Sections will survive the termination or expiration of this Agreement: 1, 2.2 through 2.4, 3.3, 5 through 12, and Exhibit A (as to Hardware purchased before termination or expiration), Hardware Maintenance already purchased for its remaining term, and any other provisions of this Agreement that by reasonable interpretation are intended by the parties to survive the termination or expiration of this Agreement.

12. **GENERAL**

12.1 **ENTIRE AGREEMENT**. This Agreement constitutes the entire agreement between the parties and supersedes all previous and contemporaneous agreements, understandings and arrangements with respect to the subject matter hereof, whether oral or written, except that if Customer and RackTop have signed a separate master agreement covering the Hardware, the RackTop Software, or Support, that agreement controls over these Terms and Conditions. Subject to Section 12.6 and any express precedence rule in a signed amendment, conflicts are resolved in the following order: (a) a mutually signed amendment or rider, including a Mission Use Addendum, but only for the subject matter it expressly modifies; (b) a signed master agreement; (c) the applicable Order as to expressly stated commercial terms, including products, license metrics, quantities, prices, payment terms, Support level, Hardware Maintenance level and term, Drive Retention or Component Retention, and dates; and (d) these Terms and Conditions and the Exhibits. A quote, ordering document, or service description does not change Section 10 or other legal terms unless a writing signed by both parties expressly identifies and changes those terms. Customer acknowledges that, in entering into this Agreement, it has not relied on any statement, representation, warranty, or promise (including any statement in marketing materials, presentations, datasheets, or websites) that is not expressly set out in this Agreement. This Agreement may be amended or supplemented only by a writing that refers explicitly to this Agreement and that is signed by both

parties. Nothing in this Section excludes liability for intentional fraud or any representation or warranty that applicable law does not permit the parties to exclude. The version identified in the accepted Order governs that Order; later website revisions do not amend an existing Order without the parties' written agreement. Acceptance of updated terms in the installer or at a Software Update or Software Upgrade does not change the version that governs an existing Order unless the parties expressly agree in a signed writing; updated terms apply to new Orders and renewals. The titles and headings herein are for reference purposes only and will not in any manner limit the construction of this Agreement, which will be considered as a whole.

12.2 **WAIVER**. No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.

12.3 **SEVERABILITY**. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree that any invalid provision will be deemed to be restated so as to be enforceable to the maximum extent permissible under law consistent with the original intent and economic terms of the invalid provision.

12.4 **ASSIGNMENT**. Neither party will indirectly or directly transfer or assign any rights under this Agreement, in whole or part, without the prior written consent of the other party. Notwithstanding the foregoing, either party may, without the prior written consent of the other party, assign this Agreement to a subsidiary or affiliated entity as part of a divestiture, corporate reorganization or consolidation or to another party in connection with a merger, acquisition, or sale of substantially all assets or stock to which this Agreement relates, provided the successor agrees in writing to assume all of the assigning party's obligations hereunder; however, neither party may make an assignment under the merger, acquisition, or sale exception to a direct competitor of the non-assigning party (for Customer, a competitor of RackTop). The assigning party will notify the other party in writing within thirty (30) days after any such assignment. Requests for RackTop's consent to any other transfer of a license may be made through RackTop's support portal or by email to RackTop. Any assignments contrary to this Section 12.4 will be void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns.

12.5 **COMPLIANCE WITH LAWS**. Each party shall be responsible for its own compliance with laws, regulations and other legal requirements applicable to the conduct of its business and this Agreement and agrees to comply with all such laws, regulations and other legal requirements.

12.6 **U.S. GOVERNMENT END USERS.** The RackTop Software subject to the Perpetual License and/or Subscription License and Documentation each were developed at private expense and constitute "commercial products," as that term is defined at 48 C.F.R. § 2.101. The RackTop Software consists of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 (FAR 12.107 as revised under the Revolutionary FAR Overhaul). Consistent with 48 C.F.R. §12.212, FAR 12.107, and 48 C.F.R. §227.7202-1 and 227.7202-3, all U.S. Government Customers acquire only those rights in the RackTop Software subject to the Perpetual and/or Subscription License and the Documentation that are specifically provided by this Agreement. Consistent with 48 C.F.R. §12.211 (FAR 12.106 as revised under the Revolutionary FAR Overhaul), all U.S. Government End Users acquire only technical data and the rights in that data customarily as specifically provided in this Agreement. If Customer is an agency or instrumentality of the U.S. Government, then (a) this Agreement is governed by the federal law of the United States; (b) disputes are resolved under the Disputes clause of Customer's contract and the Contract Disputes Act, RackTop will proceed diligently with performance pending resolution as the contract requires, and late payment is remedied only by Prompt Payment Act interest; and (c) any provision of this Agreement that is inconsistent with federal law, the Federal Acquisition Regulation, or the terms of Customer's contract (including provisions concerning indemnification by Customer, late payment interest, which is governed by the Prompt Payment Act, 31 U.S.C. § 3901 et seq., acceptance by use, attorneys' fees, publicity, waiver of jury trial, audits and audit charges, assignment, termination, automatic renewal, unilateral changes to terms (including click-through or update acceptance), equitable remedies against the Government, governing law and venue, and obligations that would violate the Anti-Deficiency Act (31 U.S.C. § 1341)) will not apply to the extent of the inconsistency, consistent with FAR 52.232-39 (Unenforceability of Unauthorized Obligations) and, for orders under a GSA Schedule, GSAR 552.232-39 and the Commercial Supplier Agreements - Unenforceable Clauses paragraph of GSAR 552.212-4 (paragraph (w), or paragraph (v) in GSA's July 2026 deviation), or any successor provision. For a U.S. Government Customer, and for a U.S. Government End User to the extent the integrator or reseller has paid the Fees then due for the applicable period, RackTop will issue Software Keys for the full period of performance that has been funded or exercised under the applicable contract, and will not withhold a Software Key or allow one to expire before the end of that period because of a payment dispute or late payment. Where a signed Mission Use Addendum conditions issuance of Software Keys for Fielded Units on payment by the integrator, that condition applies. Where the U.S. Government is an End User through an authorized integrator or reseller, the Government's use is subject to the same mandatory-law limitations; this does not excuse the commercial integrator's or reseller's own lawful obligations. If Customer is a state or local government entity, the governing law and venue are those of the entity's state to the extent its law requires; provisions on indemnification by Customer, late payment interest, attorneys' fees, jury waiver, limitation of Customer's liability, confidentiality (subject to public records laws), and audit apply only to the extent permitted by that law; nothing waives sovereign immunity; and multi-year payment commitments are subject to appropriation where that law requires.

12.7 **INTERNATIONAL TRADE COMPLIANCE**. The RackTop Software, including any Third-Party Software, is subject to the customs and export control laws and regulations of the United States and any country in which the products are manufactured, received or used. Further, under U.S. law, the Base Storage Operating System may not be exported, re-exported, or otherwise transferred, without any required U.S. Government authorization, to restricted countries or restricted end-users, or for use in activities related to weapons of mass destruction including, without limitation, activities related to designing, developing, producing or using nuclear weapons, materials, or facilities, missiles or supporting missile projects, or chemical or biological weapons. Customer will comply with the U.S. Export Administration Regulations (15 C.F.R. Parts 730–774), including EAR Part 744the International Traffic in Arms Regulations (22 C.F.R. Parts 120–130) ("ITAR"), and the economic sanctions regulations administered by the U.S. Department of the Treasury's Office of Foreign Assets Control, and will not export, re-export, or transfer the Hardware or the RackTop Software in violation of those laws. If Customer integrates the Hardware or the RackTop Software into a defense article, or uses them to provide a defense service, as those terms are defined in the ITAR, Customer is responsible for determining the export jurisdiction and classification of the integrated system and for obtaining any required export authorization, and RackTop will provide export classification information for its products on request. RackTop provides the RackTop Software and Hardware as commercial products and does not furnish defense services; Support is limited to standard commercial product

support. Customer acknowledges that the RackTop Software contains encryption functionality that is subject to U.S. export controls.

12.8 **FORCE MAJEURE**. Except for Customer's payment obligations, neither party will be liable for any failure or delay in performance under this Agreement which might be due in whole or in part, directly or indirectly, to any contingency, delay, failure, or cause of, any nature beyond the reasonable control of such party, including, without limitation, fire, earthquake, storm, flood, power outage, strike, war, act of terrorism, epidemic or pandemic, cyberattack (other than one caused by the affected party's failure to maintain reasonable security), shortage of components or other supply-chain disruption, law, export control regulation, instructions of government authorities or judgment of a court (not arising out of breach by such party of this Agreement). If, however, a party's performance is prevented for thirty (30) days or more, then the other party will be entitled to terminate this Agreement on written notice to the party suffering the force majeure at any time prior to resumption of performance by the party suffering the force majeure.

12.9 **MARKETING**. RackTop may identify Customer as a customer of RackTop, using Customer's name and any logo Customer approves, on RackTop's websites and as a part of a general list of RackTop customers for use and reference in RackTop's corporate, promotional and marketing literature, unless Customer opts out by written notice to RackTop at any time, in which case RackTop will stop new uses within thirty (30) days after receiving the notice. RackTop will not identify a government customer, or imply any government endorsement, without that customer's prior written consent.

12.10 **AUDIT**. Customer will permit RackTop or its representatives, no more than once in any twelve (12) month period, to audit Customer's use of the Systems during regular business hours upon at least thirty (30) days' written notice to ensure compliance with the capacity restrictions in Section 5.1 and other license restrictions under the Agreement. RackTop's representatives will be bound by confidentiality obligations and will comply with Customer's reasonable security and site-access requirements. Where on-site access is restricted for security reasons, Customer may instead provide a written certification of its usage signed by an authorized officer, together with reasonable supporting records. If an audit or certification shows that Customer used more capacity than it purchased, Customer will purchase the additional capacity at RackTop's then-current list price and, if the shortfall exceeds five percent (5%), reimburse RackTop's reasonable costs of the audit.

12.11 **GOVERNING LAW AND DISPUTE RESOLUTION**. The formation, existence, interpretation, enforcement and validity of this Agreement shall be governed by the laws of the Commonwealth of Virginia (USA), without regard to its conflict-of-laws principles. To the extent permitted by law, the parties agree that the Uniform Computer Information Transactions Act as enacted in Virginia (Va. Code § 59.1-501.1 et seq.) does not govern this Agreement, which is governed instead by the Virginia Uniform Commercial Code and Virginia common law. If a court will not apply Virginia law to Customer because of a law of Customer's jurisdiction concerning that Act, this Agreement is governed by the laws of the State of Delaware, without regard to its conflict-of-laws principles. Exclusive jurisdiction and venue for any actions or proceedings arising out of or in connection with this Agreement shall lie in the Circuit Court of Fairfax County, Virginia, or the United States District Court for the Eastern District of Virginia, Alexandria Division. The parties hereby irrevocably consent and submit to the jurisdiction of such courts; provided, however, that (i) either party may seek injunctive relief for breach of Sections 6 or 7 or infringement in any court of competent jurisdiction, and (ii) RackTop may bring an action to collect Fees in any court with jurisdiction over Customer. If Customer is organized outside the United States, any dispute will instead be finally resolved by arbitration administered by the International Centre for Dispute Resolution under its International Arbitration Rules, by one arbitrator, seated in Washington, D.C., in English, and judgment on the award may be entered in any court of competent jurisdiction; either party may still seek interim injunctive relief in court. EACH PARTY KNOWINGLY AND VOLUNTARILY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. Each party has had the opportunity to consult counsel regarding this Agreement. The U.N. Convention on the International Sale of Goods is hereby excluded and shall not apply to this Agreement. Section 12.6 controls for government customers.

12.12 **ATTORNEYS' FEES**. In the event any attorney is employed by any party to this Agreement with regard to any legal action or other proceeding brought by any party for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, then the prevailing party (meaning the party that obtains substantially the relief it sought, as determined by the court or arbitrator), whether at trial or upon appeal, will be entitled to recover reasonable attorneys' fees, collection costs, and other costs and expenses incurred, in addition to any other relief to which it may be entitled.

12.13 **NOTICES**. All notices, consents and approvals under this Agreement must be delivered in writing by e-mail, by courier, by overnight mail service or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address for Customer stated on the Order (or if none is specified, that address to which Customer invoices are sent) and for RackTop, to RackTop Systems, Inc., c/o Dark Wolf Solutions, LLC, Attn: Legal, 13454 Sunrise Valley Drive, Herndon, VA 20171, with a copy by email to info@racktopsystems.com, and will be effective upon receipt. Either party may change its address by giving written notice of the new address to the other party in writing.

12.14 **INDIRECT PURCHASES**. If Customer purchases Hardware, licenses, Support, or Hardware Maintenance through a RackTop authorized reseller or distributor, this Agreement governs the applicable product-use rights and RackTop's obligations. Customer pays the reseller or distributor under its agreed prices, payment, delivery, and billing terms and is not also required to pay RackTop for the same purchased entitlement. Customer must satisfy those payment obligations; reseller nonpayment to RackTop will not, by itself, be treated as Customer's nonpayment where Customer has paid the authorized reseller or distributor for the entitlement and provides reasonable evidence of that payment. Refunds owed under this Agreement will be coordinated through the selling reseller or distributor. RackTop's refund obligation is limited to the amount RackTop received for the affected entitlement, and the reseller or distributor is responsible for refunding any amount it retained. Customer's end-user purchase amount is used for Section 10.2. A reseller or distributor may not act as RackTop's agent, change this Agreement, or make commitments on RackTop's behalf. Any independent promises or services it provides are its own responsibility.

12.15 **FEEDBACK**. If Customer or its Users provide suggestions, comments, or other feedback about RackTop's products or services, RackTop may use that feedback for any purpose without obligation to Customer, provided that RackTop does not identify Customer as its source without Customer's consent.

12.16 **EQUITABLE RELIEF**. A breach of Section 6 or Section 7 may cause the non-breaching party irreparable harm for which monetary damages would be an inadequate remedy. The non-breaching party may therefore seek injunctive or other equitable relief for such a breach, in addition to any other remedies available to it.

12.17 **NO THIRD-PARTY BENEFICIARIES**. Except for the Indemnified Parties under Section 9, nothing in this Agreement confers any right or remedy on any person other than the parties and their permitted successors and assigns.

12.18 **COUNTERPARTS AND ELECTRONIC SIGNATURES**. An Order may be executed in counterparts, each of which is an original and all of which together are one instrument. Signatures and acceptances delivered electronically have the same effect as handwritten signatures.

EXHIBIT A: HARDWARE WARRANTY, MAINTENANCE AND RMA POLICY

This Exhibit A forms part of the RackTop Hardware Purchase and Software License Terms and Conditions (the "Agreement"). Capitalized terms not defined in this Exhibit have the meanings given in the Agreement.

1. Warranty. RackTop warrants that RackTop Hardware will be free from defects in materials and workmanship under normal use, when properly installed and used in accordance with the Documentation, for one (1) year from the date Customer receives the RackTop Hardware, unless a longer period is stated on the Order (the "Hardware Warranty Period"). The warranty covers manufacturing defects in RackTop Hardware as shipped, including all factory-installed hardware components regardless of their manufacturer. The corrective work and replacement parts necessary to perform a warranty repair are included. Advance parts replacement, on-site services, delivery targets, Drive Retention, and Component Retention are provided only under the Hardware Maintenance stated on the applicable Order, as described in paragraph 4 and Exhibit B, rather than as unconditional warranty commitments.

2. Exclusions. Warranty and Hardware Maintenance coverage do not apply to a failure or damage to the extent caused by misuse, accident, improper installation contrary to the Documentation, operation outside documented environmental or electrical requirements, or repair or modification not authorized by RackTop. Cosmetic damage that does not affect operation is not covered. Beta, trial, experimental, or evaluation products have no warranty except as expressly agreed in writing. Software is governed by the applicable software provisions. A third-party manufacturer's identity, including for CPUs, chipsets, memory, drives, controllers, power supplies, network components, and other installed parts, is not an exclusion from coverage for covered Hardware. Neither physical damage by itself nor an authorized customer-replaceable-unit installation voids unrelated coverage; any applicable exclusion must relate to the claimed failure.

3. Remedies. For a valid warranty claim made during the Hardware Warranty Period, RackTop will, at its option, repair the defective RackTop Hardware or replace it with new or refurbished product. For repairs of RackTop Hardware other than BrickStor products, RackTop targets returning the repaired unit within ten (10) working days. If RackTop is unable to repair or replace the defective RackTop Hardware within a reasonable time, RackTop will refund the purchase price paid for the defective unit upon its return, except that components covered by Drive Retention or Component Retention are not returned. A repaired or replacement component is warranted for the remaining original Hardware Warranty Period or ninety (90) days after its delivery to Customer, whichever is longer; this does not extend the purchased Hardware Maintenance term. These remedies are Customer's sole and exclusive remedies, and RackTop's entire liability, for breach of the warranty in this Exhibit A, without reducing Hardware Maintenance services purchased on an Order.

4. Hardware Maintenance; Advance Replacement; Drive and Component Retention. During an active Hardware Maintenance term, RackTop provides advance parts replacement and any other hardware services included in the Hardware Maintenance level stated on the Order. Replacement parts may be new or refurbished and will provide equivalent or better functionality. A component is not excluded merely because a third party manufactured it. Except as provided below for Drive Retention and Component Retention, Customer must return the defective component within fifteen (15) business days after receiving its replacement, or RackTop may invoice Customer for the replacement. If Customer has purchased Drive Retention for the affected System, Customer keeps a failed drive instead of returning it and receives the covered replacement without a charge for non-return. If Customer has purchased Component Retention for the affected System, Customer keeps any failed hardware component on the same basis, including drives, memory modules, and other server components. Without Component Retention, failed components other than drives covered by Drive Retention must be returned. Customer remains responsible for the custody, security, sanitization, and lawful disposal of retained components.

5. RMA Process. Except for components that Customer keeps under Drive Retention or Component Retention, every return requires a Return Material Authorization ("RMA") number from RackTop, and shipments received without one will be refused. When requesting an RMA, Customer must provide the product model, serial number, original invoice date and number, and the reason for return. RMA numbers are valid for thirty (30) days from issuance, and returns not received within that period are void and must be re-requested. Customer must ship returns freight prepaid, include a copy of the original invoice and a written description of the problem, use the original packaging where required, and print the RMA number clearly on the outside of the box. Returns must be shipped to the location in the United States that RackTop designates in the RMA, unless RackTop agrees otherwise. Any shipping terms stated on the Order control over this default procedure. Before returning any data-bearing component, Customer must remove or sanitize Customer Data as appropriate for its requirements and Section 7.5. If a failed data-bearing component cannot be sanitized, Customer must use Drive Retention or Component Retention, as applicable, or agree on an authorized handling procedure with RackTop in writing before shipment. RackTop will diagnose a returned unit and repair it, replace it, or issue a credit in accordance with this Exhibit A.

6. Dead on Arrival. Customer must report RackTop Hardware that is dead on arrival within fourteen (14) days after Customer receives it.

7. Cancellation and Restocking. Orders for RackTop Hardware that have not shipped may be cancelled subject to a cancellation fee of fifteen percent (15%) of the price of the cancelled items. Orders that have shipped cannot be cancelled. Non-defective RackTop Hardware in brand-new condition may be returned within thirty (30) days after Customer receives it, subject to a restocking fee of fifteen percent (15%). An Order may identify custom-built, specially procured, or other non-cancellable/non-returnable items and their applicable terms before acceptance; those expressly accepted terms control for the identified items. Software licenses and Subscription License terms are non-cancellable and non-refundable once issued except as expressly provided in this Agreement. The cancellation or return of Hardware does not cancel separate software, Support, or Hardware Maintenance commitments unless expressly agreed in writing; Section 11.2 governs surviving payment commitments.

8. Out-of-Warranty Service. Hardware covered by active Hardware Maintenance remains covered for its purchased term notwithstanding expiration of the Hardware Warranty Period. For Hardware not covered by active Hardware Maintenance, RackTop may offer out-of-warranty service for up to five (5) years for BrickStor products and up to three (3) years for other RackTop Hardware, subject to parts availability and RackTop's then-current rates.

EXHIBIT B: SUPPORT SERVICE LEVELS

This Exhibit B forms part of the Agreement and describes the service levels for Support. Capitalized terms not defined in this Exhibit have the meanings given in the Agreement.

1. Support Levels. RackTop offers two Support levels. Each Order states the Support level Customer purchases and its Support Term, and any Hardware Maintenance level and term. (a) **Standard Support** is available twenty-four (24) hours a day, three hundred sixty-five (365) days a year by telephone and email, and through RackTop's support portal. (b) **Basic Support** is available Monday through Friday, 9:00 a.m. to 5:00 p.m. Eastern Time, excluding U.S. federal holidays, by telephone and email. If the Order does not state a Support level, Customer has Basic Support.

2. Severity Levels and Response Targets. RackTop assigns a severity level to each support case based on its impact and will use reasonable efforts to meet the targets below. "Receipt confirmation" is the time by which RackTop acknowledges the case. "Resolution start" is the time by which RackTop begins active work on the case. The time needed to resolve a case depends on its complexity. For Basic Support, these targets are measured only during Basic Support hours, and the outside-business-hours target for Critical cases does not apply.

(a) **Critical**: total system failure or data inaccessible, such that the production environment cannot continue normal operation. Receipt confirmation: 2 hours. Resolution start: 2 hours during business hours and 4 hours outside business hours.

(b) **Major**: severely impaired functionality, where production continues but with a substantial impact to operations. Receipt confirmation: 4 hours. Resolution start: 4 hours.

(c) **Minor**: non-critical failure with an available workaround and limited or no impact on production. Receipt confirmation: 4 hours. Resolution start: 1 business day.

(d) **Trivial or Enhancement**: cosmetic issues, documentation requests, or feature enhancement requests. Receipt confirmation: next business day. Resolution start: no predetermined target.

3. Hardware Maintenance Services. Hardware Maintenance is separate from software Support and is mandatory for at least the initial one (1) year for every storage appliance purchased from RackTop or its authorized reseller or distributor. The Order states the covered equipment, the Hardware Maintenance level and term, and whether Drive Retention, Component Retention, or on-site service is included. Hardware Maintenance covers all hardware components of the covered equipment. Where on-site service is purchased, RackTop may dispatch a technician after telephone troubleshooting determines that on-site work is needed. For purchased next-business-day parts service, RackTop will use reasonable efforts to ship replacement parts for next-business-day delivery within the United States and Canada, excluding customs delays or other circumstances outside RackTop's control. After-hours diagnosis may extend delivery to the second business day. Customer is responsible for installing customer-replaceable units, such as drives and power supplies, unless installation is included in the purchased service. Drive Retention and Component Retention are governed by Exhibit A, paragraph 4.

4. Restricted Environments. Where Customer cannot share Support Data, Section 4.2(c) of the Agreement applies.

5. Changes. RackTop may improve these service levels at any time but will not reduce them for Support that Customer has already purchased.