

## ACME Corporation

# Terms and Conditions

PLEASE READ THIS MASTER SUBSCRIPTION AGREEMENT BEFORE PURCHASING OR USING THE PRODUCTS OR SERVICES. BY USING OR PURCHASING THE PRODUCTS OR SERVICES, CUSTOMER SIGNIFIES ITS ASSENT TO THIS AGREEMENT. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF CUSTOMER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT PURCHASE NOR USE THE PRODUCTS OR SERVICES.

This **Master Subscription Agreement** (the “**Agreement**”) is entered into by and between eXo Platform (either “eXo Platform SAS” or “eXo Platform NA LLC”), as referred in the Order Form or any other order form related to the purchase of products and/or services related to this Agreement and, if there is no precision, with eXo Platform NA LLC, a limited liability company of the laws of California registered before the registry of Californian companies under number 200920410095 and having its principal office 51 Federal Street, Suite 350, San Francisco, California 94105, United-State (“**eXo**”) and the purchaser or user of eXo products and/or services that accepts the terms of this Agreement (“**Customer**”).

The effective date of this Agreement (“**Effective Date**”) is the earlier of these three dates: the date of signature or acceptance of this Agreement by entering into an Order Form by the Customer, the date of use of eXo products and/or services by the Customer or the date of purchase and payment of eXo products and/or services through eXo online selling platform.

Whereas eXo and Customer desire to establish certain terms and conditions under which Customer will, from time to time, be licensed software and obtain services from eXo;

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Customer and eXo agree as follows:

### 1. Definitions

Capitalized terms used in this Agreement are defined in this Section 1 or the Section in which they are first used:

**1.1 “Activation Key”** means a file evidencing a grant of one or more Licenses by eXo to Customer for the Term, and provided to Customer when the Subscription is purchased.

**1.2 “CORE Processor”** means the virtual or real unit that reads and executes program instructions.

**1.3 “Documentation”** means the standard end-user technical documentation and specifications that eXo supplies with the Software, as revised from time to time by eXo. Advertising and marketing materials are not Documentation.

**1.4 “Error”** means a reproducible failure of the Software to perform in substantial conformity with its Documentation, and considered as such by eXo.

**1.5 “eXo Add-Ons”** means an extension module or plugin published by eXo enhancing the Software with new functionalities.

**1.6 “License”** means a license granted, in accordance with a Subscription, by eXo to Customer to allow installation and use of the Software.

**1.7 “Third-Party Software”** means various third-party software components licensed under the terms of applicable license agreements, whether open source or not, included in the materials relating to such software. Third-Party Software is composed of individual software components, each of which has its own copyright and its own applicable license conditions.

**1.8 “Order Form”** means an order form, whether in written or electronic form, composed of one or multiple purchase orders, defining the Software, and/or the services which will be delivered to the Customer by eXo, in accordance with this Agreement and the specific conditions written in this Order Form.

**1.9 “Software”** means the tested and certified software in object code format provided by eXo to Customer, as specified on the Order Form, pursuant to this Agreement as of the Effective Date or a future date, including any Documentation incorporated therein, and Updates to such software that eXo may provide to Customer from time to time as part of eXo Products Maintenance Program, as defined at <http://www.exoplatform.com/maintenance-program>. For the avoidance of doubt and unless otherwise specified, Third-Party Software and/or eXo Add-Ons, that may be available through the Software, (a) do not form a part of the Software, (b) are solely governed by their own licenses and/or terms and conditions, (c) are not covered by this Agreement, and (d) may be downloaded and installed by the Customer under its sole responsibility and liability. As a limited exception to the aforesaid, eXo Add-Ons listed in **Appendix 3 (“eXo Official Add-Ons”)** are governed and supported under the conditions of this Agreement under the same level of Support Services as the Support Services applicable to the Software. .

**1.10 “Subscription”** means the license for the Software and, if applicable, the access to Support Services ordered and paid for by Customer and provided by eXo as specified on the Order Form.

**1.11 “Support Services”** means the support services provided by eXo to Customer as part of the Subscription and as further defined in Section 2.6 and <http://www.exoplatform.com/SLA> and/or as may be specified on the applicable Order Form.

**1.12 “Term”** means the period of time for the Subscription as specified in the Order Form.

**1.13 “Update”** means a Major Release, Minor Release or Maintenance Fix of the Software. **“Major Release”** means a later version of the Software identified by a change in the first digit (X) of the identified update according to the (X.y.z) schema. **“Minor Release”** means a later version of the Software identified by a change in the second digit (Y) of the identified update according to the (x.Y.z) schema. **“Maintenance Fix”** means a new version of the Software identified by a change in the third digit (Z) of the identified update according to the (x.y.Z) schema.

**1.14 “Registered User”** means a physical or virtual person or program, named or anonymous, who establishes a network connection with the server on which the Software is installed, with the objective to make partial or complete use of the Software.

## **2. General Terms**

**2.1 Scope of Agreement.** This Agreement governs all transactions between the parties with respect to the Software and Services provided hereunder.

**2.2 Orders.** Customer may place orders with eXo to purchase a Subscription at eXo’s then-current prices. Customer may transmit such orders to eXo by mail, fax, email or other electronic channels. Customer may, for its convenience, submit orders using its standard forms, but no terms, provisions or conditions of any order document, acknowledgement or other business form that Customer may use in connection with the acquisition or licensing of the Software will have any effect on the rights, duties or obligations of the parties under, or otherwise modify this Agreement, regardless of any failure of eXo to object to such terms, provisions or conditions. Any such additional or conflicting terms and conditions on any Customer order document, acknowledgement or other business form are hereby rejected by eXo.

**2.3. Acceptance of Orders.** eXo may accept orders in its sole discretion by sending to Customer an Order Form confirming the particulars of the order.

**2.4 Delivery** Delivery of the Software will be from eXo’s Customer Portal web site. The Term is specified in the Order Form. The Software will be deemed accepted by Customer upon delivery of the Activation Key.

**2.5 Installation.** Customer will be responsible for installing the Software on its computers as permitted under this Agreement. Installation services may be purchased on a time-and-materials basis at eXo’s then-current rates as specified on the applicable Order Form.

**2.6 Support Services.** During the time that Customer has paid the applicable annual Subscription fees, eXo will provide Customer with Support Services for the Software under the terms outlined in the Support Policy as posted at <http://www.exoplatform.com/SLA>. Such Support Services are provided to Customer solely for Customer’s internal use, and Customer may not use the Software or Support Services to supply any consulting, support or training services to any third party.

**2.7 Exclusions.** eXo will have no obligation to correct Errors caused by: (a) improper installation of the Software; (b) altered or modified Software, unless altered or modified by eXo; (c) use of the Software in a manner inconsistent with its Documentation or this Agreement; (d) any combination of the Software with hardware or software not specified in the Documentation; or (e) defects in the Software due to accident, hardware malfunction, abuse or improper use.

**2.8 Additional Services.** Should Customer request that eXo provide services in connection with problems (a) caused by the factors listed in Section 2.7 or (b) that are otherwise beyond the scope of the Support Services or this Agreement, Customer will pay for such services eXo agrees to perform on a time-and-materials basis at eXo's then-current rates.

## **2.9 Customer Obligations.**

**2.9.1** As a condition to eXo's provision of the Support Services, Customer agrees to assure necessary competence for use of the Software. Training courses (Appendix 2) provide the Customer's technical crew with the set of knowledge required.

**2.9.2** As a condition to eXo's provision of the Support Services, Customer must assist eXo in identifying and correcting any Errors, including executing reasonable diagnostic routines in accordance with any instructions provided by eXo. Customer agrees to provide eXo with such cooperation, materials, information, access, and support which eXo deems to be reasonably required to allow eXo to successfully provide the Support Services, including, without limitation, as may be set forth in an applicable Order Form. Customer understands and agrees that eXo's obligations hereunder are expressly conditioned upon Customer providing such cooperation, materials, information, access and support.

**2.9.3** Customer acknowledges that in order for eXo to provide the Support Services, Customer may be required to license and install certain third party software and provide certain third party hardware that are not provided or licensed by eXo ("**Third Party Products**"). eXo may provide Customer with links and instructions for obtaining Third Party Products, but it is Customer's responsibility to properly license and install any required Third Party Products from the relevant third party providers. eXo will have no liability with respect to any Third Party Products. In the event of a failure by Customer to timely provide Third Party Products as required, eXo may treat the applicable Order Form as having been cancelled by Customer.

## **3. Licenses**

**3.1 Grant.** For each Subscription that Customer purchases, eXo grants Customer a limited, non-exclusive, non-transferable, non-sublicensable (except as provided in Section 11.3) License for the Term to:

**a)** use, install and execute the Software licensed hereunder (in object code format) on any computers solely for Customer's own business purposes;

**b)** use, install the Software licensed hereunder (in object code format) with respect for the number of allowed CORE Processors and/or the limitation of Registered Users, as designated in the applicable Order Form, solely for Customer's own business purposes;

Each License is subject to the terms and conditions of this Agreement, including the restrictions set forth in this Section 3 and will be contingent upon Customer's timely payment of eXo's applicable Subscription fee (as specified on the Order Form) and issuance by eXo of the Activation Key. The License granted herein is solely to the entity specified as "Customer" and not, by implication or otherwise, to any parent, subsidiary or affiliate of such entity.

**3.2 Copies.** Customer may make up to two (2) copies of the Software licensed hereunder for archival, backup, installation or disaster recovery purposes only. Customer will include in any such copy all copyright, trademark, or other proprietary rights notices as included in or affixed to the original Software.

**3.3 Restrictions.** Customer shall not itself, or through any parent, subsidiary, affiliate, agent or other third party:

- a) decompile, disassemble, translate, reverse engineer or otherwise attempt to derive source code from the Software, in whole or in part, nor will Customer use any mechanical, electronic or other method to trace, decompile, disassemble, or identify the source code of the Software or encourage others to do so, except to the limited extent, if any, that applicable law permits such acts notwithstanding any contractual prohibitions, provided, however, before Customer exercises any rights that Customer believes to be entitled to based on mandatory law, Customer shall provide eXo with thirty (30) days prior written notice and provide all reasonably requested information to allow eXo to assess Customer's claim and, at eXo's sole discretion, to provide alternatives that reduce any adverse impact on eXo's intellectual property or other rights;
- (b) allow access or permit use of the Software by any users other than Customer's employees, or authorized third-party contractors who are providing services to Customer and agree in writing to abide by the terms of this Agreement, provided further that Customer shall be liable for any failure by such employees and third-party contractors to comply with the terms of this Agreement,
- (c) create, develop, license, install, use, or deploy any third party software or services to circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions of the Software, any additional licensing terms provided by eXo via product documentation, notification, and the terms of this Agreement,
- (d) modify or create derivative works based upon the Software,
- (e) use the Software in connection with any business operation for which Customer provides services to third parties, or
- (f) disclose the results of any benchmark test of the Software to any third party without eXo's prior written approval, unless otherwise expressly permitted herein, provided, however, that the foregoing restriction shall apply to Customer only if Customer is a software or hardware vendor, or if Customer is performing testing or benchmarking on the Software.

**3.4 Third-Party Software.** The Third-Party Software are licensed under the terms of the applicable license conditions, whether open source or not, and/or copyright notices that can be

found in the licenses file, the documentation or other materials accompanying the Third-Party Software. Copyrights to the Third-Party Software are held by copyright holders indicated in the copyright notices in the corresponding source files or in the licenses file or other materials accompanying the Third-Party Software.