

PARTIES	
EXABEAM	CUSTOMER
Exabeam, Inc. 1051 E. Hillsdale Blvd. 4 th Floor Foster City, California 94404	[INSERT CUSTOMER NAME AND ADDRESS]
THE PARTIES ACKNOWLEDGE THAT EACH HAS READ THIS ENTERPRISE AGREEMENT AND ITS ATTACHMENTS, UNDERSTANDS THEM, AND AGREES TO BE BOUND BY THEIR TERMS AND CONDITIONS. FURTHER, THE PARTIES AGREE THAT THIS ENTERPRISE AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, WHICH SUPERSEDES ALL PROPOSALS AND ALL PRIOR AGREEMENTS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF. AGREED AND ACCEPTED:	
EXABEAM, INC.	[CUSTOMER FULL NAME]
BY: _____ (SIGNATURE)	BY: _____ (SIGNATURE)
NAME: _____ (PRINTED)	NAME: _____ (PRINTED)
TITLE: _____	TITLE: _____
DATE: _____	DATE: _____

This **ENTERPRISE AGREEMENT** ("Agreement") is effective on the date last signed by the parties hereto ("Effective Date") and sets forth the terms of the business relationship between the parties.

1. DEFINITIONS

- 1.1 **"Asset(s)"** means devices as measured in CUSTOMER's corporate environment, which includes but is not limited to workstations, servers and mobile devices used by employees, contractors or agents of CUSTOMER actively accessing CUSTOMER computing resources.
- 1.2 **"Confidential Information"** means any and all information related to a party's business (including software, source code and specifications, trade secrets, technical information, business forecasts and strategies, personnel information and proprietary information of third parties provided to the other party in confidence) that is labeled or identified as "confidential" or "proprietary"; and if disclosed orally or otherwise in intangible form, is confirmed as such in writing within thirty (30) days of such disclosure; or otherwise is of such a type or disclosed in such a way that a reasonable person would understand that the information disclosed is confidential or proprietary. Without limiting the foregoing, all software and Documentation shall be deemed the "Confidential Information" of EXABEAM, and CUSTOMER Data shall be deemed the "Confidential Information" of CUSTOMER.
- 1.3. **"Deployment Services"** means the training for use of the Product and/or support specific to configuring the Product to operate in CUSTOMER'S environment.
- 1.4 **"CUSTOMER Data"** means: (i) data uploaded to the SaaS, including but not limited to PII; and (ii) output from CUSTOMER's use of the SaaS.
- 1.5 **"Documentation"** means EXABEAM's published user and administration manuals and other documentation for the Product and/or SaaS furnished to CUSTOMER.
- 1.6 **"Order"** means a purchase order or similar document for ordering Product and/or Support Services and obligating CUSTOMER for the associated fees that has been issued by CUSTOMER or an EXABEAM channel partner on CUSTOMER's behalf and accepted by EXABEAM.
- 1.7 **"Personally Identifiable Information"** and **"PII"** means personal information that is, without limitation, names, phone numbers,

mailing addresses, credit card information, social security numbers, and/or account or financial information of CUSTOMER that is hosted in the SaaS environment.

- 1.8 **"Product"** means the proprietary hardware and/or software set forth in an Order as delivered by EXABEAM, which includes Updates and Upgrades.
- 1.9 **"SaaS"** means the provision of software Product(s) by EXABEAM to CUSTOMER as a service hosted by or on behalf of EXABEAM as set forth in the applicable Order, which may include, but is not limited to, hosting, management and maintenance of the applicable software Product(s) made available in the hosted environment.
- 1.10 **"Subscription"** means the provision of software Product licenses, SaaS, Documentation and Support Services for the term purchased by CUSTOMER for the Subscription Fee as set forth in the applicable Order.
- 1.11 **"Subscription Fee"** shall mean the fee for Subscription specified in an Order.
- 1.12 **"Support Services"** means the provision of Technical Support and Deployment Services.
- 1.13 **"Technical Support"** means the services for Error correction and delivery of Updates and Upgrades as set forth at <https://community.exabeam.com/s/technical-support> (as such terms are defined therein).
- 1.14 **"User(s)"** means individuals monitored by the software Product, for example as measured in CUSTOMER's active directory, which includes individuals both internal and external to CUSTOMER.

2. RIGHTS AND RESTRICTIONS

- 2.1 **LICENSE.** For Orders that include the purchase of licenses to software Product(s), or software Product(s) through SaaS, and subject to the terms and conditions of this Agreement, EXABEAM hereby grants to CUSTOMER a non-exclusive, non-transferable (except as otherwise set forth in this Agreement) license to perform and display, and access the software Product, in object code form only, subject to the Subscription

Term, usage metrics for Users and/or Assets, and limitations set forth in the applicable Order.

2.2 **RESTRICTIONS.** CUSTOMER agrees not to: (1) modify, disassemble, reverse engineer, adapt, alter, translate, or create derivative works from the Product; (2) merge the software Product with any other software; (3) distribute, sublicense, lease, rent, loan, or otherwise transfer the Product to any third party; (4) use the Product other than as described in the Documentation; (5) use the software Product on or with any system for which it was not intended (pre-installed software Product shall remain in hardware Product); or (6) use the Product in any time-sharing, outsourcing, service bureau, hosting, application service provider or managed service provider environment. CUSTOMER shall not remove, alter, or obscure in any way the proprietary rights notices of EXABEAM or its suppliers contained on or within the Product or Documentation. An Order for SaaS does not entitle CUSTOMER to migrate Products from SaaS to on-premise use.

2.3 OWNERSHIP

2.3.1 **EXABEAM.** As between CUSTOMER and EXABEAM, except for the license expressly granted to CUSTOMER in Section 2.1, EXABEAM and its licensors retain all right, title and interest in and to the software Product, SaaS environment and Confidential Information of EXABEAM. There are no implied licenses, and all rights not expressly granted hereunder are reserved to EXABEAM and its licensors.

2.3.2 **CUSTOMER.** As between CUSTOMER and EXABEAM, CUSTOMER retains all right, title and interest in and to CUSTOMER Data. EXABEAM's use of CUSTOMER Data shall be solely for the purposes of delivering SaaS and Support Services.

3. SUBSCRIPTION; SERVICES

3.1 **SUBSCRIPTION.** The term for Subscription shall begin on the date of an Order, if not otherwise specified in said Order or quote referenced by said Order, and continue for the length of time as specified in said Order (the "Initial Subscription Period"). Thereafter, EXABEAM or an EXABEAM channel partner shall provide CUSTOMER written notice of a renewal prior to expiration, and CUSTOMER may renew for the term specified in an Order (each, a "Renewal Subscription Period" and together with the Initial Subscription Period the "Subscription Term").

3.2 **SUPPORT SERVICES.** CUSTOMER is responsible only for pre-approved travel and accommodation expenses of EXABEAM personnel providing Support Services. If CUSTOMER agrees to said pre-approved expenses, then CUSTOMER shall pay EXABEAM any nonrefundable associated travel charges for CUSTOMER's cancellation of travel less than one (1) week prior to the agreed work start date.

3.2.1 **TECHNICAL SUPPORT.** EXABEAM agrees to provide Technical Support to CUSTOMER for the Subscription Term unless otherwise agreed to in an Order.

3.2.2 **DEPLOYMENT SERVICES.** Deployment Services shall be provided for terms and fees agreed to in an Order.

3.3 **RESTRICTIONS.** EXABEAM shall have no responsibility to provide Support Services for Product or SaaS: (i) modified or altered by CUSTOMER or any third party if not at the express, written direction of EXABEAM; (ii) when support is required due to failure by computer hardware, equipment or software not provided or maintained by EXABEAM; or (iii) when support is required due to accident, neglect, misuse or improper use.

3.4 **DATA PROTECTION.** With respect to the delivery of SaaS or Support Services, where EXABEAM hosts CUSTOMER PII,

EXABEAM shall comply with the requirements and standards set forth in the Data Security Policy available at <https://community.exabeam.com/s/legal>. Login credentials for the Community Portal are available upon request.

4. FEES AND PAYMENTS

4.1 **PAYMENT TERMS.** In consideration of the Product, SaaS and Support Services obligations provided to CUSTOMER, CUSTOMER shall pay all invoices issued for this Agreement as set forth in an accepted Order. Fees set forth in an Order are non-cancelable, non-exchangeable, and non-refundable. If payment of any fee is overdue, EXABEAM may: (i) suspend licenses, provision of the Support Services and/or cancel the Subscription or Subscription renewal related to the overdue fee until such delinquency is corrected; and/or (ii) following repeated failed attempts by EXABEAM to collect such overdue fee, report CUSTOMER to credit reporting agencies with respect to such overdue fee.

4.2 **CHANNEL.** For payments to an EXABEAM channel partner, payment terms shall be as agreed to by CUSTOMER and said channel partner.

4.3 **DIRECT.** For payments to EXABEAM, the following shall apply: (1) CUSTOMER's payment obligations shall accrue upon EXABEAM's acceptance of an Order; (2) fees shall be invoiced on the date an Order is accepted and paid in U.S. dollars within thirty (30) days of CUSTOMER's receipt of invoice if not otherwise stated in an Order; (3) all amounts that are not paid to EXABEAM by CUSTOMER when due shall be subject to a late charge equal to one percent (1.0%) per month, or, if less, the maximum amount allowed by applicable law, calculated on the outstanding balance from the due date until the date of full payment; and (4) in the event that CUSTOMER requires EXABEAM to use CUSTOMER'S vendor management service in connection with the ordering, invoicing, and/or payment process and such vendor management service imposes a service charge upon EXABEAM for the use of the service, EXABEAM may invoice CUSTOMER a fee to offset the service charge(s) from CUSTOMER's vendor management service. All Orders placed directly with EXABEAM shall be subject to EXABEAM's written acceptance, and no Order shall be binding upon EXABEAM until the earlier of the date of EXABEAM's written acceptance of such Order or the date of delivery of the applicable Product or Support Services included in such Order.

4.4 **TAXES.** For payments to EXABEAM, CUSTOMER shall be responsible for payment of all taxes (other than taxes based on EXABEAM's income), fees, duties, and other governmental charges, and any related penalties and interest, arising from any payments due to EXABEAM under this Agreement or the delivery of the Product to, license of the software Product to, or performance of any Support Services for, CUSTOMER, but only if invoiced by EXABEAM. CUSTOMER shall make all payments to EXABEAM free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments to EXABEAM shall be CUSTOMER's sole responsibility, and CUSTOMER shall provide EXABEAM with official receipts issued by the appropriate taxing authority, or such other documentary evidence that EXABEAM may reasonably request, to establish that such taxes have been paid.

4.5 **USAGE COMPLIANCE.** During the term of this Agreement and for a period of one (1) year thereafter: (1) CUSTOMER shall maintain complete and accurate written records of its Product use solely for EXABEAM confirming compliance with the usage metrics in the Order(s); and (2) EXABEAM shall have the right, no more than once per year, upon at least thirty (30) days' prior

written notice, to require CUSTOMER to self-certify that it has paid the correct amounts owed under this Agreement and complied with the usage metrics and limitations in the applicable Order(s), and to provide supporting records as reasonably requested. If the audit reveals any amounts owed for any billing period, CUSTOMER shall promptly pay such amounts plus the applicable late fees.

5. TERM AND TERMINATION

5.1 **TERM.** This Agreement shall enter into effect upon the Effective Date and continue in full force and effect until earlier terminated by either party as expressly permitted by this Agreement. A Subscription Term shall continue until expiration or termination as defined in an Order or as permitted by this Agreement.

5.2 **TERMINATION.** Either party has the right to terminate this Agreement immediately upon written notice if: (1) there are no active Subscriptions or Support Services; or (2) the other party materially breaches this Agreement (including a breach of the obligation to make payments when due) and fails to cure such breach within thirty (30) days after written notice of breach by the non-breaching party. Notwithstanding the foregoing, EXABEAM shall have the right to terminate this Agreement immediately upon written notice if CUSTOMER breaches Section 2.2 (Restrictions) or 2.3 (Ownership).

5.3 **EFFECT OF TERMINATION.** Upon the expiration or any termination of this Agreement, all licenses granted hereunder shall immediately terminate and the parties shall return or destroy all copies of the other party's Confidential Information. Furthermore, EXABEAM shall, upon CUSTOMER's reasonable request prior to termination, provide to CUSTOMER all assistance and cooperation reasonably required by CUSTOMER in order to transfer and/or remove CUSTOMER Data from the SaaS environment. Sections 1 (Definitions), 2.2 (Restrictions), 2.3 (Ownership), 4 (Fees and Payments), 5.3 (Effect of Termination), 6.1 (Hardware Warranty), 6.5 (Disclaimer), 8 (Limitation of Liability), 9 (General), and any payment obligations that accrued prior to termination of this Agreement shall survive any such termination.

6. REPRESENTATIONS AND WARRANTIES

6.1 **HARDWARE WARRANTY.** EXABEAM offers the limited hardware warranty of this Section for a period of: (1) three (3) years from CUSTOMER's purchase of a hardware Product; and (2) one (1) year from CUSTOMER's purchase of hardware components not pre-installed with purchase of the hardware Product (e.g. additional drives) (collectively, "Hardware"). EXABEAM warrants that the Hardware will be free from defects in workmanship. EXABEAM will repair or replace the Hardware, at EXABEAM's option. This warranty is contingent upon: (a) proper use of the Hardware as set forth in the applicable Documentation; and (b) warranty claims must be reported to EXABEAM during the warranty period. The warranty shall not apply to any failure caused by: (i) neglect; misuse; fluctuations in electrical power beyond specifications; failure of air conditioning or humidity control; (ii) any equipment or software used with the Hardware that is not furnished by EXABEAM; or (iii) alteration or repair of the Hardware by anyone other than EXABEAM or as authorized in writing by EXABEAM.

6.2 **SOFTWARE AND SAAS WARRANTY.** EXABEAM warrants that the software Product and SaaS, when used as permitted under this Agreement and in accordance with the Documentation, shall operate substantially as described in the Documentation. If the software Product fails to conform to the foregoing warranty, EXABEAM shall, as its sole obligation for breach of this warranty, correct any reproducible nonconformity in the

software Product reported in writing to EXABEAM by CUSTOMER during the applicable Subscription.

6.3 **SERVICES.** EXABEAM represents it and EXABEAM's contractors and agents have the necessary knowledge, skills, expertise and training to provide the Support Services, and shall carry out all Support Services in a diligent, prompt, and professional manner.

6.4 **VIRUSES.** The term "Virus" means any computer code designed to: (1) disrupt, disable, harm, or otherwise impede the licensed operation of a computer program or computer system; (2) provide unauthorized access to a computer program or computer system; or (3) damage or destroy any data files residing on a computer system. Prior to delivery, or access in the case of SaaS, EXABEAM shall scan the software Product and SaaS environment with a commercially-available antivirus program to protect against any Virus. If CUSTOMER demonstrates that the software Product and/or SaaS environment as supplied by EXABEAM contains a Virus, then EXABEAM shall: (i) promptly provide CUSTOMER with such pertinent information as may be in EXABEAM's possession about the infection by the Virus to mitigate the detrimental effects of the Virus; and (ii) deliver a replacement of the software Product and/or SaaS environment free of the identified Virus.

6.5 **USE OF SAAS.** CUSTOMER represents and warrants that they will not use the SaaS environment, nor will they authorize or permit any individual or entity, in a way that is illegal or promotes illegal activities. Furthermore, CUSTOMER represents and warrants that CUSTOMER Data: (i) does not violate, misappropriate or infringe any rights of EXABEAM or any third party; (ii) does not constitute defamation, invasion of privacy or publicity, or otherwise violate any rights of any third party; or (iii) is not designed for use in any illegal activity or promotes illegal activities. As used herein, "illegal activity or promotes illegal activities" includes, without limitation, any manner that might be libelous or defamatory or otherwise malicious or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age.

6.6 **DISCLAIMER.** EXCEPT TO THE EXTENT EXPRESSLY SET FORTH ABOVE IN THIS SECTION 6, EXABEAM EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES AND CONDITIONS WITH RESPECT TO THE PRODUCT, SAAS AND ALL MATERIALS OR SERVICES PROVIDED UNDER THIS AGREEMENT, WHETHER IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. INDEMNIFICATION

7.1 **INDEMNITY.** EXABEAM shall:

7.1.1 Defend and hold harmless CUSTOMER from any third-party claim, suit, or proceeding alleging that the Product or SaaS, unmodified and as originally delivered, when used as permitted under this Agreement and in accordance with the Documentation, and the licenses granted hereunder, infringes or misappropriates any third-party patent issued as of the Effective Date or copyright (a "Claim"); and

7.1.2 Indemnify CUSTOMER for all settlement amounts agreed to by the litigants or damages finally awarded or assessed by a court of competent jurisdiction for a Claim.

7.2 **EXCLUSIONS.** EXABEAM shall have no obligations under this section with respect to any Claims that arise from or relate to: (1) any modifications to the Product or SaaS environment created by any party other than EXABEAM if not at the express

direction of EXABEAM; (2) any combination of the Product or SaaS environment with any third-party hardware, software, or other materials where such combination is the object of the Claim; or (3) the use of any version of the Product other than the latest version made available to CUSTOMER by EXABEAM.

7.3 **MITIGATION.** If any element of the Product or SaaS environment has become, or if EXABEAM reasonably believes is about to become, the subject of a Claim, EXABEAM may, at its sole option: (1) obtain a license to permit CUSTOMER to use the Product and/or SaaS environment in accordance with this Agreement; (2) modify the Product and/or SaaS environment in a manner such that it is no longer infringing but maintains substantially the same functionality; or (3) terminate CUSTOMER's right to use all or part of the Product and/or SaaS environment in exchange for a refund of fees paid, less a prorated deduction to reflect past beneficial use calculated: (i) for the software Product and SaaS as the remainder of any pre-paid Subscription; and (ii) for the hardware Product on a straight-line basis assuming a useful life of three (3) years.

7.4 **PROCEDURES.** CUSTOMER must: (1) promptly notify EXABEAM in writing of any Claim; (2) tender control of the defense and settlement of such Claim to EXABEAM, provided that EXABEAM may not enter into any settlement adversely affecting CUSTOMER's interests without CUSTOMER's prior written consent; and (3) reasonably cooperate with EXABEAM in such defense at EXABEAM's expense. CUSTOMER shall have the right to participate in the defense at its own expense with counsel of its choice. The indemnity in this Section 7 states CUSTOMER's sole and exclusive remedy, and EXABEAM's entire liability, for infringement of third-party intellectual property rights arising from or related to this Agreement.

8. LIMITATION OF LIABILITY

8.1 **DAMAGES.** EXCEPT FOR ANY INFRINGEMENTS OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS (INCLUDING ANY BREACH OF SECTIONS 2.3 OR 2.4), CUSTOMER'S PAYMENT OBLIGATIONS (SECTION 4), EXABEAM'S INDEMNIFICATION OBLIGATION (SECTION 7), OR EITHER PARTY'S BREACH OF CONFIDENTIALITY (SECTION 9.5), IN NO EVENT, WHETHER ARISING FROM OR RELATED TO THIS AGREEMENT, IN CONTRACT, TORT OR OTHERWISE, SHALL:

8.1.1 EITHER PARTY BE LIABLE FOR ANY LOST DATA, LOST PROFITS, SECURITY BREACH OR GOVERNMENTAL FINE, OR CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

8.1.2 EITHER PARTY'S TOTAL CUMULATIVE LIABILITY EXCEED A SUM EQUAL TO THE TOTAL OF ALL FEES PAID BY CUSTOMER TO EXABEAM PURSUANT TO SECTION 4 (FEES AND PAYMENTS) DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT FIRST GIVING RISE TO LIABILITY. THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE INCIDENT OR CLAIM.

8.2 **ACKNOWLEDGEMENT.** THE PARTIES ACKNOWLEDGE THAT THE TERMS OF THIS SECTION 8 (LIMITATION OF LIABILITY): (1) REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT THE PARTIES WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS OF LIABILITY; AND (2) WILL APPLY EVEN IF ANY EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE DISCLAIMER OF WARRANTY AND LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT WILL APPLY ONLY TO THE MAXIMUM EXTENT

PERMISSIBLE UNDER APPLICABLE LAW, AND NOTHING IN THIS AGREEMENT PURPORTS TO LIMIT EITHER PARTY'S LIABILITY IN A MANNER THAT WOULD BE UNENFORCEABLE OR VOID AS AGAINST PUBLIC POLICY IN THE APPLICABLE JURISDICTION.

9. GENERAL

9.1 **PARTY RELATIONSHIP.** The parties are and at all times shall be and remain licensor and licensee as to each other, and at no time shall either party be deemed to be the agent or employee of the other. No joint venture, partnership, agency, or other relationship shall be created or implied as a result of this Agreement. Furthermore, neither party shall have the authority to, and shall not purport to, enter into any contract or commitment on behalf of the other party.

9.2 **GOVERNING LAW.** This Agreement, and any and all actions arising from or in any manner affecting the interpretation of this Agreement, shall be governed by, and construed solely in accordance with, the laws of the State of California, without giving effect to any conflicts of laws principles that would require the application of the laws of a different jurisdiction. Except for the right of either party to apply to a court for a temporary restraining order, a preliminary injunction, or other equitable relief, the parties consent to the exclusive jurisdiction and venue of the federal and state courts located in Santa Clara County, California for any action permitted under this Section, challenge to this Section, or judgment upon the award entered. The United Nations Convention on Contracts for the International Sale of Goods and Uniform Computer Information Transactions Act (UCITA), or any similar federal laws or regulations enacted, to the extent allowed by law shall not apply to this Agreement.

9.3 LAWS AND REGULATIONS

9.3.1 **COMPLIANCE.** The parties shall comply with all provisions of any applicable laws, regulations, rules, or orders relating to the rights granted herein and to the testing, production, transport, export, re-export, packaging, labeling, distribution, sale or other use of the Product, SaaS, Support Services or as otherwise applicable to a party's activities hereunder. The parties shall obtain such written assurances regarding export and re-export as may be required. With respect to any export transaction under this Agreement, EXABEAM shall cooperate with CUSTOMER to affect compliance with all applicable export regulation.

9.3.2 **GOVERNMENT RESTRICTIONS.** The software Product and SaaS environment is comprised of "commercial items", "commercial computer software", and "commercial computer software documentation" as such terms are defined in FAR 2.101 and DFARS 252.227-7014(a)(1). The software is provided to any federal, state or local government agency only subject to the terms and conditions of this Agreement and such additional terms as are agreed by the parties in a properly executed writing and that are consistent with (a) the policies set forth in 48 C.F.R. 12.212 (for civilian agencies); or (b) the policies set forth in 48 C.F.R. 227.7202-1 and 22.7202-3 (for units of the Department of Defense).

9.4 **ASSIGNMENT.** CUSTOMER may not assign this Agreement (whether expressly, by implication, or by operation of law), or delegate its performance under this Agreement (either in whole or in part), to any third party without obtaining EXABEAM's prior written consent. Notwithstanding the foregoing, either party may assign this Agreement in whole

together with all rights and obligations under this Agreement, without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the non-assigning party. Any purported transfer, assignment, or delegation in violation of this section shall be null and void when attempted and of no force or effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the successors and permitted assigns of EXABEAM and CUSTOMER.

9.5 CONFIDENTIALITY

9.5.1 Each party agrees: (1) to hold the other party's Confidential Information in strict confidence; (2) not to disclose such Confidential Information to any third parties, except as described below; and (3) not to use any Confidential Information except to perform its obligations and exercise its rights under this Agreement. Each party may disclose the other party's Confidential Information to its employees, contractors, agents, and professional advisors with a bona fide need to know the specific information in question in connection, but only to the extent necessary for such party's performance of obligations or exercise of rights or under this Agreement and only if all such persons (i) have been instructed that such Confidential Information is subject to the obligation of confidence set forth by this Agreement and (ii) are bound either by contract, employment policies, or fiduciary or professional ethical obligation to maintain such information in confidence.

9.5.2 The restrictions set forth in this section shall not apply to any Confidential Information that the receiving party can demonstrate: (1) was known to it prior to its disclosure by the disclosing party; (2) is or becomes publicly known through no wrongful act of the receiving party; (3) has been rightfully received from a third party authorized to make such disclosure without restriction; (4) is independently developed by the receiving party; or (5) has been approved for release by the disclosing party's prior written authorization.

9.5.3 If a party is ordered by a court, administrative agency, or other governmental body of competent jurisdiction to disclose Confidential Information, or if it is served with or otherwise becomes aware of a motion or similar request that such an order be issued, then such party will not be liable to the other party for disclosure of Confidential Information required by such order if such party complies with the following requirements: (i) if an already-issued order calls for immediate disclosure, then such party immediately shall move for or otherwise request a stay of such order to permit the other party to respond as set forth in this paragraph; (ii) such party immediately shall notify the other party of the motion or order by the most expeditious possible means; (iii) such party shall not oppose a motion or similar request by the other party for an order protecting the confidentiality of the Confidential Information, including not opposing a motion for leave to intervene by the other party; and (iv) such party shall exercise its best efforts to obtain reasonable assurance that confidential treatment will be accorded the Confidential Information so disclosed.

9.5.4 The parties agree that a breach of this section may cause immediate and irreparable harm for which monetary damages would be an inadequate remedy and therefore, the parties agree that in addition to any other remedies available at law or hereunder, the disclosing

party shall be entitled to seek equitable relief, including injunctive relief, from any court having jurisdiction, to protect its rights and interests pursuant to this section.

9.6 **EQUITABLE RELIEF.** CUSTOMER acknowledges that EXABEAM would suffer immediate and irreparable harm for which monetary damages would be an inadequate remedy if CUSTOMER were to breach its obligations under Sections 2.2 (Restrictions) or 2.3 (Ownership). CUSTOMER therefore expressly agrees that EXABEAM shall be entitled to obtain equitable relief, including injunctive relief, from any court having jurisdiction, to protect rights and interests in connection with Section 2 of this Agreement or in connection with any license restriction contained herein. Such remedy shall be in addition to such other remedies as may be available at law or in equity.

9.7 **NOTICES.** All notices permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, national express courier with a tracking system, or by certified or registered mail, return receipt requested. Notice of Subscription renewal and SaaS overages may be provided by e-mail. Notices shall be deemed given, respectively, on the date of personal delivery, five (5) days after deposit in the mail, or on the date of delivery. Notices shall be addressed to "Legal" and sent to the addresses set forth at the beginning of this agreement. Either party may amend its address for notice upon written notice to the other.

9.8 **WAIVERS; AMENDMENT.** No waiver of any terms or conditions of this Agreement shall be valid or binding on a party unless such party makes the waiver in hardcopy writing signed by an authorized representative of that party. The failure of one party to enforce any of the provisions of this Agreement, or the failure to require at any time the performance of the other party of any of the provisions of this Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of a party to enforce each and every provision thereafter. This Agreement may not be altered, amended, modified, or otherwise changed in any way except by a hardcopy written instrument signed by the authorized representatives of each party.

9.9 **SEVERABILITY.** If any provision of this Agreement is found or held to be invalid or unenforceable by any tribunal of competent jurisdiction, then the meaning of such provision shall be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of this Agreement, which shall remain in full force and effect.

9.10 **FORCE MAJEURE.** Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of: (1) any provision of any present or future law or regulation that applies to the subject matter hereof; or (2) strikes, shortages, riots, insurrection, fires, flood, storms, explosions, acts of God, war, government action, acts of terrorism, earthquakes, power outages or any other cause that is beyond the reasonable control of such party.

9.11 **CONSTRUCTION.** The headings of sections of this Agreement are included solely for convenience of reference and are not to be used to interpret, construe, define, or describe the scope of any aspect of this Agreement. As used in this Agreement, the word "including" means "including but not limited to." Each party represents that it has had the opportunity to participate in the preparation of this Agreement, and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in connection with the construction or interpretation of this

Agreement. Unless otherwise expressly stated to the contrary herein, all remedies are cumulative, and the exercise of any express remedy by either party herein does not by itself waive such party's right to exercise its other rights and remedies available at law or in equity.

9.12 COUNTERPARTS; AUTHORIZATION; ENTIRE AGREEMENT.

This Agreement may be executed in counterparts. Each party represents that the person signing this Agreement on such party's behalf has been duly authorized and empowered to enter into this Agreement on behalf of such party. This Agreement shall take precedence over any conflicting or inconsistent terms and conditions accompanying any Order or similar document submitted by CUSTOMER to EXABEAM.

9.13 TRADEMARKS

9.13.1 GENERAL. CUSTOMER grants EXABEAM the non-exclusive right to use CUSTOMER's trade and service marks ("Marks") in accordance with CUSTOMER's trademark usage guidelines, which may include a requirement for prior approval as to usage, and EXABEAM acknowledges that CUSTOMER may, from time to time, revise these trademark usage guidelines. EXABEAM agrees to cooperate with CUSTOMER in facilitating CUSTOMER's monitoring and control of the nature and quality of marketing materials and to supply CUSTOMER with specimens of use of the Marks upon request, and to comply with any instructions of CUSTOMER in relation to Mark use. Notwithstanding the foregoing, EXABEAM may, without prior approval of the CUSTOMER, include CUSTOMER's name and/or Marks in EXABEAM customer lists or like materials.

9.13.2 OWNERSHIP. EXABEAM acknowledges the validity of the Marks and CUSTOMER's ownership thereof. EXABEAM shall not challenge CUSTOMER's rights in any Marks that EXABEAM uses. All goodwill and reputation which accrues to any Marks in the course of EXABEAM promotion and licensing of the Products shall automatically vest in CUSTOMER without any separate or additional consideration of any kind to EXABEAM. EXABEAM shall not adopt, use, register, make application or attempt to register (whether such registration is for a trade mark, trade name, service mark, corporate or business name, a domain name or otherwise) Marks or other marketing name(s) of CUSTOMER or any confusingly similar mark, uniform resource locator (URL), Internet domain name, or symbol.