

ACTIFIO, INC.
END USER LICENSE AGREEMENT

THIS IS A BINDING AGREEMENT BETWEEN ACTIFIO, INC. (“ACTIFIO”) AND YOU OR, IF YOU REPRESENT A LEGAL ENTITY, THE LEGAL ENTITY YOU REPRESENT (COLLECTIVELY, “YOU”). DO NOT CLICK “ACCEPT” UNTIL YOU HAVE CAREFULLY READ THIS AGREEMENT. BY CLICKING “ACCEPT”, YOU ARE AGREEING TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING THE LIMITATIONS ON LIABILITY SET FORTH HEREIN. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT LEGAL ENTITY TO THIS AGREEMENT.

IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU ARE NOT PERMITTED TO DOWNLOAD, INSTALL OR USE THE SOFTWARE.

IF YOU HAVE ANY QUESTIONS ABOUT THESE TERMS AND CONDITIONS, PLEASE CONTACT: ACTIFIO, INC., 333 WYMAN STREET, WALTHAM, MA 02451.

This Agreement sets forth the terms and conditions of your use of the Software and Hardware (each as defined below) provided by Actifio (collectively, the “Solution.”)

1. LICENSE.

(a) Grant. Actifio hereby grants to You, and You hereby accept, subject to the terms and conditions set forth herein, a perpetual, non-exclusive, non-transferable license, without the right to sublicense, to use the computer-executable object code of the software made available as part of the Solution (including any updates made available to You, the “Software”), and use the user guides and manuals (the “Documentation”) solely in connection with the hardware, if applicable, which is provided by Actifio (or with hardware provided by You which meets the specifications set forth in the Documentation) (the “Hardware”) for Your internal business purposes. However, if You license the Software on a subscription basis, Your license shall be effective only for the duration of the specified term. Your license is for the Solution and usage limits, based on uncompressed data in native format, as specified in the Actifio proposal accepted by You or in the order placed by You with Actifio or an Actifio reseller (either, the “Order”), and any renewals of such term, and only so long as You have paid all applicable fees.

If You use the Solution to provide managed services (“Managed Services”) to Your third parties (collectively, “Your Customers”), You may allow Your Customers to access the Solution for their own internal business purposes in connection with receiving such Managed Services pursuant to agreements that are no less protective of Actifio’s intellectual property rights than the terms and conditions set forth in this Agreement. You shall be responsible for providing all first-level and second-level technical support to Your Customers.

(b) Ownership. You acknowledge that (i) all right, title and interest in all copies of the Software and Documentation, and all patents, copyrights, trade secrets and other proprietary rights therein, are and shall remain with Actifio or its third party licensors; (ii) no right or interest in the Software or Documentation is conveyed other than a limited license to use them in accordance

with this Agreement; (iii) the Software and Documentation are protected by the copyright laws of the United States and by international treaties; (iv) the Software and Documentation embody valuable confidential and secret information of Actifio; and (v) if You are licensing the Software on a subscription basis, the Hardware provided by Actifio shall at all times remain Actifio’s property.

(c) Copying. You may make a reasonable number of copies of the Software and Documentation for archival and back-up purposes only, provided that You include on each such copy all copyright or other proprietary notices contained on the Software and Documentation.

(d) No Modification. You may not (i) modify or alter the Software; (ii) create derivative works of the Software; (iii) decompile, disassemble or reverse engineer the Software; (iv) translate the Software; or (v) reduce the Software by any other means to a human-perceivable form.

(e) Certain Other Restrictions. Except as specifically provided in this Agreement, You may not (i) sell, rent, transfer, lend, provide or otherwise make available, or disclose to third parties, the Software or Documentation (except to independent contractors performing services directly for You and at Your direction, provided that such persons are obligated to maintain the confidentiality thereof, and You shall be responsible for the actions or omissions of such contractors); or (ii) remove or alter any copyright or other proprietary notices contained in the Software or Documentation. You shall maintain all copies of the Software and Documentation in a manner so as to reasonably prevent the unauthorized use of the Software and Documentation. You may not publish or disclose to any third party the results of any benchmark or comparison tests, including performance information, run on the Software without the prior written consent of Actifio.

(f) Components. The Software may contain or be provided with certain third party software licensed by its owners under its own license (collectively, the “Third Party Software”). Third Party Software is subject to the terms of the third party software license accompanying or otherwise applicable to that Third Party Software (“Third Party License”). The Third Party Licenses are set forth in the Documentation. The terms of the applicable Third Party License will apply to the Third Party Software independent of the terms of this Agreement. You may not use any component contained in or provided with the Software on a standalone basis or to interoperate with any program(s) other than the Software. Certain functionality of the Software requires creation of an executable file using the Windows Pre-Installation Environment. You hereby authorize Actifio to download the Windows Pre-Installation Environment on your behalf, to build the executable, and upload it to you to use as part of the Solution.

(g) High Risk Activities. The Solution is not designed, manufactured, or intended for use in hazardous applications which require fail-safe performance, such as nuclear, aviation, navigation, military, life-support or other high risk activities where failure of the Solution could lead directly to death, personal injury and/or substantial property damage. You agree not to use the Solution for any such purposes, and Actifio and its licensors and suppliers expressly disclaim and are released from any responsibility or

liability for any and all damages that may be incurred due to the use of the Software in such applications.

(h) **Usage Report.** The Solution will automatically generate and deliver a report (the "Usage Report") to both parties that calculates Your use of the Solution in relation to the capacity licensed in the applicable Order(s). The Usage Report enables You to track Your usage and to maintain compliance with the licenses purchased by You. The Usage Report can be generated either automatically by the Solution or via VPN access to the Solution; alternatively, You agree to provide Actifio with usage information that demonstrates Your license compliance upon Actifio's request. Actifio shall not use any of Your Confidential Information by virtue of the Solution generating the Usage Report. If the Usage Report or the provided data indicates Your use of the Solution has exceeded that for which it is authorized under the applicable Order, You shall promptly pay any additional fees for such excess use at the rates and charges set forth in the Order.

(i) **Hardware.** The Hardware will be properly contained, packaged, marked and shipped with its own documentation. If applicable, You will receive any and all pass-through warranties from the manufacturer of the Hardware provided by Actifio. Hardware is shipped Ex Works (Incoterms 2016) Actifio, with title and risk of loss transferring to You upon delivery to the carrier, unless the Hardware is provided as part of a subscription arrangement, in which case You agree: (i) to insure the Hardware and accept responsibility for any loss or damage to the Hardware while in its possession; (ii) to inform Actifio of the location of the Hardware within five (5) business days of Actifio's request and to notify Actifio if You move the Hardware (but in no event may You move the Hardware outside of the country in which it is located without Actifio's prior written consent); (iii) to allow the Hardware to be maintained or repaired only by Actifio (or Actifio's representatives) and (iv) to allow Actifio to reclaim the Hardware should You be in breach of Your payment obligations or upon any termination of this Agreement. You will be responsible for all shipping charges.

(j) **Payment.** Actifio will invoice You for the prices set forth in the applicable Order upon shipment of the Solution to You. You will pay invoices within thirty (30) days of the invoice date. Actifio may withhold shipments and cease providing support until past-due payments are made. Late payments are subject to a charge of the lesser of 1.5% per month or the maximum allowed by law. Prices do not include, and You are responsible for, all applicable taxes of any kind (including, but not limited to, sales, use and value-added taxes) due in respect of the transactions contemplated by this Agreement, except taxes on Actifio's net income. In the event You license the Solution from an authorized Actifio reseller, the applicable payment, billing, ordering and delivery terms will be agreed upon between You and the reseller.

(k) **Actifio GO.** The following terms apply to Your use of Actifio GO (or any other hosted service provided by Actifio) (the "Service"):

(i) Actifio provides the Service from data centers located in the United States. The Service will be available 99% of the time in a given month, excluding scheduled or emergency maintenance. Service uptime includes the functioning of the Actifio Solution but does not include downtime related to hardware or software not provided by Actifio, network connectivity, password resets or any other factor outside of Actifio's reasonable control. Service downtime is measured from (i) the time You open the trouble ticket (or the beginning of the

next business day, if the trouble ticket is opened after business hours) to (ii) the time the Service is once again accessible by You.

(ii) While Actifio does not have access to, and the Service does not store, host or process, any of Your data, all of which is maintained within Your own hosted infrastructure, Actifio agrees to implement policies and procedures and administrative, physical, and technical safeguards that are reasonably designed to protect the security and confidentiality of the Service, such policies and procedures to address: information classification, labeling, and handling; methods for information transmission, storage, and destruction; acceptable use of customer data; information security incident management, including data breach notification and collection of evidence procedures; authentication rules for the format, content and usage of passwords for end users, administrators and systems; and access controls, including periodic reviews of access rights.

2. WARRANTY; SUPPORT.

(a) **Limited Warranty.** Actifio warrants to You that, upon delivery and for a period of three (3) months thereafter for Software and twelve (12) months thereafter for Hardware provided by Actifio (if applicable) (the "**Warranty Period**"), the Software and Hardware, when properly used, shall be free from significant defects in materials and workmanship and shall function substantially in the manner described in the Documentation. Actifio's sole obligation under this warranty shall be to: (i) replace, at its expense, any Software media which is defective and which is returned to Actifio; (ii) repair or replace, at its expense, Hardware which is defective; (iii) correct Software which is not functioning substantially in the manner described in the Documentation; or (iv) if Actifio cannot accomplish any of the foregoing remedies, (A) in the case of a perpetual license arrangement, provide a refund of the amounts paid for the defective Hardware or Software upon their return, and (B) in the case of a subscription, provide a prorated refund of the unused fees for the then-current subscription term; provided that You give Actifio written notice of Your claim of defect or malfunction and reasonably detailed documentation of any such malfunction within the Warranty Period. Actifio shall not be responsible for any defect or malfunction resulting from (1) the use of the Solution in combination with any software or hardware not provided by Actifio; (2) causes external to the Solution, such as problems with any other software, hardware, network or other infrastructure with which the Solution is used; (3) improper, unauthorized or negligent installation, configuration or use of the Solution (including, but not limited to, use of the Solution that is inconsistent with the sizing, use cases, design or architecture of the Solution purchased by Customer); (4) use of any unsupported hardware or software as described in Actifio's then-current Maintenance and Support Policy located at www.actifio.com/supportpolicy-udp (the "**Support Policy**"); or (5) any Solution which has been altered or modified by anyone other than Actifio. Under no circumstances will Actifio have any liability for any costs or expenses incurred by You related to Your use of the Solution in cloud environment (including, but not limited to, costs and expenses related to storage, network and compute).

(b) **Support.** Actifio shall provide support to You with respect to the Solution (including updates to the Software) in accordance with the Support Policy and at the prices in effect from time to time. Support will be provided for the support term indicated on Your Order, and any renewals of such term, and only so long as You have paid all applicable support fees.

(c) Disclaimer of Other Warranties. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, ACTIFIO AND ITS THIRD PARTY LICENSORS MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND TITLE, ALL OF WHICH IMPLIED WARRANTIES (AND ALL EXPRESS WARRANTIES NOT STATED HEREIN) ARE EXCLUDED AND DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW. WITHOUT LIMITING THE FOREGOING, ACTIFIO DOES NOT WARRANT THAT THE SOLUTION WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SOLUTION WILL BE UNINTERRUPTED OR ERROR FREE.

3. INTELLECTUAL PROPERTY INFRINGEMENT.

(a) By Actifio. Except as set forth below, Actifio will defend at its expense any action brought against You to the extent that it is based on a claim that the Solution, when properly used within the scope of this Agreement, infringes a United States patent, copyright or trade secret of any third party, and Actifio will pay any costs, damages and reasonable attorneys' fees finally awarded against You in, or payable in settlement of, such action which are directly attributable to such claim; provided that (i) Actifio is notified in writing promptly of the claim, (ii) You permit Actifio to assume sole control of the defense, compromise or settlement of said claim, and (iii) You provide to Actifio reasonable cooperation, information and assistance in connection therewith. If a final injunction is obtained against Your use of the Solution by reason of infringement, or if in Actifio's opinion the Solution is likely to become the subject of a successful claim of such infringement, Actifio may, at its option, either procure for You the right to continue using the Solution or replace or modify the same so that it becomes non-infringing (so long as the functionality is essentially unchanged). In the event that neither of the foregoing is reasonably available, Actifio shall accept the return of the Solution, and Actifio, or Actifio's reseller, shall grant to You a credit equal to the fees paid by You for the Solution, less depreciation calculated on a straight-line basis over a five-year period (unless You have licensed the Solution on a subscription basis, in which case the credit shall equal the amounts prepaid by You for any period of time during which You are unable to use the Solution).

(b) By You. Actifio shall have no liability to You, and You shall, on the terms set forth above, defend and indemnify Actifio against, claims of infringement based on (i) the use or combination of the Solution with any other software or hardware not provided by Actifio, (ii) any modification of the Solution by anyone other than Actifio, (iii) the use of other than the current version of the Solution, if such version was made available by Actifio for no additional fees with notice that such version was being provided in order to avoid an alleged or potential infringement, (iv) compliance with Your designs or instructions, or (v) claims of infringement of patents, copyrights or trade secrets of You or Your affiliates.

(c) Entire Liability. THE FOREGOING STATES THE ENTIRE LIABILITY OF ACTIFIO WITH RESPECT TO INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT.

4. CONFIDENTIALITY.

(a) "Confidential Information" means all confidential or proprietary information that is made available by one party ("Discloser") to the other party ("Recipient"), including, without limitation, information about Discloser's business, finances,

operations, customers, suppliers, employees, products, plans or technology, if (i) such information is in writing and marked as proprietary or confidential, or (ii) such information is disclosed orally or visually and identified as proprietary or confidential, at or prior to disclosure, or (iii) it would be apparent to a reasonable person, familiar with Discloser and the industry in which it operates, that such information is of a proprietary or confidential nature. The Software and Documentation shall be deemed to embody Confidential Information of Actifio, whether or not so labeled.

(b) Treatment of Confidential Information. Recipient shall hold all Confidential Information of Discloser in confidence and shall protect such Confidential Information from unauthorized use, publication or dissemination with the same degree of care normally used to protect its own confidential information, but in no event less than a reasonable degree of care. Recipient shall not disclose any Confidential Information of Discloser to any person outside of Recipient's organization (other than Recipient's counsel, accountants, financial advisors or assignees, and only if the same are bound to protect the confidentiality thereof). Recipient shall disclose Confidential Information of Discloser only to persons within Recipient's organization who have a need to know in the course of performing their duties and who are bound to protect the confidentiality of such Confidential Information. Recipient shall use Confidential Information of Discloser only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit or the benefit of any other party.

(c) Release from Restrictions. The obligations of Recipient specified in Section 4(b) shall not apply with respect to any Confidential Information of Discloser to the extent that such: (i) is or becomes generally known to the public through no wrongful act on the part of Recipient; (ii) is in Recipient's possession at the time of disclosure by Discloser otherwise than as a result of a breach of any legal obligation by Recipient or any other party from whom Recipient has obtained such information; (iii) becomes known to Recipient through disclosure by sources other than Discloser having the legal right to possess and disclose such Confidential Information; (iv) is developed independently by Recipient without use of or reference to any Confidential Information; (v) is the subject of written permission to disclose provided by the Discloser; or (vi) is required to be disclosed by Recipient in response to a valid court order or to comply with applicable laws or governmental regulations, provided that Recipient provides to Discloser prior written notice of such disclosure and a reasonable opportunity to contest such disclosure and thereafter cooperates with Discloser to minimize the extent and scope of such disclosure.

(d) Privacy Policy. Actifio's Privacy Policy can be found at <https://www.actifio.com/privacy-policy/#sthash.4izaa3ws.ynm4rlus.dpbs> and governs how Actifio collects, uses, discloses and otherwise processes Your information. By accessing or using the Solution, You acknowledge and agree to Actifio's processing of Your personal information in accordance with the Privacy Policy.

5. LIMITATION OF LIABILITY.

EXCEPT FOR ACTIFIO'S OBLIGATIONS ARISING UNDER SECTION 3, YOU AGREE THAT THE MAXIMUM LIABILITY OF ACTIFIO ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE ACTUAL SOLUTION FEES RECEIVED BY ACTIFIO FROM YOU OR YOUR ACTIFIO RESELLER FOR THE IMMEDIATELY PRECEDING TWELVE-MONTH

PERIOD. IN NO EVENT WILL ACTIFIO BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, RELIANCE OR EXEMPLARY DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE DAMAGES, EVEN IF ACTIFIO HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME. This Section 5 shall apply notwithstanding the failure of any remedy provided in this Agreement.

6. TERM AND TERMINATION.

(a) Term. This Agreement shall commence upon the Effective Date and shall continue in effect for the duration of Your license to the Software, or until earlier terminated in accordance with this Section.

(b) Termination. Either party shall have the right to terminate this Agreement upon written notice to the other party in the event that the other party: (i) breaches any of the material terms or obligations, including payments to Actifio, under this Agreement and fails to cure such breach within thirty (30) days after notice thereof; or (ii) dissolves, is declared insolvent or bankrupt, makes an assignment for the benefit of creditors, has a receiver appointed, or is the subject of any proceeding under any bankruptcy or insolvency laws, which proceeding, if initiated against such party, is not dismissed within thirty (30) days.

(c) Consequences of Termination. Upon termination of this Agreement for any reason, You shall (i) cease to use the Solution, (ii) return the Hardware to Actifio in the form in which it was provided to You, reasonable wear-and-tear excepted, unless You have purchased the Hardware, (iii) return to Actifio or destroy all copies of the Software and Documentation, (iv) erase all copies which are stored in computer memory or hard disk or other similar forms or media, and (v) within ten days of such termination, furnish written notice to Actifio that all such copies have been returned, destroyed and erased. The following shall survive the termination of this Agreement: (i) all liabilities accrued under this Agreement prior to the effective date of termination; and (ii) all provisions of Sections 1(b), 1(d), 1(e), 1(j), 2(c) and 3 - 7 of this Agreement. Subject to the provisions of Section 5 hereof, the rights provided in this Section 6 shall be without prejudice to the rights and remedies available to a non-defaulting party at law or in equity upon any breach of this Agreement by the other party.

7. MISCELLANEOUS.

(a) Entire Agreement. This Agreement (and the Support Policy, which is incorporated herein by reference) sets forth the complete understanding of the parties with respect to the subject matter hereof and supersedes all prior understandings and communications relating thereto. No term or condition of Your purchase order or other document provided to Actifio which is different from, inconsistent with, or in addition to the terms and conditions set forth herein will be binding upon Actifio. To the extent that this document may constitute an acceptance, this acceptance is expressly conditioned on Your assent to the terms and conditions set forth herein. Actifio may from time to time make changes to this Agreement in a new release of the Solution, and Your continued use of the Solution shall constitute Your acceptance of the updated version of this Agreement.

(b) Compliance with Laws. You shall comply with all applicable laws and regulations relating to You use of the Solution, including without limitation, those relating to export and import, privacy and personal data protection, and shall indemnify Actifio for any losses which it may incur in the event of any failure by You

to so comply. Without limiting the foregoing, You agree that You shall not directly or indirectly, export, re-export or transship the Solution in violation of any applicable export control laws or regulations promulgated and administered by the governments of the countries claiming jurisdiction over the parties or transactions. In addition, You represent and warrant that You are not a citizen of, or located within, an embargoed or otherwise restricted nation, nor are You listed on the U.S. Treasury Department's list of Specially Designated Nationals or similar lists of denied parties.

(c) Modification; Waiver. This Agreement may not be modified or amended except pursuant to a written instrument signed by both parties. The waiver by either party of a breach of any provision hereof shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of such party to avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any right, power or privilege.

(d) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts (USA) as if made in and performed entirely within Massachusetts. The parties expressly reject any application to this Agreement of the United Nations Convention on Contracts for the International Sale of Goods.

(e) Successors and Assigns. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns. Neither party may assign or otherwise transfer this Agreement or its rights and duties without the prior written consent of the other party, except that no such consent will be required (i) for assignments or transfers of this Agreement by a party to an affiliate or in connection with a merger, acquisition or similar transaction or (ii) in connection with the assignment by Actifio of payments to be made under an Order.

(f) Severability. In the event that any provision contained herein shall for any reason be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, to such extent such provision shall be deemed null and void and severed from this Agreement, and the remainder hereof shall remain in full force and effect.

(g) Headings. The headings of the sections of this Agreement are for convenience of reference only and shall not be considered in construing this Agreement.

(h) Notices. Notices in connection with this Agreement must be in writing and either delivered in person or by recognized commercial courier or certified mail, postage and fees prepaid, return receipt requested, and addressed (i) if to Actifio, at the address set forth above; and (ii) if to You, to the address provided by You to Actifio, or to such other address as the addressee shall have specified by notice hereunder. Notices shall be deemed effective when received or, if delivery is refused, when delivery is attempted.

(i) Notice to U.S. Government End Users. The Software and Documentation are "Commercial Items", as that term is defined at 48 C.F.R. 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. 12.212 or 48 C.F.R. 227.7202, as applicable. Consistent with 48 C.F.R. 12.212 or 48 C.F.R. 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users and U.S. Government

contractors (i) only as Commercial Items and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

(j) Rights of Third Parties. The provisions of this Agreement shall inure to the benefit of any licensor or supplier of Actifio, and all such licensors and their affiliates (i) disclaim any and all warranties to You; and (ii) disclaim, to the maximum extent permitted by law, liability to You for damages that might arise from Your use of the Solution. This Agreement will not impose any obligations or liabilities on Actifio's resellers.

(k) Force Majeure. Neither party shall be responsible for any failure to perform its obligations under this Agreement (other than obligations to pay money) caused by an event beyond its reasonable control, including but not limited to, wars, riots, labor strikes, natural disasters, the infrastructure of the Internet, or any law, regulation, ordinance or other act or order of any court, government or governmental agency.

(l) Professional Services. Any professional services purchased by Customer (other than residency services or services covered by a separate Statement of Work) must be used within twelve (12) months of later of the date of the Order or shipment of the Solution (at which point they will expire).

(m) Future Commitments. Actifio has made no commitments or promises orally or in writing with respect to delivery of any future software features or functions. In relation to

any future software features or functions, all presentations, RFP responses and/or product roadmap documents, information or discussions, either prior to or following the date herein, are for informational purposes only, and Actifio has no obligation to provide any future releases or upgrades or any features, enhancements or functions, unless delivered under a support program or specifically agreed to in writing by both parties. Customer acknowledges that no purchasing decisions are based upon any future software features or functions.

(n) Publicity. Actifio may include Your name and logo on its customer lists and reference the fact that You are a customer of Actifio, subject to Actifio's confidentiality obligations under Section 4. However, neither party may issue a press release regarding this Agreement without the other party's prior written approval (which will not be unreasonably withheld or delayed).

(o) Evaluation or Beta Products. In the event Actifio provides Customer with any evaluation or beta products in connection with this Agreement, Customer agrees that any such products will be used for testing or evaluation purposes only for the agreed upon period. All such products are provided AS IS, with all faults, with no warranties or representations (express or implied) whatsoever. ACTIFIO SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, DIRECT, OR PUNITIVE DAMAGES IN CONNECTION WITH THE USE OF SUCH PRODUCTS, WHETHER SUCH LIABILITY IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY OR OTHERWISE.