EXALATE – END USER LICENSE AGREEMENT ("EULA")

IMPORTANT - READ CAREFULLY BEFORE YOU USE OR INSTALL THIS SOFTWARE. THIS EULA IS AN AGREEMENT BETWEEN YOU AND EXALATE. BY CLICKING THE "I AGREE" BUTTON, ACCESSING, INSTALLING, DOWNLOADING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THIS EULA. IF YOU DO NOT AGREE TO THIS EULA, THEN YOU ARE NOT ALLOWED TO ACCESS, DOWNLOAD OR OTHERWISE USE THE SOFTWARE.

If you are an employee (or contractor) of the Customer entering into this EULA on behalf of the Customer, you represent and warrant that (i) you have full legal authority to bind the Customer to this EULA; (ii) you have read and understand this EULA; and (iii) you agree on behalf of the Customer to this EULA.

1. Scope & Definitions

1.1. The terms of this EULA only apply to Software provided by Exalate. Any third party software is expressly excluded from the scope of this EULA and shall be subject to the applicable third party software terms.

1.2. The terms of this EULA can only be modified based on custom agreements between the Customer and Exalate as documented in an Order. If the Order is executed with an authorized reseller of Exalate, any modification to this EULA must be approved by Exalate in writing.

1.3. Capitalized notions used throughout this EULA shall have the meaning given to them below, unless stated otherwise:

a) "**Authorized User"** means an individual that is allowed to download, install, access and/or use (as applicable) the Software on the Customer's behalf.

b) **"Confidential Information"** of a Party means the information of such Party, whether in written, oral, electronic or other form, and which (i) is designated as confidential or proprietary, or (ii) should reasonably be considered confidential given its nature or the circumstances surrounding its disclosure, regardless of whether or not it is expressly designated as confidential, including information and facts concerning business plans, customers, prospects, personnel, suppliers, partners, investors, affiliates or others, training methods and materials, financial information, marketing plans, sales prospects, customer lists, inventions, program devices, discoveries, ideas, concepts, know-how, techniques, formulas, blueprints, software, documentation, designs, prototypes, methods, processes, procedures, codes, and any technical or trade secrets, including all copies of any of the foregoing or any analyses, studies or reports that contain, are based on, or reflect any of the foregoing.

c) **"Customer"**, **"you"** means the legal entity that has ordered a subscription to use the Software and identified in the applicable Order.

d) **"Customer Data"** any information, data and files transmitted or uploaded to the Software by the Customer or on the Customer's behalf.

e) **"Documentation"** means the operating manual, including a description of the functions performed by the Software, user instructions, and such other related materials as ordinarily made available by Exalate to its customers to facilitate the use of the Software.

f) **"Intellectual Property Rights"** means all intellectual or industrial property right or equivalent, whether registered or unregistered, including but not limited to: (i) copyright (including moral rights), patents, database rights and rights in trademarks, logos, designs, other artwork, know-how and trade secrets and other protected undisclosed information; and (ii) applications for registration, and the right to apply for registration, renewals, extensions, continuations, divisions, reissues, or improvements for or relating to any of these rights.

g) **"Exalate"** means EXALATE NV, a company organized and existing under the laws of Belgium having its registered office at IJzerenpoortkaai 3 bus 37 , 2000 Antwerp, Belgium and registered with company number 0834.937.594.

h) **"Instance"** means a work management system such as Jira, ServiceNow, ….

i) **"Self-Service"** means the online functionality made available by Exalate through its website or within the Software that enables the Customer, through its employees or contractors, to purchase subscriptions to the Software. The Self-Service shall specify the financial conditions, nature, number, and other specifics of the subscription to the Software.

j) **"Order"** means the process through which a Software subscription is purchased, whether (i) by executing an Order Form or (ii) by completing the Self-Service purchase flow.

k) "**Order Form"** means the written or electronic order form executed between the Parties, or between the Customer and an authorized reseller of the Software, regardless of its designation (e.g. "proposal", "quotation", "product order" or similar), indicating the financial conditions, nature, number, and other specifics of the license to use the Software.

l) **"Party"** or **"Parties"** means the Customer or Exalate individually (as the context requires), or the Customer and Exalate collectively.

m) **"Scope of Use"** means a Customer's authorized scope (such as, but not limited to, the applicable modules, functionalities, number of users, number of workspaces, number of Instances, and volumes (if any)), as specified in the applicable Order.

n) **"Software"** means the Exalate software as specified in the Order.

2. License Grant

2.1. In consideration of Customer's compliance with the provisions of this EULA, Exalate grants the Customer for the duration of this EULA and within the Scope of Use a personal, restricted, non-exclusive, non-transferrable, non-sublicensable, non-assignable, revocable, worldwide right to access and use the Software during the term of this EULA for the Customer's internal business purposes in accordance with the Documentation and Exalate's reasonable instructions.

2.2. In case the Software will be deployed by the Customer on-premise or on infrastructure managed by the Customer (as specified in the Order), the license pursuant to clause 2.1 above includes the right to download and install the Software on its systems or such infrastructure.

2.3. The Customer shall not (and procure that its Authorized Users shall not), directly or indirectly (including, without limitation, through the actions of any affiliate, agent, subcontractor, Authorized User or, in general, any third party):

a) use the Software other than in accordance with this EULA and the Software's intended purpose;

b) use the Software in any way that is unlawful, illegal, fraudulent or harmful, or in connection with any unlawful, illegal, fraudulent or harmful purpose or activity;

c) sell, lease, commercialize, rent, display, license, sublicense, transfer, provide, disclose, or otherwise make available to, or permit access to (or use of), the Software or the Documentation, in whole or in part, to (or by) any third party, whether or not related to Customer or otherwise use the Software on a "service bureau basis", except as expressly permitted in this EULA;

d) modify the Software or develop any derivative works based on the Software or any Confidential Information of Exalate (except to the extent such restriction is prohibited under applicable law);

e) decompile, disassemble, translate, reverse engineer or attempt to reconstruct, identify or discover, copy, create derivative works based upon the source code of the Software, underlying ideas, underlying user interface techniques or algorithms of the Software by any means whatsoever (except to the extent such restriction is prohibited under applicable law), or disclose any of the foregoing;

f) encumber or suffer to exist any lien or security interest on the Software (or its rights to the Software);

g) take any action that would cause the Software or the source code to be placed in the public domain;

h) use the Software in any computer environment not expressly permitted under this Agreement;

i) work around any technical limitation in the Software; and

j) use the same license on multiple Instances.

2.4. The Parties shall comply with all applicable laws relating to the use of the Software and acknowledges that the Software may include encryption and may, accordingly, be subject to export or other additional restrictions.

2.5. The right to access and use the Software, is expressly limited to the rights, restrictions and other terms set forth in this EULA and the Customer shall not be able to invoke any alleged implied rights. For the avoidance of doubt, the Software is only licensed, not sold to the Customer.

2.6. The Customer acknowledges and agrees that any download of, access to and use of the Software outside the scope of and/or in breach of the terms as set forth in this EULA, shall entitle Exalate to immediately terminate (or alternatively, at Exalate's option, suspend) this EULA for material breach by Customer, without any formalities being required and without prejudice to any other right or remedy available to Exalate.

2.7. Customer hereby acknowledges and agrees that any modification or attempted modification of the Software by any party other than Exalate shall void Exalate's warranties and shall be deemed to represent a material breach of the Agreement by Customer.

2.8. Exalate may, at its sole discretion, decide to grant the Customer an evaluation license pursuant to which the Customer may test the Software free of charge. In such case Exalate will use best efforts to provide support services to the Customer without being obliged to do so. The evaluation license shall be limited to one (1) month, which may be prolonged by mutual agreement between the Parties. Exalate cannot be held liable for any damages incurred by Customer under the evaluation license. For the avoidance of doubt, once the evaluation license has expired, access to the Software shall automatically cease, unless the Customer purchases a subscription to the Software.

3. Deployment of the Software

3.1. In case the Software is made available by Exalate as a hosted service via the cloud, the service performance is set out in the resources provided by Exalate. What can be expected is detailed as an exhibit herein and/or available at https://docs.exalate.com/docs/exalate-cloud-what-to-expect.

3.2. In case of on-premise installation or if the Software is deployed on infrastructure managed by the Customer, the following provisions shall apply:

a) the Customer shall be responsible to download and install the Software on its systems;

b) unless expressly agreed otherwise in writing, Customer shall bear all costs and full responsibility for such installation, configuration and hosting;

c) the correct functioning of the Software requires that the Customer's systems meet at least the published system requirements; and

d) the Software will be deemed accepted upon delivery.

4. Third Party Software / Instances

4.1. With regard to the Instances, the customer acknowledges that:

a) the provisions of this EULA (including but not limited to, any representations and warranties herein) do not apply to the Instances; and

b) Exalate has no responsibility for the Instances or any effect that the Instances may have on the functionality of the Software, the Customer's systems or business.

5. Maintenance and Changes

5.1. Exalate reserves the right to make operational or technical changes to the Software, and to modify, add or remove certain functionalities. Exalate shall provide prompt written notification to customer of any changes, modifications or removal of certain functionalities to the Software through release notes.

5.2. In case the Software is made available by Exalate as a hosted service via the cloud, the Software shall be updated automatically from time to time. Exalate shall use all reasonable endeavors to give prior written notice to the Customer of scheduled maintenance that is likely to affect the availability of the Software or is likely to have a material negative impact upon the Software. In case the Software is provided via an on-premise installation or if the Software is deployed on infrastructure managed by the Customer, the Customer is solely responsible for making sure that the available updates (made available by Exalate) are installed in a correct and timely manner. Exalate shall in no way be responsible for incidents or any damages resulting and/or linked to the use of outdated versions of the Software.

6. Support Services

6.1. During the Term, Exalate shall provide its standard support services via an online ticketing system in accordance with its support service level agreement, which is attached as an exhibit herein and/or available at https://docs.exalate.com/docs/standard-support-sla-policy

6.2. If the Customer has purchased advanced support services, such services shall be provided subject to separate terms and conditions entered into between Exalate and the Customer.

7. Customer Data

7.1. All Customer Data processed by the Software shall remain property of the Customer. Exalate may only use the Customer Data to the extent reasonably required to provide the functionalities of the Software to the Customer and for the purposes of monitoring the stability and performance of the Software Exalate may collect, from its backend, statistical data, which shall be considered Confidential Information.

7.2. The Customer warrants to Exalate that the Customer Data when processed by the Software in accordance with this EULA will not infringe the Intellectual Property Rights or other legal rights of any third party, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

7.3. The Customer acknowledges and agrees that it shall solely be responsible for the Customer Data that is distributed or accessible through the Software. Exalate shall in no event be responsible or held liable for any such Customer Data.

7.4. The Customer acknowledges that, without prejudice the confidentiality obligations hereunder, Exalate may use data related to the configuration of integrations between Instances set up by the Customer via the Software for the purposes of improving its Software and services in general. If and to the extent such data includes personal data of the Customer, Exalate shall fully anonymize or pseudonymize such data possible.

8. Intellectual Property Rights

8.1. Exalate is and remains the sole and exclusive proprietary owner of all Intellectual Property Rights related to the Software and the Documentation (including any new versions, updates, customizations, enhancements, modifications or improvements made to the Software or Documentation).

8.2. Nothing in the EULA shall convey any title or proprietary right or Intellectual Property Rights in or over the Software and the Documentation to Customer or any third party. Except for the limited license granted pursuant to clause 2, the Customer shall not in any way acquire any title, rights of ownership, copyright, intellectual property rights or other proprietary rights of whatever nature in the Software or Documentation. Customer agrees not to remove, suppress or modify in any way any proprietary marking, including any trademark or copyright notice, on or in the Software, or visible during its operation, or on media or on any Documentation.

9. Confidentiality

9.1. The Parties shall treat all Confidential Information received from the other Party as confidential, keep it secret and shall not disclose it to any third party, other than its agents, employees, advisors or consultants where such disclosure is necessary for the performance of this Agreement and only in case such agents, employees, advisors or consultants are bound by a confidentiality obligation at least as strict as the obligation included in this Agreement.

9.2. Confidential information disclosed in the execution of this EULA shall not be used for any purpose other than as required for the performance of either Parties' obligations under this EULA.

9.3. Both Parties shall take sufficient measures to maintain the confidentiality of all Confidential Information. The Parties in particular agree that they:

a) shall not copy or otherwise exploit any component of the Confidential Information other than as herein provided, nor make any disclosures with reference thereto to any third party; and

b) shall promptly notify the other Party if it becomes aware of any breach of confidentiality and give the other Party all reasonable assistance in connection with the same.

9.4. Shall not be considered Confidential Information, information that:

a) is published or comes into the public domain other than by a breach of this Agreement;

b) can be proven to have been known by the receiving Party before disclosure by the disclosing Party;

c) is lawfully obtained from a third party other than by a confidentiality breach of such third party; or

d) can be shown to have been created by the receiving Party independently of the disclosure.

9.5. If and to the extent required in accordance with a judicial or other governmental order, the receiving Party may disclose Confidential Information, provided that the receiving Party:

a) gives the disclosing Party reasonable prior notice to seek a protective order or equivalent, unless the receiving Party is legally prohibited from doing so;

b) reasonably cooperates with the disclosing Party in its reasonable efforts to obtain a protective order or other appropriate remedy;

c) discloses only that portion of the Confidential Information that it is legally required to disclose; and

d) uses reasonable efforts to obtain reliable written assurances from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection available under applicable law or regulation.

9.6. The obligations set out in this clause 9 shall enter into force as from the start of negotiations between the Parties and shall survive during five (5) years after the termination or expiration of the EULA.

10. Term and Termination

10.1. The provisions of this EULA shall apply for the duration of the Customer's subscription to the Software as specified in the applicable Order, unless terminated earlier in accordance with this clause 10.

10.2. Upon termination or expiration (for whatever reason) of the applicable Order, this EULA (and all licenses granted hereunder) shall automatically terminate.

10.3. Exalate may immediately terminate this EULA (and all licenses granted hereunder) without any judicial intervention, without being liable for compensation and without prejudice to its rights and damages and any other rights, remedies and/or claim to which it may be entitled by law, upon providing the other Party with written notice of termination if:

a) the Customer performs a material breach to any provision of this EULA and, where capable of remedy, fails to cure such material breach within thirty (30) calendar days after receipt of a written notice of the material breach;

b) the Customer becomes insolvent, is subject to voluntary or involuntary bankruptcy, insolvency or similar proceeding or otherwise liquidates or ceases to do business; or

c) the Customer breaches clause 8 (Intellectual Property Rights), clause 12 (Privacy and Data Protection) or clause 9 (Confidential Information).

10.4. Upon termination of this EULA or the applicable Order:

a) the Customer's right to use the Software will automatically cease and all licenses granted to Customer pursuant to this EULA shall automatically terminate;

b) in case of on-premise deployment, the Customer shall promptly delete all copies of the Software (and confirm in writing that such copies have been deleted); and

c) each Party shall delete or return, within reasonable time of such termination or expiration, all Confidential Information from the other Party, except as required to comply with any applicable legal or accounting record keeping requirement.

11. Warranties

11.1. Except as expressly provided otherwise, Customer acknowledges that the Software is provided "as is" and "as available", with all faults and without warranties of any kind, and Exalate hereby, to the maximum extent permitted under applicable law, disclaims all warranties, express, implied or statutory, including, without limitation, the warranties of merchantability, merchantable quality or fitness for any particular purpose, the warranty that the Software will operate error-free or that all errors in the software will be corrected. The Customer is solely responsible for backing-up, and will back-up, its systems and data before installing or running the Software.

11.2. Any additional warranties must be explicitly agreed upon by an authorized representative of Exalate in the Order.

12. Privacy and Data Protection

12.1. Each Party shall comply with the applicable data protection laws when processing personal data.

12.2. If applicable, Exalate shall process personal data on behalf of the Customer in accordance with the data processing agreement entered into between Exalate and the Customer.

12.3. If any changes or prospective changes to the data protection laws result or will result in one or both Parties not complying with the data protection laws in relation to processing of personal data carried out under this EULA, then the Parties shall use their best endeavors promptly to agree such variations to this EULA as may be necessary to remedy such non-compliance.

13. Limitation of Liability

13.1. In the event the Customer has purchased a subscription to the Software via an authorized reseller of the Software, the provisions of this clause 13 shall apply. If the Customer has purchased a subscription to the Software directly from Exalate, the limitation of liability as set out in the Exalate general terms and conditions shall also apply and in case of contradictions, the Exalate general terms and conditions shall prevail.

13.2. Subject to the maximum extent permitted under applicable law, Exalate's maximum aggregate liability under the EULA shall per contract year be limited to an amount equal to the fees paid by the Customer to Exalate in respect of the relevant license during such contract year, or, if the Customer has not purchased its subscription from Exalate directly (but from a third party reseller), an amount equal to the annual cost of the Customer's license based on Exalate's standard list pricing (as available online).

13.3. Exalate shall under no circumstances be liable to the Customer for any indirect, punitive, special consequential or similar damages (including damages for loss of profit, lost revenue, loss of business, loss or corruption of data, loss of customers and contracts, loss of goodwill, the cost of procuring replacement goods or services, and reputational damage) whether arising from negligence, breach of contract or of statutory duty or otherwise howsoever, and third parties' claims.

13.4. Exalate cannot be held liable in any way, neither contractually nor extra-contractually, for discontinuing an older release of the Software or for damages caused by the wrongful (or out of scope) use of the Software.

13.5. To the maximum extent permitted under applicable law, the Customer agrees, and accepts, not to hold the advisers, agents, contractors, directors, employees, representatives, and subcontractors of Exalate personally liable for or in connection with the Agreement. Any liability claim for or in connection with the Agreement (including any extra-contractual liability claim) shall be brought by the Customer exclusively against Exalate.

14. Miscellaneous

14.1. **Entire agreement.** The EULA, constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, representations or understandings between the Parties relating to the subject matter hereof. No statement, representation, warranty, covenant or EULA of any kind not expressly set forth in the EULA shall affect, or be used to interpret, change or restrict, the express clauses of the EULA. In particular, this EULA shall prevail over any differing or additional conditions agreed between the Customer and an authorized reseller of the Software.

14.2. **Electronic signatures.** The words "execution," "signed," "signature," and similar words shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

14.3. **Waiver.** The terms of the EULA may be waived only by a written document signed by both Parties. Each such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given, and shall not constitute a continuing waiver or consent.

14.4. **Severability.** If any provision of the EULA is determined to be illegal, void, invalid or unenforceable, in whole or in part, the remaining provisions shall nevertheless continue in full force and effect. The provisions found to be illegal, invalid or unenforceable shall be enforceable to the full extent permitted by applicable law. Each Party shall use its best efforts to immediately negotiate in good faith a valid replacement provision with an equal or similar economic effect.

14.5. **Survival.** Expiration, termination or cancellation of the EULA shall be without prejudice to the rights and liabilities of each Party which have accrued prior to the date of termination, and shall not affect the continuance in force of the provisions of the EULA which are expressly or by implication intended to continue in force, including, without limitation, the provisions relating to Intellectual Property Rights, Confidential Information and Limitation of Liability.

14.6. **Assignment.** The Parties shall not assign or otherwise transfer any of its rights or obligations under this EULA without the other Parties' prior written consent, except that Exalate may assign this Agreement to the surviving party in a merger of Exalate into another entity or in an acquisition of all or substantially all its assets, or through a sale or contribution of a division (*bedrijfstak*) or of a business as a whole (*algemeenheid*). Subject to any restrictions on assignment herein contained, the provisions of the EULA shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, legal representatives, successors and assignees.

14.7. **Changes to the EULA.** Exalate may change the EULA from time to time. In such case Exalate shall notify Customer of the changes via appropriate means and such changes shall enter into effect as from the renewal of Customer's subsequent subscription term or from the moment the Customer orders a new subscription. If Customer does not agree to the changes, Customer shall have the right to terminate its subscription at the end of the then-current subscription term by giving written notice to Exalate.

14.8. **Force Majeure.** In the event that either Party is prevented from performing or is unable to perform any of its non-monetary obligations under this EULA due to an Act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection, unavailability of material, or any other cause beyond the reasonable control of the Party invoking this section, provided such Party has used reasonable efforts to mitigate the effects of such force majeure event, such Party shall give prompt written notice to the other Party, its performance shall be excused, and the time for performance shall be extended for the period of delay or inability to perform due to such occurrences.

14.9. **Publicity.** Exalate shall have the right to use any trademarks, logos or other marks of Customer (including Customer's corporate name) for Customer references on Exalate's website, social media announcements and sales presentations.

14.10. **Relationship between the Parties.** The relationship between Exalate and Customer is that of independent contractors. Neither Party is agent for the other and neither Party has any authority to make any contracts, whether expressly or by implication, in the name of the other Party, without that Party's prior written consent for express purposes connected with the performance of the EULA.

14.11. **Notices.** Any notice required to be served by the EULA shall in first instance be given by electronic mail. Notices given to Customer shall be done to the email address set out in the Order (or in case no email address is available via post to Customer's registered address). All notices given by electronic mail, shall only be valid in case confirmation of receipt was expressly given by electronic mail by the receiving Party. In case no confirmation of receipt was given by Exalate within five (5) Business Days, all notices can be done in writing and served by registered letter addressed to either Party at its address given in the Order or to such other address as a Party may designate by notice hereunder.

14.12. **Applicable law and jurisdiction.** The EULA shall be governed by and construed in accordance with the laws of Belgium and the Parties hereto submit to the exclusive jurisdiction of the courts of Antwerp, division Antwerp. The United Nations Convention for the International Sale of Goods shall not apply to the EULA.