

## EXALENS GENERAL TERMS AND CONDITIONS FOR ALL OFFERINGS ("AGREEMENT")

### IMPORTANT - READ CAREFULLY:

This Agreement is a legal agreement between Customer and Exalens for:

- i. Exalens Platform ("Platform"), deployed as a virtual machine, container, software binary, Hardware device, or otherwise any other virtual or physical instrument housing and executing Exalens computer software; and
- ii. Exalens computer software, the data supplied with the software, and the associated media (Software); and
- iii. printed materials and electronic documents ("Documents") and copyright materials ("Licensed Materials"); and
- iv. associated services provided independently or in combination with the Exalens Platform as part of the "Offering";

For the purposes of this Agreement, "Exalens" refers to Cyberlens Ltd (trading as Exalens) incorporated and registered in England and Wales with company number 09562835 whose registered office is at 10-12 Mulberry Green, Old Harlow, Essex, United Kingdom; and "Customer" refers to the individual having entered into this Agreement either on their behalf or on behalf of the company, government, or other legal entity they officially represent, as named on the Order Form. Exalens and Customer may be collectively referred to as the "Parties" or individually as a "Party".

This Agreement ("Agreement") regulates the use of Exalens Platform ("Platform"), software, hardware components, and services, or combination thereof (defined herein as "Offering"). By completing an Order Form for the Offering, clicking "Accept" in a system providing access to the Offering, downloading and/or installing, activating, or otherwise accessing or using the product or service, or any part thereof, in the Offering, Customer accepts the terms and conditions of this Agreement, and:

- (a) Acknowledges having read and understood all clauses of this Agreement;
- (b) Agrees to be legally bound by it both as an individual and on behalf of any company, government, or other entity for which Customer are acting or;
- (c) In the case of acting on behalf of any company, government, or other entity, warrant that Customer has the authority to act on behalf of this legal entity; and
- (d) Where a Reseller, Service provider, Integrator, Consultant, Contractor, or other permitted third-party downloads and/or installs, or otherwise uses the Platform on Customer's behalf, such party will be deemed to be Customer's agent and Customer will be deemed to have accepted all the clauses, terms and conditions of this Agreement as if Customer had download and/or installed, or used the Offering.

Without any limitation, Customer and the legal entity Customer represents (if any) acknowledge that by submitting and order for the Offering, Customer is bounded by this Agreement.

If Customer does not agree with the terms and conditions of this Agreement, Customer, the legal entity Customer is representing (if any), or the agent acting on Customer's behalf is not authorised to access the Offering or otherwise use the Offering for any purpose.

## 1. DEFINITIONS

Any capitalised terms used but not defined herein are as set forth in Appendix 1 – Definitions.

## 2. BACKGROUND

- 2.1. This agreement (the “Agreement”) is comprised of the provisions about the “General Terms and Conditions” or “GTCs”) for the use of all Exalens’ Offerings (“Offering”).
- 2.2. Exalens is the supplier of the Offering.
- 2.3. Customer wishes to receive and use the Offering and Exalens agrees to provide the Offering on the terms and conditions of this Agreement.
- 2.4. Any order forms (other than an Order Form) or other correspondence that the Parties may use for the fulfilment of ordering the Offering or otherwise for administering this Agreement, or the purpose of providing Customer Evaluation Software, Testing and Development Software, or Free Software will be for administrative convenience only and any terms and conditions included in such forms will have no effect and will not modify this Agreement (even if such forms state otherwise and including any terms provided by the Customer or any provided with any Purchase Order).
- 2.5. Exalens may agree to provide the Offering subject to Customer request, in accordance with an executed Order Form. The Parties shall work together to discuss and agree the terms of each Order Form. In the case where Customer requests a predefined Offering as made available for request by Exalens to Customer, the agreed terms of the Order Form may be pre-set and adjusted at the sole discretion and approval of Exalens. For the avoidance of doubt, no Order Form shall be binding until fully executed by both Parties.
- 2.6. The provisions of the Agreement shall prevail over any deviation between this Agreement and an Order Form completed by Customer, unless expressly agreed by Exalens and stated in an Order Form as a prevailing Terms and Conditions addendum included in the Order Form.

## 3. EVALUATION

- 3.1. In this clause 2 and where used elsewhere in the Agreement, this clause applies if Exalens has agreed to provide a Proof of Concept (“POC”), Proof of Value (“POV”), technical preview, beta-testing, or free version of Exalens’ Offering.
- 3.2. If Exalens provides Customer with the Offering (or any part thereof) for POC, POV technical preview, beta-testing, trial or training purposes (an “Evaluation”), Exalens reserves the right to offer Customer the right to use the Offering via an agreed Fee or free of charge for evaluation and testing purposes, for a duration as specified by Exalens in writing at its sole discretion (“Evaluation Period”). Except for the foregoing, Exalens does not grant Customer any rights, implied or otherwise in or to the Offering during any Evaluation Period, Customer (i) must keep the Offering, where in such case that it is deployed as a Hardware, free from liens; (ii) will be responsible for any damage to the Hardware (excluding reasonable wear and tear); and (iii) will carry insurance coverage in an amount equal to the full replacement value of the Hardware. On the expiry of the Evaluation Period, and unless the Parties agree to a subsequent purchase of the Offering, in whole or part, for an applicable Subscription Term, Customer shall return the Hardware to Exalens

promptly and securely and properly packaged, with carriage upon which this Agreement shall automatically terminate.

- 3.3. The Offering provided for the purpose of an Evaluation is provided to Customer on an “as is” and “as available” basis, and, to the fullest extent permissible by applicable law: (i) Exalens makes no warranties, indemnifications, conditions, representations or undertakings of any kind, whether express, implied, statutory or otherwise with relation to Offering for the purpose of an Evaluation; and ii) subject to clauses 16.1 and 16.2, in no event shall Exalens be liable to Customer or to those claiming through Customer for any direct, indirect, consequential, incidental or special damage or loss of any kind, or any loss of profits, loss of contracts, business interruptions, loss of or corruption of information or data however caused and whether arising under contract or tort (including without limitation negligence).

## 4. GRANTS AND RESTRICTIONS

### 4.1. Agreement grants include:

- (a) Purchased Software. Subject to Customer's compliance with this Agreement, Exalens grants to the Customer a non-exclusive, non-transferable, non-sublicensable license to install and use the Purchased Software. This license follows the capacity limitations referred in the Order and is solely granted for the Customer's Business Purposes.
- (b) Evaluation Software. In case of specific reference in the applicable Order about the possibility of providing the Software under an evaluation / free trial license, and subject to Customer's compliance with this Agreement, Exalens grants to the Customer a non-exclusive, non-transferable, non-sublicensable license during the applicable Subscription Term to install and use the Evaluation Software. The license follows the capacity limitations referred in the Order Form, with the exclusive purpose of evaluating whether Customer wishes to purchase a commercial license for such Software. In this case, Exalens does not provide warranty (Section 9), or indemnification (Section 13).
- (c) Test and Development Software. In case of specific reference in the applicable Order about the possibility of providing the Software under a test and development license, and subject to Customer's compliance with this Agreement, Exalens grants to the Customer a non-exclusive, non-transferable, non-sublicensable license during the applicable Subscription Term to install and use the Test and Development Software. The license follows the capacity limitations referred in the Order Form, with the exclusive purpose of using the Test and Development Software in a non-production system used for software product testing, pre-production staging, or other non-production use. The Test and Development Software cannot be used under any circumstances for any for commercial / money-making purposes. In this case, Exalens does not provide warranty (Section 9), or indemnification (Section 13).
- (d) Free Software. Exalens may from time to time offer a certain Software available for license without charge, having limited features, functionality, or other restricted characteristics. Subject to Customer's compliance with this Agreement, Exalens grants to the Customer a non-exclusive, non-transferable, non-sublicensable license during the applicable Subscription Term to install and use the Free Software. This license is solely granted for the Customer's internal Business Purpose, and may not be used independently or in combination with any third-party software where either Customer nor its Affiliates use the Offering (or any part thereof) as a commercial product or for the benefit of an unaffiliated third party. At Exalens sole discretion, Exalens reserves the right to revoke

access, license, or otherwise availability to all Free Software, without prior notice, for any reason.  
In this case, Exalens does not provide warranty (Section 9), or indemnification (Section 13).

- 4.2. The Customer acknowledges and agrees that each User Licence will automatically expire at the end of the relevant Licence Period as described in the Subscription Term of an Order Form.
- 4.3. The Customer shall not:
- (a) authorise more Authorised Users to access Platform than the number of User Licences that the Customer has purchased in the Order Form;
  - (b) permit any User Licence to be: (i) used by more than one individual Authorised User; or (ii) transferred to another Authorised User; or
  - (c) permit anyone to access the Platform who is not an Authorised User.
  - (d) Use the Platform for anything other than its intended purpose as defined in the Order Form and in this Agreement.
- 4.4. The Customer shall procure that each Authorised User shall keep secure and confidential their user account credentials and any multi-factor authentication tokens provided by third-party identity services and providers for accessing the Platform.
- 4.5. The Customer shall not (and shall ensure that Authorised Users do not) access, store, distribute or transmit any software, code, file or programme which may prevent, impair or otherwise adversely affect the operation of the Platform (including without limitation worms, Trojan horses, viruses and other similar things or devices) or submit any material to the Platform that: (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing, or offensive (including without limitation racially or ethnically offensive); (b) facilitates illegal activity; (c) depicts sexually explicit images; (d) promotes unlawful violence; (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or (f) is otherwise illegal or causes damage or injury to any person or property, and Exalens reserves the right, without liability to the Customer, to disable the Customer's (and all Authorised Users') access to the Platform if any breach of this clause occurs.
- 4.6. The Customer shall not:
- (a) have any right to copy, share, adapt, reverse engineer, de-compile, disassemble, modify, adapt or make error corrections to the Platform (except to the extent de-compilation is expressly permitted by section 50B of the Copyright, Designs and Patents Act 1988 and where Exalens: (a) is not prepared to carry out de-compilation in return for a reasonable fee; or (b) has failed to provide information reasonably necessary to achieve inter-operation between platforms without de-compilation) or Licensed Materials;
  - (b) or attempt to circumvent, disable, or otherwise interfere with any security related features of the Platform and/or Licensed Materials (including features that enforce limitations of use or prevent copying);
  - (c) remove any copyright or other Intellectual Property Rights notices from the Platform and/or Licensed Materials;
  - (d) access the Platform or any Licensed Materials in order to build a product or service which competes with the Platform or the Licensed Materials;
  - (e) use the Platform or Licensed Materials to provide services to third parties; or

- (f) license, sell, rent, lease, transfer, assign, distribute, display, disclose, commercially exploit or otherwise make the Platform or Licensed Materials available to any third party except those comprising the Authorised Users.
- 4.7. The Customer shall:
- (a) to the extent within its control, use all reasonable endeavours to prevent any unauthorised access to, or use of, the Platform and/or the Licensed Materials; and
  - (b) in the event that the Customer discovers or is made aware of any such unauthorised access or use, immediately give notice to Exalens of such access or use.
- 4.8. The Customer acknowledges that if the Customer exceeds the usage of their

## 5. PLATFORM ACCESS AND USAGE

- 5.1. Subject to the terms and conditions of this Agreement and an applicable Order Form, including consideration of Fees paid by Customer to Exalens, except where Exalens has expressly agreed to provide Platform access as Free Software (for example in an Evaluation), during the Subscription Term, Exalens grants the Customer a non-exclusive, non-transferable license to use the Software and the Documents on the terms of this Agreement.
- 5.2. Customer may download, install and use the Platform on the Site(s) for Customers' and or its permitted Affiliates' internal business and where neither Customer nor its Affiliates use the Offering (or any part thereof) as a commercial product or for the benefit of an unaffiliated third party;
- 5.3. Customer acknowledges and agrees that where set out and defined in the Platform Documentation, that installation, running of, and local or remote access to, the Platform and Software requires the Customer to provide its own hardware and software services (for example when accessing the Platform user interface).
- 5.4. Customer may receive and use any free supplementary software code or update of the Software incorporating "patches" and corrections of errors as may be provided by Exalens from time to time within the period of licensing support as defined in the Subscription Term. This will include functional updates only and not new features that have an associated Fee outside of the scope of the Platform Offering as described in the Order Form. Exalens may provide access to new features as part of a promotion of beta-testing to Customer at its sole discretion within an applicable Subscription Term;
- 5.5. The Customer acknowledges that if the License entitlement for the Offering is exceeded that the system will automatically enforce restricted functionality to prevent further excess use outside of the Customer License entitlement. In the event that this enforcement does not activate, for any reason whatsoever, the Customer acknowledges and agrees that it shall pay Exalens the current standard Fee for any such excess use.

## 6. PLATFORM PROVISIONING

- 6.1. Exalens license use of the Platform, Software, Documents, and applicable Hardware or physical components provided as part of the Platform, specified by Exalens in a Offering to Customer on the basis of this Agreement. Unless otherwise agreed in writing between the Parties, Exalens do not sell the Platform, Software, Documents, Hardware or physical components to Customer. Exalens remain the owners of the Platform, Software, Documents, and Hardware and physical components at all times. As defined in the

Offering, the Platform is provided solely as the medium for delivery and operation of the Software and must not be used for any other purpose. Use of the specified Platform including any Hardware, physical components, including those provided by third-party vendors and Exalens, is included in the Fees. Customer will be granted the right to access and use the Software on the Platform during the Subscription Term specified in the relevant Order Form on the terms defined in Clause 3. Upon termination or expiration of the applicable Subscription Term, Customer shall promptly return the Hardware and any physical components of the Platform, securely and properly packaged, with carriage (and insurance at Customer's option) prepaid. Whilst the Platform is in Customer's possession, Customer must (a) clearly designate the Platform as Exalens' property; (b) hold the Platform on a fiduciary basis as Exalens' bailee; (c) store and use the Platform in a proper manner in conditions which adequately protect and preserve the Platform; (d) insure the Platform against all risks to its full replacement value; (e) not sell, charge, pledge, mortgage or otherwise dispose of the Appliance or any part of it; (f) not permit any lien to arise over the Platform (or part thereof); and (g) keep the Platform free from distress, execution and other legal process.

- 6.2. Customer agrees that the Offering and associated Platform is for use with respect to the Customer's applicable environment, with respect to network bandwidth throughput, number of connected devices, connections per minute, and number of individual device endpoint data sources as set out in the applicable Documentation.
- 6.3. Exalens will use commercially reasonable efforts to deliver and ship the Platform, whereby the Offering includes Hardware and or physical components as defined in the Order Form, in partial or full shipments, on the delivery dates agreed in writing with the Customer, and otherwise as soon as reasonably practicable after agreeing an Order Form; provided, however, that Customer's sole and exclusive remedy for any delay in delivery or for failure to give notice of delay shall be for Exalens to make such delivery as soon as practicable. Exalens is not liable for the acts or omissions of any third-party courier or shipping provider. Exalens may withhold or delay shipment of any order if Customer is late in payment or is otherwise in default under this Agreement. In the absence of specific written shipping instructions defined by Customer, Exalens will ship the Platform by the method of its choice. Unless otherwise set out in an executed Order Form, Customer will pay and be exclusively liable for all costs associated with shipping and delivery including without limitation, freight, shipping, customs charges and expenses, cost of special packaging or handling and insurance premiums incurred by Exalens in connection with the shipment of the Platform to Customer. Exalens will identify itself in all documents related to the shipment of the Platform as the exporter of record from the applicable jurisdiction of export, and Customer (or its agent, as applicable) as the importer of record into the respective country of delivery. In the case of delivery of the Platform, in partial or full, via virtual machine, container, software binary, or any other format of electronic media and transportation medium (such as Email, Internet File Sharing, etc.), Exalens will deliver the Platform via a secure electronic transportation medium agreed with the Customer and specified on the Order Form. Exalens at its sole discretion may refuse Customer requests to deliver the Platform via electronic media and medium that it deems to be insecure and poses a risk to the confidentiality, integrity, or availability of the Platform and Offering.

## 7. SERVICES

- 7.1. Exalens shall, during the Subscription Term, provide the Services to the Customer on and subject to the terms of this Agreement.

- 7.2. During the Subscription Term, Exalens will provide Support Services as defined in the Order Form, and described in Appendix 2, which provides further details of Exalens' Standard Support Service and Additional Services.
- 7.3. In the event the Customer requires Exalens to perform any additional services not set out in the Agreement (including any bespoke enhancements and/or modifications to the Platform and/or Licensed Materials) (the "Additional Services") then the fees payable in consideration of any such Additional Services shall be agreed in writing between the parties prior to their commencement and the parties shall use their reasonable endeavours to agree a written statement of work for such Additional Services.
- 7.4. If Customer requires remote support from Exalens, Exalens will provide and utilise a remote access agent on the Platform, solely at the Customer's discretion, and within their complete control to install, uninstall, initiate, and terminate, in order to provide and fulfil certain Support Services. Activation, use and provision of Support Services via this remote access agent on the Platform, will be subject to Customer's policies and procedures provided to Exalens in writing in advance of remote Support Services.
- 7.5. Exalens has sole discretion and control over, and may modify at any time (with or without notice to the Customer), the functionality, performance, configuration, appearance and content of the Platform and/or the Licensed Materials provided that, in each case such modifications do not result in a material reduction to the warranted quality of the Platform and/or Licensed Materials.
- 7.6. Unless expressly agreed between Parties in writing, or as part of service provision defined in an agreed and executed Order Form, the Offering does not include services related to monitoring, analysis, assessment, interpretation, incident response, or corrective action with respect to any system alerts or incident alerts generated by the Platform.

## 8. CUSTOMER PERSONAL DATA

- 8.1. In this clause 8 and where used elsewhere in the Agreement:
  - (a) "Customer Data" means all data inputted by the Customer, Authorised Users, or Exalens on the Customer's or an Authorised User's behalf under and/or in connection with the Services;
  - (b) "Customer Personal Data" means all personal data controlled by the Customer and which is processed by Exalens in order to provide the Services and personal data, controlled, and processed shall each have their respective meanings given in the GDPR;
  - (c) "Data Protection Legislation" means as applicable the Data Protection Act 2018, the UK retained General Data Protection Regulation (2016/679) ("GDPR"), and the Privacy and Electronic Communications (EC Directive) Regulations 2000 and any applicable replacement legislation governing the use and security of personal data;
  - (d) "Privacy Policy" means Exalens' privacy policy located at <https://www.exalens.com/page/privacy-policy>;
  - (e) "Data Controller", "Data Processor", "Process", and "Control" all have their respective meanings given in the GDPR.
- 8.2. The parties acknowledge and agree that:
  - (a) the Customer is the Data Controller in respect of the Customer Personal Data; and

- (b) except as described in paragraph 8.3 below, Exalens shall Process such Customer Personal Data as an independent Data Controller in accordance with this Agreement.
- 8.3. Exalens shall Process the Customer Personal Data on the Customer's behalf when performing the data processor activities described below (the "Data Processor Activities"):
- (a) Subject matter, nature of Processing and Processing operations: Exalens shall be a Processor where, as part of the Services, it is Processing Customer Personal Data for the following purposes on the Customer's behalf:
    - (i) support and maintenance with respect to Customer Personal Data hosted on the Platform;
    - (ii) hosting management with respect to Customer Personal Data on the Platform; and
    - (iii) such other purposes where Exalens processes Customer Personal Data on behalf of the Customer as its data processor; and
    - (iv) as described in the Privacy Policy.
  - (b) Duration: The duration of the Services.
  - (c) Data categories: Authorised Users.
  - (d) Types of Personal Data: As described in the Privacy Policy.
- 8.4. The Customer shall:
- (a) comply with the Data Protection Legislation; and
  - (b) ensure that all instructions it gives to Exalens in respect of the Customer Personal Data are and shall be lawful and in compliance with the Data Protection Legislation.
- 8.5. Exalens shall (in respect of the Data Processor Activities):
- (a) only Process Customer Personal Data in accordance with the Customer's documented instructions, including with regard to transfers, unless required to do otherwise by applicable laws. In which event, Exalens shall inform the Customer of the legal requirement before processing the Customer Personal Data otherwise than in accordance with the Customer's written instructions, unless legally prohibited from doing so. The Customer instructs Exalens to process the Customer Personal Data to the extent and in such manner as is reasonably necessary for the performance of Exalens' obligations under this Agreement or as required by Data Protection Legislation;
  - (b) ensure that its representatives are subject to appropriate obligations of confidentiality;
  - (c) taking into account the nature of the Services, provide reasonable assistance to the Customer, insofar as this is possible and at the Customer's cost, for the fulfilment of the Customer's obligations under the Data Protection Legislation in respect of data security; data breach notification; data protection impact assessments; prior consultation with supervisory authorities; and the fulfilment of data subject's rights; and
  - (d) promptly following the Customer's written request, return, delete, or put beyond use the Customer Personal Data and delete or put beyond use any existing copies of such Customer Personal Data in its possession unless required to retain such Customer Personal Data under applicable laws.
- 8.6. The Customer consents to Exalens engaging subcontractors to Process the Customer Personal Data on Exalens' behalf (the "Sub-processors") and a list of such Sub-processors (the "Sub-processor List") is available on request.



- 8.7. Exalens shall ensure that Sub-processors are subject to contractual obligations which are, where possible, equivalent to those imposed on Exalens under this Agreement. Exalens shall be responsible for the performance of its Sub-processors.
- 8.8. Exalens will notify (which notice may be by e-mail or through the Platform) the Customer prior to adding a new Sub-processor to the Sub-processor List (a "New Sub-processor").
- 8.9. If the Customer objects to Exalens' use of a New Sub-processor on reasonable grounds that the New Sub-processor is unlikely to be able to comply with the terms of this clause 8 or the Agreement then the Customer shall notify Exalens promptly in writing within ten (10) days from receipt of Exalens' notice. The Customer's failure to object in writing within such time period shall constitute approval to use the New Sub-processor.
- 8.10. The Customer acknowledges and agrees that the inability of Exalens to use a particular New Sub-processor may result in a delay or suspension in the performance of the Services, inability to perform the Services or increased Fees.
- 8.11. Exalens shall notify the Customer in writing of any change to Services or Fees that would result from Exalens' inability to use a New Sub-processor to which the Customer has objected. The Customer may either execute a written amendment to the Agreement implementing such change or terminate the Agreement provided that such termination by the Customer shall be treated as a termination for convenience and for breach of the Agreement.
- 8.12. Exalens shall use technical and organisational measures to protect Customer Personal Data stored by Exalens (to the extent such storage is within Exalens' own infrastructure) against unauthorised and unlawful processing and against accidental loss, destruction, disclosure, damage or alteration.
- 8.13. Upon written request, Exalens shall make available to the Customer such information as is reasonably necessary to demonstrate Exalens' compliance with its obligations under this clause.
- 8.14. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Exalens to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Exalens.

## 9. EXALENS' OBLIGATIONS

- 9.1. Exalens shall perform the Services:
  - (a) in compliance with this Agreement;
  - (b) promptly using reasonable skill and care; and
  - (c) substantially in accordance with the Service descriptions set out in the Agreement and the respective Order (except in trivial and/or immaterial respects that do not adversely affect its functionality or use).
- 9.2. Exalens shall have no liability for Losses incurred under and/or in connection with this Agreement to the extent any such liability is caused by:
  - (a) use of the Platform or Licensed Materials contrary to Exalens' instructions or modification or alteration of the Platform or Licensed Materials by any person other than Exalens or Exalens' duly authorised subcontractors or agents;
  - (b) any act or omission of the Customer or an Authorised User in breach of the Agreement; or

- (c) the unavailability of Third Party Materials or any incorrect or inaccurate Third Party Materials.
- 9.3. Subject to clauses 9.1 and 16.1, the Exalens warrants that:
- (a) the Software will, when properly used and deployed on an operating system, hardware, and physical components for which it was designed, perform in accordance with the functions described in the Licensed Material; and
  - (b) that the Licensed Material correctly describe the operation of the Software in all material respects, for a period of 90 days from the date of Customer first access to the Software (the “**Warranty Period**”).
- 9.4. If, within the Warranty Period, Customer notify Exalens in writing of any defect or fault in the Software as a result of which it fails to perform substantially in accordance with the Licensed Material, Exalens will, at our sole option, either repair or replace the Software, provided that Customer make available all the information that may be necessary to help Exalens to remedy the defect or fault, including sufficient information to enable Exalens to recreate the defect or fault.
- 9.5. Subject to clauses 9.1 and 16.1, Exalens specifically does not warrant, represent or undertake that the:
- (a) Customer's use of the Services will be uninterrupted or error-free; or
  - (b) information obtained by the Customer through the Platform or the Services will meet the Customer's specific requirements.
- 9.6. Subject to clauses 9.1 and 16.1:
- (a) whilst Exalens aims to ensure that the Licensed Materials are up to date and accurate please note that the Licensed Materials may be out of date at any given time and that Exalens is under no obligation to update it;
  - (b) Exalens does not guarantee the accuracy of any Licensed Materials and any reliance placed on the Licensed Materials is at the Customer's and the Authorised User's risk.
- 9.7. Exalens shall have no liability for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays, and other problems inherent in the use of such communications facilities.
- 9.8. The Customer is responsible for all acts and omissions of Authorised Users as if such acts or omissions were its own.
- 9.9. An obligation of the Customer contained in this Agreement (unless the context reasonably requires otherwise) includes an obligation on the Customer to ensure that an Authorised User does not act, or omit to act, in breach of that obligation.

## 10. CUSTOMER'S OBLIGATIONS

- 10.1. Customer warrants that it shall:
- (a) ensure that all Authorised Users are directed to, and have read and understood the Privacy Policy before granting access to the Platform and/or Licensed Materials;
  - (b) comply with all applicable laws, regulations and binding codes of practice with respect to its activities under and in connection with this Agreement;

- (c) obtain and shall maintain all necessary licences, consents, and permissions necessary for it to:
    - (i) use the Third-Party Platforms;
    - (ii) provide and/or make available the Customer Materials (including the Customer Personal Data) under this Agreement; and
    - (iii) connect its computing environment to the Platform or download the software onto its computing environment.
  - (d) ensure that its network and systems comply with the relevant specifications necessary to access the Platform provided by Exalens from time to time;
  - (e) unless otherwise agreed in writing, be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Exalens' data centres (where applicable and required for correct functioning and use of the Offering), and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;
  - (f) be liable for the cost of any changes that may be required to the Offering due to the Customer making a material change in their system requirements for the Platform, for example in changes to their network, the number of devices and number of device data sources being monitored by the Platform;
  - (g) in using the Offering or authorising third parties to use it on it on Customer's behalf, Customer will be responsible establishing, implementing, and monitoring security practices to control and safeguard the physical to and use of the Offering and Customer Data therein;
  - (h) own all rights, titles, and interests in and to the Customer Data on the Platform and the contents of any Incident Alert and Endpoint Alert. In respect of any Customer Data stored on the Platform, Customer grants Exalens a limited and non-exclusive license to access and use the Customer Data only to the extent necessary for Exalens to perform Services agreed between both Parties. Customer acknowledges and agrees that Exalens may utilise the details of any Incidents, Process and Endpoint Alert analysis on the Platform that are generated as result of Customer Data stored on the Platform to develop and improve Exalens' technology, excluding and Customer Confidential Information and/or Personal Data.
  - (i) comply with all Customer responsibilities (if any) that are set out in the Support Services provided by Exalens and described in Appendix 2.
- 10.2. Exalens or Exalens' representatives (bound by appropriate obligations of confidentiality) shall have the right to audit and inspect the Customer' premises (excluding the premises of third parties) to ascertain compliance with the licensing conditions set out in this Agreement, provided such an audit is carried out:
- 10.3. during the Customer's normal business hours and upon not less than seven (7) Business Days' notice;
- 10.4. not more than once in each Contract Year (as defined in the Order Form);
- 10.5. in a manner that causes minimal disruption to the Customer's business and excludes from its scope any internal pricing information, information relating to other customers of the Customer or the Customer's own internal reports; and
- 10.6. at Exalens' own cost.

## 11. FEES AND PAYMENT

- 11.1. The Customer shall pay the Fees (as that term is defined in the Order Form) comprising the Subscription Fee and Additional Services Fees (if any) to Exalens in accordance with the terms of this Agreement.
- 11.2. Unless stated otherwise in the Order Form, Exalens shall invoice the Customer for the Fees in advance of the Services and the Customer shall pay each invoice on or before the expiry of thirty (30) days from the date of an invoice (the "Due Date").
- 11.3. Except where explicitly stated in an Order Form with reference of deviation from this clause, Customer is not entitled to suspend payments or to set off amounts which are due and payable.
- 11.4. Fees for the agreed Subscription Term will be payable in advance prior to access being granted to the Platform.
- 11.5. If Exalens has not received payment in full of the Fees by the Due Date, then without prejudice to any other rights and remedies of Exalens:
  - (a) Exalens may, without liability to the Customer, disable the Customer's access to all or part of the Platform and/or Licensed Materials and Exalens shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Bank of England, commencing on the Due Date and continuing until fully paid, whether before or after judgment.
- 11.6. All amounts and Fees stated or referred to in this Agreement are exclusive of all taxes, including any value added tax.
- 11.7. If the Customer is required by applicable law to make any deduction or withholding from any payment to Exalens then the sum due in respect of such payment shall be increased so that, after the making of such deduction or withholding, Exalens receives a net sum equal to the sum it would have received had no such deduction or withholding been made.
- 11.8. Value added tax shall be added to Exalens' invoice(s) at the appropriate rate (if applicable).
- 11.9. Subject to clause 11.9, Exalens shall be entitled to be reimbursed for any expenses (such as travel or subsistence expenses) incurred in the performance of the Services which have been authorised in advance in writing (which may be by e-mail) by the Customer.
- 11.10. The Customer shall reimburse Exalens for all expenses agreed pursuant to clause 11.9 provided that the reimbursement is on a 'pass through' basis with no additional mark up and Exalens submits to the Customer appropriate receipts or proof of payment for such expenses.
- 11.11. Exalens reserves the right to adjust the Fees payable by the Customer on thirty days' (30) written notice, solely if the Offering includes the Offering utilising Exalens' Hosting Services for the Customer and Exalens' Cloud Provider increases the charges of or fees payable by Exalens to such Cloud Provider for services necessary for or related to providing the Offering to the Customer. In such an event, all applicable increases will be made proportionate to the increase in fees or charges by the Cloud Provider.
- 11.12. Exalens reserves the right to adjust the prices and Fees charged to the Customer on annual or at least 60 days prior written notice of each such change, unless otherwise agreed in an Order Form. If the User rejects the new prices, it may terminate the Agreement subject to a notice period of one month.

- 11.13. If Customer fails to pay the amounts due or fails to do so in a timely manner, statutory commercial interest on the outstanding amount shall be due to Exalens after lapse of the notice period included in the notice of default. If, after a notice of default, Customer continues to fail to pay the invoiced amount, Exalens may pass the claim on for collection, in which case, Partner will also be obliged to reimburse all judicial and extrajudicial costs, including all costs charged by external experts. The foregoing shall be without prejudice to Exalens' other statutory and contractual rights.
- 11.14. Clause 11 shall not apply where Customer has purchased the Offering through a Exalens authorised reseller.

## 12. INTELLECTUAL PROPERTY RIGHTS

- 12.1. In this clause 12 (INTELLECTUAL PROPERTY RIGHTS) and where used elsewhere in the Agreement:

- (a) "Intellectual Property Rights" means:
- (i) patents, any extensions of the exclusivity granted in connection with patents, petty patents, utility models, registered designs, plant variety rights, applications for any of the foregoing (including, but not limited to, continuations, continuations-in-part and divisional applications), the right to apply for and be granted any of the foregoing, rights in inventions;
  - (ii) copyrights, design rights, semiconductor topography rights, moral rights, publication rights, database rights;
  - (iii) trade marks and service marks, applications for any of the foregoing, the right to apply for any of the foregoing, rights in trade names, business names, brand names, get-up, logos, domain names and URLs;
  - (iv) rights in know-how, trade secrets and confidential information, data exclusivity rights; and
  - (v) all other forms of intellectual property right having equivalent or similar effect to any of the foregoing which may exist anywhere in the world; and
- (b) "Customer Materials" means the Customer Data together with all other materials provided and/or made available to Exalens by the Customer under this Agreement.

- 12.2. The Customer acknowledges and agrees that Exalens and/or its licensors own all Intellectual Property Rights (existing presently or created in the future) in:

- (a) the Platform;
- (b) the Licensed Materials;
- (c) all materials provided and/or made available as part of the Services (excluding the Customer Materials); and
- (d) any/all adaptations, add-ons, modifications, updates, and/or enhancements to the Platform, Licensed Materials and such materials (including as an Additional Service);

(together, "Exalens IPR").

- 12.3. Exalens may freely incorporate feedback and/or suggested improvements to Exalens IPR given by the Customer or an Authorised User.

- 12.4. Except as expressly stated in this Agreement the Customer shall have no right or interest in Exalens IPR.

- 12.5. The Customer and/or its licensors own all Intellectual Property Rights in and to all of the Customer Materials and shall have sole responsibility for the legality, non-infringement, reliability, integrity, accuracy and quality of the Customer Materials.
- 12.6. The Customer grants to Exalens (and its sub-contractors) a non-exclusive, non-transferrable right to use the Customer Materials and Customer Personal Data strictly to the extent necessary for Exalens (or Exalens' sub-contractor as the case may be) to provide the Services.
- 12.7. If through the provision of the Service, use of the Platform or Licensed Materials, or otherwise, the Customer (or an Authorised User) comes to own Intellectual Property Rights in Exalens IPR by operation of applicable law and despite the provisions of clause 12.2 then the Customer shall (or shall ensure that the Authorised User in question shall) at Exalens' request take all steps necessary to assign such Intellectual Property Rights to Exalens and, to the extent permitted by applicable law, waive all moral rights (and analogous rights) worldwide in connection with such Intellectual Property Rights.
- 12.8. Customer acknowledges that all intellectual property rights in the Platform, Software and the Documents anywhere in the world belong to Exalens, that rights in the Software are licensed (not sold) to Customer, and that Customer have no rights in, or to, the Platform, Software or the Documents other than the right to use them in accordance with the terms of this Agreement.
- 12.9. Customer acknowledges that Customer has no right to have access to the Software in source code form.
- 12.10. All intellectual property rights in and to the Offering, its associated technology, data or works (other than Customer Data), and any copy thereof, and in any ideas, know-how, software, and algorithms that may be developed by Exalens in the course of providing the Offering, including any enhancements, derivative works, or modifications thereof (other than Customer Data), will remain with Exalens at all times. In this case, works comprise:
- (a) works of original authorship, including compiled content containing Exalens' or its licensors' selection, arrangement, coordination, and expression of such content or pre-existing material it has created, gathered, or assembled; and
  - (b) information that has been created, developed, and maintained by Exalens, its licensors at Exalens' or licensors expense of time and money such that misappropriation or unauthorised use by others for commercial gain may unfairly and irreparably harm Exalens or its licensors.

### 13. INDEMNITIES

- 13.1. In this clause 13 (INDEMNITIES) and where used elsewhere in this Agreement, "**Third Party Materials**" means the components of the Platform and/or Licensed Materials to which third party licence terms apply.
- 13.2. The Customer shall indemnify and hold harmless Exalens, its affiliates, its and their officers, directors and employees against any Losses arising out of or in connection with any allegation or claim that the:
- (a) Customer Materials infringe any Intellectual Property Rights belonging to a third party; and/or
  - (b) Customer's use of the Third Party Materials is in breach of terms applicable to such Third Party Materials.
- 13.3. Exalens shall ensure that the:
- (a) Customer is given prompt notice of any allegation or claim to which the indemnity in clause 13.2 applies;

- (b) Exalens provides reasonable co-operation to the Customer in the defence and settlement of such claim; and
  - (c) Customer is given sole authority to defend or settle the claim.
- 13.4. Subject to clauses 13.5, 13.6, and 13.8 Exalens shall indemnify and hold harmless the Customer against any claim made against it by a third party to the extent that such claim alleges that the Platform or the Licensed Materials (excluding any Third Party Materials) infringes any Intellectual Property Rights in the United Kingdom belonging to that third party (the “**IPR Indemnity**”), provided that:
- (a) Exalens is given prompt notice of any such claim (and in any event is given notice within five (5) Business Days of the Customer becoming aware of, or being notified of, the claim);
  - (b) the Customer provides reasonable co-operation to Exalens in the defence and settlement of such claim; and
  - (c) Exalens is given sole authority to defend or settle the claim.
- 13.5. In the defence or settlement of any claim under clause 13.4, Exalens may procure the right for the Customer to continue using the Platform and/or the Licensed Materials, replace or modify the Platform and/or Licensed Materials so that they become non-infringing or, if such remedies are not reasonably available, terminate or suspend this Agreement (and the Services) on notice to the Customer without any additional liability to the Customer.
- 13.6. In no event shall Exalens, its employees, agents or sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Platform or Licensed Materials by anyone other than Exalens or its representatives;
  - (b) the Customer's use of the Platform or Licensed Materials in a manner contrary to the instructions given to the Customer by Exalens;
  - (c) an infringing Third Party Material; or
  - (d) an infringing Customer Material.
- 13.7. The Customer shall have no rights and remedies in respect of infringement of any third party Intellectual Property Rights except as expressly set out in clause 13.4.
- 13.8. The IPR Indemnity shall apply to Losses to the extent that such Losses are:
- (a) awarded against the Customer by a court or other body having competent jurisdiction or agreed to be paid (with the consent of Exalens) to the third-party claimant in settlement of an IPR Claim; and
  - (b) reasonably and properly incurred legal fees and disbursements, fees levied by any court of competent jurisdiction, arbitrator or mediator, and/or fees and disbursements charged by expert witnesses.

## 14. CONFIDENTIALITY

- 14.1. In this clause 144 (CONFIDENTIALITY) and where used elsewhere in this Agreement, “**Confidential Information**” means any and all information that is proprietary and/or confidential in nature and is either clearly labelled as such or would, by its nature, be considered by a reasonable business person to be confidential.

- 14.2. A party's Confidential Information shall not include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - (d) is independently developed by the receiving party.
- 14.3. Each party shall hold the other's Confidential Information in confidence and, subject to clause 14.4, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than in connection with the performance or receipt of the Services (as the case may be).
- 14.4. Either party may disclose the other party's Confidential Information if and to the extent required by applicable law or by any regulatory body or securities exchange, provided that the disclosing party shall as soon as reasonably practicable and to the extent permitted by applicable law notify the other party in writing of the circumstances of such disclosure and the Confidential Information to which such disclosure applies.
- 14.5. Each party shall take reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 14.6. No party shall make, or permit any third party to make, any public announcement concerning this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- 14.7. Aggregated Data will not be attributable to any particular Customer or Authorised User and Exalens shall ensure that the aggregation does not reveal data about a Customer or Authorised that would have a negative commercial impact on the Customer or identify the Authorised User without their consent.

## 15. TERM AND TERMINATION

- 15.1. The Agreement takes effect on the Effective Date and shall continue unless and until terminated in accordance with this clause 15 (the "Subscription Term"). It will remain in force until the sooner of:
- (a) Expiry of the Evaluation Period in accordance with Clause 3.2;
  - (b) The end of the Subscription Term specific in the applicable Order Form
- 15.2. In the event of a renewal or extension of the Subscription Term, this will be considered a new and separate Subscription Term. Each Order Form has its specific Subscription Term and expiry, irrespective of whether it is linked to another Order Form for audit, tracking or otherwise any administrative purposes.
- 15.3. In the event of the expiration of a Subscription Term the Customer's right to use, and access to, the Offering will automatically terminate unless the Parties renew or extend the applicable Subscription term. In this event, the Platform may not automatically revoke Customer access to the Platform, however, usage restrictions within the software may be enforced automatically.
- 15.4. Without prejudice to clause 15.54, each party shall have the right to terminate the Agreement for convenience with such termination having effect at the end of the relevant Contract Year provided such notice is given at least thirty (30) days prior to the end of that Contract Year.
- 15.5. Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if the other party commits a Material breach (or



a series of persistent breaches which together amount to a Material breach) of any term of this Agreement that:

- (a) is irremediable; or
- (b) if such breach is remediable, is not so remedied within thirty (30) calendar days from written notice requiring remedy of the Material breach.

15.6. Without limiting Exalens' rights to terminate under clause 15.4, Exalens may terminate this Agreement if the Customer (or an Authorised User) commits any breach (Material or otherwise) of any one or more of the following clauses: 4 (GRANTS AND RESTRICTIONS); 10.1(a) (CUSTOMER'S OBLIGATIONS); or 144 (CONFIDENTIALITY).

15.7. On termination or expiry of this Agreement for any reason:

- (a) all rights and licences granted under this Agreement shall immediately terminate and the Customer must cease using the Platform and the Licensed Materials;
- (b) each party shall return, and make no further use of, any equipment, property, and other items (and all copies of them) belonging to the other party; and
- (c) Exalens may destroy or otherwise dispose of any of the Customer Materials and Customer Personal Data in its possession unless Exalens receives, no later than ten (10) calendar days from the effective date of the termination or expiry of this Agreement, a written request for the delivery to the Customer of such Customer Materials or Customer Personal Data.

15.8. Termination or expiry of this Agreement (howsoever occurring) shall be without prejudice to any rights or liabilities which may have accrued up to the date of such termination or expiry and it shall not affect the coming into force or the continuance in force of any of its provisions which are expressly or by implication intended to come into or continue in force on or after such termination or expiry.

## 16. LIMITATION OF LIABILITY

16.1. Nothing in this Agreement shall limit or exclude either party's liability to the other to a greater extent than is permitted under applicable law for Losses resulting from:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation, or
- (c) any matter in respect of which Losses may not be limited or excluded under applicable laws.

16.2. Except as expressly provided otherwise in clause 16.3, nothing in this Agreement shall limit or exclude the Customer's liability:

- (a) to pay the Fees;
- (b) under the indemnity given in clause 13.2; or
- (c) for Losses resulting from a breach of clause 144 (CONFIDENTIALITY).

16.3. Subject to clause 16.1 and clause 16.2 (except under sub-clause 16.2(b)), neither party shall be liable to the other (or any third party claiming under or through the other) under any and all causes of action (whether such causes of action arise in contract (including under any indemnity or warranty), in tort (including negligence or for breach of statutory duty) or otherwise) for Losses that comprise:

- (a) loss of profit or revenue (except for the Fees);
- (b) loss of anticipated savings;
- (c) loss of contract or business opportunity;
- (d) depletion of goodwill;
- (e) loss or corruption of data or information except as described in clause 8.14; or
- (f) any special, indirect or consequential loss,

in each case, whether arising directly or indirectly under or in connection with this Agreement and whether or not reasonably foreseeable, reasonably contemplatable, actually foreseen or actually contemplated by a party at the Effective Date.

- 16.4. Subject to clauses 16.1, 16.2 and 16.3, each party's total aggregate liability to the other (and to any third party claiming under or through the other (including Authorised Users)) in each Contract Year and in respect of all causes of action arising in that Contract Year (as determined at the date when the liability giving rise to the causes of action arose) shall not exceed the total Fees paid by the Customer to Exalens in respect of the Contract Year in question.
- 16.5. The parties agree that the provisions of this clause 6 (LIMITATION OF LIABILITY) are considered by them to be reasonable in all the circumstances, having taken into account section 11 and the guidelines in schedule 2 of the Unfair Contract Terms Act 1977 and the nature of the Services and the Fees.

## 17. LIMITED WARRANTY

- 17.1. We warrant that for a period of 90 days from the date of your first access to the Software (Warranty Period):
- (a) the Software will, when properly used and installed on an operating system, hardware and/or physical components for which it was designed, perform in accordance with the functions described in the Documents; and
  - (b) that the Documents correctly describe the operation of the Software in all material respects; and
  - (c) that all Services provided to Customer by Exalens will be performed with all reasonable care, skill and diligence in accordance with generally recognised commercial practices and standards.,
- 17.2. If, within the Warranty Period, Customer notify Exalens in writing of any defect or fault in the Software as a result of which it fails to perform substantially in accordance with the Documents, Exalens will, at our sole option, either repair or replace the Software, provided that Customer make available all the information that may be necessary to help Exalens to remedy the defect or fault, including sufficient information to enable Exalens to recreate the defect or fault.
- 17.3. The warranty does not apply:
- (a) if the defect or fault in the Software results from Customer having altered or modified the Software; and
  - (b) if the defect or fault in the Software results from Customer having used the Software in breach of the terms of this Agreement.
  - (c) if the defect or fault in the Software results from Customer having failed to follow Exalens' installation, operation or maintenance instructions or procedures in the Documentation.

(d) if the defect or fault in the Software results from a modification, repair or improper installation other than by Exalens or any contractor or subcontractor of Exalens

(e) if the defect or fault in the Software results from Customer (or your agents) having failed to implement, or allow Exalens or contractor or subcontractor of Exalens to implement, any updates, corrections, modifications to the Software made available to Customer by Exalens.

(f) if the defect or fault in the Software results from Customer having combined or integrated in any way the Software with other software, services, products or systems that are not expressly specified in the Documentation or other materials by Exalens, where without such combination, the breach of warranty would have been avoided.

(g) if the defect or fault in the Software results from Customer using Free Software or Testing and Development Software provided as part of an Evaluation.

17.4. Except for the express warranties set out in this Agreement, and to the fullest extent permitted by law, neither Exalens nor any of its third party licensors or Exalens make any warranties, conditions, undertakings or representations of any kind, either express or implied, statutory or otherwise in relation to any subject matter of this Agreement, including without limitation any implied warranties or conditions of merchantability, satisfactory quality, fitness for a particular purpose, non-infringement or, arising from course of performance, dealing, usage or trade. Exalens does not warrant that the operation of the Platform will be error-free or uninterrupted or that it will meet Customer's specific requirements.

## **18. EXCLUSION OF IMPLIED WARRANTIES**

18.1. Subject to clause 16.1 and except to the extent expressly set out in this Agreement, Exalens does not give any warranties, representations or other commitments to the Customer (including as to the functionality, performance, availability, transmission speeds, content, latency and/or accuracy of the Platform and/or of any Service) and all other warranties, conditions, representations, and terms (whether written or oral, express or implied by statute, common law, custom, trade usage, course of dealing or otherwise, including as to satisfactory quality, fitness for a particular purpose or use, accuracy, adequacy, completeness or timeliness) are hereby excluded to the fullest extent permitted by applicable law.

## **19. DISCLAIMER**

19.1. Customer acknowledges, understands, and agrees that:

(a) any output, including data assessment, artefacts, reporting, advice, recommendations, warnings, incidents, and alerts produced as an outcome of the use of the Offering is limited to a point-in-time analysis of Customer Data ingested and processed within the Platform; and

(b) The Offering does not constitute any form of warranty or guarantee that this output and its representation of the Customer's system status is completely accurate and provides full coverage and reporting of potential threats, anomalies and their potential impacts and root-cause on Customer systems and data.

(c) Exalens does not guarantee or other warrant that Offering will result in the identification, detection, analysis, containment, eradication of, recovery from Customer's system threat, vulnerabilities,

system faults / malfunctions, or other indirect or otherwise non-responsive, malfunctioning, disruptive or malicious software and hardware arising from indirect or direct threats against the Customer's system.

(d) Except as expressly provided in this Agreement or schedules specific to an Offering, all Exalens' Offerings, including Exalens' technology, data, works, and any other materials, software, data, hardware, equipment and/or services provided or licensed by Exalens hereunder are provided "As-Is" and "With All Faults" to the extent permissible by law.

## 20. THIRD PARTY MATERIALS

The third party licence terms that apply to the Customer's and its Authorised Users' use of the Third Party Materials are described in Appendix 3 – Third Party Material and the Customer shall comply with the restrictions contained in such third party licence terms.

## 21. FORCE MAJEURE

21.1. Other than in respect of the Customer's obligation to pay the Fees or agreed expenses, neither party shall have any liability to the other under this Agreement if it is prevented from or delayed in performing its obligations, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

## 22. GENERAL

22.1. Survival: The rights and obligations under provisions of this Agreement which expressly or by their nature survive termination shall remain in full force and effect.

22.2. Conflicts: If and to the extent there is any conflict, inconsistency or ambiguity between any provision of this Agreement then such conflict, inconsistency or ambiguity shall be resolved in accordance with the following order of precedence (with the document higher in the list prevailing over a document lower in the list):

- (a) the Order Form;
- (b) the GTCs; and
- (c) the remaining Appendices.

22.3. Subcontracting: Exalens may sub-contract the performance of its obligations (or any part thereof) to any third party service-provider provided that Exalens shall remain responsible for all acts and omissions of such third party service-providers that result in a breach of the Agreement.

22.4. Variations: No variation of this Agreement shall be effective unless it is in writing and signed by the parties.

22.5. No Waiver: No failure or delay by a party to exercise any right or remedy provided under this Agreement or by applicable law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

- 22.6. **Severability:** If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 22.7. **Entire Agreement:** This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 22.8. **Assignment:** Except in respect of invoice financing or the recovery of a debt owed, neither party shall assign any of its rights under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.
- 22.9. **Third Party Rights:** This Agreement does not confer any rights on any person or party (other than the parties to this Agreement) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 22.10. **Notices:**
- (a) Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be delivered by: (a) hand or pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or (b) except with respect to the service of legal proceedings, e-mail to the addresses referred to in sub-clause (b) (below).
  - (b) Any notice or communication shall be deemed to have been received:
    - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
    - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
    - (iii) if sent by e-mail to legal@exalens.com from an authorised representative of sufficient authority to give the notice, upon the generation of a receipt notice by the recipient's server or, if such notice is not generated, upon delivery to the recipient's server.
- 22.11. **Governing Law and jurisdiction:** This Agreement and any dispute or claim arising out of or in connection with it (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement (including non-contractual disputes or claims).

## 23. COMMUNICATIONS BETWEEN PARTIES

- 23.1. Exalens may update the terms of this Agreement at any time on notice to Customer in accordance with this condition 23. Customer's continued use of the Software and Documents following the deemed receipt and

service of the notice under condition 23.3 shall constitute Customer's acceptance to the terms of this Agreement, as varied. If Customer does not wish to accept the terms of the Agreement (as varied) Customer must immediately stop using and accessing the Software and Document on the deemed receipt and service of the notice.

- 23.2. If Exalens have to contact you, Exalens will do so by email or by pre-paid post to the address Customer provided in accordance with your order for the Software.
- 23.3. Note that any notice:
- (a) given by Exalens to Customer will be deemed received and properly served 24 hours after it is first posted on our website, 24 hours after an email is sent, or three days after the date of posting of any letter; and
  - (b) given by Customer to Exalens will be deemed received and properly served 24 hours after an email is sent, or three days after the date of posting of any letter.
- 23.4. In proving the service of any notice, it will be sufficient to prove, in the case of posting on our website, that the website was generally accessible to the public for a period of 24 hours after the first posting of the notice; in the case of a letter, that such letter was properly addressed, stamped and placed in the post to the address of the recipient given for these purposes; and, in the case of an email, that such email was sent to the email address of the recipient given for these purposes.

## **24. HOW EXALENS MAY USE CUSTOMER INFORMATION**

Under data protection legislation, Exalens are required to provide Customer with certain information about who Exalens are, how Exalens process the personal data of those individuals who use the Software and the Documents and for what purposes and those individuals' rights in relation to their personal data and how to exercise them. This information is provided in <https://www.exalens.com/legal/privacy-policy> and it is important that Customer reads that information.

## **25. OTHER IMPORTANT TERMS**

- 25.1. Exalens may transfer our rights and obligations under this Agreement to another organisation, but this will not affect Customer rights or Exalens' obligations under this Agreement.
- 25.2. Customer may only transfer Customer rights or Customer obligations under this Agreement to another person if Exalens agree in writing.
- 25.3. This Agreement constitutes the entire agreement between Exalens and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter. Customer agrees that they shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Customer agrees that they shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 25.4. If Exalens fail to insist that Customer perform any of your obligations under this Agreement, or if Exalens do not enforce our rights against you, or if Exalens delay in doing so, that will not mean that Exalens have waived our rights against Customer and will not mean that Customer do not have to comply with those

obligations. If Exalens do waive a default by you, Exalens will only do so in writing signed by us, and that will not mean that Exalens will automatically waive any later default by you.

- 25.5. Each of the conditions of this Agreement operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 25.6. This Agreement, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law. Exalens both irrevocably agree to the exclusive jurisdiction of the courts of England and Wales.

## 26. INTERPRETATION

26.1. In this Agreement:

- (a) the headings are for convenience only and shall not affect the interpretation of the Agreement;
- (b) any reference to a clause is a reference to a clause of the General Terms and Conditions and a reference to a paragraph is a reference to the relevant paragraph in an Appendix;
- (c) any obligation in this Agreement on a party not to do something, includes an obligation not to agree, allow, permit or acquiesce to that thing being done;
- (d) any reference in this Agreement to any enactment or statutory provision or subordinate legislation will be construed as a reference to it as from time to time replaced, amended, consolidated or re-enacted (with or without modification) and includes all orders, rules or regulations made under such enactment;
- (e) references to a party shall be construed as the Customer or Exalens and parties shall be construed as the Customer and Exalens taken together;
- (f) any list, word, or phrase following the words including, include, in particular, for example, or any such similar expression shall be construed as having the phrase without limitation following them;
- (g) the rule known as *eiusdem generis* shall not apply and accordingly, words introduced by the word other shall not be given a restrictive meaning by reason of the fact that such words are preceded by words indicating a particular class of acts, matters or things; and
- (h) a reference to the performance of an obligation from a given date shall include that date;
- (i) “Business Day” means a day other than a Saturday, Sunday or public holiday in England;
- (j) “Losses” means all losses, liabilities, damages, costs, charges, and reasonably incurred expenses (including management time, legal fees, other professional advisers’ fees, and costs and disbursements of investigation, litigation, settlement, judgment, interest, fines, penalties and remedial actions) howsoever arising in connection with a party’s breach of the Agreement; and
- (k) “Material” in the context of classifying the seriousness of a breach means that such breach is: (i) more than trivial but need not be repudiatory; and (ii) if not remedied (or if not capable of remedy), may or is likely to have, a serious impact on the benefit which the innocent party would otherwise derive from performance of the Agreement in accordance with its terms.

## APPENDIX 1 – DEFINITIONS

Definitions of terms defined in this Appendix 1 will have meanings given below:

1. **“Authorised Users”** means those authorised officers, consultants, contractors, and agents of the Customer and its subsidiary undertakings (as defined by section 1162 Companies Act 2006) who are authorised by the Customer to access and use the relevant Services in accordance with this Agreement; any such access or use by a will be subject to the same limitations and restrictions that apply to Customer under this Agreement, and Customer will be jointly and severally liable for any Authorised User’s actions relating to or use of the Software.
2. **“Additional Services”** means collectively extend Support Service options offered by Exalens to Customer, and defined in an Order Form, as per Appendix 2;
3. **“Business Purposes”** means Customer’s use for its own internal operations on their own systems and for their proprietary data; any use from any third party is prohibited;
4. **“Content”** means any: (i) text, images, video, audio or other multimedia content; (ii) information or material, in each case, subsisting on or accessible from or on the Platform;
5. **“Customer Data”** means all data and information provided by Customer to, or accessible by, the Platform and/or Exalens under this Agreement in connection with the performance of the Platform and/or Services (which may include information about network packet captures, log files/and meta-data from different system data sources and which may include Customer confidential and personal data;
6. **“Documents”** means user manuals and other applicable technical documents for the Offering (or any part thereof) consisting of the applicable user installation guides, Platform and Software datasheets, service descriptions, technical specifications as may be updated by Exalens from time to time excluding any: documents that are non-technical or of a marketing nature.
7. **“Evaluation Software”** means Software that is specified in an Order as provided under an evaluation license or a free trial license;
8. **“Fees”** means all applicable fees payable by Customer to Exalens as set out in the Order Form;
9. **“Free Software”** means Software that is specified in an Order as provided to Customer without charge (other than Evaluation Software);
10. **“Government”** means an agency, department, or other institutional stakeholder of a National or Federal Government;
11. **“Hosting”** means the server(s) provided by or on behalf of Exalens via it’s Cloud Provider used to store the software as described on the Order Form;
12. **“Hosting Services”** means the services described as such on the Order Form;
13. **“Hardware”** means the hardware and physical equipment provided as part of the Platform and Software in the Offering as described as such on the Order Form;
14. **“Licence Period”** means, in respect of each User Licence the period of Subscription Term as defined in a Order Form: (i) the Effective Date (in respect of the User Licences purchased in the Order Form); or (ii) the date on which the additional User Licence is purchased (in respect of additional User Licences purchased after the Effective Date;
15. **“Licensed Materials”** means, as relevant to an Order Form: (i) Content; and any other materials agreed from time to time;



16. **"Open Source Software"** means third party software that Exalens distributes with the Software pursuant to a license that requires, as a condition of use, modification or distribution of such software, that the software or other software combined and/or distributed with it be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; (iii) redistributable at no charge; or (iv) redistributable but subject to other limitations;
17. **"Order Form"** means Exalens' ordering document accepted and countersigned by the Customer or any other ordering document submitted to and accepted by Exalens, which references the products, services, pricing and other terms;
18. **"Platform"** means the software and the platform, including any applicable hardware and virtual or physical components used as a medium for deployment of the software and the platform known as Exalens Platform;
19. **"Purchased Software"** means Software that is licensed to Customer and for which Customer has agreed to pay a License Fee to Exalens (directly or through an intermediary);
20. **"Offering"** means collectively the Platform, Software, applicable Hardware, Services, Documentation, and licensed materials (and any combination therefore) agreed and between Customer and Exalens as defined in an Order Form;
21. **"Software"** means the Software products listed in an Order Form;
22. **"Subscription Term"** means, in respect of each User Licence the period of Subscription Term as defined in a Order Form from the Effective Date (in respect of the User Licences purchased in the Order Form) to the period of date of expiry for the User License;
23. **"Support Services"** means collectively the Support Services that are provided as standard as part of a Offering, including any Additional Services as defined in an Order Form, as per Appendix 2 (Support Services);
24. **"Third-Party Platform"** means the Customer's own and directly licensed or sub-licensed instance of a third party-operated platform that interoperates with the Platform;
25. **"User Licence"** means the individual user subscriptions to the software purchased by the Customer pursuant to the terms of this Agreement for use by Authorised Users and described in the Order Form.

## APPENDIX 2 – SUPPORT AND ADDITIONAL SERVICES

Please see: <https://www.exalens.com/legal/support-services>

## APPENDIX 3 – THIRD PARTY MATERIAL

1. The purpose of this Appendix is to describe the components of the Platform that use Third Party Material / Open Source Software and are subject to third party licence terms.
2. The Customer acknowledges and agrees that Exalens:
  - (a) has no control over the Third Party Materials and is not responsible for their content and/or availability;
  - (b) does not endorse the content, or other material contained in, the Third Party Materials and gives no warranties with respect to the same.

(c) All Third Party Materials are provided “as is” and “as available”.

3. The Customer acknowledges the Software may contain or be accompanied by certain Third-Party Products including Open Source Software. Any Open Source Software provided to Customer as part of the Platform is copyrighted and is made available to Customer under the GPL/LGPL, APACHE 2.0, BSD, and other Open Source Software licenses. Copies of, or references to, those licenses may be set out in a Product Order Form, the Third-Party Product packaging or in a text file, installation file or folder accompanying the Software. If delivery of Open Source Software source code is required by the applicable license, Customer may obtain the complete corresponding Open Source Software source code from Exalens public code repositories, when the source code has been made available. A URL link to Exalens’ public code repositories may be requested by sending an email to [opensource@exalens.com](mailto:opensource@exalens.com). All other implied licenses are disclaimed, and all rights not expressly granted herein are reserved to Exalens.