



## UNIFORM MASTER SUBSCRIPTION AGREEMENT

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

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 OR ON-DEMAND SERVICES.

This Agreement was last updated on October 5, 2021. It is effective between You and Us as of the date of You accepting this Agreement.

### 1. DEFINITIONS

- 1.1. **“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.
- 1.2. **“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.
- 1.3. **“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.
- 1.4. **“Eligible Credit Period”** means a single calendar month and refers to the monthly billing cycle in which the most recent Unavailable event for a claim under Section 2.4(a) – (d) occurred.
- 1.5. **“Infrastructure”** means the Service Level of Our Exigo Admin that is stated on Your Order Form, the API’s, SYNC SQL, software development kits (SDK’s), and access to the order development SDK. The standard Admin Features are set forth on Our webpage <https://www.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.
- 1.6. **“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 at Our discretion.



- 1.7. **“Malicious Code”** means time bombs, Trojan horses, viruses, worms, and other harmful or malicious code, agents, files, programs, or scripts.
- 1.8. **“Monthly Uptime Percentage”** is calculated by subtracting from 100% the percentage of 5-minute periods during the Service Month in which We were in the state of “Unavailable.” If You have been using Exigo for less than 30 days, Your Service Month is still the preceding 30 days but any days prior to Your use of the service will be deemed to have had 100% availability. Any downtime occurring prior to a successful Service Credit claim cannot be used for future claims. Monthly Uptime Percentage measurements exclude downtime resulting directly or indirectly from any Exigo SLA Exclusion (as defined in Section 2.4(d)).
- 1.9. **“Nodes in Tree”** means all Customer records that exist in the Customer table, regardless of whether the Customers are in one or more of the tree tables (i.e., Enroller/Unilever/Binary tables) and regardless of whether the Customer is a commission-earning customer type or not. The commission engine reviews all Customer records each time the engine runs and therefore, the existence of a Customer record means that the record will be processed when commissions are calculated.
- 1.10. **“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.
- 1.11. **“On-Demand Services”** means services for which charges are based on usage such as Sandboxes, credit card tokenization and storage, and SMS Text Messaging. On-Demand Services may change from time to time by either adding new services or deprecating existing 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 1114 King St., 2nd Floor, Christiansted, St. Croix, US Virgin Islands 00820.
- 1.12. **“Order”** means a request to purchase goods or services made by a Customer, including retail customers with whom You transact business, via the Infrastructure and includes both one time and recurring requests. Each request that generates a data record of the transaction is counted as one Order. Return and replacements orders are not included for the purposes of counting Orders in section 2.7(a) or 2.8.
- 1.13. **“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.
- 1.14. **“Service Credit”** means a dollar credit, calculated as set forth in Section 2.4(c), that We may credit back to Your account.
- 1.15. **“Service Month”** means the calendar month for the date of a claim under Section 2.4(a) – (d).



- 1.16. **“Unavailability”** means that the network to Our Infrastructure has no external network connectivity or http connectivity to APIs during a five-minute period and You are unable to use alternative method to connect to the network. This does not include a customization or third-party integration.
- 1.17. **“User Documentation”** means the online resource documents and training tutorials that may be available at <https://hub.exigo.com/>.
- 1.18. **“We,” “Us” or “Our”** means the Exigo Office, Inc. company described in Section 15 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).
- 1.19. **“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.
- 1.20. **“Your Data”** means all electronic data or information submitted or stored by You or Your Customers 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. USE OF THE INFRASTRUCTURE

- 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 new or additional functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features. The infrastructure provided hereunder is provided as a Platform as a Service (“PaaS”) offering. As such the hardware and software are accessed by You over the internet rather than located on Your premises. Platform updates, security patches and general maintenance of the infrastructure are performed by Us and included with Your subscription pricing.
- 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 <https://www.exigo.com/features.pdf> and incorporated herein by reference.
- 2.4. **Our Responsibilities.** We shall: (i) provide Our support for the features on the Exigo Office Suite Features document to You at no additional charge (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, pandemic, 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 Infrastructure and/or On-Demand Services only in accordance with applicable laws, and (iv) provide as soon as practicable (but no later than 48 hours) notification of any breach of Your Data.



a) Service Level Agreement

We will use commercially reasonable efforts to maintain network availability and http connectivity to APIs with a Monthly Uptime Percentage as stated in the chart below during the Service Month. In the event We do not meet the Monthly Uptime Percentage commitment, You will be eligible to receive a Service Credit as described below.

Service Level	Monthly Uptime Percentage	Monthly Allowed Unavailability
Nano	99.5%	3h 39m 8s
Express	99.5%	3h 39m 8s
Standard	99.5%	3h 39m 8s
Enterprise	99.99%	4m 22s
Enterprise Plus (i.e., Custom Service Level)	99.99%	4m 22s

b) Service Commitments and Service Credits

If Your Monthly Uptime Percentage drops below the Monthly Uptime Percentage for the Service Month, You are eligible to receive a Service Credit for 500% of the downtime. 500% credit means that for every hour of downtime you will receive 5 hours of credit.

We will apply any Service Credits only against future Infrastructure subscription charges otherwise due from You. Service Credits shall not entitle You to any refund or other payment from Us. Unless otherwise provided in the MSA, Your sole and exclusive remedy for any Unavailability or non-performance and/or other failure by Us to provide connectivity to the Infrastructure is the receipt of a Service Credit (if eligible) in accordance with the terms of this Section 2.4. To be eligible for a Service Credit You must be current on Your Monthly Subscription.

c) Credit Request and Payment Procedures

To receive a Service Credit, You must submit a request by sending an e-mail message to [accounting@exigo.com](mailto:accounting@exigo.com). To be eligible, the credit request must (i) include, in the body of the e-mail, the dates and times of each Unavailability that You claim to have experienced; and (ii) be received by Us within three (3) business days of the last reported incident in Your credit request. If the Monthly Uptime Percentage of such credit request is confirmed by Us and is less than the Monthly Uptime Percentage for the Service Month, then We will issue the Service Credit to You within one billing cycle following the month in which the request occurred. Your failure to provide the credit request and other information as required above will disqualify You from receiving a Service Credit.

d) Exigo SLA Exclusions

The Service Commitment does not apply to any Unavailability, suspension or termination of Exigo, or any other performance issues: (i) that result from a suspension described in Section 6.4(Suspension of Access to the Infrastructure and Acceleration); (ii) that result from pre-determined grey outs for system maintenance, upgrades and patches (which We shall schedule to the extent practicable after hours or during the weekend hours); (iii)



caused by factors outside of Our reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of Exigo; (iv) that result from any actions or inactions of You or any third party engaged by You or acting on Your behalf; (v) that result from Your equipment, software including custom programming or other technology and/or third party equipment, software including custom programming or other technology (other than third party equipment within our direct control); or (vi) that result from failures of individual instances not attributable to Unavailability; (collectively, the “Exigo SLA Exclusions”).

2.5. 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 and On-Demand Services (iv) use commercially reasonable efforts to prevent unauthorized access to or use of the Infrastructure and/or On-Demand Services, and notify Us promptly of any such unauthorized access or use, (v) use the Infrastructure and/or On-Demand Services only in accordance with the User Documentation, 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, and/or On-Demand Services. You shall not (a) make the Infrastructure and/or On-Demand Services available to anyone other than Customers, Your employees, or Your Integrators, (b) use the Infrastructure 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 and/or On-Demand Services to store or transmit Malicious Code, (d) interfere with or disrupt the integrity or performance of the Infrastructure and/or On-Demand Services or third-party data contained therein, or (e) attempt to gain unauthorized access to the Infrastructure and/or On-Demand Services or their related systems or networks.

a) The transmission, distribution, or storage of any data or material in violation of any applicable law or regulation is prohibited. This includes, but is not limited to, material or data which:

- (1) Infringes any copyright, trademark, trade secret, or other intellectual property right.
- (2) Violates export control laws or regulations.
- (3) Violates any party’s confidentiality rights.
- (4) Constitutes use or dissemination of child pornography.

b) You, Your Customers, Your employees and any third party working on Your behalf are prohibited from using the Infrastructure to engage in improper use or distribution of electronic mail (“e-mail”) and are strictly prohibited from using the Infrastructure to engage in any of the following activities:

- (1) Sending unsolicited mass or commercial e-mail (“spamming”) for any purpose whatsoever.



- (2) Having third parties send out commercial emails on any user's behalf. Using Our Infrastructure and/or facilities to receive replies from unsolicited emails (commonly referred to as "drop-box" accounts).
  - (3) Configuring any email server in such a way that it will accept third party emails for forwarding (commonly known as an "open mail relay"). If a site has roaming users who wish to use a common mail server, the mail server must be configured to require some form of user identification and authorization.
  - (4) Mass or commercial email may be sent via the Infrastructure only to recipients who have expressly requested receipt of such e-mails, by the sending of an email request to the person performing the mass or commercial mailings. This exchanging of requests, acknowledgements, and final confirmations (commonly referred to as a "double opt-in" process) must be adhered to in its entirety for any mass or commercial email to be considered "solicited".
  - (5) Users that send mass or commercial e-mail via the Infrastructure are required to maintain complete and accurate records of all e-mail subscription requests, specifically including the email and associated headers sent by every e-mail subscriber, and to immediately provide Us with such records upon request by Us. E-mail subscriptions that do not have a specific recipient generated email request associated with them are invalid and are strictly prohibited.
  - (6) We will allow the passing of email opt-in information as long as the subscribedate and subscribelp information that is passed is verifiable. We will randomly check this information and confirm the source. There cannot be any subscribelp in the Exigo database that is used more than 3 times.
  - (7) In the absence of positive, verifiable proof to the contrary, We consider complaints by recipients of e-mails to be de-facto proof that the recipient did not subscribe or otherwise request the e-mail(s) about which a complaint was generated.
  - (8) We will provide notice to You of violation(s) of any provisions of this policy with written notice, which notice can be provided via e-mail or USPS, with the desire that You cure the violation(s). Prior to suspension or termination, We will attempt to work with You to cure violations of this policy and ensure that there is no re-occurrence; however, We reserve the right to suspend or terminate Your account, after written notice, based on a first offense, if You are unable to resolve the violation with 3rd party providers as required by backbone providers, SPAM regulatory services, or as required by State or Federal Law.
- 2.6. Minimum Requirements for Infrastructure. The latest version of Internet Explorer or Chrome are required to properly utilize the admin interface of the Infrastructure.
- 2.7. 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. Additionally, service levels will have limitations on Orders per minute, calc per minute, and or concurrent users.

a) The following service levels have the corresponding capacity for daily API calls, Nodes in Tree, maximum number of Orders per month and per minute, maximum database size, and maximum in-memory commission size. Exceeding the API call or Nodes in Tree capacity may result in overage charges and/or diminished performance. Enterprise Plus is a custom service plan with performance metrics as stated on the Order Form.

Service Plan	Monthly Subscription	Daily API Hits Included	Max # Orders per Month	Max # Orders per Minute	Max Nodes in Tree	Max Database (GB)	Max In-Memory Comm (GB)	BI Database Sync
<b>Nano</b>	\$2,500	10,000	1,500	20	10,000	5	4	Shared 1 Core
<b>Express 1</b>	\$5,000	75,000	5,000	40	50,000	20	16	Shared 2 Cores
<b>Express 2</b>	\$7,950	125,000	7,500	50	100,000	30	20	Shared 4 Cores
<b>Standard</b>	\$10,950	200,000	15,000	75	200,000	50	32	1 Single-Thread Server
<b>Enterprise 1</b>	\$13,950	300,000	25,000	100	500,000	200	44	2 Multi-Thread Servers
<b>Enterprise 2</b>	\$15,950	400,000	50,000	200	750,000	300	56	4 Multi-Thread Servers
<b>Enterprise 3</b>	\$18,950	500,000	75,000	300	1,000,000	400	68	4 Multi-Thread Servers
<b>Enterprise 4</b>	\$21,950	600,000	100,000	400	1,250,000	500	80	4 Multi-Thread Servers
<b>Enterprise 5</b>	\$24,950	750,000	125,000	500	1,500,000	600	160	4 Multi-Thread Servers
<b>Enterprise 6</b>	\$27,950	1,000,000	150,000	600	1,750,000	700	192	4 Multi-Thread Servers



<b>Enterprise 7</b>	\$31,950	1,300,000	190,000	700	2,000,000	800	224	4 Multi-Thread Servers
<b>Enterprise 8</b>	\$35,950	1,600,000	230,000	800	2,250,000	900	256	4 Multi-Thread Servers
<b>Enterprise 9</b>	\$39,950	1,900,000	270,000	900	2,500,000	1 TB	288	4 Multi-Thread Servers
<b>Enterprise 10</b>	\$43,950	2,200,000	350,000	1,000	2,750,000	1 TB	384	6 Multi-Thread Servers

<b>Service Plan</b>	<b>Monthly Subscription</b>	<b>Daily API Hits Included</b>	<b>Max # Orders per Month</b>	<b>Max # Orders per Minute</b>	<b>Max Nodes in Tree</b>	<b>Max Database (GB)</b>	<b>Max In-Memory Comm (GB)</b>	<b>BI Database Sync</b>
<b>Enterprise 11</b>	\$47,950	2,400,000	400,000	1,100	3,000,000	1 TB	384	6 Multi-Thread Servers
<b>Enterprise 12</b>	\$51,950	2,600,000	450,000	1,200	3,250,000	1 TN	384	6 Multi-Thread Servers
<b>Enterprise 13</b>	\$54,950	2,800,000	500,000	1,300	3,500,000	1 TB	384	6 Multi-Thread Servers
<b>Enterprise 14</b>	\$57,950	3,000,000	550,000	1,400	3,750,000	1 TB	384	6 Multi-Thread Servers
<b>Enterprise 15</b>	\$60,950	3,200,000	600,000	1,500	4,000,000	1 TB	384	6 Multi-Thread Servers
<b>Enterprise 16</b>	\$63,950	3,400,000	650,000	1,600	4,250,000	1 TB	384	6 Multi-Thread Servers
<b>Enterprise 17</b>	\$66,950	3,600,000	700,000	1,700	4,500,000	1 TB	384	6 Multi-Thread Servers
<b>Enterprise 18</b>	\$69,950	3,800,000	800,000	1,800	5,000,000	1 TB	384	6 Multi-Thread Servers
<b>Enterprise 19</b>	\$72,950	3,900,000	900,000	1,900	5,250,000	1 TB	384	6 Multi-Thread Servers





<b>Enterprise 20</b>	\$75,950	4,000,000	1,000,000	2,000	5,500,000	1 TB	384	6 Multi-Thread Servers
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<b>Service Plan</b>	<b>Monthly Subscription</b>	<b>Daily API Hits Included</b>	<b>Max # Orders per Month</b>	<b>Max # Orders per Minute</b>	<b>Max Nodes in Tree</b>	<b>Max Database (GB)</b>	<b>Max In-Memory Comm (GB)</b>	<b>BI Database Sync</b>
<b>Enterprise 21</b>	\$78,950	4,100,000	1,100,000	2,100	5,750,000	1 TB	384	6 Multi-Thread Servers
<b>Enterprise 22</b>	\$81,950	4,200,000	1,200,000	2,200	6,000,000	1 TB	384	6 Multi-Thread Servers
<b>Enterprise 23</b>	\$84,950	4,300,000	1,300,000	2,300	6,250,000	1 TB	384	6 Multi-Thread Servers
<b>Enterprise 24</b>	\$87,950	4,400,000	1,400,000	2,400	6,500,000	1 TB	384	6 Multi-Thread Servers
<b>Enterprise 25</b>	\$90,950	4,500,000	1,500,000	2,500	6,750,000	1 TB	384	6 Multi-Thread Servers
<b>Enterprise 26</b>	\$93,950	4,600,000	1,600,000	2,600	7,000,000	1 TB	384	6 Multi-Thread Servers
<b>Enterprise 27</b>	\$96,950	4,700,000	1,700,000	2,700	7,250,000	1 TB	384	6 Multi-Thread Servers
<b>Enterprise 28</b>	\$99,950	4,800,000	1,800,000	2,800	7,500,000	1 TB	384	6 Multi-Thread Servers
<b>Enterprise 29</b>	\$102,950	4,900,000	1,900,000	2,900	7,750,000	1 TB	384	6 Multi-Thread Servers
<b>Enterprise 30</b>	\$105,950	5,000,000	2,000,000	3,000	8,000,000	1 TB	384	6 Multi-Thread Servers

2.8. Clients that exceed the maximum capacity for their service level as set forth in section 2.7(a) above for two calendar months may be automatically upgraded to the next service level. Clients that are upgraded to a higher service level will incur and be responsible for paying the then prevailing monthly subscription rate for that service level. Clients that are upgraded to a higher service level will also incur and be responsible for paying a one-time upgrade fee of \$5,000 plus the difference between the one-time fee paid by the Client and the prevailing one-time fee for the next service level.



- 2.9. Our direct competitors may not access the Infrastructure, except with Our prior written consent. Our direct competitors include, but are not limited to ByDesign, Data Paradigm, DirectScale, Epixel Solutions, Greystar Solutions, iCentirs, IDSTC, Infotrax, Jenkon, Multisoft Corporation, Naxum, Trinity, Xensoft, and Xirect.

### 3. DATA PROTECTION AND RETENTION POLICY

- 3.1. 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 8.3 (Compelled Disclosure) or as expressly permitted in writing by You. We use industry best practices and protocols to maintain Your data and back-up Your data. In the event of an emergency (fail over or other event requiring the shutdown of the primary database), 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.
- 3.2. Clients Doing Business in the European Union. Clients doing business in the European Union must comply with the General Data Protection Regulation (“GDPR”) promulgated by the European Parliament and of the Council and the Data Processing Agreement attached hereto and incorporated herein by reference. As a data processor We only process Your Data with Your consent, for only as long as directed by You, and at Your direction in accordance with the General Data Protection Regulation. Services or tasks requested by You of Us in furtherance of GDPR compliance shall be performed and billed at standard hourly rates.
- 3.3. Retention of Your Data. We retain transaction data including Orders, payments, and commissions paid during the entire term of your subscription. However, We also employ a varied data retention policy to better optimize the performance and cost overhead of customer data, see the Exigo Data Retention Policy at <https://www.exigo.com/dataretention.pdf> and incorporated herein by reference. It is Your responsibility to retrieve Your Data and migrate same onto a successor system prior to termination. You can retrieve Your Data either through the API or the SYNC SQL. 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.
- 3.4. California Consumer Privacy Act (“CCPA”). To the extent that laws require You to comply with requests from individuals to access, delete, modify, or restrict the processing of their Personal Information, We agree to provide any assistance that You deem reasonably necessary to fulfill such requests with regards to Your Data provided under the Agreement. Services or tasks requested by You of Us in furtherance of CCPA compliance shall be performed and billed at standard hourly rates.
- 3.5. Clients Doing Business in Canada, Columbia, Mexico and Elsewhere.
  - a) Clients doing business in Canada must comply with the Personal Information and Electronic Documents Act of Canada (PIPEDA) and We agree to comply with same.



- b) Clients doing business in Colombia must comply with Colombia's Statutory Laws regarding data protection and privacy, namely Colombia Statutory Law 1266 and 1581, and Decrees 1377, 866 and 90, and We agree to comply with same.
- c) Clients doing business in Mexico must comply with The Federal Law on the Protection of Personal Data held by Private Parties (enacted July 6, 2010) and the Regulations to the Federal Law on the Protection of Personal Data held by Private Parties (enacted December 22, 2011), and We agree to comply with same.
- d) Clients doing business in other countries may have specific data protection and privacy requirements to comply with. Where commercially reasonable We will endeavor to implement other data privacy, security, or consumer data protection requirements to comply with such laws and requirements. However, please note that it might not be feasible to comply with all data localization, data sovereignty, or data residency requirements. Should We have to implement new policies and/or procedures We will bill You according to Our standard hourly rates on a time and materials basis.

#### 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 User Documentation available at <https://hub.exigo.com/> which contains user manuals, how to instructions, and frequently asked questions. Any questions that cannot be answered from the User Documentation must be entered in the online ticketing system maintained by Us accessible via the Exigo Admin each ticket being 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 resources engaged 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 resources engaged within two business days.

**Category 4 (Urgent)** - Customer is unable to process transactions for Orders due to infrastructure failure. The incident will be responded to within one hour of the notification to Us 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. We will use 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 Exigo Admin 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, i.e. 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. NON-EXIGO PROVIDERS

- 5.1. 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.
- 5.2. 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.
- 5.3. 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.
- 5.4. 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.



- 5.5. 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 (“Microsoft”) 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:
- a) The Microsoft Software is neither sold nor distributed to You and You may use it solely as part of the Infrastructure;
  - b) You may not transfer or use the Microsoft Software outside the Infrastructure;
  - c) You may not remove, modify, or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Microsoft software;
  - d) You may not reverse engineer, decompile or disassemble the Microsoft Software, except to the extent expressly permitted by applicable law;
  - e) 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;
  - f) Microsoft is not responsible for providing any support in connection with the Infrastructure. Do not contact Microsoft for support; and
  - g) 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.
- 5.6. Using TokenEx, LLC. As a mandatory On-Demand Service, Exigo provides direct access to the credit card storage and tokenization services offered by TokenEx, LLC (“TokenEx”). Your Exigo system cannot connect directly to TokenEx without using the Exigo connection to TokenEx. To use the TokenEx services You agree to these additional terms and conditions:
- a) You shall be responsible for the accuracy, quality, and content of all your data used with TokenEx, and You shall use commercially reasonable efforts to prevent unauthorized access to or use of the services.
  - b) You agree to promptly notify TokenEx of any unauthorized access or use, and You agree to use the services in compliance with all applicable laws and government regulations.



(You agree not to make TokenEx's services available to any third party, or to sell, resell, rent, or lease the Services, unless pursuant to a separate negotiated agreement with TokenEx, or as a value-added service incorporated into Client's product offering, and then with prior notification to and prior written permission of TokenEx.

- c) You further agree not to use production data within the TokenEx test environment.
- d) You assume any and all risks incident to the disclosure by You (including any of Your employees, officers, or directors) of Your TokenEx Platform Credentials. You hereby release and hold TokenEx and Exigo On-Demand LLC harmless from any and all liability of any kind or character whatsoever, in any form or forum, and to the fullest extent available under applicable law, concerning, arising from or in any way related to damages that You may sustain following Your disclosure of TokenEx's Platform Credentials.

## 6. FEES AND PAYMENT

- 6.1. Fees. You shall pay all fees specified in all Order Forms hereunder. Fees are based on services purchased in an Order Form. Unless You terminate pursuant to 10.1 (Indemnification) or 13.3 (Termination for Cause), 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.
- 6.2. Invoicing and Payment. We will issue invoices on a regular basis. All payments from You to Us must be made via the Exigo Admin.
  - 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 15th 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) API Overages. If You exceed the maximum number of API calls for Your Service Level as stated in 2.7(a) then You will be billed for such API overages. API overages are billed on the first of the month for the prior month's overages. API overages are billed by Exigo Office, Inc. (VI).
  - c) On Demand Services- Charges for On Demand Services such as Sandbox, credit card tokenization and storage, and SMS Text Messaging are based on usage for the prior month. Invoices will be sent by Exigo On Demand, LLC by the seventh of the month and are due upon receipt. You will be able to view charges as they are incurred by logging on to Exigo Admin. 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.



- 6.3. **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 6.2 (Invoicing and Payment). Additionally, if You are past due on any invoices or charges due and owing to Us, We may inhibit Your ability to enter or update tickets for new custom programming until all fees and charges are current. In the case of an ACH payment being rejected for non-sufficient funds ("NSF"), We may attempt to process the charge again within 30 days. We may charge an additional \$25.00 fee for each attempt to process the charge which will be initiated as a separate transaction from the authorized recurring payment. Furthermore, if an ACH payment is returned, We will remove the ACH payment method and require payments to be made via wire transfer or certified funds.
- 6.4. **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 15.2 (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.
- 6.5. **Taxes.** 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.

## 7. PROPRIETARY RIGHTS

- 7.1. **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Infrastructure and/or On-Demand Services, including all related intellectual property rights. Except as expressly set forth herein, no rights are granted to You hereunder.
- 7.2. **Restrictions.** You shall not (i) permit any third party to access the Infrastructure and/or On-Demand Services except as permitted herein or in an Order Form, (ii) create derivative works based on the Infrastructure and/or On-Demand Services except as authorized herein, (iii) copy, frame, or mirror any part or content of the Infrastructure 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 and/or On-Demand Services or apply any other process to derive the source code of any software included in the Infrastructure and/or On-Demand Services, or (v) access the Infrastructure 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 and/or On-Demand Services.



- 7.3. Your Applications If You or a third party acting on Your behalf utilizes the Infrastructure 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 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.
- 7.4. 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.
- 7.5. 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 and/or On-Demand Services.

## 8. CONFIDENTIALITY

- 8.1. 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 and 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, compensation 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.
- 8.2. 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 commercially 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 8, 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.





- 8.3. **Compelled Disclosure.** It is not a breach of this Section 8 (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.
- 8.4. **Non-Disparagement.** Both parties expressly acknowledge, agree, and covenant, that neither party will 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.
- 8.5. **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.

## 9. WARRANTIES AND DISCLAIMERS

- 9.1. **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 5.3 (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 (iv) 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 13.3 (Termination for Cause) and Section 13.4 (Refund or Payment upon Termination) below.
- 9.2. **Your Warranties.** You warrant that You have validly entered into this Agreement and have the legal power to do so.
- 9.3. **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.
- 9.4. **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.

## 10. INDEMNIFICATION

- 10.1. 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 or On-Demand Services as permitted hereunder infringes or misappropriates any patent, copyright, or other intellectual property right of a third party or violates applicable law (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 without your express written consent unless the settlement unconditionally releases You of all liability and does not impose any obligations or require any affirmative action on Your part); 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.
- 10.2. 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 any patent, copyright, or other 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 without Our express written consent unless the settlement unconditionally releases Us of all liability and does not impose any obligations or require any affirmative action on Our part); and (c) provide to You all reasonable assistance, at Your expense.



10.3. Exclusive Remedy. This Section 10 (Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of third-party claim described in this Section.

## 11. NON-SOLICITATION

11.1. 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.

## 12. LIMITATION OF LIABILITY

12.1. 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.

## 13. TERM AND TERMINATION

13.1. 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.

13.2. All Your subscriptions shall automatically renew for additional periods equal to the shorter of the expiring subscription term or two years, 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.

13.3. 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 30-day period, (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, or (iii) any breach of warranty by Us as stated in Section 9.1 (Our Warranties).



- 13.4. 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.
- 13.5. Surviving Provisions. 3.3 (Retention of Your Data), Section 6 (Fees and Payment), 7 (Proprietary Rights), 8 (Confidentiality), 9.3 (Disclaimer), 10 (Indemnification), 11 (Non-Solicitation), 12 (Limitation of Liability), 13.4 (Refund or Payment upon Termination), 16 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction) and 16 (General Provisions) shall survive any termination or expiration of this Agreement.

#### **14. ASSIGNMENT**

- 14.1. Assignment. You may not assign any of Your rights or obligations hereunder.
- 14.2. If You assign this Agreement in breach of this section, then We may elect to terminate this Agreement upon written notice to You.

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

##### **15.1. General.**

- 15.1.1. For Infrastructure: 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 1114 King St., 2nd Floor, Christiansted, St. Croix, US Virgin Islands 00820.
- 15.1.2. For On-Demand Services: You are contracting with 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 1114 King Street, 2nd Floor, Christiansted St. Croix, US Virgin Islands 00820.

##### **15.2. 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. Notices to Us under this Agreement should be directed to Exigo Office, Inc. (VI), 1114 King St., 2nd Floor, Christiansted St. Croix, US Virgin Islands 00820, attention Legal Department. 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.

##### **15.3. Agreement to Governing Law and Jurisdiction.**

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 exclusive jurisdiction of a territory or federal court located in St. Croix for any action or legal proceeding arising from or related to this Agreement.

## 16. GENERAL PROVISIONS

- 16.1. Import and Export Compliance. The Infrastructure, On-Demand Services, and 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 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.
- 16.2. Anti-Corruption. Neither You nor Us have received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from the other or its 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). If We learn of any violation of the above restriction, We will use reasonable efforts to promptly notify Your Legal Department or other designated contact.
- 16.3. 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.
- 16.4. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.
- 16.5. Waiver. No failure or delay by either party in exercising any right under this Agreement shall operate as a waiver of that right.
- 16.6. 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.
- 16.7. 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.



- 16.8. 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.
- 16.9. 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.
- 16.10. 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.
- 16.11. 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 <https://www.exigo.com/> or by otherwise notifying you in accordance with Section 15.2 (Manner of Giving Notice), 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 <https://www.exigo.com/features.pdf> which may be changed by Us provided; however, that no terms or conditions contained in the Exigo Office Features document shall be binding upon You.



## DATA PROCESSING AGREEMENT

This data processing agreement (“DPA”) is entered into as of the Effective Date.

### BACKGROUND

You and We are party to the following agreement (“Agreement”) under which We provide certain services to You that involve the processing of Your Data (as defined below):

<b>Agreement Title</b>	Subscription Order Form
<b>Agreement Date</b>	The Effective Date as stated on Your Order Form

In accordance with the Data Protection Legislation (as defined below), You and We have entered into this DPA.

### AGREED TERMS

#### 1. Definitions and Interpretation

- 1.1. The definitions and rules of interpretation in this Clause 1 apply in this DPA (unless the context requires otherwise).
- 1.2. For the purposes of this DPA:

“**Data Protection Legislation**” means the Data Protection Acts 1988 and 2003, the Data Protection Directive (95/46/EC), the General Data Protection Regulation (EU) 2016/679 (the “GDPR”), the ePrivacy Directive 2002/58/EC and all applicable laws and regulations relating to the processing of personal data, including, where applicable, the guidance and codes of practice issued by the Data Protection Commissioner, the Article 29 Working Party and, to the extent required by You, other supervisory authorities;

“**Data Protection Liabilities**”, means all liability, costs, claims, damages, loss, or expense incurred by You or for which You may become liable including: (i) costs associated with civil claims in favour of a data subject; (ii) administrative fines imposed by a supervisory authority; and (iii) any costs associated with any audit or inspection conducted by a supervisory authority;

“**Your Data**”, means the personal data disclosed or supplied by You to Us or otherwise acquired or generated by Us on Your behalf in relation to the provision of the Services;

“**Security Breach**”, means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Your Data;

“**Services**”, means shall mean the services provided by Us to You in the manner contemplated by and in accordance with the terms of the Agreement;



**“Standard Contractual Clauses,”** mean the standard contractual clauses annexed to the EU Commission Decision 2010/87/EU of 5 February 2010 for the Transfer of Personal Data to Processors established in Third Countries under Directive 95/46/EC, as may be updated by that commission from time to time;

**“Sub-Processor,”** means any sub-processor engaged by Us, or any further tier of sub-processor (as the case may be) to provide some or all of the Services.

**“We,” “Us” or “Our”** means Exigo Office, Inc. dba Exigo VI E Cell.

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

**“Controller,” “Data Subject,” “Personal Data,” “Processing,” “Processor,” and “Supervisory Authority,”** shall have the meanings given to those terms in the GDPR.

- 1.3. A reference to this DPA includes its schedules.
- 1.4. Words in the singular include the plural and vice versa.
- 1.5. Any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed without limitation.
- 1.6. Clause, schedule, or other headings in this DPA are included for convenience only and shall have no effect on the interpretation of this DPA.
- 1.7. A reference to any statute, statutory provision, rule, regulation, or any requirement shall be construed as including references to it as modified, consolidated, re-enacted, superseded or replaced from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8. A reference to any regulator or regulatory board shall include a reference to any replacement or successor bodies from time to time.
- 1.9. In the case of conflict or ambiguity between:
  - 1.9.1. the terms of this DPA and the terms of the Agreement, with respect to the subject matter of this DPA, the terms of this DPA shall prevail; and
  - 1.9.2. the terms of any provision contained in the main body of this DPA and, to the extent applicable, the terms of any Standard Contractual Clauses entered into between the parties, the provisions of the Standard Contractual Clauses shall prevail.

## 2. Status

- 2.1. In respect of any of Your Data processed by Us under this DPA, the parties acknowledge that You shall be the controller and We shall be a processor. We will not process Your Data in a way that is incompatible with this DPA.





2.2. The subject matter, the nature and purpose of the processing of Your Data and the duration of processing of Your Data are determined by and in the Agreement.

### 3. Data Protection Obligations

3.1. To the extent that the provision of the Services by Us involves the processing of Your Data, We warrant, represent, and agree that:

3.1.1. We shall process Your Data solely in accordance with the documented instructions of You (unless We are required to process Your Data by applicable European Union or European Union member state law to which We are subject and in such a case, We shall notify You of that legal requirement before such transfer or access occurs or is permitted, unless that law prohibits such notification on important grounds of public interest);

3.1.2. We comply and shall continue to comply with Our obligations under the Data Protection Legislation and the provisions of this DPA, and We will not do, or permit anything to be done, which might cause You to be in breach of the Data Protection Legislation;

3.1.3. We shall process Your Data exclusively for the provision of the Services but for no other purposes whatsoever;

3.1.4. Your Data is confidential in nature and, unless otherwise directed by You, We shall ensure that:

a) each of Our employees and/or agents engaged in processing Your Data are informed of the confidential nature of Your Data and are subject to contractual obligations of confidentiality;

b) all Our employees and/or agents have undertaken training in the handling of personal data in accordance with the Data Protection Legislation and are made aware of Our duties and obligations under such laws and, to the extent applicable, this DPA;

c) neither We nor any of Our employees or agents shall publish, disclose, or divulge Your Data to any third party unless otherwise required by the Agreement, this DPA, or as directed in writing to do so by You; and

d) access to Your Data is limited to those employees, agents and Sub-Processors who need access to Your Data to allow Us to fulfil Our obligations under this DPA on similar terms to those set out in this DPA and, in the case of any access to Your Data by any employee, agent or Sub-Processor, ensure such access is limited to such part or parts of Your Data as is strictly necessary for performance of the employee's, agent's, or Sub-Processor's duties;

3.1.5. We shall promptly cooperate as requested by You from time to time to enable You to comply with any exercise of rights by a data subject under the Data Protection Legislation in respect of personal data processed by Us under this DPA;



- 3.1.6. We shall assist You in a timely manner where You conduct a data protection impact assessment or engages in a process of prior consultation with a supervisory authority following the outcome of a data protection impact assessment;
- 3.1.7. We shall assist You in a timely manner in notifying a Security Breach to a supervisory authority and/or data subjects;
- 3.1.8. We shall assist You in taking any actions deemed necessary or appropriate to deal with complaints or allegations of or in connection with a failure to comply with the Data Processing Legislation; and
- 3.1.9. We shall (and shall procure that its Sub-Processors and agents shall) immediately (and in any event within 24 hours) notify You about:
  - a) any legally binding request for disclosure of Your Data by a law enforcement or other applicable authority unless otherwise prohibited by applicable law; and
  - b) any request received directly from a data subject without responding to that request unless they have been otherwise authorized by You to do so.

#### **4. Security**

- 4.1. We shall implement appropriate technical and organizational measures to ensure a level of security of Your Data appropriate to the risk in particular against unauthorized or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure of, or access to Your Data (“Security Measures”).
- 4.2. We shall ensure that We at all times comply with the Security Measures and shall not implement any proposed changes to the Security Measures which would adversely affect the security of Your Data unless previously agreed in writing by You.
- 4.3. We shall, and shall procure that its Sub-Processors shall, notify You promptly (and in any event within 48 hours) of any actual, anticipated, or suspected Security Breach.
- 4.4. In the event that Your Data is corrupted or lost or sufficiently degraded as to be unusable, You shall have the option to require Us to restore or procure the restoration of Your Data to Your satisfaction.

#### **5. International Transfers**

- 5.1. You and We agree to sign a copy of the Standard Contractual Clauses in conjunction with executing this DPA as necessary to ensure compliance for international data transfers with the Data Protection Legislation.
- 5.2. In the event that the legal mechanism used to transfer Your Data outside the EU is held by a court of competent jurisdiction to be an invalid basis for the transfer of personal data outside of the EU, the parties agree that:



- 5.2.1. None of Your Data shall be transferred outside of the EU until an appropriate legal basis for transfer is effected by the parties; and
- 5.2.2. the parties will take all reasonable steps to put in place a mechanism for international data transfers in compliance with Data Protection Legislation.

## **6. Appointment of Sub-Processors**

- 6.1. We shall not subcontract any of Our processing obligations under this DPA without Your prior written consent. For the purposes of this DPA, You hereby authorize Us to use the Sub-Processors listed in Schedule 1.
- 6.2. Where We appoint a Sub-Processor in accordance with clause 6.1, We shall ensure that each Sub-Processor's contract:
  - 6.2.1. is on terms that are consistent with and at least as onerous as those set out in this DPA;
  - 6.2.2. is terminated immediately on termination of this DPA for any reason; and
  - 6.2.3. to the extent applicable, flows down the same obligations as are applicable to Us (and Our Sub-Processors) as set out in any of EU standard contractual clauses which may be entered into between You and Us.
- 6.3. We shall at all times remain liable for the acts and omissions of any Sub-Processor as if such acts and omissions were those of Us.

## **7. Audits**

- 7.1. We shall promptly provide all information (including details of the Security Measures implemented by Exigo) requested by You in respect of Our processing Your Data.
- 7.2. We shall permit You and Your third-party representatives, on reasonable notice by You, during normal business hours (but without notice in the event of any actual or suspected Security Breach or breach of this DPA or Data Protection Legislation) the right of access to any of Our premises, systems, personnel, records, facilities and equipment which contain, relate to or otherwise store Your Data for the purpose of determining whether We are complying with Our obligations under this DPA and under Data Protection Legislation.
- 7.3. Any information obtained by You in connection with or in the course of any such audit and any written description of the security technical and organizational measures shall, without prejudice in any way to Your legal rights and remedies in the circumstances, be maintained by You in confidence, shall be used solely for the purposes of determining whether We are complying with Our obligations under this DPA and under Data Protection Legislation and shall not be used or disclosed for any other purpose save that such information may be shared with a supervisory authority without such obligations of confidentiality or restrictions on use applying.

## **8. Liability**



- 8.1. We shall indemnify You from and against any and all Data Protection Liabilities incurred by You arising out of or in connection with a breach by Us (or Our employees, agents, and Sub-Processors) of Our data protection obligations under this DPA or under Data Protection Legislation.
- 8.2. We shall take out and maintain insurance in an amount no less than \$2,000,000USD and produce the policy upon request.

## 9. Term and Termination

- 9.1. This DPA shall be effective as and from the Effective Date and shall remain in force until such time as the Agreement is terminated.
- 9.2. Following termination of this DPA, We shall immediately return all Your Data to You and subsequently shall promptly securely destroy all Your Data unless European Union or European Union member state law applicable to Us requires further storage of Your Data. We shall certify to You that no copies have been made or retained and, to the extent applicable, that any deletion has been effected permanently.

## 10. General

- 10.1. No failure or delay by a party to exercise any right or remedy provided under this DPA or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 10.2. This DPA, together with the Agreement and any documents referred therein, represents the entire agreement between the parties with respect to its subject matter. Each party confirms that it has not relied upon any representations not recorded in this document inducing it to enter into this DPA. No variation of these terms and conditions will be valid unless confirmed in writing by authorized signatories of each of the parties on or after the date of this DPA.
- 10.3. No variation of this DPA shall be effective unless it is in writing and signed by the parties (or their authorized representatives).
- 10.4. If any provision or part-provision of this DPA is or becomes invalid, illegal, or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid, and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision. If such amendment is not possible, the relevant provision or part-provision shall be deemed deleted. Any amendment to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this DPA.
- 10.5. Nothing in this DPA is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor authorize any party to make or enter into any commitments for or on behalf of any other party except as expressly provided herein.



10.6. This DPA may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. Transmission of an executed counterpart of this DPA by email (in PDF, JPEG, or other agreed format) shall take effect as delivery of an executed counterpart of this DPA.

**LIST OF SUB-PROCESSORS**

<b>SUB-PROCESSOR</b>	<b>FUNCTION</b>	<b>LOCATION</b>
Exigo Office, Inc. d/b/a Exigo Professional Services	Custom development and testing.	1600 Viceroy Drive Suite 125 Dallas, TX 75235