

## XDR Alliance Membership Terms and Conditions

THIS AGREEMENT BETWEEN YOU ("PARTNER") AND EXABEAM, INC. ("EXABEAM"), AS MAY BE MODIFIED BY EXABEAM, ("AGREEMENT") SHALL APPLY TO YOUR PARTICIPATION IN THE XDR ALLIANCE ("PROGRAM") AND SHALL BE EFFECTIVE THE EARLIER OF ACCEPTANCE OF PARTNER INTO OR THE COMMENCEMENT OF PARTNER'S PARTICIPATION IN THE PROGRAM. UNLESS THE PARTIES ENTER INTO AN AGREEMENT SIGNED BY BOTH PARTIES WHICH EXPRESSLY SUPERSEDES OR SUPPLEMENTS THIS AGREEMENT, THEN THE PARTIES AGREE THAT THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES, WHICH SUPERSEDES ALL PROPOSALS AND ALL PRIOR AGREEMENTS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE PROGRAM.

### 1. MARKETING AND SALES

- 1.1 **JOINT ACTIVITIES.** The parties hereby agree to participate in joint marketing and promotional efforts, to notify customers, potential customers, and other members of the industry of the relationship between and/or common objectives of the parties. Content and activities shall be mutually agreed by the parties. In furtherance of such joint marketing and promotional efforts, each party shall avoid deceptive, misleading, illegal, or unethical practices that may be detrimental to the other party or to the products and services of such other party. Each party will bear its own costs incurred pursuant to fulfillment of its obligations or carrying out its activities under this Agreement.
- 1.2 **TRADEMARKS.** Subject to the terms and conditions of this Agreement, the parties each hereby grant the other party a non-exclusive, non-transferable limited license to use their respective trademarks provided that: (i) said use shall only be in connection with the promotion of the relationship; (ii) ownership of the trademarks is clearly designated; and (iii) each party complies with the trademark owner's usage guidelines. Each party understands and agrees that all use and goodwill associated with the other party's trademarks will inure to the benefit of such other party. Upon termination or expiration of this Agreement, each party will cease to use the other party's trademarks. Each party shall have the right to immediately suspend the other party's use of its trademarks if such usage is improper or inconsistent with the terms of this Agreement.

### 2. TERM AND TERMINATION

- 2.1 This Agreement shall commence on the Effective Date and continue until terminated by a party. Either party may terminate this Agreement by providing thirty (30) days' prior written notice to the other. Upon the expiration or any termination of this Agreement, any licenses granted hereunder shall immediately terminate and each party shall destroy all copies of all licensed materials. This Section 2 (Termination), 3 (Warranty Disclaimer), and 5 (General) shall survive any such termination.

### 3. WARRANTY DISCLAIMER

- 3.1 EACH PARTY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES AND CONDITIONS WITH RESPECT TO ALL MATERIALS, INFORMATION, OR SERVICES PROVIDED UNDER THIS AGREEMENT, WHETHER IMPLIED, EXPRESS, OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### 4. LIMITATION OF LIABILITY

- 4.1 **DAMAGES.** EXCEPT FOR ANY INFRINGEMENTS OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS (INCLUDING BUT NOT LIMITED TO BREACHES OF SECTION 1.2), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER ANY CIRCUMSTANCES ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE FOR DAMAGES, WHETHER DIRECT OR INDIRECT, IN ANY AMOUNT, INCLUDING BUT NOT LIMITED TO THOSE ARISING FROM OR RELATING TO LOST DATA, LOST PROFITS, SECURITY BREACH OR GOVERNMENTAL FINE, OR CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES ACKNOWLEDGE THAT THE TERMS OF THIS SECTION: (1) REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT THE PARTIES WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS OF LIABILITY; AND (2) WILL APPLY EVEN IF ANY EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE DISCLAIMER OF WARRANTY AND LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT WILL APPLY ONLY TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

### 5. GENERAL

- 5.1 **PARTY RELATIONSHIP; COMPLIANCE.** At no time shall either party be deemed to be the agent or employee of the other. No joint venture, partnership, agency, or other relationship shall be created or implied as a result of this Agreement. Furthermore, neither party shall have the authority to, and shall not purport to, enter into any contract or commitment on behalf of the other party. The parties shall comply with all provisions of any applicable laws, regulations, rules, or orders relating to exercising its rights or obligations hereunder.
- 5.2 **GOVERNING LAW.** This Agreement, and any and all actions arising from or in any manner affecting the interpretation of this Agreement, shall be governed by, and construed solely in accordance with, the laws of the State of California, without giving effect to any conflicts of laws principles. The parties consent to the exclusive jurisdiction and venue of the federal and state courts located in Santa Clara County, California for any action related to this Agreement.
- 5.3 **EQUITABLE RELIEF.** Each party acknowledges that the other party would suffer immediate and irreparable harm for which monetary damages would be an inadequate remedy for a breach of Section 1.2 (Trademarks) or other infringement of a party's intellectual property rights. The parties therefore expressly agree that either party shall be entitled to obtain equitable relief, including injunctive relief, from any court having jurisdiction, to protect rights and interests in connection with Section 1 of this Agreement and/or its intellectual property rights. Such remedy shall be in addition to such other remedies as may be available at law or in equity.
- 5.4 **NOTICES.** All notices under this Agreement shall be in writing and shall be delivered by personal delivery, national express courier with a tracking system, or by certified or registered mail, return receipt requested. Notices sent to Exabeam shall be sent to 1051 E. Hillsdale Blvd., Fourth Floor, Foster City, California, unless otherwise notified by Exabeam, and addressed to "Legal".
- 5.5 **WAIVERS; AMENDMENT; SEVERABILITY.** Failure to enforce any of the provisions of this Agreement or require performance of the other party shall in no way be construed to be a present or future waiver of such provisions. If any provision of this Agreement is found or held to be invalid or unenforceable by any tribunal of competent jurisdiction, then the meaning of such provision shall be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the
- 5.6 **ENTIRE AGREEMENT.** Each party represents and warrants that the person accepting this Agreement on such party's behalf has been duly authorized and empowered to enter into this Agreement.