

## HiveIO Product End User License Agreement (“EULA”)

By using a HiveIO product offering (“Product Offering”), you agree to be bound by these terms of service between you and HiveIO (“Terms of Service”), and if applicable the Service Level Agreement, all of which together constitute the “EULA”. If you do not agree to these Terms of Service or to any other portion of the EULA you must not use the Product Offering. “You” means you individually (and, as applicable, your Users) or the entity that you represent. If you are entering into the EULA for an entity, you represent that you have the authority to bind that entity. “HiveIO”, “we” or “us” means HiveIO, Inc., a Delaware corporation. Capitalized terms used in these Terms of Service are defined throughout these Terms of Service and in Section 14 (“Definitions”). Section references in this document are to the provisions of these Terms of Service.

### 1. THE PRODUCT OFFERING.

1.1 Generally. We may deliver the Product Offering with the assistance of our affiliates, licensors, and service providers. For purposes of the EULA, a “Product Offering” includes services to host, on your behalf, HiveIO Software to enable you to use the software in a production environment via network-based consoles.

#### 1.2 Use of the Product Offering.

1.2.1 You and your Users must comply with all laws, rules, and regulations applicable to your use of the Product Offering and to any Content including operating systems and software licenses.

1.2.2 You may use the Product Offering only (a) during the Subscription Term, (b) for your own benefit, and (c) in accordance with the EULA. To use the Product Offering you must register and set up an authorized account with Login Credentials. You must keep your registration information accurate and complete during the term of the EULA. You must keep your Login Credentials confidential. You can manage your Product Offering account through the My HiveIO Portal as specified in the Service Description.

1.2.3 You are responsible for any use of the Product Offering that occurs under your Login Credentials. You are responsible for your Users’ compliance with the EULA. If you become aware of any User’s violation of the EULA you must immediately terminate that User’s (a) access to Content and (b) use of the Product Offering. If you believe your account has been compromised, including any unauthorized access to or use or disclosure of any account information, passwords, user names, or Login Credentials, you must notify us as soon as possible by submitting a Severity 1 Service Request (see the applicable Support Policy) or as we may otherwise notify you from time to time.

1.2.4 You may receive software from us, incidental to your use of the Product Offering, which must be installed in your on-premises environment to enable you to use the Product Offering. If that software is subject to an accompanying license agreement, you must comply with the terms of that license. If that software does not have an accompanying license agreement, we grant you a limited license to use that software, only (a) in connection with your use of the Product Offering, (b) for the Subscription Term, and (c) in accordance with the EULA.

1.3 Verifying Compliance. We have the right to verify your and your Users’ compliance with the EULA. We may request information from you to assist in that verification, which you must provide to us. If we reasonably believe a problem with the Product Offering may be attributable to any Content or to your or your Users’ use of the Product Offering, you must cooperate with us to identify the source of the problem and to resolve the problem.

1.4 Monitoring. We may monitor your and your Users’ use of the Product Offering, and collect configuration, performance, usage, and consumption data relating to such use: (a) to facilitate delivery of the Product Offering (such as tracking entitlements, providing support, monitoring the performance, integrity, and stability of the Product Offering’s infrastructure, and preventing or addressing service or technical issues); and (b) to improve our products and services, and your and your Users’ experience. You may not block or interfere with any such monitoring.

1.5 Third Party Content. As part of your use of the Product Offering you may receive access to Third Party

Content. You are responsible for complying with any terms that may be presented to you when you access that Third Party Content. Third Party Content is available “AS IS” without indemnification, support (unless otherwise specified in the EULA), or warranty or condition of any kind. We may suspend or terminate provision of any Third Party Content at any time, and any such suspension or termination will not be deemed a material, detrimental change.

1.6 Evaluation and Beta Use. We may offer any new Product Offering, or a new feature or functionality of an existing Product Offering, on an evaluation or beta basis (“Evaluation Service”). If you use any Evaluation Service, the terms of this Section 1.6 govern that use, and control over any conflicting provision of these Terms of Service; provided however that the term “Product Offering” will include an Evaluation Service in all provisions that are not in conflict with the provisions of this Section 1.6. If you have already joined a separate beta program, then the terms of that program will apply.

1.6.1 You may only use an Evaluation Service (a) for internal testing and evaluation purposes, and (b) for the period we specify. Unless we specify otherwise use of an Evaluation Service will be for a period of 30 days beginning on the date we provide you Login Credentials for or access to the Evaluation Service. You will not have access to the Evaluation Service or to Content in the Evaluation Service after your authorized use period ends.

1.6.2 Use of an Evaluation Service may require additional terms from a third party service provider.

1.6.3 You may use the Documentation provided with an Evaluation Service solely in support of your authorized use of the Evaluation Service.

1.6.4 We will provide the Evaluation Service (a) free of charge, (b) without support, (c) “AS IS”, and (d) without indemnification, warranty or condition of any kind. No service level commitment will apply to the Evaluation Service.

1.6.6 You must not put any of the following into an Evaluation Service: (a) production data; or (b) any information relating to an identified or identifiable natural person; or (c) Prohibited Data. If you put any such data into an Evaluation Service, you do so at your own risk, and we will not be responsible for the consequences of that use.

1.6.7 If you use an Evaluation Service in violation of the terms of the EULA, including Section 1.6.6, you will indemnify us as specified in Section 10.1.

1.6.8 Certain features or functionality of a particular Product Offering, as specified in the applicable Service Description, may not be available in an Evaluation Service for any feature or functionality within that Product Offering. Provision of any Evaluation Service, or any feature or functionality in an Evaluation Service, does not constitute our commitment to offer it or the Evaluation Service on a generally available basis.

1.6.9 We may terminate or modify an Evaluation Service at any time, and any such suspension or termination will not be deemed a material, detrimental change.

1.6.10 As consideration for access to and use of an Evaluation Service, you will, from time to time, as we may reasonably request, provide feedback (including comments and suggestions) to us, and only to us, concerning the functionality and performance of the Evaluation Service. We may use any feedback you provide with regard to the Evaluation Service as specified in Section 1.8.

1.6.11 You will use reasonable efforts to participate in marketing and publicity activities related to an Evaluation Service, as we may reasonably request from time to time.

1.7 Open Source Software. You may receive open source software when you use the Product Offering or any Evaluation Service. The open source software you receive, as well as open source software that you may interact with when using the Product Offering and that we are required to disclose to you, is made available under the applicable open source licenses, found at [http://www.HiveIO.com/download/open\\_source.html](http://www.HiveIO.com/download/open_source.html). You can obtain a copy of these licenses and any source code (and modifications) that we are required to make available under these licenses (“Source Files”) at the foregoing URL or by sending a written request, with your name and address, to: HiveIO, Inc., Attention: General Counsel, 404 Fifth Avenue, New York, NY 10018, United

States of America. All requests must clearly specify: "Open Source Files Request". This offer to obtain a copy of the Source Files is valid for three years from the date you last received open source software or interacted with the open source software when using the Product Offering.

1.8 Feedback. We may elect in our sole discretion to use, for any purpose, any feedback (such as comments or suggestions) that you or any User provide to us regarding the Product Offering. You represent that you have the right to give us that feedback. You must not submit any Confidential Information to us as feedback without our express prior written consent. You hereby grant us a non-exclusive, perpetual, irrevocable, royalty-free, transferable, worldwide right and license, with the right to sublicense, to use, reproduce, perform, display, disclose, distribute, modify, prepare derivative works of, and otherwise exploit the feedback without restriction in any manner now known or in the future conceived, and to make, use, sell, offer to sell, import, and export any product or service that incorporates the feedback.

1.9 Modifications.

1.9.1 We may from time to time change (a) the Product Offering, (b) the terms of your access to the Product Offering, or (c) any portion of the EULA. We will post notice of updates on the My HiveIO Portal, or other sites, pursuant to our standard policies. If we make a material, detrimental change to the Service Level Agreement, we will post notice at least 90 days prior to the effective date of the change. The modified EULA will become effective as of the date specified in our notice. Your continued use of the Product Offering after the effective date of any modification to the EULA will be deemed acceptance of the modified terms. It is your responsibility to check the My HiveIO Portal regularly for updates.

1.9.2 If we make a material, detrimental change to the Product Offering or to any part of the EULA you may terminate the EULA by notifying us not later than 30 days after the effective date of the change. If you terminate the EULA pursuant to this Section 1.9.2, the termination will be effective as of (a) the date we receive your notice or (b) any later date specified in your notice (but in any event the effective termination date will not be more than 45 days after the date on which we receive your notice). If you terminate a subscription-based Product Offering pursuant to this Section 1.9.2 we will refund any prepaid fees prorated as of the effective date of the termination, less any discounts not earned as of the effective date of the termination.

1.9.3 If we agree (in our sole discretion) to any modifications to these Terms of Service with regard to any Product Offering, those modifications must be in a written agreement signed by both you and us. Those modifications will continue to apply to future versions of these Terms of Service with respect to that Product Offering, unless the written agreement specifies otherwise.

1.10 Disclosures. If HiveIO is required by a subpoena, court order, agency action, or any other legal or regulatory requirement, to disclose any of your or any User's Confidential Information or any Content, we will provide you with notice and a copy of the demand, as soon as practicable, unless we are prohibited from doing so pursuant to applicable law or regulation. If you or the User request, we will, at your (or the User's) request and expense, take reasonable steps to contest and to limit the scope of any required disclosure.

2. DATA PROTECTION AND SECURITY. We will process Content in accordance with the Data Processing Addendum. You are responsible for ensuring that the security of the Product Offering is appropriate for your intended use of the Product Offering and the storage, hosting, or processing of any Content. You are responsible for taking and maintaining appropriate steps to protect the confidentiality, integrity, and security of all Content from unauthorized access, use, loss, or destruction. Those steps include (a) controlling access you provide to your Users, (b) configuring the Product Offering appropriately, (c) ensuring the security of Content while it is in transit to and from the Product Offering, (d) using encryption technology to protect Content, and (e) backing up Content. You are responsible for providing any necessary notices to Users, and establishing relevant legal grounds and/or obtaining any legally required authorizations or consents from Users regarding their use of the Product Offering.

3. ACCEPTABLE USE.

3.1 General Restrictions. You and your Users must not: (a) resell or sublicense the Product Offering unless specifically allowed in your agreement with us; or (b) use the Product Offering (i) in a way prohibited by law,

regulation, or governmental order or decree, (ii) to violate any rights of others, (iii) to try to gain unauthorized access to, test the vulnerability of, or disrupt the Product Offering or any other service, device, data, account, or network, (iv) to distribute spam or malware, (v) in a way that could harm the Product Offering or impair anyone else's use of it, (vi) in a way intended to work around the Product Offering's technical limitations, recurring fees calculation, or usage limits, or (vii) for any High Risk Activities.

### 3.2 Content Restrictions.

3.2.1 You must not post, and you must take steps to ensure that no User posts, any Content that: (a) may create a risk of harm, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness, or any other loss or damage to any person or property; (b) may constitute or contribute to a crime or a tort; (c) includes any data that is illegal, unlawful, harmful, abusive, pornographic, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, or otherwise objectionable; or (d) contains any information or content that you or the User do not have a right to upload into the Product Offering.

3.2.2 Some Product Offerings may not permit any Prohibited Data to be uploaded to, hosted by, stored in, or processed by the Product Offering. You must not use any such Product Offering to transmit, store, host, or process any Prohibited Data; if you do, then you are solely responsible for the consequences of such use, and you will indemnify HIVEIO as specified in Section 10.1.

3.2.3 The Product Offerings are not intended for use by children under the age of 13 (in the United States) or such other age as provided by applicable law in other countries. Unless you have obtained the appropriate prior consent for such use, you may not allow any such Product Offering to be offered to children under the applicable statutory age of consent, and you must not use the Product Offering to collect, disclose, publish, or store information about children under the legal age of consent where prohibited by applicable law. 3.3 Violations of Acceptable Use. If you become aware that any Content or any User's use of the Product Offering violates Section 3.1 ("Acceptable Use; General Restrictions") or Section 3.2 ("Acceptable Use; Content Restrictions") you must take immediate action to remove the applicable Content and/or to suspend the User's use of the Product Offering. We may ask you to take action within a certain time period. If you fail to comply with our request we may suspend your account pursuant to Section 6 ("Suspension").

3.4 Notification of Infringement Concerns. If you believe that your copyrighted work has been copied and is accessible on the Product Offering in a way that constitutes copyright infringement you may send a notice to our copyright agent, providing the following information: (a) a description of the copyrighted work that you claim has been infringed and a description of the infringing activity; (b) the location of the material that you claim is infringing, such as the URL where it is posted; (c) your name, address, telephone number, and email address; (d) a statement by you that you have a good faith belief that the disputed use of the material is not authorized by the copyright owner, its agent, or the law; (e) your statement under penalty of perjury that the information in your notice of infringement concern is accurate, and that you are the copyright owner or are authorized to act on the copyright owner's behalf; and (f) your electronic or physical signature, as the copyright owner or as the person authorized to act on the copyright owner's behalf. Solely for purposes of reporting copyright infringement, please contact HIVEIO's copyright agent as follows: HIVEIO, Inc. General Counsel 404 Fifth Ave, New York, NY 10018 United States of America Email: [finance@hiveio.com](mailto:finance@hiveio.com) Telephone: +1-415-340-2089

## 4. INTELLECTUAL PROPERTY OWNERSHIP.

4.1 Ownership of Product Offering. As between you and us, we and our licensors and service providers own and retain all right, title, and interest in and to the Product Offering and any related HIVEIO Software, including all improvements, enhancements, modifications, and derivative works thereof, and all Intellectual Property Rights therein. This includes any information we collect and analyze in connection with the Product Offering. Your rights to use the Product Offering are limited to those expressly granted in the EULA. No other rights with respect to the Product Offering, any related HIVEIO Software, or any related Intellectual Property Rights are

implied.

4.2 Ownership of Content. As between you and us, you and your Users retain all right, title and interest in and to any Content and all Intellectual Property Rights therein. Our rights to access and use Content are limited to those expressly granted in the EULA.

#### 5. ORDERS, DELIVERY, PAYMENT, AND TAXES.

5.1 Orders Generally. All Orders are subject to the terms of the EULA and are not binding until accepted by us. Your Order will be deemed accepted when we provide your Login Credentials. We are not required to provide the Product Offering to you until you provide to us all information we require for processing your Order and provisioning the Product Offering for you. All Orders are non-refundable and non-cancellable except as expressly provided in the EULA.

5.2 Delivery. When we accept your Order, we will deliver your Login Credentials to the email address associated with your account. If we ship a physical object in connection with an add-on feature of a Product Offering, shipping and delivery terms are Ex Works HiveIO shipping location (INCOTERMS 2010).

5.3 Direct Orders. This Section 5.3 applies only to Orders directly with HiveIO. If you purchase the Product Offering through a HiveIO authorized reseller, different terms regarding invoicing, payment, and taxes may apply.

5.3.1 Purchase Orders. If you purchase the Product Offering on a subscription basis you must issue a purchase order to HiveIO for your initial Order.

5.3.2 Invoicing and Payment. Unless you and we have agreed otherwise, fees for the Product Offering will be governed by the applicable price list at the time of invoicing. You must pay all fees for use of the Product Offering in the amount and currency specified in your invoice, not later than 30 days after the date of the invoice. See the applicable Service Description for details on invoicing and payment.

5.3.3 Taxes. Product Offering fees are exclusive of Taxes. "Taxes" means any sales, VAT, GST (Goods and Services Tax), use, gross receipts, business and occupation, and other taxes (other than taxes on our income), export and import fees, customs duties, and similar charges imposed by any government or other authority. You must pay or reimburse us for all Taxes arising out of the transactions contemplated by the EULA. If you are required to pay or withhold any Tax for payments due under the EULA, you must gross up your payments to us so that we receive all sums due in full and free of any deductions. If you are required to pay any Tax to a taxing authority, you must also provide documentation to us showing that you paid those Taxes. You confirm that we can rely on the name and address you provide to us when you register for the Product Offering or in connection with your payment method as being the place of supply for sales tax and income tax purposes, or as being the place of supply for VAT purposes where you have established your business.

#### 6. SUSPENSION.

6.1 Generally. We may suspend your use of the Product Offering if: (a) payment for the Product Offering is not received within 30 days after the date on which payment is due; (b) you are in breach of the EULA; (c) you fail to address our request to take action as specified in Section 3.3 ("Acceptable Use; Violations of Acceptable Use"); (d) your use of the Product Offering poses a security risk to the Product Offering or to other users of the Product Offering; or (e) suspension is required pursuant to a subpoena, court order, or other legal requirement. We will give you notice before any suspension if permitted by applicable law or unless we reasonably determine that providing notice presents a risk of harm to the Product Offering or to any person or property.

6.2 Effect of Suspension. You will remain responsible for all fees incurred before or during any suspension.

#### 7. TERM; TERMINATION.

7.1 Term of EULA. The EULA takes effect when you click "I accept" or similar button or check box presented to you as part of the sign-up process or when you first use the Serving Offering, whichever is earlier, and will remain in effect during the relevant Subscription Term or until terminated as specified in the EULA. The applicable Service Description for any Product Offering sets forth details on renewal, including any auto-renew feature, and termination of the Subscription Term.

7.2 Termination for Cause. We may terminate the EULA effective immediately upon sending you an email notice

if you: (a) breach any provision of Section 3.1 (“Acceptable Use; General Restrictions”), Section 3.2 (“Acceptable Use; Content Restrictions”), or Section 13.5 (“Compliance with Laws; Export Control”); (b) do not resolve the underlying cause resulting in a suspension pursuant to Section 6.1 (“Suspension; Generally”) (other than suspension due to a subpoena, court order, or other legal requirement) within 10 days after your account is suspended; (c) commit a material breach of the EULA that cannot be cured; or (d) terminate or suspend your business.

7.3 Termination for Insolvency. We may terminate the EULA effective immediately upon sending you an email notice if you: (a) become insolvent, admit in writing your inability to pay your debts as they mature, or make an assignment for the benefit of creditors; or (b) become subject to control of a trustee, receiver, or similar authority, or to any bankruptcy or insolvency proceeding.

7.4 Effect of Termination.

7.4.1 Upon the effective date of termination of the EULA for any reason: (a) all rights granted to you under the EULA, including your ability to use the Product Offering, will immediately terminate; and (b) you must promptly discontinue all use of the Product Offering and delete or destroy any of our Confidential Information. Deletion of Content remaining in the Product Offering will occur as specified in the applicable Service Description. As between you and HivelO, you are responsible for ensuring that you have necessary copies of all Content prior to the effective date of any termination.

7.4.2 The Data Processing Addendum (to the extent we continue to process Personal Data (as defined in the Data Processing Addendum) following any termination of the EULA), and the following sections of these Terms of Service, will survive termination of the EULA: Sections 1.7 (“The Product Offering; Open Source Software”), 3 (“Acceptable Use”), 4 (“Intellectual Property Ownership”), 5 (“Orders, Delivery, Payment and Taxes”), 7 (“Term; Termination”), 9 (“Disclaimer of Warranties”), 11 (“Limitation of Liability”), 12 (“Confidential Information”), 13 (“General”), 14 (“Definitions”), 15 (“Provisions for Data Centers Outside the United States”) and 16 (“Provisions for United States Federal, State and Local Government Customers”). 7.4.3 Termination of the EULA, except to the extent termination is permitted under Sections 1.8.2 (“The Product Offering; Modifications”) or 10.2 (“Indemnification by HivelO”), will not entitle you to any refunds, credits, or exchanges, and you will be liable for all fees incurred as of the effective date of the termination.

8. SUPPORT. We will provide support for the Product Offering in accordance with the applicable Support Policy, and as specified in the applicable Service Description. We will not provide support to end users of any Content.

9. DISCLAIMER OF WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE, FOR OURSELVES AND ON BEHALF OF OUR AFFILIATES, LICENSORS, AND SERVICE PROVIDERS, EXPRESSLY DISCLAIM ALL WARRANTIES RELATING TO THE PRODUCT OFFERING OR TO ANY MATERIALS OR SERVICES PROVIDED TO YOU UNDER THE EULA, WHETHER SUCH WARRANTIES ARE EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. WE AND OUR AFFILIATES, LICENSORS, AND SERVICE PROVIDERS DO NOT WARRANT THAT THE PRODUCT OFFERING WILL BE UNINTERRUPTED OR FREE FROM DEFECTS, OR THAT THE PRODUCT OFFERING WILL MEET (OR IS DESIGNED TO MEET) YOUR BUSINESS REQUIREMENTS. WE DO NOT COMMIT TO FIXING ALL ERRORS. THE PRODUCT OFFERING, OR ANY PART OF IT, IS NOT DESIGNED OR INTENDED FOR HIGH RISK ACTIVITIES.

10. INDEMNIFICATION.

10.1 Indemnification by You. If we are subject to any third party claim arising from or relating to (a) any Content, (b) any infringement or misappropriation of any Intellectual Property Rights by you or any Users in connection with use of the Product Offering, (c) any violation of law by you or your Users in connection with use of the Product Offering, (d) your use or your Users’ use of the Product Offering and any Evaluation Service in violation of the EULA, or (e) your use or your Users’ use of any Third Party Content; then you will indemnify us from costs, fines, and damages finally awarded against us by a court of competent jurisdiction or a governmental agency, or agreed to by us in settlement of the claim. We will (i) provide you with notice of the claim within a reasonable

period of time after learning of the claim, and (ii) have sole control over the claim's defense and settlement. You will reasonably cooperate in response to our requests for assistance. You may not settle or compromise any indemnified third party claim subject to this Section 10.1 without our prior written consent.

10.2 Indemnification by HiveIO.  
10.2.1 Subject to the remainder of this Section 10.2, we will (a) defend you against an Infringement Claim, and (b) indemnify you from costs, fines, and damages finally awarded against you by a court of competent jurisdiction or a government agency, or agreed to by us in settlement. You will: (i) provide us with notice of any Infringement Claim within a reasonable period of time after learning of the claim; (ii) allow us sole control over the claim's defense and settlement; and (iii) reasonably cooperate in response to our requests for assistance. You may not settle or compromise any Infringement Claim without our prior written consent.

10.2.2 If the Product Offering becomes or in our opinion is likely to become the subject of an Infringement Claim, we will at our option and expense: (a) procure the rights necessary for you to keep using the Product Offering; or (b) modify or replace the Product Offering to make it non-infringing; or (c) terminate the EULA and refund any prepaid fees, prorated for the remaining portion of the Subscription Term.

10.2.3 We will have no obligation under this Section 10.2 or otherwise with respect to any claim based on: (a) a combination of HiveIO Software with non-HiveIO products or content, including any Content and/or any Third Party Content; (b) use of the Product Offering for a purpose or in a manner not permitted by the EULA; (c) any modification to the Product Offering made without our express written approval; or (d) any Product Offering provided on a no-charge basis, including an Evaluation Service.

10.2.4 This Section 10.2 states your exclusive remedy for any Infringement Claims.

## 11. LIMITATION OF LIABILITY.

11.1 Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL WE, OUR AFFILIATES, LICENSORS, OR SERVICE PROVIDERS BE LIABLE FOR ANY COSTS, COMPENSATION, OR REIMBURSEMENT WITH REGARD TO LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE OF THE SERVICE OFFERING OR OF ANY CONTENT, OR LOSS OF DATA, FOR ANY REASON INCLUDING POWER OUTAGES, SYSTEM FAILURES, SUPPLY FAILURES BY SERVICE PROVIDERS, OR OTHER INTERRUPTIONS (SUBJECT TO OUR OBLIGATIONS UNDER THE APPLICABLE SERVICE LEVEL AGREEMENT), LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. THIS LIMITATION WILL APPLY REGARDLESS OF WHETHER WE OR OUR AFFILIATES, LICENSORS, OR SERVICE PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE FOREGOING LIMITATION MAY NOT APPLY TO YOU.

11.2 Cap on Monetary Liability. OUR AND OUR AFFILIATES' AGGREGATE LIABILITY FOR ANY CLAIM UNDER THE EULA WILL NOT EXCEED THE GREATER OF: (a) AN AMOUNT EQUAL TO THE TOTAL FEES PAID OR PAYABLE TO US FOR YOUR USE OF THE PARTICULAR SERVICE OFFERING GIVING RISE TO THE CLAIM IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM, OR (b) FIVE THOUSAND U.S. DOLLARS (\$5,000 USD) (OR THE EQUIVALENT IN LOCAL CURRENCY). THE LIMITATIONS OF LIABILITY IN THIS SECTION 11.2 WILL NOT APPLY TO (i) HIVEIO'S INDEMNIFICATION OBLIGATIONS UNDER THE EULA OR (ii) ANY LIABILITY WHICH MAY NOT BE EXCLUDED BY APPLICABLE LAW.

## 11.3 Further Limitations.

11.3.1 Our licensors and service providers have no liability of any kind under the EULA. You may not bring a claim directly against any of them under the EULA.

11.3.2 You may not bring a claim under the EULA more than eighteen (18) months after the cause of action arises.

## 12. CONFIDENTIAL INFORMATION.

12.1 Protection. Either party (the "recipient") may use Confidential Information of the other party (the

“discloser”) solely to exercise its rights and perform its obligations under the EULA or as otherwise permitted by the EULA. You and we will each use reasonable care to protect the other party’s Confidential Information in the same manner as we each protect our own Confidential Information of a similar nature, but in any event with not less than reasonable care. The recipient may disclose the discloser’s Confidential Information only to the recipient’s employees, or to third parties, who have a need to know the Confidential Information for purposes of the EULA, and who are under a duty of confidentiality no less restrictive than as specified in this Section 12. The recipient may also disclose the discloser’s Confidential Information, in accordance with the procedures set forth in Section 1.10.

12.2 Exceptions. The recipient’s obligations under Section 12.1 (“Confidential Information; Protection”) with respect to any of the discloser’s Confidential Information will terminate if the recipient can show by written records that the information: (a) was, at the time of disclosure by the discloser, already rightfully known to the recipient without any obligation of confidentiality; (b) was disclosed to the recipient by a third party who had the right to make the disclosure without any confidentiality restrictions; (c) at the time of disclosure is, or through no fault of the recipient has become, generally available to the public; or (d) was independently developed by the recipient without access to or use of the discloser’s Confidential Information.

### 13. GENERAL.

13.1 Assignment. You may not assign or transfer the EULA, in whole or in part, by operation of law or otherwise, without our prior written consent, except in connection with the sale of all or substantially all of your assets, provided that (a) you give us reasonable prior notice of any proposed assignment, and (b) the assignee agrees in writing to be bound by the EULA. We may prohibit any assignment to a competitor of ours. Any attempted assignment or transfer of the EULA without our consent will be void and will be a breach of the EULA. Subject to these limitations, the EULA will bind and inure to the benefit of the parties and their respective successors and assigns.

13.2 Notices. Any notice by us to you under the EULA will be given (a) by email to the email address associated with your account or (b) by posting in the My HivelO Portal, except as otherwise set forth in the EULA. You must direct legal notices or other correspondence to HivelO, Inc., 404 Fifth Ave, New York, NY 10018, United States of America, Attention: General Counsel.

13.3 Waiver. Waiver of a breach of any provision of the EULA will not constitute a waiver of any later breach of that provision, or waiver of a breach of any other provision.

13.4 Severability. If any provision of the EULA is held to be invalid or unenforceable, the remaining provisions of the EULA will remain in force to the extent feasible.

13.5 Compliance with Laws; Export Control. Each party will comply with all laws applicable to the actions contemplated by the EULA. You acknowledge that the Product Offering is of United States origin, is provided subject to the U.S. Export Administration Regulations (including “deemed export” and “deemed re-export” regulations), and may be subject to the export control laws of any other applicable country. You represent and warrant that (a) you, and any User, are not, and are not acting on behalf of, (i) any person who is a citizen, national or resident of, or who is controlled by, the government of any country to which the United States has prohibited export transactions; or (ii) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List, or any similar designated persons list published for the jurisdiction in which the applicable data center is located; (b) you, and any User, will not permit the Product Offering to be used for any purposes prohibited by law, including any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons; (c) no Content will be classified or listed on the United States Munitions list or similar list published for the jurisdiction in which the applicable data center is located, or contain defense articles, defense services or ITAR-related data; (d) no Content will require an export license nor is restricted under applicable export control laws from export to any country where HivelO or HivelO’s service providers maintain facilities or personnel; and (e) you, and any User, are not subject, either directly or indirectly, to any order issued by any agency of the United States government revoking or denying, in whole or in part,

your United States export privileges. You must notify Hivelo immediately if you or any User becomes subject to any such order.

13.6 Force Majeure. Neither party will be liable for any delay or failure to perform its obligations under the EULA, except for your payment obligations, due to any cause beyond its reasonable control including labor disputes or other industrial disturbances, systemic electrical, telecommunications or other utility failures, earthquakes, storms or other acts of nature, embargoes, riots, acts or orders of government, acts of terrorism, or war.

13.7 Construction. The headings of sections of these Terms of Service are for convenience and are not for use in interpreting these Terms of Service. As used in these Terms of Service, the word “including” means “including but not limited to”.

13.8 Language. The EULA is in English, and the English language version governs any conflict with a translation into any other language.

13.9 Governing Law. The EULA is governed by the laws of the State of California, United States of America (excluding its conflict of law rules). The United Nations Convention for the International Sale of Goods does not apply to the EULA. The EULA does not affect your statutory rights that cannot be waived or changed by contract.

13.10 Third Party Rights. Other than as expressly provided in the EULA, the EULA does not create any rights for any person who is not a party to it, and no person who is not a party to the EULA may enforce any of its terms or rely on any exclusion or limitation contained in it; provided however our licensors and service providers are beneficiaries of the warranty disclaimers and limitations of liability in the EULA.

13.11 Order of Precedence. The terms of the EULA will supersede and control over any conflicting or additional terms and conditions of any purchase order or other purchasing-related document issued by you in connection with any Order for the Product Offering.

13.12 Entire EULA. The EULA as it may be modified from time to time is the entire agreement of the parties regarding its subject matter. The EULA supersedes all prior or contemporaneous communications, understandings and agreements, whether written or oral, between the parties regarding its subject matter.

#### 14. DEFINITIONS.

14.1 “Confidential Information” means non-public technical, business, or other information or materials disclosed or otherwise made available in connection with the EULA or the Product Offering, that are in tangible form and labeled “confidential” or the like, or are provided under circumstances reasonably indicating confidentiality. Our Confidential Information includes the Login Credentials. Your Confidential Information does not, for purposes of the EULA, include any Content.

14.2 “Content” means any and all data uploaded into the Product Offering for storage or hosting, by you or any User, or by us (acting upon your instructions and on your behalf as part of a Product Offering), but does not include (i) Third Party Content, or (ii) data we collect as specified in Section 1.4.

14.3 “Data Processing Addendum” means the then-current version of the Hivelo Data Processing Addendum, found at [www.Hivelo.com/download/eula.html](http://www.Hivelo.com/download/eula.html).

14.5 “High Risk Activities” means activities with a likelihood of injury or death, including but not limited to controlling aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, weaponry systems, or any similar scenario where failure could lead to personal injury, death, or environmental damage.

14.6 “Infringement Claim” means any claim by a third party that any Hivelo Software used to provide the Product Offering infringes any patent, trademark, or copyright of the third party, or misappropriates a trade secret of the third party (but only to the extent that the misappropriation is not a result of your actions.)

14.7 “Intellectual Property Rights” means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, patents, patent applications, and moral rights, whether registered or unregistered.

14.8 “Login Credentials” mean any passwords, authentication keys, or security credentials that enable your access to and management of the Product Offering.

14.9 “Order” means the ordering document that specifies your purchase of a Product Offering, whether you purchase a subscription or a term license.

14.10 “Prohibited Data” means any of the following types of personal data (i) financial account or payment or credit card information, including information regulated under the Gramm-Leach-Bliley Act; (ii) patient, medical, or other information related to an individual’s physical or mental health, and the provision of or payment for health care, whether regulated by HIPAA or any similar federal, state, or local laws, rules, or regulations; (iii) government-issued identifications; or (iv) other information as specified in the applicable Service Description. “HIPAA” means the Health Insurance Portability and Accountability Act, as amended and supplemented, and the regulations thereunder.

14.11 “Service Description” means the then-current version of the Service Description for the particular Product Offering, found at [www.HiveIO.com/download/eula.html](http://www.HiveIO.com/download/eula.html). Certain offerings may not have a Service Description; those offerings are described in the then-current version of the HiveIO Product Guide, found at [www.HiveIO.com/download/eula.html](http://www.HiveIO.com/download/eula.html).

14.12 “Service Level Agreement” means the then-current version of the Service Level Agreement for the particular Product Offering, found at [www.HiveIO.com/download/eula.html](http://www.HiveIO.com/download/eula.html). Certain offerings may not have a Service Level Agreement.

14.13 “Product Offering” means the HiveIO product specified in your Order, including all features and functionality of that offering, used to store or manage Content.

14.14 “Subscription-based Product Offering” means a Product Offering for which you pay in advance for use of the Product Offering or commit to paying for use of the Product Offering, for a fixed period, as specified in your Order. A subscription-based Product Offering may also include optional services (e.g., add-ons) and metered usage components, as set forth in the applicable Service Description.

14.15 “Subscription Term” means the initial term of your authorized use of the Product Offering, as set forth in the applicable Order, together with any renewal terms (if applicable). The initial term begins on the earlier of (a) the date on which you start using the Product Offering or (b) the date you complete the registration process, or as otherwise specified in the Order or in the applicable Service Description.

14.16 “Support Policy” means the then-current version of the Support Policy for the particular Product Offering, found at [www.HiveIO.com/download/eula.html](http://www.HiveIO.com/download/eula.html).

14.17 “Third Party Content” means data, services, content, software, or applications provided by a third party, that interoperates with the Product Offering. As an example, Third Party Content may include custom open source or OpenStack software.

14.18 “User” means any person who uses the Product Offering or accesses Content under your Login Credentials, and may include your employees, contractors, service providers, and other third parties.

14.19 “HiveIO Software” means the software programs listed in our commercial price list.