

# EXACOM, INC.

## END-USER LICENSE AGREEMENT (EULA)

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### 1.0 Introduction

#### 1.1 Purpose of the Agreement

This End-User License Agreement (“EULA”) is a legal agreement between the End-User (“End-User,” or “you”) and Exacom, Inc. (“Exacom”), and governs your access to and use of all HINDSIGHT™ Software Products.

#### 1.2 Access and Use of Software Products

The Software Products can be accessed and used in one of the following ways:

- Deployment of Software Products on Exacom Hardware (“On-Prem Access”).
- Deployment of Software Products on hardware owned by the End-User or a third-party (“VM Access”).
- Software Products hosted in a cloud environment that can be remotely accessed by End-Users (“Cloud-Based Access”).

This EULA governs your use and access to Software Products regardless of the manner in which it is accessed and used.

#### 1.3 Acceptance of Terms

By installing, copying, using, or authorizing employees or agents to use the Software Product, the End-User agrees to be bound by the terms of this EULA. No other use of the Software Product is authorized by this EULA.

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### 2.0 Definitions

**Data Breach** - An incident where there is unauthorized or unlawful Processing of Personal Data within the possession, custody, or control of Exacom that End-User provides to Exacom, that Exacom acquires or receives from End-User, or that Exacom creates for or on behalf of the End-User under this EULA.

**EARS™ brand** - Hardware or Software Products sold under the EARS™ brand name, subject to special terms under this EULA (see Section 4.4 and others herein).

**Effective Date** - The term of this EULA commences when you download, install, or use the Software Product and will continue until terminated pursuant to this EULA.

**End-User Data** – Any information, data, and other content, in any form or medium, collected, downloaded, or otherwise received, directly or indirectly, from the End-User by or through the Software Product or related services.

**Exacom Materials** - Any information, data, documents, or other materials or content that Exacom provides or makes available to the End-User in connection with the Software product or related services.

**Exacom Quotation** - The written or electronic proposal issued by Exacom that outlines the specific Software Product(s), Exacom Hardware, pricing, and any territorial limitations between Exacom and the entity or person acquiring a license for the Software Product from Exacom (the “Customer”).

**Exacom Hardware** - All tangible computing platforms, components (e.g., analog/digital line cards), and related equipment supplied to the End-User by Exacom in connection with the Exacom Quotation.

**Personal Data** – Any information that identifies or is reasonably identifiable of an individual.

**Process** - To take any action or perform any operation or set of operations upon Personal Data or End-User Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restricting, erasure, deletion, or destruction. “Processing” and “Processed” have correlative meanings.

**Service and Support** - Maintenance and support services offerings made available to the End-User by Exacom in connection with the Software Product.

**Software Product** - Any and all software items bearing or offered in connection with the HINDSIGHT™ brand name, including:

- Machine-executable object code versions of any user-loadable programs;
- Microcode (firmware) embedded in Hardware;
- Protocols furnished to facilitate communication between Hardware and external servers; and
- All documentation related to the function or use of the foregoing items.

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## 3.0 Grant of License

### 3.1 License Grant and Scope

Subject to the terms and conditions of this EULA, Exacom grants the End-User a non-exclusive, non-transferable (except as expressly allowed in this EULA) limited license to access and use the applicable Software Product strictly for Non-Commercial Use and the purposes identified in the Exacom Quotation and within any territorial limitations indicated in that Quotation. “Non-Commercial Use” means personal use and use for internal business purposes. The license granted is not transferable to any other party without prior written consent of Exacom. The End-User shall have no right to rent, lease, lend, sell, assign, distribute, publish, transfer, sublicense, or otherwise make the Software Product, in whole or in part, available to any third party, for any reason.

### 3.2 License Key or Activation

Any license keys or activation processes provided by Exacom to enable use of the Software Product may only be used by the End-User for the authorized installations and may not be shared or otherwise distributed without Exacom’s written consent.

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## 4.0 Prohibited Uses

### 4.1 Prohibited Uses

- **Reverse Engineering:** The End-User may not reverse-engineer, decompile, disassemble, decode, adapt, modify, or otherwise attempt to derive human-readable form of any Software Product component that is not already provided in human-comprehensible form.
- **Bypass or Breach:** The End-User may not bypass or breach any security device or protection used by the Software Product or Exacom Materials or access or use the Software Product or Exacom Materials other than through the use of his or her own then-valid access credentials.
- **Copying:** The End-User may not make a copy of the Software Product other than a single copy of any tangible medium provided by Exacom for archival purposes.
- **Rent:** The End-User may not rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software Product or Exacom Materials to any third party, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service.
- **Modifications or Derivative Works:** The End-User may not modify, create derivative works, or improvements based on the Software Product without Exacom’s prior written consent.
- **Unlawful use:** The End-User will not use the Software Product in any unlawful manner, for any unlawful purpose, or in any manner that violates any law or is inconsistent with this EULA.
- **Virus:** The End-User will not transmit or propagate any virus, Trojan horse, worm, bomb, corrupted file and/or similar destructive or corrupted data in relation to the Software Product or any Exacom Materials, and/or organize, participate in or be involved in any way in an attack on the Software Product.
- **Infringement:** The End-User will not infringe Exacom’s intellectual property rights or those of any third party in relation to its use of the Software Product.
- **On-Prem Access:** When End-Users’ access and use of the Software Product is through On-Prem Access, the End-User may not use the Software Product in functional cooperation with hardware other than Exacom Hardware or in functional cooperation with software other than the Software Product without first obtaining the written consent of Exacom (such consent not to be unreasonably withheld).
- **VM Access:** When End-Users’ access and use of the Software Product is through VM Access, the End-User must adhere to the system resource requirements identified by Exacom. Failure to do so, or operation of the Software Products in any other environment, without the prior consent of Exacom, shall void all warranties in this EULA.

Exacom may suspend, temporarily or permanently terminate, deny, discontinue or restrict End-Users’ access to and use of all or any of the Software Product for any breach by End-User of this section 4.1.

### 4.2 Hardware Restrictions

- If End-Users' access to and use of the Software Product is through On-Prem Access, the End-User may not use the Software Product with non-Exacom hardware or third-party software without obtaining Exacom's prior written consent.
- If End-Users access to and use of the Software Product is through VM Access, the End-User must adhere to Exacom's documented system resource requirements. Operation outside these requirements or on non-approved environments voids warranties under this EULA.

#### **4.3 EARS™-Brand Limitations**

For EARS™-brand Hardware or Software Products, the term of this EULA is limited to one year. Exacom Service and Support for EARS™-brand products is only available on an exception basis.

#### **4.4 Compliance with Laws and Regulations**

The End-User agrees to comply with all applicable laws, regulations, and third-party terms of use related to the Software Product.

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### **5.0 Intellectual Property Rights**

#### **5.1 Ownership of Software**

The Software Product is licensed, and not sold to you. Exacom retains all rights, title, and interest, including all intellectual property rights (copyright, trade secrets, etc.), in and to the Software Product and Exacom Hardware. The Exacom name, logo, and all product and service names (including HINDSIGHT™ and EARS™) are the property of Exacom, and you do not acquire any ownership interest in the Software Product or Exacom Hardware other than the right or license to use the Software Product and Exacom Hardware in accordance with the license granted, and subject to all terms, conditions, and restrictions under this EULA. Exacom reserves all rights not expressly granted to you under this EULA.

#### **5.2 Trademarks and Branding**

Any use of Exacom's trademarks, service marks, or branding must be in accordance with Exacom's guidelines and only as required to identify the Software Product. You may not remove, delete, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices included in the Software Product or any Exacom Materials, including any copy thereof.

#### **5.3 Feedback and Contributions**

Any suggestions, improvements, or feedback provided by the End-User shall be deemed non-confidential and may be used by Exacom without obligation or limitation.

#### **5.4 Use with Third Party Products**

The Software Product may include or provide access to products, content, materials, or services that do not originate from or are not owned or maintained by Exacom, the access or use of which is at your own risk and subject to terms that may differ from and/or be in addition to those contained in this EULA. You are responsible for complying with any third-party provider terms, including applicable privacy policies and data processing agreements. Exacom does not provide support or guarantee ongoing integration support for products that are not owned or provided by Exacom. Exacom does not provide any warranties or make representations to you with respect to any third party products.

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### **6.0 Maintenance, Updates, and Upgrades**

#### **6.1 Maintenance Obligations**

Exacom shall provide Service and Support services as agreed between Exacom and Customer in the Exacom Quotation.

#### **6.2 Updates (Patches, Bug Fixes)**

Exacom may provide updates to the Software Product (e.g., patches, bug fixes, minor enhancements) as part of any ongoing maintenance and support agreement. Such software updates do not include new features or major version upgrades unless otherwise stated.

#### **6.3 Upgrades and New Versions**

Major upgrades or new functionalities may be subject to additional fees unless specifically covered under an applicable Service and Support plan.

## **6.4 Changes to Functionality**

Exacom reserves the right to modify or discontinue features of the Software Product at its discretion. Such modifications will be communicated through release notes, documentation, or other notifications.

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## **7.0 Fees and Payment (If Applicable)**

### **7.1 License Fees**

License fees and related costs will be as stated in the Exacom Quotation, invoice, or other purchase documentation.

### **7.2 Payment Terms**

All payments must be made according to the terms stated in the Exacom Quotation or invoice. Failure to pay may result in suspension or termination of license rights under this EULA.

### **7.3 Taxes and Other Charges**

All fees are exclusive of any applicable taxes.

### **7.4 Refunds and Cancellation**

Unless otherwise agreed, no refunds shall be granted after the Effective Date once the Software Product has been delivered, installed, or otherwise made available for use.

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## **8.0 User Obligations and Responsibilities**

### **8.1 Account Creation and Security**

If access credentials or accounts are provided, the End-User is responsible for maintaining the confidentiality and security of those credentials. The End-User shall immediately notify Exacom in the event any such credentials are compromised.

### **8.2 Accurate Information**

The End-User agrees to provide Exacom with accurate information necessary for delivery, support, and billing.

### **8.3 Compliance with Third-Party Terms**

If the Software Product interfaces with third-party software, content, data, and/or other services or materials, the End-User is responsible for complying with all applicable terms or licenses. You acknowledge and agree that Exacom is not responsible for such third-party services, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality, or any other aspect thereof. Exacom does not provide any warranties or make representations to you with respect to any such third-party services and will not have any liability or responsibility to you or any other person or entity for any such third-party services. You understand that your access and use of such third-party services is entirely at your own risk and subject to such third parties' terms and conditions.

### **8.4 Notification Obligations**

The End-User must notify Exacom promptly if it becomes aware of any unauthorized use of Software Product, theft or destruction of Exacom Hardware, or any breach of this EULA.

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## **9.0 Confidentiality**

### **9.1 Definition of Confidential Information**

The Software Product and Exacom Materials, including all underlying technology, code, and documentation, contains confidential and proprietary information of Exacom.

## 9.2 Confidentiality Obligations

The End-User agrees to use reasonable precautions, no less than it uses to protect its own confidential information, to prevent disclosure of any of the confidential and proprietary information of Exacom, the Software Products, and Exacom Materials to a third party. The End-User further agrees to (a) limit access to such confidential and proprietary information to its employees and agents having a genuine business need to access such information for purposes consistent with this EULA and the Exacom Quotation; and (b) have been informed of the confidential nature of the confidential information and are bound by confidentiality and restricted use obligations at least as protective of Exacom's confidential information as this Section 9.

## 9.3 Exceptions to Confidentiality

These obligations do not apply to information that (a) is or becomes publicly available without breach of this EULA, (b) was already in the End-User's possession without restriction, or (c) is lawfully obtained from a third party with no obligation of confidentiality.

## 9.4 Handling of Confidential Information Upon Termination

Upon termination of this EULA, the End-User will cease use and promptly destroy, delete, or return all of Exacom's confidential information, including the Software Product, Exacom Materials and other related documentation, unless otherwise agreed in writing.

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## 10.0 Privacy and Data Collection

### 10.1 Data Collection Practices

In order to access and use the Software Product, you may be required to provide certain information to Exacom. End-User agrees and understands that all such information provided to Exacom may be used and Processed by Exacom in accordance with Exacom's Privacy Policy, which can be found here: [insert link](#), and End-User consents to any actions taken by Exacom with respect to End-User's information in accordance with the Privacy Policy.

### 10.2 Use of Personal Data

If you use the Software Product to Process Personal Data, you are responsible for ensuring compliance with relevant data protection laws. To the extent your use of the Software Product requires it, you are responsible for providing notice to, and obtaining consents from, individuals regarding the Processing of their Personal Information through your use of the Software Product.

### 10.3 Data Protection and Security Measures

The End-User is responsible for implementing appropriate security measures to protect data within its environment.

Exacom shall implement commercially reasonable security measures designed to protect the confidentiality, security and availability of End-User Personal Data within the possession, custody, or control of Exacom. However, the End-User remains responsible for maintaining secure access credentials and complying with any Exacom security guidelines to ensure data integrity.

### 10.4 Third-Party Service Providers

If Exacom uses third-party services to Process End-User Personal Data, Exacom shall use contractual or other means to obligate such third-party service providers to implement reasonable measures designed to protect the confidentiality, security and availability of such End-User Personal Data.

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## 11.0 Warranties and Disclaimers

### 11.1 Software Warranty

Exacom warrants that for one year from the Effective Date (and for additional one-year periods if the End-User timely purchases an Exacom Service and Support plan such as ExaCare™ Essentials or ExaCare™ Gold):

- The Software Product, when accessed and used through On-Prem Access, that Exacom Hardware will be fully operable, materially meet all applicable specifications, and function in all material respects, in conformity with this EULA and the documentation.
- The Software Product, when accessed and used through VM Access, will be fully operable, materially meet all applicable specifications, and function in all material respects, in conformity with this EULA and the documentation.

- Any media on which any item of the Software Product is delivered will be free of any damage or defect in design, material or workmanship, and will remain so under ordinary use as contemplated by this EULA.

## **11.2 Exacom Hardware Warranty**

Exacom warrants that for one year from the Effective Date (extendable for up to five additional one-year periods with timely purchase of Service and Support), all tangible Exacom Hardware is free from defects in materials and workmanship when used under normal conditions and consistent with Software Product documentation. Exacom Hardware warranties beyond six years may require a hardware refresh from Exacom. The Exacom Hardware warranty may extend beyond the sixth year after the Effective Date only if the End-User purchases from Exacom a refresh of the applicable Exacom Hardware. End-Users which purchase a refresh of Exacom Hardware shall be eligible to purchase up to additional one-year periods of Exacom Service and Support.

## **11.3 Exclusions and Warranty Voiding**

- The Hardware Warranty does not apply to hardware obtained from sources other than Exacom.
- Operation in non-approved hardware or software environments without prior written consent of Exacom may void warranties.
- For EARS™-brand products, the warranty is limited to one year unless otherwise expressly stipulated.

## **11.4 Disclaimer of Warranties**

EXCEPT AS EXPRESSLY PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXACOM DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. THE END-USER ASSUMES ALL RISK ARISING FROM THE USE OF THE SOFTWARE PRODUCT AND HARDWARE.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SOFTWARE PRODUCT, EXACOM MATERIALS, AND RELATED SERVICES ARE PROVIDED "AS IS" WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING AND TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EXACOM, ITS AFFILIATES AND THEIR LICENSORS MAKE NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR ARISING BY COURSE OF DEALING, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, IN CONNECTION WITH THE SOFTWARE PRODUCTS, EXACOM MATERIALS, OR ANY RELATED PRODUCTS AND SERVICES PROVIDED TO YOU HEREUNDER, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. FURTHER, EXACOM AND ITS SUPPLIERS DO NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS YOU MAY OBTAIN BY USING THE SOFTWARE PRODUCT OR THE DOCUMENTATION. NO EMPLOYEE, AGENT, DEALER OR DISTRIBUTOR OF EXACOM IS AUTHORIZED TO MODIFY THIS LIMITED WARRANTY, OR TO MAKE ANY ADDITIONAL WARRANTIES WITH RESPECT TO THE SOFTWARE PRODUCT, EXACOM MATERIALS, OR RELATED SERVICES. EXACOM MAKES NO WARRANTY THAT ACCESS TO OR OPERATION OF ANY SOFTWARE PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE.

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## **12.0 Limitation of Liability**

### **12.1 Types of Damages Excluded**

IN NO EVENT WILL EXACOM OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS EULA OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

### **12.2 Cap on Monetary Liability**

IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF EXACOM AND ITS LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS ARISING OUT OF OR RELATED TO THIS EULA, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID TO EXACOM UNDER THIS EULA DURING THE THEN CURRENT TERM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

### **12.3 Applicability of Limitations**

The limitations of liability and damages set forth herein shall apply regardless of the form of action, whether in contract, tort, strict liability, or otherwise, and whether or not Exacom or the End-User were advised of the possibility of such damages.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXACOM SHALL NOT BE LIABLE FOR ANY DATA BREACH EXCEPT TO THE EXTENT SUCH BREACH OR LOSS ARISES SOLELY FROM EXACOM'S FAILURE TO MAINTAIN COMMERCIALY REASONABLE SECURITY MEASURES, IN WHICH CASE, EXACOM'S LIABILITY FOR SUCH DATA BREACH WILL NOT EXCEED THE TOTAL AMOUNTS PAID TO EXACOM UNDER THIS EULA DURING THE THEN CURRENT TERM.

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## **13.0 Indemnification**

### **13.1 Indemnification by Exacom**

Exacom shall indemnify, defend, and hold harmless the End-User against any and all losses arising from a third-party claim that the Software Product infringes a valid copyright of such third party, provided the End-User immediately notifies Exacom of any such claim and cooperates in Exacom's defense or settlement of the claim. Exacom's indemnification obligations shall not exceed amounts paid by the End-User for the Software Product and any Service and Support plan in connection therewith.

### **13.2 Indemnification by the End-User**

End-User shall indemnify, defend, and hold harmless Exacom and its subcontractors and affiliates, and each of its and their respective officers, directors, employees, agents, successors, and assigns (each, a "Exacom Indemnitee") from and against any and all losses incurred by such Exacom Indemnitee resulting from any (i) any violation by End-User of applicable law, or this EULA; and (ii) End-User's use of the Software Product; and (iii) Exacom's authorized use of End-User's Personal Data or other End-User Data.

### **13.3 Indemnification Procedure**

The indemnifying party will have the right to assume the defense and settlement of any such claim at its own expense, provided that the indemnified party is entitled to participate in such defense at its own expense and no settlement may be agreed without the indemnified party's prior written consent (not unreasonably withheld).

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## **14.0 Term and Termination**

### **14.1 Term of the Agreement**

This EULA takes effect on the Effective Date and remains in effect until terminated in accordance with this Section or as set forth in the Exacom Quotation or related agreement between Exacom and the Customer.

### **14.2 Termination by the End-User**

The End-User may terminate this EULA at any time by destroying, deleting, or returning to Exacom the Software Product and all copies thereof, and by returning Exacom Hardware (if End-User's use and access of Software Product is through On-Prem Access), notifying Exacom of such action, and identifying any copies or items believed to be in possession of third parties.

### **14.3 Termination by Exacom**

Exacom may terminate this EULA upon thirty (30) days' written notice of material breach to the End-User if the breach is not cured within that 30-day period to Exacom's reasonable satisfaction. In addition, Exacom may terminate this EULA at any time if it ceases to support the Software Product and in accordance with section 4.1, 7.2 and 14.5 of this EULA.

### **14.4 Effect of Termination (Survival of Terms)**

Upon termination of this EULA, all right granted to you under this EULA will also terminate and you must cease all use of the Software Product. Upon termination of this EULA, you will immediately destroy, delete, or return the Software Product and all copies thereof, and, in the event your use and access of the Software Product is through On-Prem Access, return Exacom Hardware to Exacom. Sections relating to confidentiality, limitations of liability, indemnification, and any other provision that by its nature should survive shall survive termination.

### **14.5 Suspension and Termination**



End-User understands that Exacom may suspend, temporarily or permanently terminate, deny, discontinue or restrict End-User's access to and use of all or any of the Software Product, without any liability whatsoever, if: (i) Exacom determines that End-User's use of the Software Product (a) violates the terms of the this EULA or any other applicable law, (b) creates or causes any security or privacy threat or risk, or disrupts any other person's use of the Software Product, or (c) is illegal, unlawful, fraudulent, deceptive, defamatory, obscene, offensive, abusive, unethical, immoral, or dishonest; (ii) there is threat or attack to the Software Product; (iii) End-User's connection to its computer systems or Internet is impaired or breached by a third-party; or (iv) Exacom must do so under any applicable law, or pursuant to an order or instruction of any law enforcement, governmental, or regulatory authority.

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## **15.0 Governing Law and Dispute Resolution**

### **15.1 Governing Law**

This EULA is governed by and construed in accordance with the internal laws of the State of New Hampshire, without regard to its conflicts of law principles. Any legal suit, action, proceeding, or arbitration award arising out of or related to this EULA shall be instituted in the federal courts of the United States or the courts of the State of New Hampshire, and each of Exacom and the End-User irrevocably submits to the jurisdiction of such courts.

### **15.2 Jurisdiction and Venue**

Any legal suit, action, proceeding, or arbitration award arising out of or relating to this EULA shall be instituted in the federal courts of the United States or the courts of the State of New Hampshire, and each party irrevocably submits to the jurisdiction and venue of such courts.

### **15.3 Informal Dispute Resolution**

The parties shall attempt to resolve any claim or controversy arising under this EULA through good faith negotiations and by mutual agreement prior to commencing formal proceedings.

### **15.4 Arbitration Clause**

Failing resolution by mutual agreement, disputes shall be resolved by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The arbitration shall take place within [25 miles] of Manchester, NH. The award rendered may be entered in any court of competent jurisdiction in the United States.

### **15.5 Class Action Waiver**

Unless prohibited by law, the parties agree that any dispute resolution shall be conducted on an individual basis, and not as part of a class, consolidated, or representative action.

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## **16.0 Changes to the Agreement**

### **16.1 Right to Modify**

Exacom may update or modify this EULA for future releases of the Software Product. Any such modifications will not retroactively alter the End-User's rights unless the End-User expressly agrees to the updated terms.

### **16.2 Notice of Changes**

Exacom will notify the End-User of any material changes to this EULA through reasonable means, such as via email or posting an updated EULA on an Exacom website.

### **16.3 Acceptance of Updated Terms**

Continued use of the Software Product after an update to the EULA constitutes the End-User's acceptance of the updated terms.

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## **17.0 Export Control**

### **17.1 Compliance with Export Laws**



The End-User shall not, directly or indirectly, export or re-export, or release, directly or indirectly, the Software Product to any country or jurisdiction to which export or re-export is restricted by applicable law without obtaining any required licenses or other governmental approvals.

## **17.2 U.S. Government-Restricted Rights**

All items of the Software Product are deemed to be “commercial items,” “commercial computer Software,” and/or “commercial computer Software documentation,” as such terms are defined in 48 C.F.R. § 2.101, DFAR Sections 252.227-7014(a)(1), 252.227-7014(a)(5), and 227.7202, and FAR Sections 2.101 and 12.212, as applicable. Accordingly, if the End-User is an agency of the U.S. Government or any contractor therefor, the End-User receives only those rights with respect to the Software as are granted to all other end users under license, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, et seq. (as may be amended), with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, et seq. (as may be amended), with respect to all other U.S. Government licensees and their contractors. Any use, modification, reproductions, release, performance, display, disclosure, or distribution of the Software Product by the U.S. Government will be governed solely by the terms of this EULA and will be prohibited except to the extent expressly permitted by the terms of this EULA.

## **17.3 Geographic Restrictions**

The End-User agrees to abide by any territorial restrictions placed on use of the Software Product as stated in the Exacom Quotation or this EULA.

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## **18.0 Miscellaneous Provisions**

### **18.1 Entire Agreement**

This EULA constitutes the entire agreement between the parties regarding the subject matter and supersedes all prior agreements, representations, and understandings related thereto.

### **18.2 Severability**

If any provision of this EULA is held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the EULA shall remain in full force and effect. In the event of termination of this EULA, the provisions set forth in sections 4, 11, 12, 13, and 15 of this EULA, as well as any other right or obligation that, by its nature, should survive termination of this EULA, will survive any such termination.

### **18.3 Waiver**

No waiver by either party of any breach of this EULA shall be deemed a waiver of any subsequent breach.

### **18.4 Assignment**

End-User shall not assign or transfer this EULA or any rights granted herein without Exacom’s prior written consent.

### **18.5 Force Majeure**

Neither party shall be liable for any failure or delay in performing obligations if such failure or delay is due to circumstances beyond its reasonable control (e.g., natural disasters, acts of government, war, terrorism, labor disputes).

### **18.6 No Third-Party Beneficiaries**

This EULA is for the sole benefit of the parties and their permitted successors and assigns. No other person or entity shall have any right to enforce any of its terms.

### **18.7 Equitable Relief**

A breach or threatened breach of Sections 4.0, 5.0, or 9.0 may cause irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, Exacom will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

### **18.8 Monitoring**

Exacom may, at any time, in its sole discretion, and without notice to or consent from you, do the following: (i) monitor and review your use of the Software Product; and (ii) report to and cooperate with any law enforcement, governmental, or regulatory authority, including providing information, documents, and data about your use of the Software Product to such authority, if and to the extent Exacom (a) reasonably believes that your use of the Software Product violates any applicable law, or (b) is required to do so by subpoena or other legal process.

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## **19.0 Notices**

### **19.1 Methods of Providing Notice**

All notices required under this EULA shall be in writing and shall be deemed to have been effectively given upon (a) personal delivery (with written confirmation of receipt), (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested), or (c) on the date sent by email (with confirmation of transmission).

### **19.2 Contact Information for Notice**

- Exacom: 25 Sundial Ave. Suite 505, Manchester, NH 03103
- End-User: at the address for End-User or related Customer as set forth in the Exacom Quotation

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## **20.0 General Contact Information**

### **20.1 Customer Support**

For assistance or customer support, the End-User may contact Exacom at: **insert**

### **20.2 Reporting Violations**

The End-User should report any known or suspected violations of this EULA to Exacom at the above address or through official Exacom support channels.