



## RUBRIK, INC. END USER LICENSE AGREEMENT

**IMPORTANT: READ THIS END USER LICENSE AGREEMENT (“AGREEMENT”) BEFORE INSTALLING OR USING THE RUBRIK PRODUCTS (AS DEFINED BELOW). THIS AGREEMENT APPLIES TO THE RUBRIK PRODUCTS THAT YOU OR THE ENTITY THAT YOU REPRESENT (“CUSTOMER”) OBTAIN FROM RUBRIK, INC. (“RUBRIK”) OR FROM ANY THIRD PARTY AUTHORIZED BY RUBRIK TO RESELL THE RUBRIK PRODUCTS AND SERVICES. BY DOWNLOADING, INSTALLING, USING OR ACCESSING THE RUBRIK PRODUCTS OR BY CLICKING “ACCEPT”, CUSTOMER AGREES TO ALL THE TERMS OF THIS AGREEMENT WITH RUBRIK. IF CUSTOMER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT COPY, INSTALL, USE OR ACCESS THE RUBRIK PRODUCTS.**

### 1. DEFINITIONS.

- 1.1 **“Documentation”** means the Rubrik documentation shipped with the Products or made available in electronic form to Customer, excluding advertising and marketing materials.
- 1.2 **“Effective Date”** means the date Customer accepts the terms of this Agreement.
- 1.3 **“Hardware”** means Rubrik hardware purchased by Customer.
- 1.4 **“Order”** means the purchase order or other agreed upon document, which includes, but is not limited to, a description of the Products and Services purchased by Customer from a Rubrik authorized reseller, including the applicable Term.
- 1.5 **“Policy”** means the applicable Rubrik warranty and support services policy. If Customer is licensing Rubrik Software or SaaS Services and not acquiring Hardware from Rubrik, the Rubrik Software Support Services Policy at <https://www.rubrik.com/content/dam/rubrik/en/resources/policy/rubrik-support-services-policy.pdf> applies. If Customer is acquiring Software, Hardware and/or SaaS Services from Rubrik, the Rubrik Hardware Warranty and Product Support Services Policy at <https://www.rubrik.com/content/dam/rubrik/en/resources/policy/rubrik-hardware-warranty-and-product-support-services-policy.pdf> applies.
- 1.6 **“Products”** means, collectively, Rubrik Hardware, Software and SaaS Services.
- 1.7 **“SaaS Services”** means the cloud-based software-as-a-service data management platform that may be separately purchased by Customer. SaaS Services also include all Updates to the SaaS Services and any available Upgrades to the SaaS Services that Customer may purchase.
- 1.8 **“Services”** means the implementation, configuration and training services that may be purchased and provided to Customer by Rubrik and as described in an applicable Order and associated Documentation. Services do not include support services which are provided to Customer in accordance with the Policy.
- 1.9 **“Software”** means, collectively, Rubrik Cloud Data Management Software (“**RCDM**”) (Rubrik’s standard embedded firmware and software), standalone software downloaded or accessed by Customer from Rubrik, and Software Add-Ons licensed to Customer. Software also includes all Updates, Upgrades, copies and alterations, modifications and derivatives thereof. Software is licensed only in object code and includes any third party or open source software included with the Software.
- 1.10 **“Software Add-Ons”** means Software offering enhanced features and functionality including, for example, CloudOn, CloudOut and Edge.
- 1.11 **“Term”** means the period of time from the Effective Date until the end of the applicable license term as set forth on the Order, including any renewal thereof.
- 1.12 **“Updates”** mean patch releases, “bug” fixes, and maintenance updates for the Software or the SaaS Services.
- 1.13 **“Upgrades”** mean new features included in Software or SaaS Services which Customer may purchase during the Term and which are subject to an additional charge.

## 2. SOFTWARE LICENSE.

2.1 **Software License.** Subject to Customer's compliance with the terms and conditions of this Agreement and Customer's payment of all fees due, Rubrik grants Customer a limited, non-exclusive, non-sublicensable, non-transferable (except as may be expressly permitted herein) license to use the Software and Documentation only for Customer's internal business purposes on Hardware or Rubrik-approved third-party hardware and in accordance with the Documentation. If Customer acquires Rubrik Products pursuant to a refresh or upgrade promotion or similar program (collectively, the "**Refresh Products**"), Customer must uninstall and cease use of the Software on the previously acquired Products that are being refreshed or upgraded (collectively, the "**Replaced Products**") so that Customer's actual use and deployment corresponds only to the quantity of Refresh Products as set forth in the applicable Order. Rubrik will allow a period of up to sixty (60) days from the date of the Order for Refresh Products for Customer to install Refresh Products, during which time Customer may keep the Replaced Products in operation. Thereafter, the license to use the Software on the Replaced Products terminates and Customer must uninstall such Software and cease all use thereof.

2.2 **Term of License.** Unless otherwise agreed to in writing by Rubrik, Software is licensed for the term set forth in the applicable Order and either: (i) on a device basis meaning Customer's right of use to the Software is tied to the life of the Hardware on which it was originally installed and the Software is not portable to new hardware, except as may be expressly approved in advance in writing by Rubrik ("**Life of Device License**"); or (ii) on a subscription basis, meaning Customer has the right to use the Software or SaaS Services for the period of time set forth in the applicable Order and any renewals thereto ("**Subscription License**"). If Customer does not renew a Subscription License at the end of the subscription term, Customer loses entitlement to all Software features except for recovery.

2.3 **Hardware Refresh Policy.** Certain of the Subscription Licenses may be eligible for a Hardware refresh or transfer to replacement Hardware in accordance with Rubrik's then-current Hardware Refresh Policy at <https://www.rubrik.com/content/dam/rubrik/en/resources/policy/Rubrik-Go-Hardware-Refresh-Policy.pdf> or as otherwise authorized by Rubrik in writing.

2.4 **SaaS Services Additional Terms.** If Customer acquires SaaS Services, the additional terms at <https://www.rubrik.com/content/dam/rubrik/en/resources/policy/SaaS-Services-Terms.pdf> shall also govern Customer's use of such SaaS Services.

3. **USE RESTRICTIONS.** Customer will not, nor will Customer encourage or assist others to:

- i. Copy, modify, encumber or distribute the Software, SaaS Services or Documentation (except for a reasonable number of copies of the Documentation for internal use);
- ii. Reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or structure, sequence and organization of the Products or create any derivative works including, without limitation, customization, translation or localization;
- iii. Sell, license, sublicense, rent, lease, lend or transfer the Software or SaaS Services or use the Software or SaaS Services for the benefit of any third party, including but not limited to timesharing or service bureau purposes;
- iv. Remove or obscure any proprietary notices on the Products or Documentation;
- v. Publish or disclose to any third party any technical features, performance or benchmark tests, or comparative or competitive analyses relating to the Software or SaaS Services and Early Access Products unless authorized in writing by Rubrik;
- vi. Use any feature, function or capability without first purchasing the applicable license for the same even if such feature, function or capability is enabled without a key; or
- vii. Use the Software or the SaaS Services for any purpose or in any manner not authorized by this Agreement (including, without limitation, for any purpose competitive with Rubrik).

4. **PROPRIETARY RIGHTS.** Software, SaaS Services and Documentation are licensed to Customer and not sold. Rubrik and its licensors retain all title, ownership rights, and intellectual property rights in and to the Software, SaaS Services (including third party and open source software) and Documentation, in any form or format, along with all copies, and all tools, routines, programs and other technology used or provided in the provision of Support Services. The Software, SaaS Services and Documentation are protected by copyright and other intellectual property laws and by international treaties. The Software and SaaS Services contain automated reporting routines that generate and report to Rubrik usage metrics and statistics regarding the performance of the Products to report problems and issues ("**Usage Data**"). For the avoidance of doubt, files and the backups configured by Customer's use of the Products are not collected by Rubrik. Such Usage Data may be used: (i) to address Customer's service requests; and (ii) to detect and address threats to the functionality, security, integrity, and availability of the Software and SaaS Services. Customer hereby grants Rubrik a perpetual, irrevocable and transferable right to use the Usage Data to improve the Software, SaaS Services, Support Services, and the customer experience. This Agreement does not grant Customer any rights not expressly granted herein. All trademarks used in connection with the

Software, Documentation and SaaS Services are owned by Rubrik, its affiliates, licensors and other suppliers, and no license to use any such trademarks is provided hereunder. Customer may from time to time elect to provide suggestions, comments for enhancements or functionality or other feedback to Rubrik with respect to the Products, Support Services, and Services (“**Feedback**”). Rubrik may use any Feedback as it sees fit without obligation or restriction of any kind, other than its obligations of confidentiality as set forth in this Agreement.

**5. FEES.** All amounts due and owing under an Order to Rubrik’s authorized distributor or channel partner (along with all taxes, tariffs, and duties) are payable to and in accordance with the requirements of the authorized channel partner or distributor.

**6. AUDIT.** During the Term and for a period of three (3) years thereafter, Rubrik (or its independent third-party auditors) has the right to reasonably audit Customer’s relevant facilities, systems, books and records to confirm Customer’s compliance with this Agreement. Rubrik may conduct no more than one (1) audit per twelve (12) month period and Customer shall reasonably cooperate with Rubrik (or its independent third-party auditors) for such audit. If an audit discloses Customer has installed, accessed, used, or otherwise permitted use and access to the Software or SaaS Services in a manner that is not permitted expressly by this Agreement, Customer agree to reimburse Rubrik immediately for any unpaid fees (if applicable). In addition, if such audit reveals underpayment or non-compliance in excess of 5% of fees payable by Customer, Customer agree to reimburse Rubrik for all of Rubrik’s reasonable expenses related to such audit.

**7. EARLY ACCESS PRODUCTS.** Rubrik may make available to Customer a beta or pre-release version of Products solely for purposes of internal testing and evaluation prior to such Products being made generally available (“**Early Access Products**”). Early Access Products are licensed on a limited, cost-free, non-sublicensable, non-transferable, non-assignable, non-exclusive, revocable basis with such license terminating on the earlier of: (i) the date on which Rubrik makes the Early Access Products generally available; or (ii) upon notice to Customer from Rubrik, which notice may be made at any time in its sole and absolute discretion. Notwithstanding anything to the contrary in this Agreement, Customer acknowledges and agrees that Early Access Products: (a) shall not be used in a production environment; (b) are still under development and not at the level of performance or compatibility of final, generally available products; (c) may not operate correctly; (d) may be modified by Rubrik prior to being made generally available; (e) may not be made available for general release; and (f) are not subject to a Policy. Customer further agrees to use reasonable efforts to notify Rubrik of any bugs or problems in the Early Access Products.

**8. CONFIDENTIALITY.** Customer and Rubrik may disclose Confidential Information to each other during the Term of this Agreement. “**Confidential Information**” means all information disclosed by one party (“**Disclosing Party**”) to the other party (“**Receiving Party**”) which is in tangible form and labeled “confidential” or the like, or that reasonably should be understood to be confidential given the circumstances around the disclosure and the nature of the information. Confidential Information includes, but is not limited to, the Software, SaaS Services, Documentation, strategic roadmaps, product plans, product designs and architecture, technology and technical information, security processes, security audit reviews and business and marketing plans. Confidential Information will not include information that: (i) was already in Receiving Party’s possession without confidentiality obligations; (ii) is rightfully received by Receiving Party without confidentiality obligations; (iii) is independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information; or (iv) is publicly disclosed by the Disclosing Party. The Receiving Party will exercise at least the same degree of care, but not less than reasonable care, to safeguard the Confidential Information received from the Disclosing Party and use or disclose Confidential Information only to the Receiving Party’s employees, partners or contractors for purposes consistent with this Agreement, who have a need to know and who are under a similar obligation of confidentiality. Confidential Information may be disclosed in response to a subpoena or order of a court or governmental agency provided, however, that, if not otherwise prohibited, the Receiving Party will notify the Disclosing Party promptly of such disclosure to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure. Upon expiration or termination of this Agreement for any reason, the Receiving Party will, upon request, return or destroy, the Disclosing Party’s Confidential Information. Notwithstanding the foregoing, the Receiving Party may retain such copies of Disclosing Party’s Confidential Information stored electronically on data archives or back-up systems or to comply with the laws or regulations applicable to the Receiving Party, provided that such copies shall at all times be subject to the terms of this Agreement while in Receiving Party’s possession or control.

**9. SUPPORT.** Support for the Products is covered in the applicable Policy, which is incorporated by reference into this Agreement, and may be updated from time to time in Rubrik’s sole discretion.

**10. SECURITY.** During the Term of this Agreement, Rubrik will implement and maintain commercially reasonable administrative, physical and technical safeguards and measures designed to address the security, confidentiality and availability of the Products and Services.

**11. SERVICES.** Rubrik may provide Services as described in an Order accepted by Rubrik. Services may be performed by sub-contractors acting on Rubrik's behalf. In regard to the Services, Rubrik warrants that: (i) it and each of its employees, consultants and subcontractors, if any, have the necessary knowledge, skills, experience, qualifications and resources to provide and perform the Services; and (ii) the Services will be performed in a professional and workmanlike manner in accordance with industry standards. Rubrik shall own all rights, title and interest in and to any deliverables provided to Customer and all related intellectual property rights (excluding Customer's Confidential Information), unless otherwise set forth in a mutually agreed upon Statement of Work. As a condition to Rubrik providing Services hereunder, Customer shall: (a) provide good faith cooperation and access to such information, facilities, and equipment as may be reasonably required in order to provide the Services; and (b) provide such personnel assistance as may be reasonably requested from time to time. If, through no fault or delay by Customer or any failure by Customer or Customer's representatives to perform in accordance with this section, the Services do not conform to the foregoing warranty, and Customer notifies Rubrik within seven (7) calendar days of Rubrik's completion of the Services, Rubrik will re-perform the non-conforming portions(s) of the Services at no additional cost to Customer.

## **12. WARRANTY AND DISCLAIMER.**

**12.1 Software Warranty.** Rubrik warrants to Customer, for ninety (90) days from the date of delivery ("**Software Warranty Period**"), the Software will conform in all material respects to the applicable Documentation ("**Software Warranty**"). Rubrik's delivery of any Update does not extend the Software Warranty Period applicable to the Software. Rubrik's sole obligation under this Software Warranty, and Customer's exclusive remedy, is to use commercially reasonable efforts to correct the Software during the Software Warranty Period such that the Software complies with the foregoing warranty. Customer's obligation is to provide all information reasonably requested to enable Rubrik to cure the deficiencies. If Rubrik is not able to cure the deficiencies in the Software such that it complies with the foregoing warranty, Rubrik will refund to the authorized distributor an amount equal to: (i) for a Life of Device License to the Software, applicable fees paid; or (ii) for a Subscription License, applicable fees paid covering the period from the date of refund through the conclusion of the period of prepayment. In the event of a refund in accordance with the foregoing, Customer's license to use the Software for which fees were refunded terminates. The Software Warranty does not apply to any Software that is: (a) installed, operated, maintained, stored or used improperly, or in any manner not in accordance with the Documentation, the Policy, this Agreement or Rubrik's written instructions; or (b) repaired, altered or modified other than by Rubrik or its authorized service provider.

**12.2 No warranty or support for Early Access Products.** Rubrik provides Early Release Products for evaluation only and on an "AS IS" basis, without warranty or liability of any kind.

**12.3 Disclaimer of Warranties.** EXCEPT AS PROVIDED IN THIS AGREEMENT, AND TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, RUBRIK AND ITS LICENSORS DISCLAIM ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. RUBRIK DOES NOT WARRANT AGAINST LOSS OR INACCURACY OF DATA, THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE PRODUCTS WILL BE COMPATIBLE WITH ANY THIRD-PARTY SOFTWARE OR HARDWARE. RUBRIK, ITS SUPPLIERS AND LICENSORS ARE NOT LIABLE OR RESPONSIBLE FOR ANY WARRANTIES EXPRESS OR IMPLIED PROVIDED BY A DISTRIBUTOR, CHANNEL PARTNER OR OTHER THIRD PARTY.

## **13. INTELLECTUAL PROPERTY INDEMNITY.**

**13.1 Intellectual Property Indemnification.** Rubrik agrees to defend or settle, at Rubrik's option, a third-party claim or cause of action against Customer alleging that the Products infringe or misappropriate a U.S. patent or copyright of such third party ("**Claim**") and to pay damages finally awarded against Customer by a court of competent jurisdiction or as agreed to in a settlement. Rubrik's obligations hereunder do not apply with respect to any Claim that arises out of: (i) any unauthorized use, reproduction or distribution of the Products; (ii) use of the Products in combination with any other software or equipment not specified by the Documentation if such Claim would have been avoided without such combination; (iii) Products that were modified after delivery without Rubrik's prior written authorization; or (iv) Customer's continued use of the allegedly infringing Product after Rubrik supplied a modified or replacement non-infringing Product. If any Claim arises, Rubrik may, at its sole option and expense: (a) replace or modify the affected Product to make it non-infringing; (b) procure a license for Customer's continued use of the affected Product; or, if (a) and (b) are not commercially viable (as determined by Rubrik in its sole discretion), terminate this Agreement, in which case Rubrik will issue a pro-rated refund to the authorized distributor who paid the applicable fee received by Rubrik for the affected Product which is the subject of the Claim. For Life of the Device licensed Software and Hardware, the refund will be based on a straight-line amortization over a three (3) year term beginning on the

date of initial delivery of the Software and Hardware. For Subscription licensed Software, the refund will be the prepaid and unused fees covering the remainder of the Term.

**13.2 Indemnification Process.** As a condition of receiving indemnity as described in Section 13.1 above, Customer will provide Rubrik with: (i) prompt written notice of the Claim, provided, however, that the failure to give such notice shall not relieve Rubrik's obligations hereunder except to the extent that Rubrik is prejudiced by such failure; (ii) complete control over the defense and settlement of the Claim (provided, that Rubrik will not settle any claim without Customer's prior written permission if the settlement fails to unconditionally release Customer from all liability pertaining to the Claim, such permission not to be unreasonably withheld, delayed or conditioned); and (iii) reasonable assistance in connection with the defense and settlement of the Claim.

**13.3 Exclusive Remedy.** This Section 13 states Customer's sole and exclusive remedy, and Rubrik's sole liability, with respect to any Claim under this Section.

## **14. LIMITATION OF LIABILITY.**

**14.1 Disclaimer of Consequential Damages.** EXCEPT FOR CUSTOMER'S BREACH OF SECTIONS 2.1 AND 3 OF THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA OR THE COST OF COVER, HOWEVER CAUSED, WHETHER BASED IN CONTRACT, TORT, WARRANTY, NEGLIGENCE OR ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES. IN SUCH AN EVENT, THIS EXCLUSION WILL NOT APPLY TO THE EXTENT THE EXCLUSION IS PROHIBITED BY LAW.

**14.2 Limitation of Liability.** IN NO EVENT WILL RUBRIK'S, ITS AFFILIATES' AND ITS LICENSORS' TOTAL AND CUMULATIVE LIABILITY, FOR ALL CLAIMS OF ANY NATURE ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL FEES PAID BY CUSTOMER TO RUBRIK (OR TO A RUBRIK DISTRIBUTOR OR RESELLER) FOR THE PRODUCTS IN THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE FIRST EVENT GIVING RISE TO LIABILITY UNDER THIS AGREEMENT. THE FOREGOING LIMITATION DOES NOT LIMIT OR EXCLUDE ANY LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE.

## **15. TERM AND TERMINATION.**

**15.1 Term; Termination for Cause.** This Agreement begins on the Effective Date and continues until the end of the Term. Notwithstanding the foregoing, a party may terminate this Agreement if the other party: (i) materially breaches this Agreement and such breach is not cured within thirty (30) days of such party's receipt of written notice describing the breach; or (ii) becomes insolvent, admits in writing of its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, becomes subject to control of a trustee, receiver or similar authority, or becomes subject to any bankruptcy or insolvency proceeding.

**15.2 Post-Termination Obligations.** Upon expiration or termination of this Agreement, the license granted hereunder will immediately terminate and Customer will stop using the Software. Customer will uninstall and destroy the Software and Documentation or undertake such actions as to ensure that the Software and Documentation will not be used after the effective date of termination. All terms of this Agreement which must survive in order to fulfill their essential purpose shall survive termination or expiration of this Agreement.

## **16. GENERAL.**

**16.1 Contractual Relationship.** Customer and Rubrik are entering into this Agreement as independent contracting parties. Neither Customer nor Rubrik have, or hold itself out as having, any right or authority to incur any obligation on behalf of the other.

**16.2 Assignment.** Customer will not, directly, indirectly, by operation of law or otherwise, assign all or any part of this Agreement or Customer's rights hereunder or delegate performance of any of Customer's duties hereunder without the prior written consent of Rubrik. Rubrik may assign this Agreement without obtaining Customer's consent: (i) to an affiliate of Rubrik; or (ii) to a successor in interest in connection with a merger, reorganization or a sale of all or substantially all of the assets of Rubrik. Any assignment in violation of the foregoing shall be void and without effect. Subject to the foregoing restrictions, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by the parties and their permitted successors and assigns.

**16.3 Export Controls and Trade Laws.** Customer will comply with all applicable laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. Without limiting the foregoing, Customer agrees it will not export, re-export, download, or otherwise transmit Confidential Information or the Products: (i) to any country or region subject to a U.S. embargo or comprehensive trade sanctions; (ii) to any individual or entity identified on any U.S. Government restricted party lists (including the Consolidated Sanctions, Specially Designated Nationals, Denied Persons, Entity, or Unverified Lists); or (iii) to any end user with knowledge or reason to know that the Products or Confidential Information will be used for nuclear, chemical, or biological weapons proliferation, or for missile-development purposes.

**16.4 Third Party Beneficiaries.** Nothing in this Agreement shall confer, or is intended to confer, on any third party any benefit or the right to enforce any term of this Agreement.

**16.5 Government Users.** The Products constitute Commercial Off the Shelf (“COTS”) items as that term is defined in the U.S. Government Federal Acquisition Regulations (“FAR”). Government use rights are limited to those minimum rights required by the appropriate provisions of the FAR.

**16.6 Use of Name.** During the Term of the Agreement, Rubrik may refer to Customer as a Rubrik customer in sales and marketing materials and public statements, subject to Customer’s trademark and logo usage guidelines if Customer provides such guidelines to Rubrik. Customer may send an email to Rubrik at [stories@rubrik.com](mailto:stories@rubrik.com) with its trademark and logo usage guidelines, or if Customer does not wish to be referred to as a Rubrik customer.

**16.7 Anti-corruption.** Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Rubrik’s employees, agents, resellers or subcontractors in connection with this Agreement and that Customer will use reasonable efforts to promptly notify Rubrik should Customer learn of any violation of this restriction.

**16.8 Severability.** In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision will be interpreted so as reasonably to affect the intent of the parties.

**16.9 Nonwaiver.** The failure of Customer or Rubrik to insist upon or enforce strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be construed as a waiver or relinquishment of such party’s right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will remain in full force and effect.

**16.10 Force Majeure.** Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations under this Agreement on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes, volcanic eruptions, material shortages or any other cause that is beyond the reasonable control of the party.

**16.11 Integration; Order of Precedence.** This Agreement constitutes the entire agreement between Customer and Rubrik and supersedes any and all prior agreements or communications between us with regard to the subject matter hereof. This Agreement may not be amended or modified except by a writing signed by both Customer and Rubrik. The terms of this Agreement shall supersede and control over any conflicting or additional terms and conditions of any purchase order, acknowledgement, confirmation or other document issued by Customer. Notwithstanding any agreement Customer may have previously accepted during the installation of any prior versions of the Software, this Agreement applies to the Software and any Updates or Upgrades (except to the extent such Updates or Upgrades are accompanied by new or additional terms, in which case the different terms apply prospectively and do not alter Customer’s or Rubrik’s rights relating to pre-updated Software).

**16.12 Ambiguities.** Customer and Rubrik have participated in the review of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

**16.13 Governing Law.** This Agreement shall be construed and enforced in all respects in accordance with the laws of the State of California, U.S.A., without applying conflict of law rules. Unless waived by Rubrik in a particular instance, the sole and exclusive jurisdiction and venue for actions arising out of this Agreement shall be the State and Federal Courts in Santa Clara County. The United Nations Convention of Contracts for the International Sale of Goods (1980) is hereby excluded in its entirety from application to this Agreement.