**EXABEAM**

**RESELLER AGREEMENT**

This Reseller Agreement (“**Agreement**”) is entered into as of the date last signed ("**Effective Date**"), between Exabeam, Inc., a Delaware corporation with an office located at 2 Waters Park Drive, San Mateo, CA 94403 ("**Exabeam**") and the party listed below (“**Reseller**”).

|  |  |
| --- | --- |
| Reseller: | Reseller  Primary Contact: |
| Address: | Phone: |
| Email: | Fax: |

This Agreement includes this Cover Page, the attached “Terms and Conditions”, all other Attachments attached hereto, any future Attachments or addendums executed by the parties which reference this Agreement, and any terms expressly incorporated by reference. There shall be no force or effect to any different or additional terms of any related purchase order, confirmation, ordering document or similar form even if signed by the parties after the date hereof.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ, UNDERSTOOD AND AGREED UPON ALL THE TERMS OF THIS AGREEMENT, AS INDICATED BY THE RESPECTIVE DULY AUTHORIZED SIGNATURES OF EACH PARTY’S REPRESENTATIVE BELOW AND EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND THE LIABILITY AND REMEDY LIMITATIONS IN THIS AGREEMENT ARE MATERIAL, BARGAINED FOR BASES OF THIS AGREEMENT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

**Reseller** **Exabeam, Inc.**

Signed: Signed:

Name: Name:

Title: Title:

Date: Date:

**Terms and Conditions**

**1. Definitions**.

* 1. “**Documentation**” means the written and/or electronic end user or technical documentation pertaining to the Product that is provided together with the delivery of the Product.
  2. **“End User(s)”** means entities located in the Territory identified in Attachment A that have assented to an End User Agreement and have purchase/license (as relevant) the Products from Reseller for their own internal use and benefit in the normal course of its business.
  3. “**End User Agreement**” means, with respect to a Exabeam Product, the then-current end user agreement provided by Exabeam, which may include a click-wrap agreement, a web agreement which End User assents to, or a negotiated end user agreement between Exabeam and the applicable End User, as relevant.
  4. **“Exabeam Reseller Program”** means the Program, requirements, obligations, and benefits of Exabeam’s Reseller Program, which shall be outlined by Exabeam in Exabeam’s Reseller Program Guide (as such guide is updated by Exabeam from time to time). The then current Reseller Program Guide can be obtained from Exabeam sales personnel upon request.
  5. **“MarketPlace”** shall mean the market segment identified in Attachment A, if any.

**f.** “**Price List”** shall mean Exabeam’s then-current relevant Price List provided to Reseller (as updated during the Term of this Agreement). The current Price List may be obtained from Exabeam sales personnel. Exabeam shall have the right to change its prices listed on its Price List with thirty (30) days written notice, provided such revised pricing will only apply to orders approved after such notice period expires.

**g. "Products"** shall mean the products and services (including but not limited to Exabeam’s hardware, software, support and maintenance or other professional services) set forth in Exabeam’s Price List, together, as relevant, with the Documentation. Exabeam reserves the right to add change or modify Products at any time. Exabeam may also discontinue any Product at any time with thirty (30) days prior written notice to Reseller.

**h.** “**Territory**” means the geographical location(s) identified in Attachment A.

2. **Appointment; Demonstration; Subcontracting Services**.

**a. Appointment**. Subject to the terms and conditions of this Agreement, Exabeam hereby appoints Reseller, during the Term, as Exabeam’s independent, non-exclusive, reseller of the Products in the Territory and for the MarketPlace specified on Attachment A. Unless otherwise authorized by Exabeam in writing from time to time, Reseller shall adhere to any resale minimums identified in the Price List (if any). Exabeam expressly reserves the right to market and sell the Products in the Territory and MarketPlace, directly or through other resellers, distributors and/or other channels.

**b.** **Demonstration License.** Subject to the terms of this Agreement and the payment by Reseller of the relevant “not-for-resale-license fees” designated by Exabeam for demonstration only licenses, Exabeam grants Reseller a nontransferable, non-exclusive license to use the Product to demonstrate Products to bona fide End Users in the Territory and Market Place, but only if such potential End User is subject to obligations of confidentiality and non-use which are no less restrictive than the confidentiality terms described herein.

**c.** **Subcontracting Services**. From time to time, instead of reselling Exabeam professional services, Reseller may itself agree to provide an End User certain professional services relating to the training or implementation of Products, etc. In connection with the same, Reseller may ask Exabeam to serve as a subcontractor to Reseller to assist Reseller with the delivery of some or all of such services. The scope, delivery schedule, pricing and payment terms for the subcontracted services shall be as mutually agreed by the parties in a statement of work executed by the parties which references this Agreement; in such cases, such subcontracting services delivered by Exabeam to Reseller shall be delivered subject to the terms and conditions of this Agreement.

**3. Reseller Responsibilities.**

**a.** **Resources**. Reseller will at all times maintain a sales organization, facilities and other technical resources reasonably sufficient to carry out Reseller’s obligations under this Agreement.

**b. Marketing**. Reseller will use reasonable commercial efforts to promote and market the Products in accordance with the terms of this Agreement. Reseller will not make any representations regarding the Products except as consistent in all respects with materials provided to Reseller by Exabeam. From time-to-time, Exabeam may furnish Reseller with a quantity of marketing material. Reseller agrees to obtain Exabeam’s prior written approval for all advertisements and promotional materials used in connection with marketing the Products, which approval shall not be unreasonably withheld, conditioned or delayed.

**c.** **Compliance with Good Business Practices; Laws.** While acting as a reseller for Products, Reseller agrees that it shall conduct its business in a manner that favorably reflects upon the Products and Exabeam. In addition, each party agrees to comply with all laws and regulations in connection with its performance under this Agreement, including to the extent applicable, privacy laws, telecommunication laws, the U.S. Foreign Corrupt Practices Act and all applicable export laws, restrictions, and regulations of any United States or foreign agency or authority. Reseller agrees that it will not import, export or re-export, or allow or authorize the import, export or re-export of any Product, technology or information it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any laws or regulations. When necessary, in connection with the delivery of Products hereunder, Exabeam will provide Reseller information regarding the export classification control numbers (ECCN) and any export licenses it has obtained with respect to its Products. Subject to the foregoing, Reseller shall be responsible for procuring any necessary governmental authorizations for importation of the Products within the Territory (including any territories from which the Products may be accessed), including without limitation any necessary licenses, approvals, permissions or consents. Reseller warrants that neither this Agreement nor the performance of or exercise of rights under this Agreement is restricted by, in conflict with, ineffective under, requires registration, or will require any termination or expiration payment, compensation or indemnification or any compulsory licensing under, any law or regulation of any country, group of countries or other governmental entity located within any portion of the Territory and Reseller will not make any claim to the contrary (Exabeam is relying on this representation and warranty, among other provisions of this Agreement, in entering this Agreement and would not enter this Agreement in its absence).

**d. Communications**. During the Term, Reseller agrees to keep Exabeam informed as to any problems encountered with the Products and any resolutions arrived at for those problems of which Reseller becomes aware, and to communicate promptly to Exabeam any modifications, design changes or improvements of the Exabeam Products suggested by any End User, employee or agent (collectively “**Suggestions**”). As between Exabeam and Reseller, Reseller further agrees that Exabeam shall own all Suggestions and Reseller agrees to and hereby assigns all of Reseller’s rights, title and interest in and to such Suggestions to Exabeam. During the Term, Reseller will also promptly notify Exabeam of any allegations of infringement of any trademarks or other intellectual property or proprietary rights relating to the Products of which Reseller becomes aware.

**e.** **Competitive Products**. Upon written request from Exabeam, Reseller agrees to identify to Exabeam any third party products that it markets or sells to its customers which are competitive to the Products.

**f.** **Reports; Point of Sale**. Upon request, within five (5) business days after the end of each calendar month, Reseller shall provide Exabeam with a report which shall include: (i) the names and addresses of End User customers of Reseller to whom Products were distributed in the preceding month, along with sales information (date of delivery and serial number associated with each customer purchase (if relevant)); (ii) sales of additional licenses to existing End User licensees; and (iii) other relevant information reasonably requested by Exabeam from time to time relating to the sales of Products or sales efforts of Reseller.

**4.**  **Payment and Supply Terms**.

**a.** **Reseller Discounts based on Reseller Status**. The discounts off the Price List which are available to Reseller for the resale of Products are dependent on the Reseller’s partner status. Reseller’s partner status will depend on Reseller obtaining/meeting the certification and other program requirements outlined by Exabeam in Exabeam’s Reseller Program Guide. Exabeam’s Reseller Program Guide can be obtained from Exabeam sales personnel. Reseller also understands and agrees that pricing and discounts are also subject to Exabeam’s deal Registration Terms and Conditions outlined by Exabeam at <http://www.exabeam.com/partners/deal-registration/> (as such terms are updated from time to time).

**b. Payment Terms; Invoices.** All payments to Exabeam shall be made to the address/account specified by Exabeam in U.S. dollars. Reseller shall pay all amounts invoiced within thirty (30) days from receipt of invoice, unless Exabeam determines that Reseller’s credit is not satisfactory, in which case, upon notice from Exabeam, payment terms shall be C.O.D. Reseller understands and agrees that Exabeam may run a background or credit check on Reseller and Reseller shall provide any information or assistance reasonably required by Exabeam to run such background or credit check.

**c.** **Taxes.** Reseller shall be responsible for, and shall pay, any and all taxes, duties, and other governmental assessments associated with sales under this Agreement (except for taxes based on Exabeam’s net income), including without limitation any applicable sales, VAT, use taxes (if relevant). Reseller will pay interest on all amounts not paid when due at the rate of 1% per month or the highest rate permitted by law, whichever is lower.

**d.** **Shipping of Hardware; Delivery**. For shipments of any hardware, when relevant, Reseller will pay all transportation and insurance expenses and risk of loss shall pass to Reseller upon delivery to the carrier. In the case of hardware products shipped, all such Products are shipped FOB Origin from Exabeam's applicable warehouse or place of production. Subject to the terms and conditions of this Agreement, for software, online subscriptions or hardware products ordered, Exabeam shall use its reasonable commercial efforts to fill (by full or partial shipments or electronic delivery, as relevant) Reseller's written orders for Products, which are accepted by Exabeam in writing, insofar as practical and consistent with Exabeam’s then-current lead-time and shipping schedule, access to supplies, etc. Exabeam will not be liable to Reseller or to any other party for any delay in the delivery of the Products or for any orders not accepted by Exabeam in writing.

**e.** **Cancellation; Changes; Returns**. Reseller may not decrease or cancel any order once the order has been accepted by Exabeam and scheduled for production, unless written consent is obtained from Exabeam, which consent shall not be unreasonably delayed. If consent is granted Reseller may (unless waived in the consent) be subject to Exabeam’s then current cancellation, restocking, or change order fees as applicable. Any such fees shall be disclosed to Reseller prior to charging.

**5. Confidentiality; Ownership; Trademarks; Software Products; Restrictions; End User Agreement.**

**a.** **Confidential Information**. Each party (the “Receiving Party”) agrees that all code, inventions, algorithms, designs, know-how, ideas, and all business, technical and financial information it obtains from the other party (the “Disclosing Party”) are the confidential property of the Disclosing Party (“**Confidential Information**”). Reseller understands that the Products and Documentation are the Confidential Information of Exabeam and its licensors, and Reseller shall not provide them (or provide access) to End Users unless End User has signed an End User Agreement or End User is otherwise subject to confidentiality terms not less onerous than the confidentiality provisions of this Section. Except as expressly and unambiguously allowed herein to perform under this Agreement, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party’s nondisclosure obligation will not apply to information it can document is (i) generally available to the public (other than through breach of this Agreement), or (ii) known to the Receiving Party prior to its disclosure, or (iii) later learned by the Receiving Party from a third party without any obligation of confidentiality to the Disclosing Party, or (iv) independently developed or obtained by the Receiving Party without use of Confidential Information of Disclosing Party. Because of the unique and proprietary nature of Confidential Information, it is understood and agreed that the Disclosing Party’s remedies at law for a breach by the Receiving Party of its obligations under this Section will be inadequate and that the Disclosing Party will be entitled to equitable relief (including without limitation provisional and permanent injunctive relief without the obligation to post a bond) in addition to any other remedies.

**b. Ownership**. As between the parties, Exabeam and its licensors retain all right, title and interest (including all intellectual property rights, proprietary rights and industrial property rights) in and to the (i) Products, all copies, improvements, and derivative works thereof (by whomever produced) and all related documentation and materials, and (ii) all of the service marks, trademarks, trade names, logos, or any other designations used in connection with the Exabeam Products (collectively “**Exabeam Marks**”). All rights to Products and Exabeam Marks not granted herein are retained by Exabeam and its licensors. There are no implied licenses granted by Exabeam under this Agreement.

**c.** **Trademarks**. Reseller agrees to use only the then-current Exabeam Marks used by Exabeam in its promotion, marketing, and sale of the Products. All goodwill associated with the use of Exabeam’s Mark’s shall inure to the benefit of Exabeam. Notwithstanding anything else herein, Reseller may not use Exabeam Marks without the express written consent of Exabeam. Reseller will at no time contest or aid in contesting the validity or ownership of any Exabeam Mark or take any action in derogation of Exabeam’s rights therein, including without limitation applying to register any trademark, trade name, service mark or other designation that is confusingly similar to any Exabeam Mark.

**d.** **Software Products.** Notwithstanding anything else in this Agreement, software (including any virtual machine or firmware) incorporated into or provided in connection with the Product delivery (whether initially, as part of maintenance or support or otherwise) (“**Software**”) is licensed and not sold. Reseller’s appointment only grants to Reseller a license to distribute such Software and does not transfer any right, title or interest in any such Software to any End User or third party.

**e.** **Restrictions**. Reseller shall not (and shall not permit any third party to): (i) copy or use the Software or any portion thereof, except as expressly authorized by this Agreement; (ii) modify the Software or create or attempt to create, by reverse engineering or otherwise, the source code or internal structure of the Products or any part thereof, except and only to the extent such restrictions are prohibited by local law; (iii) remove any proprietary notices or restrictions from the Products; or (iv) use the Products for any purpose other than to support the End Users and demonstrate the Product to potential End Users as permitted herein; or (v) provide the Product to any third party which is not subject to Exabeam’s End User Agreement; or (vi) permit any End User to use the Product beyond the scope of the End User Agreement; or (vii) promote, advertise, market, sell or otherwise distribute the Products outside the Territory or Marketplace (specified on Attachment A) without Exabeam’s prior written consent.

f. **End User Agreement.** All sales / licenses of Product shall be subject to the End User Agreement and no other terms.Reseller shall not offer the Products to any customer subject to any additional or different terms than those provided by Exabeam in its End User Agreement. If an End User seeks to negotiate a nonstandard form of End User Agreement, Exabeam will attempt to negotiate mutually satisfactory terms; provided, however, Exabeam shall not be obligated to agree to any different terms. For clarity, in each instance, End Users must agree in writing (including electronically) to be bound by the End User Agreement prior to delivery of any Products to such End Users.Reseller shall promptly notify Exabeam of any breach of the End User Agreement by any End User of which it becomes aware.

**6.**  **Warranties; Disclaimers**.

**a. Conflicts**. Each party represents and warrants that neither this Agreement nor the performance of or exercise of rights under this Agreement is, other than as set forth herein, restricted by or in conflict with any agreement that such party has entered into with a third party, and it will take no action inconsistent with the foregoing warranty.

**b.**  **Warranties to End Users.** With respect to Exabeam Products, Exabeam provides warranties for its Products directly to the End Users in the relevant End User Agreement and Reseller may pass through such warranties directly to the End User. Notwithstanding anything else, Reseller agrees that it will make no additional or different warranty, guarantee, or representation, whether written or oral, on Exabeam’s behalf, beyond those warranties provided for by Exabeam directly to the End User in the End User Agreement effective between the relevant End Users and Exabeam.

**c. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, EXABEAM PROVIDES NO OTHER WARRANTIES TO RESELLER WITH RESPECT TO THE PRODUCTS OR ANY SERVICES PROVIDED HEREUNDER. EXCEPT FOR THE WARRANTIES EXPRESSLY DESCRIBED HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXABEAM AND ITS LICENSORS DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT, THE PRODUCTS AND ANY SERVICES PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

**7. Indemnity.**

**a.** **Reseller Indemnity**. Reseller will defend, indemnify and hold Exabeam harmless from and against any third party claims, actions or demands brought against Exabeam, its affiliates, agents, or their respective employees, directors, officers (collectively “Exabeam Indemnities”) arising out of or relating to any breach of its obligations hereunder or any other grossly negligent or intentional act or any omission or misrepresentation of Reseller or Reseller’s, agents, affiliates, or employees in connection with their activities under this Agreement.

**b.** **Exabeam Indemnity**. Exabeam will defend, indemnify and hold Reseller harmless from and against any third party claim brought against Reseller, its affiliates, agents, or their respective employees, directors, officers (collectively “Reseller Indemnities”) to the extent based on an allegation that Exabeam’s Products infringe or violate any intellectual property right of a third party in the Territory. The foregoing obligation of Exabeam does not apply with respect to Product or portions or components thereof (i) that are not supplied by Exabeam, (ii) that are modified after shipment by Exabeam, if the alleged infringement relates to such modification, (iii) that are combined with other products, processes or materials where the alleged infringement relates to such combination, (iv) where the allegedly infringing activity continues after notification thereof or of modifications that would have avoided the alleged infringement, (v) where use of the Product is incident to an infringement not resulting primarily from the Product or (vi) where use is not strictly in accordance with this Agreement and all applicable licenses and Documentation. The remedies set forth in this Section constitute Reseller’s sole and exclusive remedies, and Exabeam’s entire liability, with respect to claims of infringement or violation of any third party intellectual property or other rights.

**c.** **Conditions of Indemnification**. A party’s indemnity obligation hereunder is conditioned upon: (i) the indemnitee providing the indemnitor prompt written notification of any and all threats, claims and proceedings for which indemnity is being sought, provided that any failure by the indemnitee to provide prompt notice shall not relieve the indemnitor of its indemnification obligations except to the extent that the defense against such threats, claims, or proceedings is prejudiced by such delay, and (ii) the indemnitee providing the indemnitor all reasonable assistance in connection with the defense or settlement of any such claim, at the indemnitor’s cost and expense and (iii) the indemnitee providing the indemnitor the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise.

**8. LIMITATION ON LIABILITY.** NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, EXCEPT FOR LIABILITY ARISING OUT OF EITHER PARTY’S BREACH OF SECTION 5 OR WITH RESPECT TO A PARTY’S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT: (A) EACH PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY, INCLUDING CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, SHALL NOT EXCEED THE AMOUNTS PAID TO OR OWED TO EXABEAM BY RESELLER DURING THE TWELVE-MONTH PERIOD PRIOR TO THE DATE THE LIABILITY AROSE, AND (B) NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, REVENUE, DATA, USE OR SAVINGS, OR COST OF SUBSTITUTE PROCUREMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE.

**9. Term and Termination.**

**a.** **Term**. This Agreement shall have a term specified on Attachment A (“**Term**”), and shall automatically renew for one (1) year renewal terms, unless a notice of non-renewal is provided by either party prior to the effective date of such renewal.

**b.** **Termination for Cause**. This Agreement may be terminated by a party for cause immediately by written notice upon the occurrence of any of the following events: (i) if the other ceases to do business or otherwise terminates its business operations without a successor or if there is a material change in control of the other or (ii) if the other breaches any material provision of this Agreement and fails to cure such breach within thirty (30) days (ten (10) days in the case of a failure to pay) of written notice describing the breach; or (iii) if the other becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against the other (and not dismissed within ninety (90) days).

**c.** **Termination for Convenience**. Either party may terminate this Agreement at any time with or without cause upon sixty (60) days prior written notice to the other party.

**d.** **Effects of Termination or Expiration**. Upon any termination or expiration of this Agreement: (i) Reseller will pay Exabeam all fees due to Exabeam for Products and services sold or licensed by Reseller prior to the date of termination; (ii) Reseller will discontinue all reselling, licensing and all use of the Products and Exabeam Marks and return to Exabeam all materials containing Exabeam Marks; (iii) each party will also promptly return all Confidential Information of the other party in its possession or control, and upon request, provide the other party with a written certification, signed by one of its officers certifying to the return of all such Confidential Information. For clarity, End User Agreements with End Users shall survive for the term specified in such agreement.

**e.** **Survival**. Sections 1, 3(d), 4, 5, 6, 7, 8, 9, and 10 will survive any termination or expiration of this Agreement.

**f.** **Damages Associated With Exercising Termination Rights.** Neither party will be liable to the other party for any claims or damages of any kind arising solely out of a party exercising its non-renewal or termination rights described in this Agreement, and each party hereby waives, and covenants to the other that it will not pursue, any compensation or reparation associated with a such termination, whether such compensation or reparation results by operation of law or otherwise. For clarity, the foregoing sentence is not intended to affect any remedies a party is entitled to seek in connection with a breach of this Agreement, nor does such provision affect the obligation of Reseller to pay fees due to Exabeam for Products resold prior to the effective date of termination.

**g.** **Continuance of Activities**. If, despite the expiration or termination of this Agreement, the parties, for a period of time, continue to do business with each, the terms of this Agreement will continue to govern the relationship between the parties, and except that the relationship may be terminated unilaterally by either party merely by ceasing to do business with the other.

**10. General.**

**a.** **Relationship of Parties**. The parties to this Agreement are independent contractors. There is no relationship of agency, partnership, joint venture, employment or franchise between the parties. Neither party nor any of its employees has the authority to bind or commit the other party in any way or to incur any obligation on its behalf.

**b.** **Assignment**. This Agreement and the rights hereunder are not transferable or assignable without the prior written consent of the other party, except to an entity who acquires all or substantially all of the assets or business of a party, whether by sale, merger, operation of law or otherwise. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party’s permitted successors and assigns.

**c.** **Amendment and Waiver**. Except as otherwise expressly provided herein, any provision of this Agreement may be amended and the observance of any provision of this Agreement may be waived (either generally or any particular instance and either retroactively or prospectively) only with the written consent of the parties. However, it is the intention of the parties that this Agreement be controlling over additional or different terms of any order, confirmation, invoice or similar document, even if accepted in writing by both parties, and that waivers and amendments shall be effective only if made by non-preprinted agreements clearly understood by both parties to be an amendment or waiver.

**d.** **Governing Law; Disputes; Venue and Jurisdiction**. This Agreement shall be governed by and construed under the laws of the State of California and the United States without regard to conflicts of laws provisions thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods or UCITA. In the event of any controversy or dispute between Reseller and Exabeam arising out of or in connection with this Agreement, the parties shall attempt, promptly and in good faith, to resolve any such dispute. The parties agree that any dispute that can’t be resolved by those involved shall be submitted to the senior management of each party for attempted resolution of the dispute. Senior management shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without necessity of any formal proceeding relating thereto. If senior management, within thirty (30) days of their first communication has not resolved the dispute (the day after such period expires shall be deemed the “Arbitration Date”), the parties shall immediately thereafter submit the dispute to binding arbitration in accordance with the Commercial Arbitration Procedures of JAMS then in effect. The parties shall mutually choose a single commercial arbitrator with substantial experience in resolving complex commercial contract disputes, whom may or may not be selected from the appropriate list of JAMS arbitrators. If the parties cannot agree upon the arbitrator win fifteen (15) days following the Arbitration Date, then a single arbitrator shall be selected in accordance with the Arbitration Rules and Procedures of JAMS, provided any arbitrator so selected shall have substantial experience in the software industry. The arbitrator shall have the authority to grant specific performance and to allocate between the parties the costs of arbitration (including service fees, arbitrator fees and all other fees related to the arbitration) in such equitable manner as the arbitrator may determine. The prevailing party in the arbitration shall be entitled to receive reimbursement of its reasonable expenses incurred in connection therewith. Judgment upon the award so rendered may be entered in a court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the forgoing, Exabeam or Reseller shall have the right to institute an action in a court of proper jurisdiction for preliminary injunctive relief pending a final decision by the arbitrator, provided that a permanent injunction and damages shall only be awarded by the arbitrator. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys’ fees. Unless waived by Exabeam in writing for the particular instance (which Exabeam may do at its option), for all purposes of this section, the parties consent to exclusive jurisdiction and venue in the U.S., California, Santa Clara County and U.S. federal courts located in Santa Clara County in California; Both parties consent to such jurisdiction and venue. For the avoidance of doubt, the validity, construction, and enforceability of this Agreement and the resolution of disputes arising out of and relating to this Agreement, shall be governed solely by this section.

**e.** **Headings**. Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement.

**f.** **Notices**. Any notice required to be given under this Agreement shall be in writing and delivered personally, by facsimile transmission, by email transmission, by express overnight mail, or by certified U.S. mail to the other party at the postal address, facsimile or email address set forth on the Cover Page (or such other postal address, facsimile or email address provided by each party in accordance with this Section). Notices shall be deemed effective (i) on the date of delivery, if delivered personally; (ii) on the date of transmission, if sent by facsimile transmission, provided that the sending facsimile machine confirms in writing the receipt of the full facsimile transmission; (iii) on the date of email transmission, if sent by email and a response email or other confirmation by the recipient of the receipt of such email is provided; (iv) one (1) business day after deposit, if sent by express overnight courier, with written confirmation of receipt; or (v) five (5) business days after posting, if sent by certified U.S. mail.

**g.** **Entire Agreement**. This Agreement supersedes all past and contemporaneous proposals (oral or written), negotiations, conversations, or discussions between or among parties relating to the subject matter of this Agreement and all past dealing or industry custom.

**h.** **Severability**. If any provision of this Agreement is held by an arbitrator or a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

**i. Counterparts**. This Agreement may be executed and delivered in one or more counterparts (including facsimile, PDF or other electronic counterparts), with the same effect as if the parties had signed the same document. Each counterpart so executed shall be deemed to be an original, and all such counterparts shall be construed together and shall constitute one Agreement.

**Attachment A**

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| --- |
| **Initial “Term” of Agreement**: one (1) year from the Effective Date. |
| **“Territory”(non-exclusive):** [Name Territory**]** |
| **“MarketPlace”:** [Federal government] or [Commercial markets] |