

EXABYTES ENTERPRISE STANDARD TERMS AND CONDITIONS (“ST&C”)

These General Terms are between Exabytes Enterprise Sdn. Bhd. (herein known as Exabytes Enterprise) and the individual or entity identified in the Master Service Agreement. To place orders subject to these General Terms, at least one Term of Service (herein know as TOS) must be incorporated into these General Terms. If a term is relevant only to a specific TOS, that term will apply only to that TOS if and/or when that TOS is incorporated into these General Terms.

1. DEFINITIONS

- 1.1. **“Affiliate”** refers to any legal entity that a party controls, that controls a party, or that is under common control with a party. For purpose of this definition, "control" shall mean an entity, directly or indirectly, holding more than fifty per cent (50%) of the issued share capital, or more than fifty per cent (50%) of the voting power at general meetings, or which has the power to appoint and to dismiss a majority of the directors or otherwise to direct the activities of such legal entity.
- 1.2. **“Acceptable Use Policy” or “AUP”** refers to the Acceptable Use Policy set out at <http://www.exabytes.cloud/legal/aup>
- 1.3. **“Customer”/You/Your** refers to the counterparty in the Master Service Agreement to which this Master Service Agreement applies to.
- 1.4. **“Hardware”** refers to the computer equipment, including components, options and spare parts.
- 1.5. **“Master Service Agreement”** refers to these General Terms (including any amendments thereto) and all TOS(s) incorporated into the Master Service Agreement (including any amendments to those incorporated TOS(s)). The Master Service Agreement governs Your use of the Products and Service Offerings ordered from Exabytes Enterprise or an authorised reseller.
- 1.6. **“Operating System”** refers to the software that manages Hardware for Programs and other software.
- 1.7. **“Products”** refers to Programs, Hardware, Integrated Software and Operating System.
- 1.8. **“Programs”** refers to (a) the software owned or distributed by Exabytes Enterprise that You have ordered under TOS, (b) Program Documentation and (c) any Program updates acquired through technical support. Programs do not include Integrated Software or any Operating System.
- 1.9. **“Program Documentation”** refers to the Program user manual and Program installation manuals. Program Documentation may be delivered with the Programs.

- 1.10. **“Term of Service (TOS)”** refers to all Exabytes Enterprise TOS to these General Terms as identified in Section 2.
- 1.11. **“Separate Terms”** refers to separate license terms that are specified in the Program Documentation, readmes or notice files and that apply to Separately Licensed Third Party Technology.
- 1.12. **“Service Level Agreement”** refers to the service level commitment for a particular service and any provision which provides a specified remedy for an identified failure to deliver or provide the service.
- 1.13. **“SLA Credits”** refers to the credits for applicable qualifying Service Outage as described in the Service Level Agreement.
- 1.14. **“Service Outage”** refers to unavailability or decrease in quality of service that results in a service not being delivered at a level they reasonably expected.
- 1.15. **“SS&P”** refers to the Service Specifications and Pricing. SS&P specifies detailed itemized hardware, software and service(s) that a customer has subscribed to.
- 1.16. **“Third Party”** refers to an individual or an entity which is not a customer, Exabytes Enterprise, or an Affiliate of Exabytes Enterprise.
- 1.17. **“Third Party Services”** refers to services which are provided by Third Parties directly to customer. The definition of Services does not include Third Party Services.
- 1.18. **“Separately Licensed Third Party Technology”** refers to third party technology that is licensed under Separate Terms and not under the terms of the Master Service Agreement.
- 1.19. **“Service Offerings”** refers to technical support, hosted/outsourcing services, cloud services, consulting, customer support services, or other services which You have ordered. Such Service Offerings are further described in the applicable TOS.
- 1.20. **“You”** and **“Your”** refers to the individual or entity that has executed these General Terms.

2. Responsibilities

Exabytes Enterprise will install all the services (hereinafter collectively known as the “Services”) specified in the SS&P of the Service Agreement for You. You will agree to:

- 2.1. be responsible for all content stored on and distributed from the Services;
- 2.2. comply with all applicable laws, rules and regulations, without limitation;

- 2.3. pay the fees for the TOS when due. Customer is required to settle all outstanding payment to Exabytes Enterprise before any equipment belonging to them can be removed from the Exabytes Enterprise data center. All removal of such equipment must be scheduled on weekdays during the business hours from 9a.m. to 6p.m. SGT (GMT+8) Monday to Friday. A charge of RM600 per hour will be levied to Customer for any removal of equipment done outside this business hours. All upfront pre-payments received by Exabytes Enterprise Sdn. Bhd. for this contract are non-refundable. This also applies to payments made for unused periods arising from premature termination of this contract;
- 2.4. In the event that your account becomes past due for thirty (30) days, Exabytes Enterprise may assume that Customer wishes to discontinue the Service fully and Exabytes Enterprise will terminate the Service to Customer unilaterally and immediately without any further consent from Customer. In this case, the Master Service Agreement Termination Clause under Clause 8 of this Agreement is deemed to be invoked by Customer and termination penalty fee under Clause 8.4 shall apply immediately. For any reinstatement of suspended Services, a penalty of RM350.00 will be charged to Customer;
- 2.5. Exabytes Enterprise reserves the right to adjust the pricing for this Master Service Agreement, but only after thirty (30) days written notice has been given to Customer via email upon mutual agreement with Customer;
- 2.6. use reasonable security precautions for providing access to the TOS by its employees or other individuals to whom it provides access;
- 2.7. cooperate with Exabytes Enterprise's investigation of outages, security problems and any suspected breach of the Master Service Agreement;
- 2.8. comply with all license terms or term of use for any software, content, service or website (including Your content) which You use or access when using the TOS;
- 2.9. provide Exabytes Enterprise true, accurate, current and complete contact, billing, payment and other related information as needed for this Master Service Agreement;
- 2.10. provide update to Exabytes Enterprise to keep Your contact, billing, payment and related information up to date;
- 2.11. responsible for the use of the TOS by You and Your end users and any other person to whom You have given access to the TOS;
- 2.12. use commercially reasonable effort to prevent unauthorized access to and use of the TOS and immediately notify Exabytes Enterprise of any known or suspected unauthorized usage or any other breach of security;
- 2.13. may not use the TOS in any situation where failure or fault of the TOS could lead to death or serious bodily injury of any person or to physical or environment damage;



For the avoidance of doubt, this would include introducing additional power extension cords or make use of additional power sockets not otherwise agreed with in the TOS.

3. Disclaimers

- 3.1. To the extent permitted by the applicable law, the express terms of the Master Service Agreement is in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise.
- 3.2. You acknowledge and agree that Exabytes Enterprise exercises no control over, and accepts no responsibility for, the content of the information passing through Exabytes Enterprise's host computers, network hubs and points of presence (Exabytes Enterprise Network) or the Internet. While non-exhaustive, the **Customer** shall be deemed to have read and understood **Exabytes Enterprise'** policies available at the web resource site <https://www.exabytes.cloud/legal>
Exabytes Enterprise reserves the right to terminate any account that breaches these limitations, or where the usage does not abide by the relevant laws of the Federal Constitutional Monarchy of Malaysia.
- 3.3. Notwithstanding any other oral or written communications between Exabytes Enterprise and You about or in connection with the TOSs, to the extent permitted by the applicable law, neither Exabytes Enterprise, its employees, affiliates, agents, suppliers, sub-contractors, third-party information providers, merchants, licensors nor the like make any warranties of any kind to You or any other person with respect to the TOS or any equipment provided hereunder and disclaim all other warranties and conditions, express or implied, including without limitation warranties of error-free performance, quality, non-interruption of use, freedom from bugs or otherwise, and disclaim all implied warranties, including without limitation warranties of merchantability, fitness for a particular purpose, title and non-infringement, accuracy, reliability or content of any information services or merchandise contained in or provided through the TOS, or otherwise.
- 3.4. While every care will be taken by Exabytes Enterprise to provide the TOS and ensure a high level of security, Exabytes Enterprise disclaims all liability whatsoever for any loss, alteration, destruction or disclosure to any third party whomsoever, of any of the Your data or other data howsoever caused or arising including without limitation, delays, interceptions, non-deliveries or misuse as a result of any interruption, suspension or termination of the Services. Exabytes Enterprise cannot guarantee and does not warrant the accuracy of any data or report of the TOS delivered to You.
- 3.5. You understand and agree that Exabytes Enterprise shall under no circumstances be held responsible or liable for situations where Your data is accessed by third parties through illegal or illicit means, including situations of access by exploitation of software security gaps, inherent flaws or weakness in any software, or Your own internal security procedures governing the use of the TOS and the conduct of its users.
- 3.6. Where Exabytes Enterprise assists You by registering in Your name such domain name(s) selected by You as part of the Services, or engaging 3rd Party services and software licenses as required by You, You undertake compliance with the 3rd Party's terms and conditions and to fully indemnify Exabytes Enterprise in respect of any liability to a third party arising

out of such a registration and/or subscription of services and licenses.

- 3.7. Subject to any Service Level Agreement specifically referenced herein, the services and equipment provided under or associated with the Master Service Agreement are provided on an “as is” basis.
- 3.8. Neither Exabytes Enterprise, its employees, affiliates, agents, suppliers, sub-contractors, third-party information providers, merchants, licensors or the like, warrant that the TOS will not be interrupted or error free; nor do any of them make any warranty as to the results that may be obtained from the use of the TOS or as to the accuracy, reliability or content of any information services or merchandise contained in or provided through the TOS.
- 3.9. Exabytes Enterprise is not liable for the content or loss of any data transferred either to or from You or stored by You or any of the Your clients via the TOS provided by Exabytes Enterprise.
- 3.10. Where legislation implies in the Master Service Agreement any condition or warranty, and that legislation avoids or prohibits in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in the Master Service Agreement. However, the liability of Exabytes Enterprise for any breach of such condition or warranty shall be limited, at the opinion of Exabytes Enterprise, to one or more of the following:
 - a. If the breach relates to goods:
 - i. The replacement of the goods or the supply of equivalent goods;
 - ii. The repair of such goods;
 - iii. The payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - iv. The payment of the cost of having the goods repaired; and
 - b. If the breach relates to services:
 - i. The supplying of the TOS again; or
 - ii. The payment of the reasonable cost of having the TOS supplied again.

4. SEGMENTATION

The purchase of any Products and related TOS or other TOS are all separate offers and separate from any other order for any Products and related TOS or other TOS you may receive or have received from Exabytes Enterprise. You understand that you may purchase any Products and related TOS or other TOS independently of any other Products or TOS. Your obligation to pay for (a) any Products and related TOS is not contingent on performance of any other TOS or delivery of any other Products or (b) other TOS is not contingent on delivery of any Products or performance of any additional/other TOS.

5. OWNERSHIP

Exabytes Enterprise or its licensors retain all ownership and intellectual property rights to the Programs, Operating System, Integrated Software and anything developed or delivered under the Master Service Agreement.

6. INDEMNIFICATION

- 6.1. If a third party makes a claim against either You or Exabytes Enterprise (“Recipient” which may refer to You or Exabytes Enterprise depending upon which party received the Material), that any information, design, specification, instruction, software, data, hardware, or material (collectively, “Material”) furnished by either You or Exabytes Enterprise (“Provider” which may refer to You or Exabytes Enterprise depending on which party provided the Material) and used by the Recipient infringes the third party’s intellectual property rights, the Provider, at the Provider’s sole cost and expenses, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:
- i. Notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);
 - ii. Gives the Provider sole control of the defence and any settlement negotiations; and
 - iii. Gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.
- 6.2. If the Provider believes or it is determined that any of the Material may have violated a third party’s intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any fees the Recipient may have paid to the other party for it, and, if Exabytes Enterprise is the Provider of an infringing Program, any unused, prepaid technical support fees You have paid to Exabytes Enterprise for the license of the infringing Program. If such return materially affects Exabytes Enterprise’s ability to meet its obligations under the relevant order, then Exabytes Enterprise may, at its option and upon 30 days prior written notice, terminate the order.
- 6.3. The Provider will not indemnify the Recipient if the Recipient alters Material or uses it outside the scope of use identified in the Provider’s user documentation or if the Recipient uses a version of Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of Material which was provided to the Recipient, or if the Recipient continues to use the applicable Material after the end of the license to use that Material. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by the Provider. Exabytes Enterprise will not indemnify You for any portion of an infringement claim that is based upon the combination of any Material with any products or services not provided by Exabytes Enterprise. Solely with respect to Separately Licensed Third Party Technology that is part of or is required to use a Program and that is used: (a) in unmodified form; (b) as part of or as required to use a Program; and (c) in accordance with the license grant for the relevant Program and all other terms and conditions of the Master Service Agreement, Exabytes Enterprise will indemnify You for infringement claims for Separately Licensed Third Party Technology to the same

extent as Exabytes Enterprise is required to provide infringement indemnification for the Program under the terms of the Master Service Agreement. Exabytes Enterprise will not indemnify You for infringement caused by Your actions against any third party if the Program(s) as delivered to You and used in accordance with the terms of the Master Service Agreement would not otherwise infringe any third party intellectual property rights. Exabytes Enterprise will not indemnify You for any intellectual property infringement claim(s) known to You at the time license rights are obtained.

7. SUSPENSION

This section provides the parties' exclusive remedy for any infringement claims or damages.

Exabytes Enterprise may suspend provision of TOS to You without liability if:

- 7.1 Exabytes Enterprise reasonably believes that the TOS is being used by You in violation of the Master Service Agreement or any applicable law, court order, rule or regulation in any jurisdiction;
- 7.2 You do not cooperate with Exabytes Enterprise's investigation of any suspected violation of the Master Service Agreement or any applicable law, court order, rule or regulation in any jurisdiction;
- 7.3 Exabytes Enterprise reasonably believes that TOS provided to You has been accessed or manipulated by third party without Your consent or in violation of the Master Service Agreement;
- 7.4 Exabytes Enterprise reasonably believes that suspension of the TOS is necessary to protect Exabytes Enterprise's network or other Exabytes Enterprise customers;
- 7.5 A payment of the TOS is overdue by more than 30 days;
- 7.6 The continued use of the TOS by You may adversely impact the TOS or the systems or content of any other Exabytes Enterprise customers;
- 7.7 Exabytes Enterprise reasonably believes that the use of the TOS by You may subject Exabytes Enterprise, its affiliates or any third party to liability; or
- 7.8 Suspension is required by law, regulation, rule or court order.

Exabytes Enterprise will give You reasonable advanced notice of a suspension and a chance to cure the grounds on which the suspension is based, unless Exabytes Enterprise determines, in Exabytes Enterprise's reasonable commercial judgement that a suspension on shorter or contemporaneous notice is necessary to protect Exabytes Enterprise or its other customers from operational, security, or other risk or the suspension is ordered by a court or other judicial body.

If Exabytes Enterprise suspends the Your right to access or use any portion or all of the TOS:

- a) You remain responsible for all fees and charges You have incurred through the date of suspension;
- b) You remain responsible for any applicable fees and charges for any service to which You have continued to have access, as well as applicable;
- c) You shall not be entitled to SLA Credits under any Service Level Agreement for any period of suspension;
- d) At Exabytes Enterprise's sole discretion, Exabytes Enterprise may terminate Your access to the TOS or Your content stored in the TOS during a suspension. Exabytes Enterprise shall not be liable to You for any damages or losses You may incur as a result of such suspension.

8. TERMINATION

Customer or Exabytes Enterprise may terminate all or any of the Services in the Service Agreement subject to the following conditions:

- 8.1. If either of us breaches a material term of the Master Service Agreement and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate the Master Service Agreement. If Exabytes Enterprise terminates the Master Service Agreement as specified in the preceding sentence, You may pay within 30 days all amounts which have accrued prior to such termination, as well as all sums remaining unpaid for Products ordered and/or Service Offerings received under the Master Service Agreement plus related taxes and expenses. You agree that if you are in default under the Master Service Agreement, You may not use those Products or Service Offerings ordered.
- 8.2. The TOS or the Master Service Agreement may be terminated upon sixty (60) days advance written notice by You before the expiry of the first TOS or any subsequent TOS. Such notice must be submitted to Exabytes Enterprise on official company letterhead signed by the signatory to the Service Agreement, or its authorized representative, together with the following information:
 - a. Your Name;
 - b. Effective date of intended termination;
 - c. Contract number AND server ID or service identification assigned by Exabytes Enterprise.
- 8.3. Unless otherwise specified in the Master Service Agreement, Exabytes Enterprise shall be entitled to terminate the Master Service Agreement without cause, by providing You at least sixty (60) days notice of Exabytes Enterprise' intention to do so. Also, prior to suspending or terminating a service on the basis of a breach of agreement or for non-payment, Exabytes Enterprise will first notify the Customer of the breach and provide sufficient time for the Customer to remedy the same. In the event You fail to remedy the breach within the period stated in the notice given by Exabytes Enterprise, Exabytes Enterprise shall be entitled to immediately suspend and/or terminate the TOS provided as it

sees fit. Notwithstanding the above, Exabytes Enterprise is at liberty to dispense with service of a notice under this clause if:

- a. Exabytes Enterprise reasonably believe that it is necessary to protect Exabytes Enterprise or its other customers from operational, security, or other risk;
- b. Exabytes Enterprise is acting in compliance with a requirement of any regulatory authority or law enforcement body;
- c. Where You are an individual, the individual dies; or
- d. Where You represent a corporation, the corporation ceases to carry on its business.

8.4. If the TOS or this Master Service Agreement is terminated by You, You shall be liable for one hundred percent (100%) of the total monthly charge as stated in the SS&P and all Addendum(s) for each month remaining in the first TOS or that subsequent TOS, which becomes immediately due. If payment is not received within 5 business day, Exabytes Enterprise reserves the right to suspend or terminate the service and enact measures to recover the monies at your cost.

8.5. Extension of less than 1 year would be at double previous contracted value. Extension refers to any period after the end of the expiry of the first TOS or any subsequent TOS is subjected to a minimum of 1 calendar month and could arise from late notice per Clause 8.3.

8.6. Provisions that survive termination or expiration are those relating to limitation of liability, infringement indemnity, payment and others which by their nature are intended to survive.

9. Service Level Agreement, SLA Credit, Claim Policy and Process

9.1. Service Level Agreement

- a. Service Level Agreement (SLA) is provided and applicable to all TOS delivered to You.
- b. SLA Credits is the remedy for any breach of SLA and SLA Credits mean the credits for applicable qualifying service outage as described in SLA of individual TOS or under the general SLA if specific SLA is not defined for the applicable service.
- c. The issuance of SLA Credits is the sole and exclusive remedy of You and Exabytes Enterprise's sole exclusive obligation, for any failure of Exabytes Enterprise to satisfy the requirement set forth in the SLA.
- d. SLA does not apply to the availability of Third Party Services. SLA is binding only to Exabytes Enterprise and You and does not apply to any third parties. Third party means individual or an entity which is not Exabytes Enterprise or Affiliate of Exabytes Enterprise.
- e. You are an Eligible Customer to claim for SLA Credits when You have purchased Services from Exabytes Enterprise and Your account is up-to-date on all payments and in compliance with the terms in the Master Service Agreement.
- f. SLA Credits may be used for future payments due or refund as deemed appropriate by Exabytes Enterprise.

- g. SLA Credits may not be used until any violation of terms in the Master Service Agreement is resolved to Exabytes Enterprise's satisfaction.
- h. SLA Credits do not apply for periods during which the TOS are not available for the following reasons:
 - i. Exabytes Enterprise or its third party service providers perform system upgrades, enhancements and routine, ad-hoc or emergency maintenance which are announced by Exabytes Enterprise or third party service providers.
 - ii. Your use of the TOS in violation of the Master Service Agreement;
 - iii. Issues relating to Your content;
 - iv. Problems with Your access to Internet;
 - v. System administration, commands, file transfers performed by Your representative;
 - vi. Events described in the Force Majeure clause;
 - vii. Suspension of Your access to TOS provided in the Service Agreement;
 - viii. Violation of Exabytes Enterprise's Acceptable Use Policy;
 - ix. Problems caused by Your use of the TOS after Exabytes Enterprise advised You to modify such use, if You did not modify its use as advised;
 - x. Problems arising from Your software, hardware, or other technology or equipment.

9.2. General Service Level Agreement

General Service Level Agreement (General SLA) covers TOS in which specific SLA is not provided. General SLA does not cover or apply to third party services. For the avoidance of doubt, Separately Licensed Third Party Technology would be subjected to the Third Party's separate terms.

Exabytes Enterprise aims to achieve 100% Service Availability of its TOS. If the Service Availability is less than 100%, Exabytes Enterprise will issue SLA Credits to You in accordance with the following schedule, with the SLA Credits being calculated on the basis of the monthly fee for the affected TOS. A service outage exists when the unavailability of the affected service resulted in Your inability to access Your content which the affected service is associated with and there is total disruption of service to entire set of end users.

In the event of Service Outage that is:

- a. exceeds thirty (30) continuous minutes and
- b. due to a cause within control of Exabytes Enterprise

You may request SLA Credit 5% of the monthly fee of the affected Services for each thirty (30) contiguous minutes of outage, up to 100% of Your monthly fee for the affected Services. You cannot combine service outage for different Services to meet this calculation. Such SLA Credit is limited to one (1) per month.

9.3 Claim Policy and Process

All claims for breach of service levels under the Master Service Agreement shall be made in the following manner:

- c. All claims under this policy must be submitted using a service outage claim form which shall be provided by Exabytes Enterprise when the need arises with all details requested in the form filled in by You.
- d. This form must be submitted to Exabytes Enterprise within fourteen (14) calendar days from the end of the service outage;
- e. The information that would be included in the service outage claim form but may not be limited to:
 - i. Your company name and registered business address;
 - ii. Contract number, server or service identification assigned by Exabytes Enterprise affected by the outage;
 - iii. Dates and start/end times of the service outage;
 - iv. Description of service outage experienced;
 - v. Signature of Your authorized representative.
- f. Exabytes Enterprise will acknowledge all claims within two (2) working days and will review all claims within ten (10) working days of receipt of email. Exabytes Enterprise will advise You by email whether the appropriate service credit will be issued on the next invoice or reject the claim by specifying the basis for rejection;
- g. Exabytes Enterprise reserves the right to change, amend, revise or revoke any one or more of the policies at any time of the TOS;
- h. In the event of any outage howsoever arising and of whatsoever nature, in respect of, or arising from, the Master Service Agreement or the provision of services hereunder, the maximum claim You can make against Exabytes Enterprise in any given month is 100% of Yours monthly fee (i.e. or one month's worth) as stated in the Master Service Agreement.
- i. Any claims under any breach of Service Levels will be limited to the individual TOS in the Master Service Agreement.
- j. If at the time of claiming for SLA Credits, You are not current in the payment of fee of Services, You do not qualify for SLA Credits for service outage.

10. FEES AND TAXES; PRICING, INVOICING AND PAYMENT OBLIGATION

- 10.1. All fees payable to Exabytes Enterprise are due within 30 days from the invoice date. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Exabytes Enterprise must pay based on the Products and/or Service Offerings You ordered, except for taxes based on Exabytes Enterprise's income. Also, You will reimburse Exabytes Enterprise for reasonable expenses related to providing TOS. For the avoidance

of doubt, there is no credit upon termination notice as setout in clause 8.

- 10.2. You understand that You may receive multiple invoices for the Products and Service Offerings You ordered.

11. NONDISCLOSURE

- 11.1. By virtue of the Master Service Agreement, the parties may have access to information that is confidential to one another (“**Confidential Information**”). We each agree to disclose that is required for the performance of obligation under the Master Service Agreement. Confidential Information shall be limited to the terms and pricing under the Master Service Agreement and all information clearly identified as confidential at the time of disclosure.
- 11.2. A party’s Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.
- 11.3. We each agree not to disclose each other’s Confidential Information to any third party other than those set forth in the following sentence for a period of 3 years from the date of the disclosing party’s disclosure of the Confidential Information to the receiving party. We may disclose Confidential Information only to those employees or agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than under the Master Service Agreement. Nothing shall prevent either party from disclosing the terms or pricing under the Master Service Agreement or orders submitted under the Master Service Agreement in any legal proceeding arising from or in connection with the Master Service Agreement or disclosing the Confidential Information to a government entity as required by law.

12. ENTIRE AGREEMENT

- 12.1. You agree that the Master Service Agreement and the information which is incorporated into the Master Service Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable order, are the complete agreement for the Products and/or TOS ordered by You and supersede all prior or contemporaneous agreements or representations, written or oral, regarding such Products and/or TOS.
- 12.2. It is expressly agreed that the terms of the Master Service Agreement and any other Exabytes Enterprise order shall supersede the terms in any purchase order, procurement internet portal or any other similar non-Exabytes Enterprise document and no terms included in any such purchase order, portal or other non-Exabytes Enterprise document shall apply to the Products and/or TOS ordered. In the event of inconsistencies between the terms of any TOS and these General Terms, the TOS shall take precedence. The Master Service Agreement and orders may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online through the Exabytes



Enterprise Portal by authorized representatives of You and Exabytes Enterprise. Any notice required under the Master Service Agreement shall be provided to the other party in writing.

13. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE. EXABYTES ENTERPRISE'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THE MASTER AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE PAST 6 MONTHS FEES PAID TO Exabytes Enterprise UNDER THE TOS GIVING RISE TO THE LIABILITY, AND IF SUCH DAMAGES RESULT FROM YOUR USE OF PRODUCTS OR SERVICES OFFERINGS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID Exabytes Enterprise FOR THE DEFICIENT PRODUCT OR SERVICE OFFERINGS GIVING RISE TO THE LIABILITY.

14. FORCE MAJEURE

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic, electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including denial or cancellation of any export, import or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed Service Offerings and affected orders upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Your obligation to pay for Products and Service Offerings ordered or delivered.

15. Dispute Resolution

15.1. In the event of any disagreement or dispute between the parties arising out of any matter relating to or arising out of the Master Service Agreement, the parties shall in the first instance seek to resolve the matter by discussions between the respective representatives of You and Exabytes Enterprise. In the event that they are unable to resolve the disagreement or dispute within two (2) business days, it shall be escalated for resolution to the parties' senior representatives.

15.2. In all other circumstances all disputes arising under or in relation to the Service Agreement shall be the subject to the jurisdiction of the courts of Malaysia.

16. GOVERNING LAW AND JURISDICTION

The Master Agreement is governed by the substantive and procedural laws of **{Malaysia}** and You and Exabytes Enterprise agree to submit to the exclusive jurisdiction of, and venue in, the courts of Malaysia in any dispute arising out of or relating to the Master Service Agreement.

17. NOTICE

If You have a dispute with Exabytes Enterprise or if You wish to provide a notice under the Indemnification section of these General Terms, or if You become subject to insolvency or other similar legal proceedings, You will promptly send written notice to support@exabytes.cloud.

18. OTHER

- 18.1. Exabytes Enterprise is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between us. We each will be responsible for paying our own employees, including employment related taxes and insurance.
- 18.2. If any term of the Master Service Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of the Master Service Agreement.
- 18.3. Except for actions for non-payment or breach of Exabytes Enterprise's proprietary rights, no action, regardless of form, arising out of or relating to the Master Service Agreement may be brought by either party more than two years after the cause of action has accrued.
- 18.4. Products and Service Offerings deliverables are not designed for or specifically intended for use in nuclear facilities or other hazardous applications. You agree that it is Your responsibility to ensure safe use of Products and Service Offerings deliverables in such applications.
- 18.5. If requested by an authorized reseller on Your behalf, You agree Exabytes Enterprise may provide a copy of the Master Service Agreement to the authorized reseller to enable the processing of Your order with that authorized reseller.
- 18.6. You understand that Exabytes Enterprise's business partners, including any third party firms retained by You to provide consulting services, are independent of Exabytes Enterprise and are not Exabytes Enterprise's agents. Exabytes Enterprise is not liable for nor bound by any acts of any such business partner unless the business partner is providing services as a Exabytes Enterprise subcontractor in furtherance of an order placed under the Service Agreement signed directly with between yourself and Exabytes Enterprise,