



## **UNIFORM MASTER SUBSCRIPTION AGREEMENT**

THIS UNIFORM MASTER SUBSCRIPTION AGREEMENT (“AGREEMENT”) CONTAINS THE TERMS AND CONDITIONS THAT GOVERN YOUR ACQUISITION AND USE OF OUR INFRASTRUCTURE AND CUSTOM SERVICES.

BY ACCEPTING THIS AGREEMENT, BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT OR ACCESSING THE EXIGO INFRASTRUCTURE, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND SUCH ENTITY AND ITS CORPORATE RELATED ENTITIES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS CORPORATE RELATED ENTITIES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE INFRASTRUCTURE, CUSTOM SERVICES OR ON-DEMAND SERVICES.

This Agreement was last updated on August 1, 2017. It is effective between You and Us as of the date of You accepting this Agreement.

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## 1. DEFINITIONS

"Acceptable Use Policy" means the online policy for the use of the Infrastructure available at <http://exigo.com/aup.pdf>, as updated from time to time. You acknowledge that you have had the opportunity to review the Acceptable Use Policy.

"Change Request" means the online system maintained by Us, accessible via the portal at [portal.exigo.com](http://portal.exigo.com), which must be utilized by You to open tickets for custom programming, new feature requests, and customizations.

"Corporate Related Entity" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity and uses the Infrastructure. "Control," for purposes of this definition, means ownership or control, either directly or indirectly, of more than 50% of the voting interests of the subject entity.

"Customer" means a person authorized by You to use the Infrastructure. Customers may include but are not limited to Your employees, consultants, contractors and agents, independent representatives, distributors, affiliates, and third parties with which You transact business.

"Custom Services" means custom programming and features as well as consulting and training including, but not limited to, order calculation programming, data management, commission plan programming, project management, third party integrations, internationalization, and web programming. Custom Services are not included in the "Infrastructure" hereunder and are provided "AS IS" with no express or implied warranty.

"Freemium Services" means the services listed at <http://exigo.com/freemium.pdf> and incorporated herein by reference. Customer support for Freemium Services will be billed at the same hourly rates as custom programming. Freemium Services are not considered "Infrastructure" hereunder and are provided "AS IS" with no express or implied warranty. Individual Freemium Services may be deprecated, added to the Features referenced in Section 2.3, or added to the On-Demand Services.

"Infrastructure" means the edition of Our Exigo Admin that is stated on Your Order Form, the API's, OData and access to the order calculation SDK. The Standard Admin Features are set forth on Our webpage <http://exigo.com/features.pdf> as We may change such features from time to time. "Infrastructure" excludes Non-Exigo Applications, Custom Services, and On-Demand Services.

"Integrators" means the third parties that work in or on applications or direct integrations of applications that interoperate with the Infrastructure. We may list, add, or remove Integrators on Our website.

"Malicious Code" means time bombs, Trojan horses, viruses, worms, and other harmful or malicious code, agents, files, programs or scripts.

"Non-Exigo Applications" means online applications and offline software products that are provided by entities or individuals other than Us, and that interoperate with the Infrastructure, including but not limited to any listed on our website as Integrators and those identified by a similar designation.

"On-Demand Services" means optional services for which charges are based on usage such as Sandboxes and SMS Text Messaging. On-Demand Services may change from time to time by either adding new optional services or deprecating existing optional services. On-Demand Services are provided by Exigo On Demand, LLC, a limited liability company organized and existing under the laws of the Territory of the United States Virgin Island with its principal place of business at 53A Company Street, Christiansted, VI 00820.

"Order Form" means the documents for placing orders hereunder, including addenda thereto, that are entered into between You and Us or any of Our Corporate Related Entities, including addenda and supplements thereto. By executing an Order Form, a Corporate Related Entity agrees to be bound by the terms of this Agreement as if it were an original party hereto. Order Forms are deemed to be incorporated herein by reference.

"Portal" means the portal at [portal.exigo.com](http://portal.exigo.com) which is an access point where You can, inter alia, view User Documentation, enter Support Tickets, enter Change Requests, monitor server performance, monitor external connectivity, view sandbox and SMS messaging charges, review invoices, and make payments to Us.

"Support Ticket" means the online ticketing system maintained by Us, accessible via the Portal, which must be utilized by You to open tickets for all issues related to the Infrastructure, including but not limited to, system bugs.

"User Documentation" means the online user guides that may be available via login at [portal.exigo.com](http://portal.exigo.com), as updated from time to time, for features listed on the features document available at <http://exigo.com/features.pdf>.

"We," "Us" or "Our" means the Exigo Office, Inc. company described in Section 16 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).

"You" or "Your" means the company or other legal entity for which you are accepting this Agreement and Corporate Related Entities of that company or entity.

"Your Data" means all electronic data or information submitted or stored by You to the Infrastructure. It is understood that the only data that We can return to You upon termination of services is data previously available to You via a currently exposed data retrieval method.

## 2. INFRASTRUCTURE AND CUSTOM SERVICES

2.1. Provision of Infrastructure. We shall provide the Infrastructure to You pursuant to this Agreement and any relevant Order Forms during a subscription term. You agree that Your entering into this Agreement is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

2.2. Infrastructure Subscription Pricing. All applicable pricing will be specified in an Order Form.

2.3. Exigo Office Suite Features. A detailed listing of Exigo Office Suite Features is contained at <http://exigo.com/features.pdf> and incorporated herein by reference.

2.4 Custom Services. You can request Custom Services such as custom programming through a Change Request. All Change Requests and support for same, that we accept, will be billed through a customer pre-approved ticket request. Upon Your entering a Change Request in the ticketing system, We shall schedule and assign a resource to complete the Change Request. You may request an estimate of the time to complete the Change Request. Acceptance of an estimate by Customer is binding. You will be billed for contract labor hours, in fifteen minute increments, actually performed to complete the work regardless of whether or not You use the results. You may cancel a Change Request at any time; however, you are responsible for actual labor hours performed prior to cancellation. Invoices will be sent weekly and are due upon receipt. Please note that custom programming requested by You to be performed outside of support hours (9:00 a.m. to 6:00 p.m. Central Time, Monday through Friday) will be charged at a rate 50% higher than the standard billable rate. Customer support for Custom Services, including compensation plan programming, will be billed at the same hourly rates as custom programming. Custom Services are not included in the "Infrastructure" hereunder and are provided "AS IS" with no express or implied warranty. Custom Services includes, but are not limited to order calculation programming, data management, commission plan programming, project management, third party integrations, internationalization, training, consulting and web programming.

## 3. USE OF THE INFRASTRUCTURE

3.1. Our Responsibilities. We shall: (i) provide Our support for the features on the Exigo Office Suite Features document to You at no additional charge (except support for Custom Services such as compensation plan programming), (ii) use commercially reasonable efforts to make the Infrastructure available 24 hours a day, 7 days a week, except for: (a) planned downtime or “greyouts” (which We shall schedule to the extent practicable after hours or during the weekend hours), or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, floods, fires, tornados, earthquakes, civil unrest, acts of terror, strikes or other labor problems, Internet service provider failures or delays, third party software or support provider failures or delays, bugs in third party software, or denial of service attacks, (iii) provide the Services only in accordance with applicable laws, and (iv) provide as soon as practicable notification of any breach of Your Data.

3.2. Our Protection of Your Data. We shall maintain appropriate administrative, physical, and technical safeguards to protect the security, confidentiality, and integrity of Your Data. We shall not disclose Your Data except as compelled by law in accordance with Section 9.3 (Compelled Disclosure) or as expressly permitted in writing by You. We use industry best practices and protocols to back up and maintain your data. In the event of an emergency, there may be up to a five minute lag in time while the geo-redundant backup replicates the primary database. During such lag time, modifications and/or new transactions that have not yet been replicated to the secondary datacenter may be lost if the data cannot be recovered from the primary datacenter.

3.3. Your Responsibilities. You shall (i) be responsible for your Customers’, employees’, and Integrators’ compliance with this Agreement, (ii) be responsible for the accuracy, quality, and legality of Your Data and of the means by which Your Data is acquired, (iii) be responsible for the level of access that Your employees and Integrators have to the Infrastructure, Custom Services, and On-Demand Services (iv) use commercially reasonable efforts to prevent unauthorized access to or use of the Infrastructure, Custom Services and/or On-Demand Services, and notify Us promptly of any such unauthorized access or use, (v) use the Infrastructure, Custom Services, and/or On-Demand Services only in accordance with the User Documentation, Acceptable Use Policy, and applicable laws, and (vi) comply with the policies of any credit card brand (e.g. Visa, MasterCard, American Express, or Discover) utilized in conjunction with the Infrastructure, Custom Services, and/or On-Demand Services. You shall not (a) make the Infrastructure, Custom Services, and/or On-Demand Services available to anyone other than Customers, your employees, or your Integrators, (b) use the Infrastructure, Custom Services, and/or On-Demand Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (c) use the Infrastructure, Custom Services, and/or On-Demand Services to store or transmit Malicious Code, (d) interfere with or disrupt the integrity or performance of the Infrastructure, Custom Services, and/or On-Demand Services or third-party data contained therein, or (e) attempt to gain unauthorized access to the Infrastructure, Custom Services, and/or On-Demand Services or their related systems or networks.

3.4. Minimum Requirements for Infrastructure. PC computers and Internet Explorer 7.0+ are required to properly utilize the admin interface of the Infrastructure.

3.5. Training. You shall provide the necessary personnel to operate the Infrastructure. Exigo requires the following or similar personnel: IT Director, web master, commission processor/analyst, and customer service lead be on staff prior to training. You will select one (1) staff member to manage the entire implementation and act as the communication liaison to Us. In the event that the required personnel are not on staff, Our ability to successfully complete the implementation and Your ability to use and fully enjoy and experience the Infrastructure will be severely and negatively impacted.

3.6. Usage Limitations. It is understood that all systems, processors, and infrastructures have limitations. It is impossible to foresee all future potential usage limitations. There may be limitations, such as limits on the size of uploads, on the number of simultaneous calls You are able to make against our Application Programming Interface (“API”), and, for services that enable You to provide public websites, on the number of page views by visitors to those websites. We will notify You of any usage limitations if/when same are encountered and advise on possible solutions. The following editions have the corresponding capacity for daily API calls. Exceeding the API call capacity may result in overage charges and/or diminished performance.

Nano Edition	50,000 API calls per day
Express Edition	100,000 API calls per day
Standard Edition	500,000 API calls per day
Enterprise Edition	750,000 API calls per day
Enterprise Plus	1,500,000 API calls per day

3.7. Our direct competitors may not access the Infrastructure, except with Our prior written consent. Our direct competitors include, but are not limited to Data Paradigm, Inc., ByDesign, Infotrax, Jenkon, IDSTC, Greystar, Trinity Software Incorporated, Xensoft and Direct Scale.

#### 4. SUPPORT PROCEDURE AND ESCALATION FOR STANDARD ADMIN FEATURES.

4.1. Help Desk. Help Desk support can be provided via the resources provided in our Resource Library. You shall have a login account for access to this library that contains user manuals, how to instructions, and frequently asked questions. Any questions that cannot be answered from the Resource Library must be entered in a Support Ticket.

4.2. Support. Any support requests or inquiries must be entered into a Support Ticket. Support inquiries received during support hours from 9:00 a.m. to 6:00 p.m. Central Time, Monday through Friday, will be evaluated to determine the nature and categorization of the incident. Any items will be responded to within the response time listed for each category as follows:

Category 1 (Low)- The incident has little or no impact on the daily use of the function or module. It is usually a cosmetic problem or the nuisance factor is very low. The incident will be entered and tracked in a Support Ticket and addressed depending upon the severity of the item.

Category 2 (Medium)- A function or module is usable and operations are not severely restricted. The nuisance factor is not real high or there is a simple work around. Impact on operations is minor. The incident will be entered and tracked in a Support Ticket and addressed within 7 days.

Category 3 (High)- A function or module is usable, but operations are severely restricted. This category may not apply if the failure is a customization or third party integration. The incident will be entered and tracked in a Support Ticket and addressed within two business days.

Category 4 (Urgent)- Customer is unable to process transactions for orders due to system failure. The incident will be responded to within one hour of the notification to Exigo if the notification is received via phone 214-367-9999 (normal support desk, after hours answering service, or technician on call cell phone). Customer will receive periodic updates until resolution is achieved or a temporary work around is put in place. Exigo will use its best efforts to resolve this issue or provide an interim solution that will re-categorize the issue as a Category 3 incident.

4.3. Incident Tracking. You must access the Portal to open a Support Ticket for incidents related to the performance of the Infrastructure including, but not limited to, system bugs. You are required to login to view status, and to communicate updates/comments of each incident in the Support Ticket.

4.4. Abuse of Support Services. In the event You abuse Our support services, then You shall pay Us fees for such abuse in accordance with this subsection. An abuse of support services (“Abuse Incident”) occurs when You declare an incident to be a Category 4 incident when it could reasonably be determined that the incident was of a lower priority, ie You are still able to process transactions for orders. There shall be no charge for the first Abuse Incident occurring in a calendar month. For each Abuse Incident occurring thereafter You shall pay Us a fee of \$500.00, and the aggregate fees for Abuse Incidents shall not exceed \$2,500.00 during any calendar month.

## 5. COMPENSATION PLAN AND PROGRAM AUDIT AND VALIDITY

5.1. We may custom program Your compensation and bonus plan according to written documentation supplied by You.

5.2. You accept full responsibility to audit and validate all compensation runs and bonus runs before releasing any payments. You shall hold Us harmless from all claims, losses, and liabilities resulting from deficiencies, inaccuracies, or omissions in the compensation and/or bonus program. In the event that errors are found, We shall use commercially reasonable efforts to correct errors in the compensation and/or bonus program.

## 6. NON-EXIGO PROVIDERS

6.1. Acquisition of Non-Exigo Applications and Infrastructure. We or third parties may from time to time make available to You third-party products or services, including but not limited to Non-Exigo Applications and implementation, customization and other consulting services. Any acquisition by You of such Non-Exigo products or services, and any exchange of data between You and any Non-Exigo provider, is solely between You and the applicable Non-Exigo provider.

6.2. Non-Exigo Applications and Your Data. If You install or enable Non-Exigo Applications for use with the Infrastructure, Custom Services, and/or On-Demand Services, You acknowledge that We may allow providers of those Non-Exigo Applications to access Your Data as required for the interoperation of such Non-Exigo Applications with the Infrastructure, Custom Services, and/or On-Demand Services. We shall not be responsible for any disclosure, modification, or deletion of Your Data resulting from any such access by Non-Exigo Application providers. The Infrastructure shall allow You to restrict such access by restricting Customers and Your employees from installing or enabling such Non-Exigo Applications for use with the Infrastructure.

6.3. Integration with Non-Exigo Applications. The Infrastructure may contain features designed to interoperate with Non-Exigo Applications (e.g., Google, Facebook, or Twitter applications). To use such features, You may be required to obtain access to such Non-Exigo Applications from these providers. If the provider of any such Non-Exigo Application ceases to make the Non-Exigo Application available for interoperation with the corresponding Infrastructure features on reasonable terms, We may cease providing such Infrastructure features without entitling You to any refund, credit, or other compensation.

6.4. You shall maintain licenses and adhere to the license terms of any software You run in conjunction with the Infrastructure, Custom Services, and/or On-Demand Services.

6.5. Using Microsoft Software. As part of the Infrastructure, you may be allowed to use certain software (including related documentation) developed and owned by Microsoft Corporation or its licensors (collectively, the “Microsoft Software”). If you choose to use the Microsoft Software, Microsoft and its licensors require that you agree to these additional terms and conditions:

- The Microsoft Software is neither sold nor distributed to you and you may use it solely as part of the Infrastructure;
- You may not transfer or use the Microsoft Software outside the Infrastructure;
- You may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Microsoft Software;
- You may not reverse engineer, decompile or disassemble the Microsoft Software, except to the extent expressly permitted by applicable law;
- Microsoft disclaims, to the extent permitted by applicable law, all warranties by Microsoft and any liability by Microsoft or its suppliers for any damages, whether direct, indirect, or consequential, arising from the Infrastructure;



- Microsoft is not responsible for providing any support in connection with the Infrastructure. Do not contact Microsoft for support; and
- You are not granted any right to use the Microsoft Software in any application controlling aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, weaponry systems, or any similar scenario (collectively, “High Risk Use”). Microsoft and its suppliers disclaim any express or implied warranty of fitness for High Risk Use. High Risk Use does not include utilization of the Microsoft Software for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function.

## 7. FEES AND PAYMENT

7.1. Fees. You shall pay all fees specified in all Order Forms hereunder and all invoices issued for Custom Services pursuant to Section 2.4. Fees are based on services purchased in an Order Form. Payment obligations are non-cancelable, and fees paid are non-refundable. Your delays in implementation shall not excuse the commencement of monthly Infrastructure subscription fees as specified in an Order Form.

7.2. Invoicing and Payment. We will issue invoices on a regular basis. All payments from You to Us must be made via the portal located at [portal.exigo.com](http://portal.exigo.com).

A. Monthly Infrastructure Subscriptions. The first payment of the monthly Infrastructure subscription fee is due as stated in the Order Form. Thereafter, the monthly Infrastructure subscription fee is due on the first of each month without the necessity of further invoices. Nonetheless we will send invoices for monthly Infrastructure subscriptions on or about the 15<sup>th</sup> of the prior month. (Ex. We will send invoices on January 15 for February’s subscription fee.) Clients with Opt-in pricing on their Order Form (as set forth on the Order Form) must enroll in Our ACH automatic withdrawal to pay the monthly Infrastructure subscription by completing Our authorization form with Your ACH banking information.

B. On Demand Services- Charges for On Demand Services such as Sandbox and SMS Text Messaging are based on usage for the prior month. Invoices will be sent by Exigo On Demand, LLC on the first of the month and payment processed the same day. You will be able to view charges as they are incurred by logging on to the Portal at [portal.exigo.com](http://portal.exigo.com). Clients with Opt-in pricing on their Order Form (as set forth on the Order Form) must enroll in Our ACH automatic withdrawal to pay the On Demand Services by completing Our authorization form with Your ACH banking information.

C. Custom Services shall be invoiced weekly and are due upon receipt by paying via the payment portal at [portal.exigo.com](http://portal.exigo.com).

7.3. Past Due Charges. If any charges are not received from You by the due date, then at Our discretion, (a) We may, beginning on the tenth day the charge is overdue, charge an administrative fee at 18% per annum for each occurrence, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 7.2 (Invoicing and Payment). Additionally, if You are past due on any invoices or charges due and owing to Us, We may place You on Support Hold wherein We will stop working on Change Requests and you will not be allowed to enter new Change Requests until all fees and charges are current.

7.4. Suspension of Access to the Infrastructure and Acceleration. If any amount owing by You under this or any other agreement for Our services is 15 or more days overdue, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and/or suspend Our services to You until such amounts are paid in full. We will give You at least 3 business days' prior notice that Your account is overdue, in accordance with Section 16.2 (Manner of Giving Notice), before suspending Your Access to the Infrastructure. In the event service is suspended, there will be a \$500.00 reconnection fee.

7.5. Taxes. Unless otherwise stated, You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with legally sufficient tax exemption certificates for each taxing authority. If at any time We do not collect Taxes at the time they are initially due, we reserve the right to retroactively bill You for the Taxes and You shall pay said Taxes.

## 8. PROPRIETARY RIGHTS

8.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Infrastructure, Custom Services, and/or On-Demand Services, including all related intellectual property rights. Except as expressly set forth herein, no rights are granted to You hereunder.

8.2. Restrictions. You shall not (i) permit any third party to access the Infrastructure, Custom Services, and/or On-Demand Services except as permitted herein or in an Order Form, (ii) create derivative works based on the Infrastructure, Custom Services, and/or On-Demand Services except as authorized herein, (iii) copy, frame, or mirror any part or content of the Infrastructure, Custom Services, and/or On-Demand Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer, disassemble, or decompile the Infrastructure, Custom Services, and/or On-Demand Services or apply any other

process to derive the source code of any software included in the Infrastructure, Custom Services, and/or On-Demand Services, or (v) access the Infrastructure, Custom Services, and/or On-Demand Services in order to (a) build a competitive product or service or to assist someone else in building a competitive product or service, or (b) copy any features, functions or graphics of the Infrastructure, Custom Services, and/or On-Demand Services.

8.3. **Your Applications and Code.** If You or a third party acting on Your behalf utilizes the Infrastructure, Custom Services, and/or On-Demand Services in creating applications or program code, You authorize Us to host, copy, transmit, display, and adapt such applications and program code, solely as necessary for Us to provide the Infrastructure, Custom Services, and/or On-Demand Services in accordance with this Agreement. Subject to the above, We acquire no right, title, or interest from You or Your licensors under this Agreement in or to such applications or program code, including any intellectual property rights therein.

8.4. **Your Data.** Subject to the limited rights granted by You hereunder, We acquire no right, title, or interest from You or Your licensors under this Agreement in or to Your Data, including any intellectual property rights therein.

8.5. **Suggestions.** We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Customers, relating to the operation of the Infrastructure, Custom Services, and/or On-Demand Services.

## 9. CONFIDENTIALITY

9.1. **Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally, in writing, or otherwise, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Infrastructure, Custom Services, and/or On-Demand Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

9.2. **Protection of Confidential Information.** The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but

in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Corporate Related Entities' employees, contractors and agents who need access for purposes consistent with this Agreement. Dissemination of information used as part of an aggregate of other data is not a violation of this Section 9, so long as it is not identifiable that information is about any single Client specifically. Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than its Corporate Related Entities and their legal counsel and accountants without the other party's prior written consent.

9.3. **Compelled Disclosure.** It is not a breach of this Section 9 (Confidentiality) if a Receiving Party discloses Confidential Information due to being compelled by law to do so. The Receiving Party shall give the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil or criminal proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

9.4. **Non-Disparagement.** Both parties expressly acknowledge, agree, and covenant, that either party will not make, or induce or assist others in making, whether directly or indirectly, any public or private statements, comments, or communications in any form, which in any way would constitute libel, defamation, slander, or disparagement of either party or its affiliates or any of their employees, officers, partners, members, and/or directors, or which may be considered to be derogatory or detrimental to the good name or business reputation of either party; provided, however, that the terms of this provision shall not apply to any truthful testimony provided under oath as part of a legal proceeding.

9.5 **Customer Name.** This Agreement allows Us to include Your name or logo in Our general listing of customers, website and in any other materials or presentations. The general listing will not include any details about specific projects.

## 10. WARRANTIES AND DISCLAIMERS

10.1. **Our Warranties.** We warrant that (i) We have validly entered into this Agreement and have the legal power to do so, (ii) the Infrastructure shall perform materially in accordance with the User Documentation, (iii) subject to Section 6.3 (Integration with Non-Exigo Applications), the functionality of the Infrastructure will not be materially decreased during a subscription term, and (iv) We will not transmit Malicious Code to You, provided it is not a breach of this subpart (v) if You or a Customer uploads a file containing Malicious Code into the Infrastructure and later

downloads that file containing Malicious Code. For any breach of a warranty above, Your exclusive remedy shall be as provided in Section 14.3 (Termination for Cause) and Section 14.4 (Refund or Payment upon Termination) below.

10.2. Your Warranties. You warrant that You have validly entered into this Agreement and have the legal power to do so.

10.3. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

10.4. Limited Release Services. From time to time We may invite You to try, at no charge, Our products or services that are not generally available to Our customers ("Limited Release Services"). You may accept or decline any such trial in Your sole discretion. Any Limited Release Services will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a similar description. Limited Release Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. LIMITED RELEASE SERVICES ARE NOT CONSIDERED "SERVICES" HEREUNDER AND ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY. We may discontinue Limited Release Services at any time in Our sole discretion and may never make them generally available.

## 11. INDEMNIFICATION

11.1. Indemnification by Us. We shall indemnify, defend, and hold You harmless against any claim, demand, suit, or proceeding made or brought against You by a third party alleging that the use of the Infrastructure as permitted hereunder infringes or misappropriates any patent, copyright, or other intellectual property right of a third party (a "Claim Against You"), and shall indemnify You for any losses, costs, damages, expenses, and liabilities, including court costs and reasonable legal fees, suffered or incurred by You in connection with any claim, demand, suit, or proceeding as a result of, and/or for amounts paid by You under a court-approved settlement of, a Claim Against You; provided that You (a) promptly give Us written notice of the Claim Against You upon Your obtaining knowledge of the Claim; (b) give Us sole control of the defense and settlement of the Claim Against You (provided that We may not settle any Claim Against You unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Our expense. In the event of a Claim Against You, or if We reasonably believe the Infrastructure may infringe or misappropriate, We may in Our discretion and at no cost to You (i) modify the Infrastructure so that they no longer infringe or misappropriate, without

breaching Our warranties under “Our Warranties” above, (ii) obtain a license for Your continued use of the Infrastructure in accordance with this Agreement, or (iii) terminate Your Customer subscriptions for such Infrastructure upon 30 days’ written notice and refund to You any prepaid fees covering the remainder of the term of such Customer subscriptions after the effective date of termination.

11.2. Indemnification by You. You shall defend Us against any claim, demand, suit or proceeding made or brought against Us by (1) a third party alleging that Your Data, or Your use of the Infrastructure in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, or (2) Your Customer or end user for any act or omission of You (a "Claim Against Us"), and shall indemnify Us for any damages, attorney’s fees and costs for any losses, costs, damages, expenses, and liabilities, including court costs and reasonable legal fees, suffered or incurred by Us in connection with any claim, demand, suit, or proceeding as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us; provided that We (a) promptly give You written notice of the Claim Against Us upon Our obtaining knowledge of the Claim; (b) give You sole control of the defense and settlement of the Claim Against Us (provided that You may not settle any Claim Against Us unless the settlement unconditionally releases Us of all liability); and (c) provide to You all reasonable assistance, at Your expense.

11.3. Exclusive Remedy. This Section 11 (Mutual Indemnification) states the indemnifying party’s sole liability to, and the indemnified party’s exclusive remedy against, the other party for any type of claim described in this Section.

## 12. NON-SOLICITATION

12.1. Non-Solicitation. You shall not solicit, hire or engage any employee of Ours or former employee within eighteen months of the employee’s departure from Exigo. The parties agree that Our employees represent a significant investment in recruitment and training, the loss of which would be detrimental to Our current and future business and profits. The parties further recognize that determining damages in the event of a breach of this provision is very difficult and therefore agree that if You breach this provision and hire or engage Our personnel covered hereunder, then You shall pay to Us damages for the breach (exclusive of any other remedy provided herein) of an amount equal to the greater of twelve times the last month of compensation paid to said personnel by Exigo or 70% of the annual compensation to be paid by You. This clause shall endure 2 years beyond the term of this Agreement.

## 13. LIMITATION OF LIABILITY

13.1. Exclusion of Consequential and Related Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF

PROFITS, GOODWILL, USE OR DATA) HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

#### 14. TERM AND TERMINATION

14.1. Term of Agreement. This Agreement commences on the date You accept it and continues until all Customer subscriptions granted in accordance with this Agreement have expired or been terminated.

14.2. All Your subscriptions shall automatically renew for additional periods equal to the shorter of the expiring subscription term or one year, unless either party gives notice of non-renewal at least 30 days before the end of the relevant subscription term. The pricing during any such renewal term shall be the same as that during the prior term unless We have given You written notice of a pricing increase at least 30 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.

14.3. Termination for Cause. A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

14.4. Refund or Payment upon Termination. Upon any termination for cause by You, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term or renewal term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.

14.5. Retention of Your Data. It is Your responsibility to retrieve Your Data and migrate same onto a successor system prior to termination. You have the ability to retrieve Your Data either through the API or the DB Sync. Thirty days after the effective date of termination of a subscription, We shall have no obligation to maintain or provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control. We do not retain commission detail older than seven years and will delete same after seven years. We do not retain unaccepted commission runs after 90 days and will delete same after 90 days.

14.6. Surviving Provisions. Section 7 (Fees and Payment), 8 (Proprietary Rights), 9 (Confidentiality), 10.3 (Disclaimer), 11 (Mutual Indemnification), 12 (Non-Solicitation), 13

(Limitation of Liability), 14.4 (Refund or Payment upon Termination), 14.5 (Retention of Your Data), 16 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction) and 17 (General Provisions) shall survive any termination or expiration of this Agreement.

## 15. ASSIGNMENT.

15.1. Assignment. You may not assign any of Your rights or obligations hereunder.

15.2. If You assign this Agreement in breach of this section, then We may elect to terminate this Agreement upon written notice to You. In the event of such a termination, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination.

## 16. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION

### 16.1. General.

16.1.1 Clients on Enterprise or Enterprise Plus Editions: You are contracting with Exigo Office, Inc. a corporation formed under the laws of the State of Texas with its principal office at 8130 John W. Carpenter Freeway, Dallas, Texas 75247.

16.1.2 Clients on Nano, Express or Standard Editions: You are contracting with Exigo Office, Inc. (VI) a corporation formed under the laws of the Territory of the United States Virgin Islands with its principal office at 53A Company St., Christiansted, VI 00820.

16.2. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to Us under this Agreement should be directed to Exigo Office, Inc., 8130 John W. Carpenter Freeway, Dallas, Texas 75247, attention Jay Boyer. Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator designated by You.

### 16.3. Agreement to Governing Law and Jurisdiction.

16.3.1 For Clients on Enterprise or Enterprise Plus Editions: Each party agrees that the laws of the State of Texas and controlling United States federal law shall govern this Agreement without regard to choice or conflicts of law rules. Each party agrees that Dallas County, Texas shall be the exclusive venue for any action or legal proceeding arising from or related to this Agreement. Each party consents to the jurisdiction of a state or federal court located in Dallas County, Texas for any action or legal proceeding arising from or related to this Agreement.



16.3.2 For Clients on Nano, Express or Standard Editions: Each party agrees that the laws of the Territory of the US Virgin Islands and controlling United States federal law shall govern this Agreement without regard to choice or conflicts of law rules. Each party agrees that the Territory of the United States Virgin Islands shall be the exclusive venue for any action or legal proceeding arising from or related to this Agreement. Each party consents to the jurisdiction of a territory or federal court located in St. Croix for any action or legal proceeding arising from or related to this Agreement.

## 17. GENERAL PROVISIONS

17.1. Import and Export Compliance. The Infrastructure, Custom Services, and/or On-Demand Services, other technology We make available, and derivatives thereof may be subject to import laws, export laws, and regulations of the United States and other jurisdictions, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country specific sanctions programs of the Office of Foreign Assets Control. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Customers to access or use the Infrastructure, Custom Services, and/or On-Demand Services in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

17.2. Anti-Corruption. You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Our Legal Department (jayb@exigo.com).

17.3. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

17.4. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

17.5. Waiver. No failure or delay by either party in exercising any right under this Agreement shall operate as a waiver of that right.

17.6. Severability. If any provision of this Agreement is held by a court to be invalid or unenforceable, the remaining provisions will remain in full force and effect. Any invalid or unenforceable provision shall be modified, if possible, by the court so as best to accomplish the objectives of the original provision to the fullest extent permitted by law. If such construction is not possible, then the invalid or unenforceable provision shall be severed from this Agreement, and the remaining provisions of this Agreement shall remain in effect.

17.7. Mediation. If a dispute arises out of or relates to this Agreement, or its breach, and the parties have not been successful in resolving such dispute through negotiation, the parties agree to attempt to resolve the dispute through mediation. If no agreement can be reached as to mediator, then the parties shall request that the American Arbitration Association (“AAA”) select a mediator. Each party shall bear its own expenses and an equal share of the mediator’s fees. The parties agree to attend mediation prior to filing any lawsuit arising out of or related to this Agreement, or its breach.

17.8. Attorney’s Fees. Should any lawsuit be commenced in connection with any dispute arising from this Agreement or collection of a judgment thereunder, then the prevailing party shall be entitled to recover reasonable attorney’s fees and costs incurred in connection with such dispute.

17.9. Waiver of Jury Trial. Each party hereby waives any right to jury trial in connection with any action or legal proceeding arising from or related to this Agreement.

17.10. Entire Agreement. This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

17.11. Modifications to the Agreement. We may modify this Agreement (including any Policies) at any time by posting a revised version on the customer login link at <http://exigo.com> or by otherwise notifying you in accordance with Section 16.2, but only as required to effectuate necessary administrative changes, comply with legal requirements, update technical specifications and limitations; and further provided that such modification does not materially alter the rights and duties of the parties under the Agreement. This Agreement also references the descriptions contained in the Exigo Office Features document, available at <http://exigo.com/features.pdf>, and the Exigo Freemium Services document, available at <http://exigo.com/freemiumservices.pdf>, both of which may be changed by Us provided; however, that no terms or conditions contained in the Exigo Office Features document or the Exigo Freemium Services document shall be binding upon You.