# MinIO Inc.
# RESELLER AGREEMENT
# Effective November 11, 2024

This OEM and MSP Agreement (the "**Agreement**) is entered into as of the earlier of the date you start to use the Software or the date of the Order substantially in the form of Exhibit A ("**Effective Date**") by and between the **Reseller** listed on the Order and MinIO, Inc. a Delaware corporation with a principal place of business at 275 Shoreline Dr, Suite 100, Redwood Shores, CA 94065 ("**MinIO**").  Each of Reseller and MinIO are referred to herein individually as a "**Party**" and collectively the "**Parties**").

## 1. DEFINITIONS

**1.1.** "**Documentation**" means user manuals, reference manuals, installation guides, and other technical material that are provided with the Software.

**1.2.** "**End User**" means any user that purchases or acquires the right to use the Software through Reseller or a Sub-Reseller.

1.3. "**Order**" means one or more ordering documents executed by the Parties that reference this Agreement, the form of which is attached hereto as Exhibit A.

**1.4.** "**Software**" means MinIO's proprietary object storage software application in object code form, including any Updates and Upgrades.

1.5. "**Support Services**" means any support services for the Software that MinIO makes available to the End Users.

1.6. "**Sub-Reseller**" means any authorized sub-reseller of Reseller, who Reseller authorizes, in accordance with this Agreement, to resell the Software and Support Services on Reseller's behalf.

**1.7.** "**Term**" is as defined in each Order.

**1.8.** "**Unit**" means for a given End User, the amount of data under management by the Software, with respect to such End User as identified in the Order.

1.9. "**Updates and Upgrades**" means subsequently released versions of the Software.  Updates and Upgrades will not include any products that MinIO licenses separately from the Software or for an additional fee.

**1.10.** "**Usage Limit**" means the number of Units purchased under this Agreement with respect to a given End User, as identified in an Order.

## 2. APPOINTMENT; RESTRICTIONS.

**2.1.** **Appointment.** Subject to the terms of this Agreement, MinIO hereby appoints Reseller and its permitted Sub-Resellers as a nonexclusive reseller of the Software and the right to receive Support Services.  Reseller may appoint Sub-Resellers in accordance with the terms of this Agreement.  Reseller and its Sub-Resellers will use all commercially reasonable efforts to promote and market the Software and Support Services and to increase sales of the Software and Support Services.

**2.2.** **Use of Sub-Resellers**

**2.2.1.** **Demonstration Use**. During the Term, Reseller may install and use a reasonable number of copies of the Software on systems under Reseller's control, without charge, solely for internal training and demonstrating the Software to potential End Users ("**Demonstration Use**"). Reseller's use of the Software for Demonstration Use is subject to the terms of this Agreement and Reseller will cease any such use and delete all Demonstration Use copies of the Software upon notice from MinIO. Reseller is not permitted to resell or charge any fee for Demonstration Use nor allow any potential End User or End User to directly use the Software.

2.2.2. **Sub-Reseller Agreement Terms**.  Reseller will obtain from each of its Sub-Resellers, and will require that each Sub-Reseller obtain from each of its Sub-Resellers of any tier, an executed copy of a distributor agreement ("**Sub-Reseller Agreement**") sufficient to ensure that each Sub-Reseller is bound to the terms of this Agreement as though it were Reseller, but excluding any payment obligations, which are solely between Reseller and Sub-Reseller. Failure to expressly state in this

Agreement that a Sub-Reseller is bound by a given provision that binds Reseller, does not mean that Sub-Reseller is not bound by such provision, and Sub-Reseller shall be so bound by Reseller through the Sub-Reseller Agreement.

2.2.3.    **Enforcement**.  Reseller will use all commercially reasonable efforts to enforce each Sub-Reseller Agreement with at least the same degree of diligence used in enforcing similar agreements.  Reseller will use all commercially reasonable efforts to protect MinIO's proprietary intellectual property rights, notify MinIO of any breach of a material obligation under a Sub-Reseller Agreement, and cooperate with MinIO in any legal action to prevent or stop unauthorized use, reproduction, or distribution of the Software.

2.3.    **End User Sublicensing**. End Users will be licensed by MinIO to use the Software in accordance with MinIO's end user license agreement attached as Exhibit B (the "**End User Agreement**"), which may be updated from time to time upon notice to Reseller.  Reseller will ensure each End User becomes bound by the End User Agreement and will: (a) notify each End User in advance of purchase that the Software is subject to the End User Agreement and that to place an order the End User must agree to the End User Agreement; (b) require the End User to execute the End User Agreement; (c) ensure that the Term of the Order Form for the End User does not exceed the Term of the Order Form for the Software purchased from MinIO; and (d) not remove or obscure the End User Agreement, interfere with its presentation or accept it on the End User's behalf. For clarity, Reseller has no authority to negotiate the terms of the End User Agreement, and Reseller will immediately refer any End User questions or comments regarding the End User Agreement directly to MinIO. Provision of the Software to any End User is subject to entry into a legally binding End User Agreement by such End User. If Reseller becomes aware of any unauthorized use of the Software or of any failure by an End User to comply with an End User Agreement, Reseller will immediately notify MinIO and at MinIO's direction, use its best efforts to assist MinIO in the enforcement of the End User Agreement.

2.4.    **Orders and Acceptance.**  Reseller will place orders for the Software and Support Services under this Agreement by delivering an Order to MinIO. No Order will be binding until executed by MinIO. Upon MinIO's acceptance of such Order, Reseller will execute Reseller's own order form with the applicable End User which is consistent with the corresponding Order. Reseller will not commit to providing the Software or Support Services to any End User without first obtaining an executed Order for such Software and Support Services from MinIO. Accepted Orders are non-cancellable by Reseller and Sub-Reseller.

2.5.    **Restrictions**. Except as explicitly provided in this Agreement or expressly permitted by applicable law, Reseller will not, and will not permit or authorize End Users or Sub-Resellers or other third parties to, directly or indirectly (a) copy, modify, enhance, or otherwise create derivative works of the Software or related Documentation, in whole or in part; (b) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part; (c) write or develop any program based upon or use the Software to create a competitive product; (d) sell, sublicense, transfer any rights in, use for the benefit of or to provide services (e.g., as a service bureau) the Software, or allow access to unauthorized persons; (e) transmit unlawful, infringing or harmful data or code to or from the Software; (f) replicate significant portions of the Software; or (g) otherwise use the Software except as expressly permitted hereunder. Without limiting the foregoing, Reseller will not, and will not permit or authorize End Users or Sub-Resellers or other third parties to, use the Software in a way that (x) imposes or could impose a requirement or condition that any Software or part thereof (i) be disclosed or distributed in source code form, (ii) be licensed for the purpose of making modifications or derivative works, or (iii) be redistributable at no charge, or (y) otherwise imposes or could impose any other material limitation, restriction, or condition on the right or ability of MinIO to use or distribute the Software. Reseller will use the Software and Documentation in compliance with all applicable laws and regulations, and refrain from any unethical conduct or any other conduct that tends to damage the reputation of MinIO. Nothing in the foregoing limits the Reseller's or End User's rights under the open-source version of MinIO software.

2.6.    **Restrict Acquisition of Rights by Government**. Reseller will comply with all applicable laws, rules, and regulations to (a) ensure that any government users only receive ordinary End User rights to the Software, (b) preclude the acquisition of unlimited rights to technical data, software, and documentation provided with the Software to a governmental agency, including by ensuring the addition of the appropriate "Restricted Rights" or "Limited Rights" notices required by the U.S. Government agencies or other relevant governmental entities.

2.7.    **Non-Exclusive Relationship**.  MinIO reserves the unrestricted right to market, distribute, and sell the Software worldwide, including without limitation through original equipment manufacturers, value added resellers, managed service provider, and other third party intermediaries and directly to end users.

**2.8.    MinIO's Trademarks**.  Subject to the provisions of this Section 2.8, during the term of this Agreement, Reseller will have the right to advertise the MinIO Products with MinIO's trademarks, trade names, service marks, and logos of MinIO ("**MinIO's Trademarks**"), subject to MinIO's prior inspection and written approval of all materials bearing MinIO's Trademarks. All representations of MinIO's Trademarks that Reseller intends to use will first be submitted to MinIO for approval (which will not be unreasonably withheld) of design, color, and other details, or will be exact copies of those used by MinIO.  Reseller will

fully comply with all guidelines, if any, communicated by MinIO concerning the use of MinIO's Trademarks.  MinIO may modify any of MinIO's Trademarks, or substitute an alternative mark for any of MinIO's Trademarks, upon 30 days prior notice to Reseller, after which time Reseller shall use such updated MinIO Trademarks. Except for the express license grant, nothing contained in this Agreement will grant or will be deemed to grant to Reseller any right, title, or interest in or to MinIO's Trademarks.   All uses of MinIO's Trademarks and related goodwill will inure solely to MinIO and, and Reseller hereby irrevocably assigns, and will cause Sub-Resellers to irrevocable assign, to MinIO, all right, title, interest, and good will, if any, in any of MinIO's Trademarks.  At no time during or after the term of this Agreement will Reseller challenge or assist others to challenge MinIO's Trademarks (except to the extent expressly required by applicable law) or the registration thereof or attempt to register any of MinIO's Trademarks or marks or trade names that are confusingly similar to those of MinIO.  Upon termination of this Agreement, Reseller and Sub-Resellers will immediately cease to use all MinIO's Trademarks. Reseller will enter into any subsequent agreements necessary to effectuate the intent of the above or otherwise preserve MinIO's Trademarks.

2.9.      **Proprietary Rights**. The Software and Documentation are licensed, not sold, by MinIO, and nothing in this Agreement will be interpreted or construed as a sale or purchase of the Software or Documentation. Reseller will not have any rights in or to the Software or Documentation except as expressly granted in this Agreement. MinIO reserves to itself all rights to the Software and Documentation not expressly granted to Reseller in accordance with this Agreement. MinIO retains all intellectual property rights in and to the Software, Documentation, and any work product resulting from the Support Services. Reseller acknowledges that the Software and Documentation, all copies of the Software and Documentation are the sole and exclusive property of MinIO and contain MinIO's confidential and proprietary materials.

3.      **RESELLER OBLIGATIONS**

3.1.      **Conduct**. Reseller will conduct itself in a professional manner that reflects positively on MinIO. In advertising, marketing, and reselling the Software, Support Services and otherwise performing under this Agreement, Reseller will (a) not engage in any deceptive, misleading, illegal, or unethical practices, (b) not make any representations, warranties, or guarantees concerning the Software or Support Services that are inconsistent with or in addition to those made by MinIO in this Agreement, and (c) comply with all applicable federal, state, and local laws and regulations.

3.2.      **Records**.  During the term of this Agreement and for three years after, Reseller will maintain at its primary place of business full, true, and accurate books of account (kept in accordance with generally accepted accounting principles) and records concerning all transactions and activities under this Agreement.  Such books and records will include and record, without limitation, all Sub-Reseller Agreements executed by Reseller, all End User Agreements, Reports and all data that Reseller is required to provide with respect to Software purchases (including End User contact information).

4.      **Feedback.** If Reseller provides any feedback, advice, suggestions or guidance related to MinIO's business, products or services, or any technology therein (collectively, "**Feedback**"), then Reseller grants to MinIO a perpetual, irrevocable, sublicensable, assignable, fully paid-up license to freely use and otherwise exploit such Feedback and, notwithstanding anything to the contrary in this Agreement, such Feedback shall be the Confidential Information of MinIO.

5.      **FEES AND PAYMENT.**

5.1.      **Fees**. In consideration of MinIO's provision of the Software and Support Services to End Users, Reseller will pay all applicable fees set forth in each Order (the **"Fees"**). Reseller acknowledges and agrees that MinIO does not accept checks for payment, and MinIO will not be required to sign up for vendor portals or similar applications to receive payment.  Fees are exclusive of taxes, duties and the like, which shall be paid by Reseller.  For Resellers outside the United States, i. the Fees will be grossed up to include any local withholding tax due which, if due, will be payable by the Reseller to the relevant tax authorities; ii. any Value Added Taxes (VAT) due is the responsibility of Reseller under any local reverse charge mechanism; iii. Reseller must provide evidence of its VAT registration status to support the application of the reverse charge mechanism

5.2.      **End User Pricing; Obligation to Pay.** Reseller will independently determine the pricing at which it offers the Software to End Users. Reseller bears sole responsibility to pay for accepted Orders of Software and Support Services regardless of any non-payments by any of its Sub-Resellers or End Users.  MinIO reserves the right to cancel or suspend any End User's right to access or use the Software if it fails to receive payment from Reseller with respect to such End User.

6.      **TERM; TERMINATION**.

6.1.      **Term**. This Agreement shall commence on the Effective Date and continue until the date on which all Orders have been expired or terminated for a period of ninety (90) consecutive days, unless otherwise terminated earlier as set forth herein.

6.2.    **Termination for Breach.** Either Party may terminate this Agreement or any Order at any time if the other Party fails or defaults in the performance of any of its obligations under this Agreement and such failure or default remains uncured for a period of thirty (30) days after receipt by the other Party of a written notice thereof.

6.3.    **Termination for Non-Payment**. MinIO may, without limitation to any of its other rights or remedies, terminate this Agreement or any Order upon ten (10) days' notice if Reseller fails to timely pay any fees specified in an Order, or any other amounts owing under this Agreement.

6.4.    **Suspension of Service**. MinIO may immediately suspend Reseller's and End User's accessibility to use to any or all of the Software if: (a) Reseller or an End User breaches Section 2.5 (Restrictions), Section 5.2 (End User Pricing; Obligation to Pay), Section 3 (Reseller Obligations) or any other provision of this Agreement that would cause MinIO material risk; or (b) Reseller's account is 10 days or more overdue. Where practicable, MinIO will use reasonable efforts to provide Reseller with prior notice of the suspension (email sufficing). If the issue that led to the suspension is resolved, MinIO will promptly restore Reseller's access to the Software.

**6.5.    Effect of Termination**.

6.5.1.    Unless this Agreement is terminated by MinIO under Sections 6.2, or 6.3, all Orders will survive the termination of this Agreement, along with the necessary rights and obligations for the fulfillment of such Orders.

6.5.2.    Subject to Section 6.5.1, upon any termination or expiration of this Agreement each Party will promptly destroy any Confidential Information of the other Party, in the other Party's possession.

6.5.3.    If MinIO terminates for Reseller's breach or non-payment, Reseller will also pay all Fees for the remainder of the current term for any active Orders, whether or not such Fees have accrued.

6.5.4.    Subject to Section 6.5.1, any termination of this Agreement shall terminate all Orders then in effect. Sections 2.5 (Restrictions), 2.8 (MinIO's Trademarks), 2.9 (Proprietary Rights), 3 (Reseller Obligations), 4 (Feedback), 5 (Fees and Payment), 6.4 (Suspension of Service), 6.5 (Effect of Termination), 7 (Confidentiality), 8.3 (Export Control and Sanctions), 8.4 (Disclaimer), 9 (MinIO Indemnification), 10 (Reseller Indemnification), 11 (Limitation of Liability), and 12 (General) shall survive termination or expiration of this Agreement.

**7.    Confidentiality.**

**7.1.    Definition**. "**Confidential Information**" means: any information disclosed by one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") during the term of this Agreement that: (a) is marked as "confidential," or in some other manner to indicate its confidential nature; (b) is disclosed orally and described as confidential at the time of disclosure and subsequently set forth in writing, marked "confidential," and sent to the Receiving Party within thirty (30) days following the oral disclosure; or (c) should reasonably be considered confidential given the nature of the information and circumstances of its disclosure. In addition, any software provided by MinIO that is not made generally available to the public without an obligation of confidentiality and any information, technical data, product roadmaps, business information or other non-public information concerning MinIO's products, services, customers or business to which Reseller has access in connection with the activities contemplated by this Agreement will be considered the Confidential Information of MinIO. However, Confidential Information does not include any information that: (i) is or becomes generally known and available to the public through no act or omission of the Receiving Party; (ii) was already in the Receiving Party's possession at the time of disclosure by the Disclosing Party, as shown by the Receiving Party's contemporaneous records; (iii) is lawfully obtained by the Receiving Party from a third party who has the express right to make such disclosure; or (iv) is independently developed by the Receiving Party without use of, or reference to, the Disclosing Party's Confidential Information.

**7.2.    Use; Maintenance**. Neither Party shall use the Confidential Information of the other Party for any purpose except to exercise its rights and perform its obligations under this Agreement. Neither Party shall disclose, or permit to be disclosed, either directly or indirectly, any Confidential Information of the other Party, except: (a) to its officers, employees, consultants and legal advisors who have a "need to know" such Confidential Information, who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Agreement; or (b) where the Receiving Party becomes legally compelled to disclose Confidential Information. Each Party will take reasonable measures to protect the secrecy of, and avoid disclosure and unauthorized use of, the Confidential Information of the other Party, and will take at least those measures that it takes to protect its own confidential information of a like nature. The Receiving Party will use reasonable efforts to provide timely notice of any legally compelled disclosure to facilitate confidential treatment of Disclosing

Party's Confidential Information and will furnish only that portion of Confidential Information that it is legally required to disclose after exercising reasonable efforts to obtain assurance that such information will receive confidential treatment.

**8.      Warranties.**

**8.1.      Mutual Warranties**. Each party represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement; and (c) the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

**8.2.      Reseller Warranty**. Reseller represents and warrants that it will use the Software in compliance with all applicable laws, rules and regulations.

**8.3.      Export Controls and Sanctions**: Reseller acknowledges that Software and Support Services and any related technology provided by MinIO are subject to U.S. and applicable international export control laws and regulations and trade sanctions. Reseller agrees to comply with all applicable export and reexport control laws and regulations and trade sanctions, including the Export Administration Regulations maintained by the U.S. Department of Commerce and trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control. Reseller agrees not to—directly or indirectly—sell, export, reexport, transfer, or divert any product, software, technology, or service provided by MinIO (including any item incorporating, developed with, or based on any such item provided by MinIO) to any destination, entity, or person or for any end use prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations.  Additionally, Reseller warrants that it is not, and that it is not owned or controlled by, and will not provide Software and Support Services or any related technology to any individual or entity who is: (1) incorporated or located in or a resident of a country or territory prohibited by the United States (currently including Belarus, Cuba, Iran, North Korea, Russia, Syria, or sanctioned regions of Ukraine currently the Crimea or so-called Donetsk People's Republic ("DNR") and the Luhansk People's Republic ("LNR")); or (2) a restricted or prohibited party as specified in the regulations listed above including but not limited to being listed on the U.S. Department of Commerce's Denied Persons List or Entity List, or the U.S. Treasury Department's list of Specially Designated Nationals and Blocked Persons. This export control clause shall survive termination or cancellation of this Agreement.

**8.4.      Disclaimer**. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 8, MINIO MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. MINIO EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. MINIO DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SOFTWARE OR AGAINST INFRINGEMENT. MINIO DOES NOT WARRANT THAT THE SOFTWARE OR SUPPORT SERVICES ARE ERROR-FREE OR THAT OPERATION OF THE SOFTWARE WILL BE SECURE OR UNINTERRUPTED. MINIO EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESELLER'S, SUB-RESELLER's OR END USER'S USE OF THE SOFTWARE OR ANY DECISIONS RESELLER OR END USER MAKES AS A RESULT OF USING THE SOFTWARE. RESELLER, SUB-RESELLER AND END USERS WILL NOT HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF MINIO TO ANY THIRD PARTY.

**9.      MinIO Indemnification.**  This Section 9 only applies with respect to Orders by Reseller for AIStor services.

**9.1.      Infringement Defense.** MinIO will defend Reseller from any third party claim that the MinIO Trademarks, Software, Support Services or Documentation infringes or misappropriates any intellectual property right of any third party if: (a) Reseller gives MinIO prompt written notice of the claim; (b) MinIO has full and complete control over the defense and settlement of the claim; (c) Reseller provides assistance in connection with the defense and settlement of the claim as MinIO may reasonably request; and (d) Reseller complies with any settlement or court order made in connection with the claim (e.g., relating to the future use of any infringing materials).

**9.2.      Indemnification**.  MinIO will indemnify Reseller against (a) all damages, costs, and attorneys' fees finally awarded against Reseller in any settlement entered into by MinIO under Section 9.1; (b) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by Reseller in connection with the defense of such proceeding (other than attorneys' fees and costs incurred without MinIO's consent after MinIO has accepted defense of such claim); and (c) if any proceeding arising under Section 9.1 is settled, all amounts paid to any third party agreed to by MinIO in settlement of any such claims.

**9.3.** **Mitigation**. In response to an actual or potential infringement or misappropriation claim or otherwise relating to violation of intellectual property rights, if required by settlement or injunction or as MinIO determines necessary to avoid material liability, MinIO may at its option: (a) procure rights for Reseller's continued use of the applicable MinIO Trademarks, Software, Support Services or Documentation; (b) replace or modify the allegedly infringing portion of the applicable MinIO Trademarks, Software, Support Services or Documentation to avoid infringement or misappropriation without reducing the MinIO Trademarks', Software's, Support Services' or Documentation's overall functionality; or (c) terminate access to the affected MinIO Trademarks, Software, Support Services or Documentation and refund to Reseller any pre-paid, unused fees for the terminated portion of the Term for the affected Order.

**9.4.** **Exceptions**. MinIO will have no obligation under this Section 9 for any alleged infringement or misappropriation to the extent that it arises out of or is based upon (a) use of the Software in combination with other products if such alleged infringement or misappropriation would not have arisen but for such combination; (b) the Software that is provided to comply with designs, requirements, or specifications required by or provided by Reseller, if the alleged infringement or misappropriation would not have arisen but for the compliance with such designs, requirements, or specifications; (c) use of the Software for purposes not intended or outside the scope of the license granted to the Reseller; (d) Reseller's failure to use the Software in accordance with instructions provided by MinIO; or e) any modification of the Software not made or authorized in writing by MinIO. Reseller is responsible for any costs or damages that result from these actions.

**9.5.** **Exclusive Remedy**.  This Section 9 states MinIO's sole and exclusive liability, and Reseller's sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third party intellectual property right by the MinIO Trademarks, Software, Support Services or Documentation.

**10.** **Reseller Indemnification.**

**10.1.** **Defense of Claims**. Reseller will defend MinIO and its affiliates and its employees, directors, agents, and representatives ("**MinIO Indemnified Parties**") from any actual or threatened third party claim arising out of or based upon (a) Reseller's performance or failure to perform under this Agreement, or (b) any claims by an End User, except where such claim is based on MinIO's breach of this Agreement or the End User Agreement. The MinIO Indemnified Parties will: i) give Reseller prompt written notice of the claim; ii) grant Reseller full and complete control over the defense and settlement of the claim; and iii) assist Reseller with the defense and settlement of the claim as Reseller may reasonably request.

**10.2.** **Indemnification**. Reseller will indemnify each of the MinIO Indemnified Parties against a) all damages, costs, and attorneys' fees finally awarded against any of them in any proceeding under Section 10.1; b) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by any of them in connection with the defense of such proceeding (other than attorneys' fees and costs incurred without Reseller's consent after Reseller has accepted defense of such claim); and c) if any proceeding arising under Section 10.1 is settled, Reseller will pay any amounts to any third party agreed to by Reseller in settlement of any such claims.

**11.** **Limitation of Liability.**

EXCLUDING THE RESELLER'S PAYMENT OBLIGATIONS, EACH PARTY'S INDEMNIFICATION OBLIGATIONS, BREACHES OF CONFIDENTIALITY, AND RESELLER'S BREACH OF SECTION 2 OR SECTION 3, TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOSS OF DATA, LOSS OF INCOME, LOSS OF OPPORTUNITY OR PROFITS, COST OF RECOVERY OR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.  EXCLUDING THE RESELLER'S PAYMENT OBLIGATIONS, EACH PARTY'S INDEMNIFICATION OBLIGATIONS, BREACHES OF CONFIDENTIALITY, AND RESELLER'S BREACH OF SECTION 2 OR SECTION 3, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY EXCEED THE PORTION OF FEES PAID BY RESELLER CORRESPONDING TO THE SERVICES RENDERED DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST DATE ON WHICH THE CAUSE OF ACTION AROSE.  THE LIMITATIONS OF LIABILITY IN THIS SECTION 11 WILL APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY DAMAGE.  THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 11 REFLECT THE APPROPRIATE ALLOCATION OF RISK BETWEEN THE PARTIES AND THAT THESE LIMITATIONS OF LIABILITY SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

**12.** **General.**

**12.1.    Assignment**. Neither Party may assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party; provided that either Party may assign this Agreement without the written consent of Reseller as part of a corporate reorganization, upon a change of control, consolidation, merger, reincorporation, sale of all or substantially all of its assets related to this Agreement, or a similar transaction or series of transactions.  Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns. MinIO may freely subcontract the Support Services to be provided under this Agreement to third parties.

**12.2.    Independent Contractor**. MinIO is an independent contractor, and nothing in this Agreement or related to MinIO's performance hereunder will be construed to create an employment or agency relationship between Reseller and MinIO.

**12.3.    Force Majeure**. Except for the obligation to pay money, neither Party will be liable for any failure or delay it its performance under this Agreement due to any cause beyond its reasonable control, including, without limitation, an act of war, government, terrorism, an earthquake, flood, weather, accident, embargo, riot, sabotage, or labor shortage or dispute, or the failure of the Internet, phone system, or any public utility.  The delayed party shall give the other party notice of such cause and shall use commercially reasonable efforts to correct such failure or delay in performance.

**12.4.    Publicity**. MinIO may use Reseller's name and logo in MinIO's reseller lists, on MinIO's website, and in MinIO's marketing materials, in each case in substantially the same manner in which MinIO uses the names and/or logos of its other resellers.  MinIO may use Reseller's name and logo in connection with the exercise of its rights under this Section 12.4.  If requested by Reseller MinIO will promptly cease such usage.

**12.5.    Entire Agreement; Amendment**.  This Agreement, including any attached Exhibits, and together with any Orders contains the entire agreement relating to the subject matter contained herein and supersedes all prior or contemporaneous agreements, written or oral, between the Parties.  Except as set forth herein, neither this Agreement nor any Order may be modified or amended except in a written amendment signed by both Parties.  No terms of any purchase order, acknowledgement, or other form provided by Reseller will modify this Agreement, regardless of any failure of MinIO to object to such terms.  In the event of a conflict the following order of precedence shall apply: (i) the Order; (ii) the main body of Agreement; (iii) any Exhibits.

**12.6.    Notice**.  All notices under this Agreement will be in writing and will reference this Agreement.  Notices will be deemed given when sent by e-mail to the following.
All notices relating to this Agreement shall be sent to MinIO at: legal@minio.io
All notices relating to this Agreement shall be sent to Reseller at: [e-mail address].

**12.7.    Waiver**.  No term of this Agreement shall be considered waived and no breach excused by either Party unless made in writing.  No consent, waiver, or excuse by either Party, express or implied, of any provision of this Agreement shall constitute a consent, waiver or excuse of any other breach of that or any other provision of this Agreement.

**12.8.    Severability**.  If any provision of this Agreement is held illegal or unenforceable by any court of competent jurisdiction, such provision shall be deemed severed from the remaining provisions of this Agreement and shall not affect or impair the validity or enforceability of the remaining provisions of this Agreement.  The Parties hereto agree to replace any such illegal or unenforceable provision with a new provision that has the most nearly similar permissible economic or other effect.

**12.9.    Controlling Law**.  This Agreement will be governed by the laws of the State of California, without reference to conflict of laws principles. In any dispute arising out of this Agreement, Reseller and MinIO each consent to the exclusive personal jurisdiction and venue in the state and federal courts within Santa Clara County, California.  The Parties hereto exclude the provisions of the United Nations Convention on Contracts for the International Sale of Goods from this Agreement and any transaction that may be implemented in connection with this Agreement.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives.

|  |  |
|---|---|
|  |  |
|  |  |
|  |  |
|  |  |

| Reseller Information: | End User Information | MinIO Information |
|---|---|---|
| Name: | Name: | Name: MinIO, Inc |
| Entity Type: | Entity Type: | Address: 275 Shoreline Drive, Suite 100 Redwood Shores, CA 94065 Country: USA |
| Address: | Address: | |
| Country: | Country: | Attention: Garima Kapoor Co-CEO, MinIO, Inc. |
| Attention: | Attention: | Subscription Start Date: [_____] |
| Email: | Email: | Subscription End Date: [_____] |
| | | Purchase Order required? [Y/N ] |
| | | Quote Expiry Date: [      ] |

1.      **Initial Subscription Term**. The initial subscription term of this Order starts on the Subscription Start Date and ends on the Subscription End Date ("**Initial Subscription Term**").  Upon expiration of the Initial Subscription Term, the Order will automatically renew for successive terms of one (1) year (each a "**Renewal Subscription Term**") unless either Party gives written notice of non-renewal at least thirty (30) days before the commencement of the next Renewal Subscription Term (the Initial Subscription Term together with all Renewal Subscription Terms, the "**Term**").

2.      **Pricing**

| Product Name | Units / Usage Limit | Amount per TiB per Year | Total per Year |
|---|---|---|---|
| Due from the Customer: AIStor | 400 TiB | $240 | $96,000 |
| Reseller Margin | (10%) | ($24) | ($9,600) |
| Total Price | | $216 | $86,400 |

        **Total Due - Initial Subscription Term: [$          ]**

3.      **Billing Frequency**:  Annual Upfront.

4.      **Payment Terms.**  Fees for the Software are as indicated above. The fees are in United States dollars and are due thirty (30) days after receipt of an invoice from MinIO. All payments must be made through the payment portal specified in the invoice. All payments made by Reseller under this Order are non-refundable; provided that if Reseller terminates for MinIO's breach, Reseller will receive a prorated refund of any prepaid fees.

5.      **True Up.** Any amount used in excess of the Units purchased above by the End User (as measured as an average over the previous 90 days) will be billed at [$    per TiB per year], as prorated for the remainder of the applicable term. The fee is not prorated for any usage less than 1 TiB. MinIO will measure and invoice excess usage at the end of each quarter of the Term. Reseller will require "air-gapped" End Users to submit Reports in accordance with the terms of the Reseller Agreement at the end of each quarter of the Term. Reseller will pay any invoice for excess usage per the Payment Terms above.

6.      **Taxes**: Fees above are exclusive of taxes, duties and the like, which shall be paid by the Reseller.

By signing this Order, Reseller hereby orders from MinIO the Software and, if specified, the other goods or services described in this Order. This Order and Reseller's use of the Software and receipt of any related services are subject to the MinIO Reseller Agreement available at minio.io/legal, or as signed between the Parties (the "**Reseller Agreement**"), which is incorporated by reference. In the event of a conflict between this Order, as executed by MinIO, and a provision of Reseller Agreement, this Order will control. All terms not defined herein will be as defined in the Reseller Agreement.

| **MinIO Inc.** | **Reseller** |
| --- | --- |
| **Signature:** | **Signature** |
| **Name:** | **Name:** |
| **Title:** | **Title:** |
| **Date:** | **Date:** |

# END USER LICENSE AGREEMENT

This End User License and Subscription Agreement (the "**Agreement**") is entered into by and between **End User** and MinIO, Inc. a Delaware corporation with a principal place of business at 275 Shoreline Drive, Suite 100, Redwood Shores, CA 94065 ("**MinIO**") as of the date you first access the Software ("**Effective Date**"). Each of End User and MinIO are referred to herein individually as a "**Party**" and collectively the "**Parties**").

## 1. Definitions

**1.1.** **"End User Content"** is as defined in Section 3.

**1.2.** "**Documentation**" means user manuals, reference manuals, installation guides, and other technical material that are provided with the Software.

**1.3.** "**Order**" means one or more ordering documents executed by the End User and Reseller that reference this Agreement.

**1.4.** "**Reseller**" means a duly authorized reseller of MinIO.

**1.5.** "**Software**" means MinIO's proprietary object storage software application in object code form, including any Updates and Upgrades.

**1.6.** "**Support Services**" means the support services described in Exhibit I.

**1.7.** "**Term**" is as defined in each Order.

**1.8.** "**Unit**" means the amount of data under management by the Software as identified in the Order.

**1.9.** "**Updates and Upgrades**" means subsequently released versions of the Software. Updates and Upgrades will not include any products that MinIO licenses separately from the Software or for an additional fee.

**1.10.** "**Usage Limit**" means the number of Units that End User has purchased, as identified in an Order.

## 2. Delivery; License; Restrictions.

**2.1.** Delivery**.** MinIO has delivered, or will deliver within a reasonable time after Effective Date, one copy of the Software and Documentation to End User.

**2.2.** Software. Subject to the terms and conditions of this Agreement, MinIO grants End User a limited, worldwide, nonexclusive, non-transferrable, non-assignable, non-sublicensable license during the Term of the applicable Order to download, install and run the Software solely in connection with End User's internal business operations. Nothing in this Agreement applies to or limits software licensed to End User by MinIO under an open source license.

**2.3.** Documentation. Subject to the terms and conditions of this Agreement, MinIO grants to End User a limited, worldwide, non-exclusive, non-transferable license, without right of sublicense, during the Term of the applicable Order to reproduce, without modification, and internally use a reasonable number of copies of the Documentation solely in connection with its internal use of the Software.

**2.4.** Restrictions. Except as explicitly provided in this Agreement or expressly permitted by applicable law, End User will not, directly or indirectly: (a) copy, modify, enhance or otherwise create derivative works of the Software or related Documentation, in whole or in part; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software; (c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part; (d) remove any proprietary notices from the Software; (e) write or develop any program based upon or use the Software or Documentation to create a competitive product; (f) remove or otherwise interfere with any part of the Software designed to monitor End User's compliance with this Agreement and the Usage Limits; or (g) otherwise use the Software except as expressly permitted hereunder. Without limiting the foregoing, End User will not use the Software in a way that (x) imposes or could impose a requirement or condition that any Software or part thereof (i) be disclosed or distributed in source code

form, (ii) be licensed for the purpose of making modifications or derivative works, or (iii) be redistributable at no charge, or (y) otherwise imposes or could impose any other material limitation, restriction, or condition on the right or ability of MinIO to use or distribute the Software. End User will use the Software and Documentation in compliance with all applicable laws and regulations, and refrain from any unethical conduct or any other conduct that tends to damage the reputation of MinIO. Nothing in the foregoing limits the End User's rights under the open-source version of MinIO software. Excluding the End User Content, End User agrees not to give MinIO access to any other content, materials, data or information of End User.

**2.5.** Proprietary Rights. The Software and Documentation are licensed, not sold, by MinIO to End User, and nothing in this Agreement will be interpreted or construed as a sale or purchase of the Software or Documentation. End User will not have any rights in or to the Software or Documentation except as expressly granted in this Agreement. MinIO reserves to itself all rights to the Software and Documentation not expressly granted to End User in accordance with this Agreement. MinIO retains all intellectual property rights in and to the Software, Documentation, and any work product resulting from the Support Services. End User acknowledges that the Software and Documentation, all copies of the Software and Documentation are the sole and exclusive property of MinIO and contain MinIO's confidential and proprietary materials.

**3.      Support Services**.

3.1.      **Support Services**.  If purchased via an Order and subject to End User's payment of all applicable Fees to Reseller, MinIO will use commercially reasonable efforts, during the Term of the applicable Order, to provide the support services described in the attached Exhibit I, at the level of support indicated in each Order (the "**Support Services**").

**3.2.      End User Content**.  If pursuant to the Support Services, End User provides MinIO any Software-related logs ("**End User Content**"), then End User hereby provides MinIO a limited, irrevocable, fully paid-up license to use such End User Content solely as necessary to provide support for, maintain and improve the Software.

**4.      Feedback**. If End User provides any feedback, advice, suggestions or guidance related to MinIO's business, products or services, or any technology therein (collectively, "**Feedback**"), then End User grants to MinIO a perpetual, irrevocable, sublicensable, assignable, fully paid-up license to freely use and otherwise exploit such Feedback and, notwithstanding anything to the contrary in this Agreement, such Feedback shall be the Confidential Information of MinIO.

**5.      Reporting; True Up**. Except where the Software is used in an "air-gapped" environment, End User will not interfere with any feature or function that reports usage of the Software. If MinIO is unable to remotely monitor usage of the Software, then End User will submit a report (the "**Report**") specifying End User's actual usage of the Software at the frequency specified in the Order, including any usage in excess of the Usage Limit. Reports will include all documentation necessary for MinIO to verify the amounts in the Report and End User will promptly provide any documentation reasonably requested by MinIO.

**6.      Term; Termination**.

**6.1.** Term. This Agreement shall commence on the Effective Date and continue until the date on which all Orders have expired or terminated for a period of ninety (90) consecutive days, unless otherwise terminated earlier as set forth herein.

**6.2.** Termination for Breach. Either Party may terminate this Agreement or any Order at any time if the other Party fails or defaults in the performance of any of its obligations under this Agreement and such failure or default remains uncured for a period of thirty (30) days after receipt by the other Party of a written notice thereof.

**6.3.** Termination for Non-Payment. MinIO may, without limitation to any of its other rights or remedies, terminate this Agreement or any Order upon ten (10) days notice if End User fails to timely pay any fees specified in an Order or if Reseller fails to pay MinIO any amounts due for the Order, or if End User or Reseller fails to pay any other amounts owing under this Agreement.

**6.4.** Suspension of Service. MinIO may immediately suspend End User's accessibility to use to any or all of the Software if: (a) End User breaches Section 2.4 (Restrictions), Section 5 (Reporting; True Up) or any other provision of this Agreement that would cause MinIO material risk; or (b) End User's account with Reseller is 10 days or more overdue. Where practicable, MinIO will use reasonable efforts to provide End User with prior notice of the suspension (email sufficing). If the issue that led to the suspension is resolved, MinIO will promptly restore End User's access to the Software.

**6.5.** Effect of Termination.

6.5.1. Any termination of this Agreement will terminate all Orders then in effect. Sections 2.4 (Restrictions), 2.5 (Proprietary Rights), 3.2 (End User Content), 4 (Feedback), 5 (Reporting; True Up), 6.4 (Suspension of Service), 6.5 (Effect of Termination), 7 (Confidentiality), 8.3 (Disclaimer), 9 (MinIO Indemnification), 10 (Limitation of Liability), and 11 (General) will survive termination or expiration of this Agreement.

6.5.2. If this Agreement expires or is terminated for any reason, (a) End User will pay to Reseller any Fees or other amounts that have accrued prior to the effective date of the termination, (b) any and all liabilities accrued prior to the effective date of the termination will survive, and (c) End User will provide MinIO with a written certification signed by an authorized representative certifying that End User has destroyed all copies of the Software and Documentation and that all use of the Software and Documentation by End User has been discontinued.

6.5.3. If MinIO terminates for End User's or Reseller's breach or non-payment, End User will also pay all Fees for the remainder of the current term, whether or not such Fees have accrued. End User acknowledges and agrees that after an Order Term, End User will not have rights to use the Software or to manage or access data and content through the Software.

## 7. Confidentiality.

**7.1.** Definition. "**Confidential Information**" means: any information disclosed by one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") during the term of this Agreement that: (a) is marked as "confidential," or in some other manner to indicate its confidential nature; (b) is disclosed orally and described as confidential at the time of disclosure and subsequently set forth in writing, marked "confidential," and sent to the Receiving Party within thirty (30) days following the oral disclosure; or (c) should reasonably be considered confidential given the nature of the information and the circumstances of its disclosure. In addition, any software provided by MinIO that is not made generally available to the public without an obligation of confidentiality and any information, technical data, product roadmaps, business information or other non-public information concerning MinIO's products, services, customers or business to which End User has access in connection with the activities contemplated by this Agreement will be considered the Confidential Information of MinIO. However, Confidential Information does not include any information that: (i) is or becomes generally known and available to the public through no act or omission of the Receiving Party; (ii) was already in the Receiving Party's possession at the time of disclosure by the Disclosing Party, as shown by the Receiving Party's contemporaneous records; (iii) is lawfully obtained by the Receiving Party from a third party who has the express right to make such disclosure; or (iv) is independently developed by the Receiving Party without use of, or reference to, the Disclosing Party's Confidential Information.

**7.2.** Use; Maintenance. Neither Party shall use the Confidential Information of the other Party for any purpose except to exercise its rights and perform its obligations under this Agreement. Neither Party shall disclose, or permit to be disclosed, either directly or indirectly, any Confidential Information of the other Party, except: (a) to its officers, employees, consultants and legal advisors who have a "need to know" such Confidential Information, who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Agreement; or (b) where the Receiving Party becomes legally compelled to disclose Confidential Information. Each Party will take reasonable measures to protect the secrecy of, and avoid disclosure and unauthorized use of, the Confidential Information of the other Party, and will take at least those measures that it takes to protect its own confidential information of a like nature. The Receiving Party will use reasonable efforts to provide timely notice of any legally compelled disclosure to facilitate confidential treatment of Disclosing Party's Confidential Information and will furnish only that portion of Confidential Information that it is legally required to disclose after exercising reasonable efforts to obtain assurance that such information will receive confidential treatment.

## 8. Warranties

**8.1.** Mutual Warranties. Each party represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement; and (c) the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

**8.2.** End User Warranty. End User represents and warrants that it will use the Software in compliance with all applicable laws, rules and regulations.

**8.3.** Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 8, MINIO MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. MINIO EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS

FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. MINIO DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SOFTWARE OR AGAINST INFRINGEMENT. MINIO DOES NOT WARRANT THAT THE SOFTWARE OR SUPPORT SERVICES ARE ERROR-FREE OR THAT OPERATION OF THE SOFTWARE WILL BE SECURE OR UNINTERRUPTED. MINIO EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON THE CUSTOMER'S USE OF THE SOFTWARE OR ANY DECISIONS CUSTOMER MAKES AS A RESULT OF USING THE SOFTWARE. CUSTOMER WILL NOT HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF MINIO TO ANY THIRD PARTY.

**9.      MinIO Indemnification.**  This Section 9 only applies with respect to Orders by End User for AIStor services.

**9.1.**      Infringement Defense. MinIO will defend End User from any third party claim that the Software, Support Services or Documentation infringes or misappropriates any intellectual property right of any third party if: (a) End User gives MinIO prompt written notice of the claim; (b) MinIO has full and complete control over the defense and settlement of the claim; (c) End User provides assistance in connection with the defense and settlement of the claim as MinIO may reasonably request; and (d) End User complies with any settlement or court order made in connection with the claim (e.g., relating to the future use of any infringing materials).

**9.2.**      Indemnification. MinIO will indemnify End User against (a) all damages, costs, and attorneys' fees finally awarded against End User in any settlement entered into by MinIO under Section 9.1; (b) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by End User in connection with the defense of such proceeding (other than attorneys' fees and costs incurred without MinIO's consent after MinIO has accepted defense of such claim); and (c) if any proceeding arising under Section 9.1 is settled, all amounts paid to any third party agreed to by MinIO in settlement of any such claims.

**9.3.**      Mitigation. In response to an actual or potential infringement or misappropriation claim or otherwise relating to violation of intellectual property rights, if required by settlement or injunction or as MinIO determines necessary to avoid material liability, MinIO may at its option: (a) procure rights for End User's continued use of the applicable Software, Support Services or Documentation; (b) replace or modify the allegedly infringing portion of the applicable Software, Support Services or Documentation to avoid infringement or misappropriation without reducing the Software's, Support Services' or Documentation's overall functionality; or (c) terminate access to the affected Software, Support Services or Documentation and refund to End User any pre-paid, unused fees for the terminated portion of the Term for the affected Order.

**9.4.**      Exceptions. MinIO will have no obligation under this Section 9 for any infringement to the extent that it arises out of or is based upon (a) the combination, operation, or use of the Software, Support Services or Documentation with materials or assets not provided by MinIO; (b) designs, requirements, or specifications for the Software, Support Services or Documentation required by or provided by End User; (c) use of the Software, Support Services or Documentation outside of the scope of the license granted to the End User; (d) End User's failure to comply with instructions provided by MinIO; or (e) any modification of the Software or Documentation not made by MinIO.

**9.5.**      Exclusive Remedy. This Section 9 states MinIO's sole and exclusive liability, and End User's sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third party intellectual property right by the Software, Support Services or Documentation.

**10.      Limitation of Liability**.

EXCLUDING THE CUSTOMER'S PAYMENT OBLIGATIONS, EACH PARTY'S INDEMNIFICATION OBLIGATIONS, BREACHES OF CONFIDENTIALITY, AND CUSTOMER'S BREACH OF SECTION 2, TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOSS OF DATA, LOSS OF INCOME, LOSS OF OPPORTUNITY OR PROFITS, COST OF RECOVERY OR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.  EXCLUDING THE CUSTOMER'S PAYMENT OBLIGATIONS, EACH PARTY'S INDEMNIFICATION OBLIGATIONS, BREACHES OF CONFIDENTIALITY, AND CUSTOMER'S BREACH OF SECTION 2, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY EXCEED THE PORTION OF FEES PAID BY CUSTOMER CORRESPONDING TO THE SERVICES RENDERED DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST DATE ON WHICH THE CAUSE OF ACTION AROSE.  THE LIMITATIONS OF LIABILITY IN THIS SECTION 10 WILL APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY DAMAGE. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 10 REFLECT THE APPROPRIATE ALLOCATION OF RISK BETWEEN THE PARTIES AND THAT THESE LIMITATIONS OF LIABILITY SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

# 11.    General.

**11.1.**    Assignment. Neither Party may assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party; provided that MinIO may assign this Agreement without the written consent of End User as part of a corporate reorganization, upon a change of control, consolidation, merger, reincorporation, sale of all or substantially all of its assets related to this Agreement, or a similar transaction or series of transactions.  Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns. MinIO may freely subcontract the Support Services to be provided under this Agreement to third parties.

**11.2.**    Independent Contractor. MinIO is an independent contractor, and nothing in this Agreement or related to MinIO's performance hereunder will be construed to create an employment or agency relationship between End User and MinIO.

**11.3.**    Force Majeure. Except for the obligation to pay money, neither Party will be liable for any failure or delay it its performance under this Agreement due to any cause beyond its reasonable control, including, without limitation, an act of war, government, terrorism, an earthquake, flood, weather, accident, embargo, riot, sabotage, or labor shortage or dispute, or the failure of the Internet, phone system, or any public utility.  The delayed party shall give the other party notice of such cause and shall use commercially reasonable efforts to correct such failure or delay in performance.

**11.4.**    Publicity. MinIO may use End User's name and logo in MinIO's customer lists, on MinIO's website, and in MinIO's marketing materials, in each case in substantially the same manner in which MinIO uses the names and/or logos of its other customers. MinIO may use End User's name and logo in connection with the exercise of its rights under this Section 11.4.  If requested by End User MinIO will promptly cease such usage.

**11.5.**    Entire Agreement; Amendment.  This Agreement, including any attached Exhibits, and together with any Orders for Support Services contains the entire agreement relating to the subject matter contained herein and supersedes all prior or contemporaneous agreements, written or oral, between the Parties.  Except as set forth herein, neither this Agreement nor any Order may be modified or amended except in a written amendment signed by both Parties.  No terms of any purchase order, acknowledgement, or other form provided by End User will modify this Agreement, regardless of any failure of MinIO to object to such terms.  In the event of a conflict the following order of precedence shall apply: (i) the Order; (ii) the main body of Agreement; (iii) any Exhibits.

**11.6.**    United States Government End Users. The Software and its Documentation are "Commercial items," "Commercial computer software," and "Computer software documentation" as defined by the Federal Acquisition Regulations ("**FAR**") and Defense Federal Acquisition Regulations Supplemental ("**DFARS**"). Pursuant to FAR 12.211, FAR 12.212, DFARS 227.7202-1 through 227.7202-4, and their successors, the U.S. Government acquires the Software and its documentation subject to the terms of this Agreement.

**11.7.**    Export Restrictions. MinIO may supply End User with technical data that is subject to export control restrictions.  MinIO will not be responsible for End User's compliance with applicable export obligations or requirements for this technical data. End User agrees to comply with all applicable export control restrictions. MinIO may terminate this Agreement if End User breaches this Section 11.7 or any export provisions of an applicable end user license agreement for the Software.

**11.8.**    Notice.  All notices under this Agreement will be in writing and will reference this Agreement. Notices will be deemed given when sent by e-mail to the following .

> All notices relating to this Agreement shall be sent to MinIO at: legal@minio.io
> All notices relating to this Agreement shall be sent to End User listed in the signature block below.

**11.9.**    Waiver.  No term of this Agreement shall be considered waived and no breach excused by either Party unless made in writing.  No consent, waiver, or excuse by either Party, express or implied, of any provision of this Agreement shall constitute a consent, waiver or excuse of any other breach of that or any other provision of this Agreement.

**11.10.**    Severability.  If any provision of this Agreement is held illegal or unenforceable by any court of competent jurisdiction, such provision shall be deemed severed from the remaining provisions of this Agreement and shall not affect or impair the validity or enforceability of the remaining provisions of this Agreement.  The Parties hereto agree to replace any such illegal or unenforceable provision with a new provision that has the most nearly similar permissible economic or other effect.

**11.11.**    Controlling Law.  This Agreement will be governed by the laws of the State of California, without reference to conflict of laws principles. In any dispute arising out of this Agreement, End User and MinIO each consent to the exclusive personal jurisdiction and venue in the state and federal courts within Santa Clara County, California.  The Parties hereto exclude the provisions of the United Nations Convention on Contracts for the International Sale of Goods from this Agreement and any transaction that may be implemented in connection with this Agreement.

IN WITNESS WHEREOF, the End User, intending to be legally bound, has caused this Agreement to be executed by its duly authorized representative.  Upon issuance of a valid Order by End User, and signature by End User below, MinIO becomes a party to this Agreement.

|  |  |
|  |  |
|  |  |
|  |  |

# Exhibit I to End User License Agreement
## Support Services

This Exhibit I (this "**Exhibit**") describes the Support Services to be provided under the Agreement. The level of Support Services provided will be as specified in the Order. Capitalized terms not defined in this Exhibit have the same meanings as such terms are defined in the Agreement.

**1.** **Support**. MinIO will provide the Support Services as described herein 24 hours a day, 7 days a week to assist in End User's use of the Software and resolve Problems in accordance with the support level purchased by End User pursuant to an Order. "**Problems**" means a failure of the Software to substantially conform to the functional specifications set forth in any Documentation provided by MinIO or to operate as MinIO intended. All support requests must be submitted through the MinIO Subscription Network (commonly referred to as SUBNET). For AIStor customers, MinIO will use commercially reasonable efforts to respond to a support request within 4 hours.

**2.** **Panic Button**. If the Software is unavailable such that End User's business is critically affected and there is no workaround that End User can implement to mitigate the issue, then End User may request Panic Button service. MinIO may, in its discretion, downgrade a request from a Panic Button request to a regular support request if MinIO does not believe the Problem meets the requirements for a Panic Button request. MinIO will use commercially reasonable efforts to respond to Panic Button requests within 10 minutes. AIStor customers may request unlimited Panic Button service.

**3.** For End Users who have a current Order for the AIStor product, on End User's request, MinIO will provide an architectural, performance, and security review once per year.

**4.** **End User Obligations.** Prior to requesting Support Services from MinIO, End User shall comply with all published operating and troubleshooting procedures for the Software, including the Documentation. To assist in expeditiously resolving End User's support requests, the End User should record the following information for reference and should provide the information to MinIO: (i) error messages and indications that End User received when the malfunction occurred; (ii) what the user was doing when the malfunction occurred; (iii) what steps End User has taken to reproduce the malfunction; (iv) what steps End User may have already taken to solve the Problem; and (v) system logging. For certain Software Problems, MinIO may require that End User provide MinIO a test case and sufficient documentation to allow duplication of the Problem. Subject to End User's reasonable security and safety rules, End User shall provide access to End User's information, systems, and software reasonably requested by MinIO, including remote control access to each Unit as necessary to provide the Support Services. End User will obtain any third party consents necessary to grant such access. MinIO will be relieved of its obligation to provide any Support Services due to End User's failure to comply with this section.

**5.** **Disclaimer**.  MinIO will not be responsible to provide Support Services, or any other maintenance and support to the extent that Problems arise because End User (i) misuses, improperly uses, misconfigures, alters, or damages the Software; (ii) uses the Software with any hardware or software not supplied or supported by MinIO; (iii) fails to install any updates or upgrades to the Software if such updates or upgrades would have resolved the Problem; or (iv) otherwise uses in a manner not in accordance with the Agreement, Documentation or MinIO's directions. MinIO shall have no responsibility for loss of or damage to End User's data, regardless of the cause. MinIO shall provide Support Services for a release of the Software if such release was made generally available during the previous twelve (12) months.  Other versions of the Software will not be supported unless MinIO and End User mutually agree otherwise in writing.