

LICENSE AGREEMENT

This Agreement (this “**License Agreement**”) is by and between Exym, LLC, a California limited liability company (“**Exym**”), and the Subscriber (the “**Subscriber**”) identified on a signed Order Form (“**Order Form**”). This Agreement governs the use of the subscription and the provision of any related services provided by Exym to Subscriber in accordance with the Order Form. This Agreement, the Order Form(s), the HIPAA Privacy Compliance Agreement (the “**BAA**”), and all exhibits thereto are collectively referred to as this “**Agreement**”. This Agreement is effective on the Effective Date of the Order Form (the “**Effective Date**”).

RECITALS

A. Exym owns and offers subscriber access to its proprietary Electronic Health Record (her) Software, and its related modules such as Exym Analytics and Exym Engage, and provides certain Services related thereto.

B. Exym desires to offer to Subscriber, and Subscriber desires to obtain from Exym, a subscription to use the Software and to provide certain Services on the terms and subject to the conditions set forth below, which terms and conditions shall supersede the terms of any understanding or other agreement between Exym and Subscriber relating to the subject matter hereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Defined Terms. Unless the context requires otherwise, the capitalized terms used herein and not otherwise defined shall have the following meanings.

(a) “**Business Hours**” means 8:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday, excluding U.S. federal holidays.

(b) “**Derivative Works**” is defined by 17 U.S.C. §101. The right to access the Software hereunder is a subscription, not a sale, to Subscriber for Subscriber’s internal use only as provided herein. Exym reserves all rights not expressly granted in this Agreement.

(c) “**EHR Software**” means Exym’s proprietary Electronic Health Record System and related software, more particularly described as the object code version of any and all software of Exym to which Subscriber is given internet access during this Agreement, including but not limited to all modifications, updates, translations, and enhancements and Derivative Works thereof, together with related user documentation. The term “EHR Software” excludes Content (defined below) provided by Subscriber that is accessed by use of the EHR Software.

(d) **“Exym Analytics”** means Exym’s customized analytics tools, reports, and support as more particularly described in the Order Form. The term “Exym Analytics” excludes Content provided by Subscriber that is accessed by use of the Exym Analytics.

(e) **“Exym Knowledge Base”** means the contents of the “Help Center” located at www.exym.org.

(f) **“Representatives”** means, with respect to a party, that party’s employees, officers, directors, service providers, consultants, independent contractors, and legal advisors.

(g) **“Services”** means additional services provided by Exym to Subscriber as more particularly described in the applicable Order Form, and which may include integration services, migration services, and training.

(h) **“Software”** means the EHR Software and, if applicable to an Order Form, any other related proprietary software offered by Exym, including ExymAnalytics, Exym Engage, KCare Forms, and other modules.

(i) **“Users”** means employees or sub-contractors of Subscriber (or other persons during the period such other persons are on Subscriber’s premises) designated by Subscriber to access and use the Software for purposes specifically related to Subscriber’s internal business, which users have been identified to Exym.

Section 1.2 Incorporation. The above recitals are incorporated herein in their entirety and made a part of this Agreement by this reference.

ARTICLE II SUBSCRIPTION

Section 2.1 Access and Use Subscription. Subject to the terms and conditions set forth in this Agreement, Exym grants Subscriber and Subscriber accept a non-exclusive, non-transferable, limited right to access and use the Software for Subscriber’s use only and at a location(s) within the United States, in accordance with the applicable Order Form and terms herein (the **“Subscription”**). Under the Subscription, Exym authorizes Subscriber’s Users, and no others, to access and use the Software and its functionality and display it on, any of Subscriber’s computer workstations. The Order Form will set forth the agreed upon minimum number of Users and the applicable price for such Users, as well as the per-User fee for any additional Users. At the end of each month during the Term, Exym will confirm the number of Subscriber Users and invoice Subscriber for all Users as set forth on the Order Form. Subject to the terms of this Agreement, Exym shall use commercially reasonable efforts to ensure that the Software is accessible and usable by Subscriber, its affiliates, and Users during the term of the Subscription.

Section 2.2 Prohibited Actions. Except as expressly provided otherwise herein, Subscriber may not do any of the following things with or to the Software: (1) copy or reproduce the Software, in whole or in part; (2) modify, correct, adapt, translate, enhance, or otherwise prepare Derivate Works of the Software; (3) rent, sell, lease, timeshare, assign, distribute, publish,

transfer, lend, or otherwise make available the Software to a third party; (4) copy or permit access to the Software by any third party, other than pre-approved sub-contractors; (5) permit individuals other than Users to access or otherwise use the Software; (6) reverse engineer, disassemble, decompile, decode, or adapt the Software, or otherwise attempt to derive or gain access to the Source Code of the Software, in whole or in part; (7) bypass or breach any security device or protection used for or contained in the Software; and/or (8) use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law. Subscriber may give access to the Software to external auditors and other regulators to conduct periodic reviews.

Section 2.3 Development of Training Materials. Subscriber is authorized to develop training materials utilizing screen shots and otherwise proprietary elements of the Software solely for internal training use, and for no other purpose whatsoever. Subscriber is expressly prohibited from developing training material for Software for the purpose of resale or distribution outside of Subscriber or its affiliates.

Section 2.4 Protection of Software. Subscriber will take action by instruction, written agreement, or otherwise as appropriate with any person permitted access to the Software to ensure that Subscriber complies with its obligations and restrictions hereunder. Subscriber will not provide, permit access to or use of, or otherwise make available any element of the Software in any form without Exym's prior written agreement except to Subscriber's Users. Software in human-readable ("**Source Code**") form is confidential and proprietary information of Exym and/or its licensors. Subscriber agrees not to discover or attempt to discover or assist or permit any person or entity to discover or attempt to discover, by any means whatsoever the Source Code of any element of the Software.

Section 2.5 Services. Exym may provide, and Subscriber may elect to receive or benefit from, certain Services from time to time as described on the applicable Order Form. Exym shall not be responsible and shall not be in breach of this Agreement or any Order Form for failing to meet any deadlines set forth in an Order Form to the extent arising as a result of Subscriber's failure to provide information, instructions, or appropriate access required by Exym to provide the Services.

ARTICLE III TERM

Section 3.1 Term. The term of this Agreement (and, thus, the Subscription) shall begin on the Effective Date and extends for the initial term set forth in the Order Form (the "**Initial Term**") and shall renew automatically for successive terms of the same length as the Initial Term (each, a "**Renewal Term**", and together with the Initial Term, the "**Term**"), unless terminated pursuant to Section 3.2 below or unless either party provides written notice to the other party at least 30 days prior to the end of the Initial Term or any Renewal Term, as applicable, that it will terminate the

Agreement effective as of the last day of the then-current Initial Term or Renewal Term, as applicable.

Section 3.2 Termination for Breach. This Agreement, including the Order Form, may be terminated: (1) by either party if the other party has materially breached this Agreement, within thirty (30) calendar days after written notice of such breach to the other party if the breach is remediable or immediately upon notice if the breach is not remediable; (2) by Exym immediately, with written notice to Subscriber, if Subscriber violates Article II of this Agreement, or (3) by Exym upon written notice to Subscriber if Subscriber (a) has made or attempted to make any assignment for the benefit of its creditors or any compositions with creditors, or (b) has any action or proceedings under any bankruptcy or insolvency laws taken by or against it which have not been dismissed within sixty (60) days. Furthermore, and for avoidance of doubt, should Subscriber choose not to renew an Order Form, including its subscription to the Software and/or Services pursuant to this Agreement, and come to hold no active Subscription, this Agreement will be deemed terminated. If Subscriber breaches this Agreement more than twice during any 12-month period, then Exym, at its option, may terminate this Agreement or increase the Fees (defined below) to its then-current rates (notwithstanding any terms hereunder or in the Order Form to the contrary).

Section 3.3 Effect of Termination. In the event of any termination or expiration of this Agreement for any reason, (1) Subscriber shall pay to Exym any amounts due and outstanding up to and including the effective date of such termination or expiration; (2) Subscriber shall cease use of the Software on the effective date of such termination or expiration; (3) Exym shall return Subscriber's data in accordance with Section 3.4; and (4) the terms of Article I, Section 3.4, and Articles VI through X shall survive such termination or expiration. If this Agreement is terminated by Exym pursuant to Section 3.2(1) or (2), Subscriber shall be obligated to pay Exym all of the Fees for the entire term set forth in the corresponding Order Form.

Section 3.4 Return of Subscriber Data. Notwithstanding any other provision of this Agreement to the contrary, (1) any time Exym is required to return Subscriber's data following termination of this Agreement, Exym will do so on a SQL Server backup file, and (2) unless earlier returned or destroyed as agreed by Exym and Subscriber, Exym will return all Subscriber's data and destroy all other copies of Subscriber data in its possession promptly following the 30th day after the termination date of this Agreement.

ARTICLE IV FEES

Section 4.1 Fees. Subject to the terms of this Agreement and unless alternate payment terms are set forth on the applicable Order Form, Subscriber shall pay Exym the Fees set forth on the Order Form (collectively, the "**Fees**"), with such Fees accruing as of the **Effective Date** and continuing for the Term set forth on the Order Form (the "**Term**"); provided, however, that Fees related to implementation (the

“**Implementation Fees**”) are paid as set forth on the Order Form and typically in advance of the Go-Live Date. Exym reserves the right to increase Fees with respect to renewals beyond the Term upon notice prior to the expiration of the then applicable Term.

Section 4.2 Invoicing. With the exception of Implementation Fees, which are paid in accordance with the Order Form, Subscriber shall pay the Fees required hereunder and all amounts specified in each Order Form within thirty (30) days from invoice date.

Section 4.3 Taxes. Subscriber shall, in addition to the payment of the Fees required hereunder, pay all applicable sales, use, transfer or other taxes and all duties, whether national, state or local, however designated, which are levied or imposed by reason of the Subscription or other Services provided hereunder, excluding, however, income taxes on net income which may be levied against Exym. Subscriber shall reimburse Exym for the amount of any such taxes or duties paid or accrued levied directly against Exym as a result of this Agreement.

ARTICLE V SUPPORT

Section 5.1 Support. The Fees paid by Subscriber shall include technical support during each month for which such Fees have been paid. During the Term, Exym will use commercially reasonable efforts to develop and deploy updates, enhancements, modifications, bug fixes, or other similar changes to the Software which Exym deems necessary or advisable with respect to enhancing or improving the features and functionality of the Software or the resolution of any bugs, defects, errors, problems, disruptions, etc. (including those identified and communicated by Subscriber).

Section 5.2 Maintenance. Exym will perform maintenance on the Software system after Business Hours where possible. Bug and emergency fixes may require immediate downtime. Exym will run automated maintenance jobs on the system outside of Business Hours, during which time the Software may be unavailable intermittently. Exym will use commercially reasonable efforts to provide Subscriber with advance notification of any software upgrades, version releases, and data base changes.

Section 5.3 Requests for Support. Exym shall use commercially reasonable efforts to promptly respond to each of Subscriber’s email support requests during Business Hours. Exym’s resolution time of problems or errors with the Software may depend on the availability of sufficient detail from Subscriber to reproduce the error and the complexity of the issue.

ARTICLE VI REPRESENTATIONS AND WARRANTIES

Section 6.1 Mutual Representations and Warranties. Each party represents, warrants, and covenants to the other party that: (1) it is duly organized, validly existing and in good

standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization; (2) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, subscriptions, and authorizations it grants and is required to grant under this Agreement; (3) the execution of each Order Form that references this Agreement by a party's representative whose signature is set forth on such Order Form has been duly authorized by all necessary corporate or organizational action of such party; and (4) when executed and delivered by both parties, each Order Form that references this Agreement (including the BAA) will constitute the legal, valid, and binding obligation of such party to abide by the terms of this Agreement, enforceable against such party in accordance with its terms.

Section 6.2 Limited Warranty. Exym warrants that the Software, when operated with the equipment configuration and in the operating environment specified by Exym, will perform substantially in accordance with the specifications as defined in the then current Exym Knowledge Base. However, due to the inherently complex nature of computer software, Exym does not warrant that the Software or user documentation is completely error free, will operate without interruption, or will otherwise meet Subscriber's requirements. In the event Exym is notified of any defect or error covered by such warranty Subscriber agrees to provide Exym with sufficient detail to allow reproduction of the defect or error. As Subscriber's exclusive remedy for any defect or error in the Software and services pertaining thereto covered by such warranty, and as Exym's entire liability in contract, tort, or otherwise, Exym will, in Exym's sole discretion, correct such error or defect, or provide Subscriber with a new copy of the Software. Exym, however, is not responsible for any defect or error not reported to Exym by Subscriber or any defect or error with Software and services pertaining thereto that is due to actions of Subscriber or a User of others or third-party software not provided or authorized by Exym that causes Software to be modified, misused, or damaged.

Section 6.3 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.2, THE SOFTWARE IS PROVIDED BY EXYM "AS IS". EXYM SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, EXYM MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET SUBSCRIBER'S OR OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEMS, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

Section 6.4 Data, Software and Related Services. Subscriber acknowledges that data conversion, processing and manipulation are subject to the likelihood of human and machine errors, omissions, delays, and losses, including inadvertent loss of data or damage to media that may give rise to loss or damage. Except as expressly provided in this Agreement, and excluding errors caused by Exym's gross negligence or willful misconduct, Exym shall not be liable for any such errors, omissions, delays, or losses. Subscriber is also responsible for complying with all local, state, and federal laws pertaining to the use and disclosure of any data.

ARTICLE VII LIMITATION OF LIABILITY

Section 7.1 Exclusion of Damages. IN NO EVENT WILL EXYM BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT (WHICH INCLUDES THE ORDER FORM AND BAA) OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY (1) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES OR PROFITS, (2) LOSS OF GOODWILL OR REPUTATION, (3) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF THE EHR SOFTWARE, (4) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, (5) COST OF REPLACEMENT GOODS OR SERVICES, OR (6) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

Section 7.2 Cap on Monetary Liability. IN NO EVENT WILL THE AGGREGATE LIABILITY OF EXYM ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING THE ORDER FORM AND BAA), WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID TO EXYM UNDER THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

ARTICLE VIII OWNERSHIP

Section 8.1 Ownership. Exym or its licensors retain all ownership and intellectual property rights to the Software, all related services (including the Services), and anything developed and delivered by Exym during this Agreement. For avoidance of doubt, Exym retains ownership of any: (1) materials developed by Exym prior to the Effective Date; (2) materials developed by Exym in performance of this Agreement with the exception of the Content; (3) materials that are generally applicable to Exym's products and Services; or (4) any improvements Exym may make to its own proprietary software (including the EHR Software and Exym Analytics) or any of its internal processes or tools as a result of any Order Form. Subscriber retains ownership and intellectual property rights in and to all Content.

Section 8.2 Intellectual Property. The Software uses, and may continue to use (during the term of this Agreement), Subscriber's or its affiliates' confidential and/or proprietary

documentation, material and information that is generated, collected or provided by Subscriber via the Software, including, but not limited to, proprietary and personal information, graphics, logos, patient data, word processing documents, trademarks, service marks, copyrights and other proprietary and confidential information (collectively, “**Content**”), that is separate from and stored in and accessed by the Software. Exym agrees that all Content is the property of Subscriber or the applicable Subscriber affiliate and is provided by Subscriber or its affiliates to Exym for the sole purpose the permitted operation and intended function of the Software. Collection of and/or access to the Content by Exym is governed by Exym’s Privacy Policy located at <https://exym.com/legal/privacy-policy/>.

Section 8.3 Use of De-Identified Information. Exym may use certain anonymized, De-Identified Information for business purposes from time to time and at any time. “**De-Identified Information**” means information that was formerly protected health information, as such term is defined in HIPAA, and that has been de-identified in accordance with the requirements for de-identifying health information under the HIPAA Privacy Rule. Subscriber acknowledges and agrees that De-Identified Information is not protected health information (as such term is defined in HIPAA) and that Exym reserves the right to use anonymized, De-Identified Information as described in this Section 8.3 in its sole discretion.

ARTICLE IX CONFIDENTIALITY

Section 9.1 Confidential Information. In connection with this Agreement, each Party (the “**Disclosing Party**”) may disclose or make available Confidential Information to the other Party (the “**Receiving Party**”). Subject to Section 9.2, “**Confidential Information**” means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party’s technology, trade secrets, know-how, business operations, plans, strategies, customers, software, data, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, whether or not marked, designated, or otherwise identified as “confidential.” Without limiting the foregoing, (1) the EHR Software and Exym Analytics are the Confidential Information of Exym, and (2) the terms of this Agreement (which includes all Order Forms between the parties) are the Confidential Information of the parties.

Section 9.2 Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (1) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information being disclosed or made available to the Receiving Party in connection with this Agreement; (2) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (3) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (4) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

Section 9.3 Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall: (1) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (2) except as may be permitted under the terms and conditions of Section 9.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 9; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 9; (3) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its sensitive information and in no event less than a reasonable degree of care; (4) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and to prevent further unauthorized use or disclosure; and (5) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 9. Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 9 with respect to any Confidential Information that constitutes a trade secret under any applicable law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

Section 9.4 Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party will: (1) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 9.3; and (2) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 9.4, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party will disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

Section 9.5 Disclosure by Subscriber Data. Exym warrants to Subscriber that, except as permitted under Section 8.3 or unless Exym's obligation to do so no longer exists as set forth in Section 9.2, Exym will not disclose or communicate in any way, or permit, allow or acquiesce to the disclosure or communication of, any of Subscriber's data stored in Exym servers and databases to or by any person for any purpose except for the benefit of Subscriber and Exym directly related to the Services provided under this Agreement.

ARTICLE X GENERAL

Section 10.1 Records. During the term of this Subscription Agreement, Exym will determine Subscriber's Users and others upon which Fees are based by accessing login records.

Section 10.2 Export Controls. Regardless of any representations made by Subscriber with respect to its export or reexport of the Software, including documentation and any other technical information, delivered hereunder ("**Technical Data**"), Subscriber agrees not to export or reexport, directly or indirectly, any Technical Data without complying with the export controls imposed by the United States Export Administration Act of 1979, as amended (or any future U.S. export control legislation) and the regulations promulgated thereunder.

Section 10.3 Notices. Unless otherwise specifically provided in this Agreement, every notice or other communications required or permitted under this Agreement shall be valid only if in writing and shall be delivered either by personal delivery; by facsimile, telegram, mailgram or telecopy; by nationally recognized overnight courier service; or by certified or registered mail, return receipt requested, addressed as set forth on the Order Form.

Section 10.4 Entire Agreement. This Agreement, including the BAA and the Order Form, constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written and oral proposals, understandings, agreements and representations, all of which are merged herein. No amendment to or modification of this Agreement shall be effective unless in writing and executed by both parties.

Section 10.5 Non-Waiver of Default. The failure of either party to insist, in any one or more instances, on the performance of any term or condition of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term or condition, and the obligations of the non-performing party with respect thereto shall continue in full force and effect.

Section 10.6 Relationship. Nothing in this Agreement is intended to or shall be construed to constitute or establish an agency, joint venture, partnership or fiduciary relationship between the parties, and neither party shall have the right or authority to act for or on behalf of the other party. Nothing in this Agreement shall be construed to create an employment relationship between either of the parties and employees of the other party.

Section 10.7 Severability. In the event that any term, provision or restriction of this Agreement, or the Order Form shall, for any reason, be deemed to be invalid, void or unenforceable, the remaining provisions, terms and restrictions of this Agreement and the Order Form shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 10.8 Trademarks. Subscriber agrees that that all trademarks, logos and designations of Exym now or hereafter used by Exym to identify the Software are trademarks or registered trademarks of Exym.

Section 10.9 Dispute Resolution. The sole and exclusive venue and jurisdiction for any action or proceeding instituted to interpret or enforce any term(s) of this Agreement, or for the

resolution of any dispute between the parties arising from or related to this Agreement, shall be in Contra Costa, California.

Section 10.10 Governing Law. This Agreement shall be governed by, interpreted under and construed and enforced in accordance with, the laws of the State of California as apply to contracts wholly made and performed therein by residents thereof, without giving effect to any conflicts of law principles thereof.

Section 10.11 Assignment. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party. Notwithstanding the foregoing, Exym may transfer and assign its rights under this Agreement without consent from the other party in connection with a change in control, acquisition or sale of all or substantially all of its assets. Any assignment in contravention of this Section 10.11 shall be void.

Section 10.12 Force Majeure. Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by an act, event, or occurrence beyond such party's reasonable control, including, without limitation, acts of God, fires, floods, storms, landslides, epidemics, lightning, earthquakes, drought, blight, famine, quarantine, blockade, governmental acts or inaction, orders or injunctions, war, insurrection or civil strife, sabotage, explosions, labor strikes, work stoppages, acts of terror, issues arising from bugs or other problems in the software, firmware or hardware of Exym's suppliers, or outages or issues with upstream providers or network carriers, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as commercially feasible.

Section 10.13 Further Assurances. Each party agrees to take, or cause to be taken, all such further or other actions as may be reasonably necessary to make effective, consummate or perform the undertakings and obligations contemplated by this Agreement.

Section 10.14 Headings. The headings used in this Agreement are for convenience only, and are not to be construed to have any legal significance.

The parties have entered into this Agreement by signing any Order Form referencing this Subscription Agreement.