



MASTER SUBSCRIPTION AND PROFESSIONAL SERVICES AGREEMENT

This Master Subscription and Professional Services Agreement (“Agreement”), effective as of September 24, 2021 (“Effective Date”), by and between Exterro, Inc., an Oregon company whose principal address is 4145 SW Watson Avenue, Suite 400, Beaverton, Oregon, 97005 (“Exterro”) and The Texas A&M University System, whose principal address is 301 Tarrow Street, College Station, Texas 77840 (“Customer”) (each a “Party” and collectively, the “Parties”).

Whereas Exterro provides Subscription Services and related Professional Services and Customer desires to subscribe to the Services, and this business relationship and the allocation of responsibilities regarding such Services are set forth in this Agreement. Therefore, the Parties agree as follows:

1. PROVISION OF THE SERVICES

- 1.1. Subscription Service. “Subscription Service” or “Service” means Exterro’s software applications (including any third party software which is part thereof) as described in and ordered by Customer (the “Software”), and related services, which are made available by Exterro as a Software as a Service (SaaS) online via web access designated by Exterro. Exterro will make the following available to Customer, subject to the terms and conditions of this Agreement and related ordering documents signed by the Parties (each an “Order Form”), including without limitation, (a) use of the Subscription Services; (b) professional services and training services (“Professional Services”); and (c) any additional services. An Order Form shall specify the term of authorized use of the Subscription Service (“Subscription Term”), the fees and other charges for the Subscription Service, any special payment terms, the scope of use, and the numbers, types and identifiers of Authorized Users, applications, servers, devices, capacity and locations at or through which the Customer is permitted to use the Subscription Service. Each Order Form is hereby incorporated into and made a part of this Agreement for that order.
- 1.2. Professional Services. Exterro shall perform Professional Services in the form, type and manner provided in one or more statements of work (“SOW”) that refer to this Agreement, and which, upon execution, are incorporated into the Agreement.
- 1.3. Customer Obligations. Customer is responsible for directing, participating and cooperating with Exterro during the implementation of the Subscription Services. Customer may enable access of the Service for use only by Authorized Users solely for the internal business purposes of Customer and its Affiliates in accordance with the Documentation and not for the benefit of any third parties. Customer shall protect the names and passwords of the Authorized Users to the Subscription Service. Customer is responsible for all Authorized User use of the Subscription Service and compliance with this Agreement. Customer shall: (a) have sole responsibility for the accuracy, quality, and legality of all Customer Data; and (b) prevent unauthorized access to, or use of, the Subscription Service, and notify Exterro promptly of any such unauthorized access or use. Customer shall not attempt to gain access to the Subscription Services or its related systems or networks in a manner not set forth in the Documentation. Customer is responsible for using the Subscription Service within the permitted scope and only in accordance with the numbers, types and identifiers of Authorized Users, applications, servers, devices, capacity and locations at or which Customer is permitted to use as set forth in the Order Form. Customer shall designate a minimum number of named contacts as listed in the applicable Order Form to request and receive support services from Exterro. Named Support Contacts must be trained on the Exterro products for which they initiate support requests.
- 1.4. Acceptance of the Services.
 - 1.4.1. Acceptance of the Software. Customer is entitled to perform verification testing on delivered Software (the “base product”) to confirm receiving the product(s) as set forth in the Agreement and to confirm that the base products function as set forth in Exterro’s product documentation. Said testing shall be completed within ten (10) days after Exterro makes the base product(s) available to Customer (the “Acceptance Period”). If Customer reasonably determines that the base product made available to them differs from the Agreement, or that the product(s) fails to operate in accordance with the documentation, Customer shall notify Exterro and Exterro shall correct the error. Unless Customer



notifies Exterro, in writing, that the Software failed the verification testing, within thirty (30) days after Exterro makes the Software available to the Customer, the base product(s) will be deemed to be accepted. Exterro will not begin configuration services or other Professional Services until such time as the Software has been accepted.

- 1.4.2. Acceptance of Professional Services. Customer may engage Exterro to provide Professional Services to configure the Software. Customer is entitled to perform Acceptance Testing of the configured Software including any and all deliverables described in a Statement of Work ("SOW") or the Order Form. The term "Acceptance Testing" means testing performed by or on behalf of Customer to determine whether the relevant configured Software complies with any specifications and requirements set forth in the Professional Services SOW/Order Form. If Customer reasonably determines that such configured Software complies with the foregoing or otherwise decides in its reasonable discretion to accept the configured Software, Customer will notify Exterro in writing (email is acceptable) of its acceptance of the Professional Services. Customer will notify Exterro on or before any acceptance date set forth in the applicable SOW/Order Form ("Configured Software Acceptance Date"). If Exterro has not received written notice within ten (10) business days of the Configured Software Acceptance Date, the Professional Services will be deemed to have been accepted.
- 1.4.3. Failure of Acceptance Testing of Professional Services. If Customer notifies Exterro that the configured Software fails to pass Acceptance Testing, Exterro will correct all material deficiencies in the Software or Professional Services, not later than thirty (30) calendar days after receipt of Customer' notice of such failure. Within thirty (30) calendar days after such corrections have been made, Customer will retest the relevant Services. If the Services still fail Acceptance Testing, Customer may, in its discretion: (i) grant Exterro additional time to correct the outstanding deficiencies; or (ii) terminate the associated SOW/Order Form. In the event of termination under this Section 1.4.3 Exterro will refund promptly any Professional Service Fees paid to Exterro for the associated terminated SOW/Order Form.
- 1.4.4. Service Use. When using a Service, Customer may develop, provide and maintain Customer-specific standards or protocols for use in connection with such Service, such as risk assessment standards, benchmarking standards, or applicable best practices, policies, procedures or protocols, which may be further identified on an applicable Order Form ("System Protocols"). Customer is solely responsible for determining whether the System Protocols applicable to any particular Service comply with any legal, tax, accounting, operational, regulatory and other requirements.

2. FEES AND PAYMENT

2.1. Fees.

- 2.1.1. Subscription Service. Fees for the Subscription Service will be invoiced in accordance with the applicable Order Form.
- 2.1.2. Professional Services. Customer shall pay Exterro Professional Services fees at the rates and in accordance with the applicable SOW. Customer shall reimburse Exterro for all reasonable and necessary travel and living expenses incurred by Exterro in the performance of the Professional Services under this Agreement and approved in advance and in writing by customer.

- 2.2. Payment Terms. Except as expressly set forth in the applicable Order Form or Statement of Work ("SOW") (a) Subscription Service fees are invoiced annually in advance; (b) Professional Services fees are invoiced as set forth in the Order Form (including reasonable travel expenses) monthly in arrears; and (c) Customer shall pay each invoice in accordance with the Texas Prompt Payment Act (Texas Government Code Chapter 2251), in U.S. dollars. Except as otherwise stated in an Order Form, all fees are based on Service rights acquired and not actual usage. If Customer specifies in an Order Form that it is issuing a purchase order for such Order Form, then Exterro shall reference the applicable Customer purchase order number on its invoices (solely for administrative convenience) so long as Customer provides the purchase order number to Exterro at least five (5) business days prior to the date of the applicable Exterro invoice.



- 2.3. Overdue Payments. Late payments shall accrue interest at a rate of one and one-half percent (1.5%) per month or the legal maximum interest rate, whichever is lower. If Customer is delinquent in payment of amounts for the services owed hereunder, Exterro may give notice to Customer of such delinquency and, in such case, Customer will have thirty (30) days from the date of Exterro's written notice to cure the delinquency. If Customer fails to cure the delinquency, Exterro may, in addition to its other rights and remedies provided hereunder or at law, terminate or suspend the affected Service.
- 2.4. Non-cancelable & non-refundable. Except as specifically set forth to the contrary under Section 1.4.3 "Failure of Acceptance Testing of Professional Services", Section 6.1 "Warranties", Section 7.1 "Indemnification – Exterro Obligation", Section 9.4 "Effect of Termination" and under Section 3 "Availability Service Level" of the Subscription Service Guide Agreement (Appendix 1), all payment obligations under any and all Order Forms are non-cancelable and all payments are non-refundable. The license rights for the number of Authorized Users set forth on any respective Order Form cannot be decreased during the Term.
- 2.5. Audit. Exterro shall have the right, at Exterro's expense, to periodically confirm Customer's compliance with the Subscription Services usage terms of any Order Form. Customer shall provide any reasonable assistance to Exterro in conducting an audit. If Customer's use of the Subscription Services exceeds the usage permitted by the Order Form, Customer shall (a) disable the unpermitted use; or (b) purchase additional rights to bring the actual use into compliance with permitted rights. If Customer fails to correct the unpermitted use, Exterro may, in addition to other rights and remedies provided hereunder or at law, and after providing thirty (30) days of written notice of the noncompliance, terminate or suspend the affected Service.
- 2.6. Taxes. All payments required by this Agreement are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies and similar assessments. Customer agrees to bear and be responsible for the payment of all taxes, duties, tariffs, levies, fees and charges of any kind, including sales, use, excise or value added taxes, and all other similar charges (collectively, "Taxes") which are imposed on transactions under this Agreement by or under the authority of any government body, excluding Taxes based solely on Exterro's net income. Customer shall make all payments required without deduction of any Taxes, except as required by law, in which case the amount payable shall be increased as necessary so that after making any required deductions and withholdings, Exterro receives and retains (free from any liability for payment of Taxes) an amount equal to the amount it would have received had no such deductions or withholdings been made. If Customer is a tax-exempt entity or claims exemption from any Taxes under this Agreement, Customer shall provide a certificate of exemption upon execution of this Agreement and, after receipt of valid evidence of exemption, Exterro shall not charge Customer any Taxes from which it is exempt.

3. PROPRIETARY RIGHTS

- 3.1. Ownership and Reservation of Rights to Exterro Intellectual Property. Exterro and its licensors own all right, title, and interest in and to the Subscription Services, Documentation, and other Exterro Intellectual Property Rights. Subject to the limited rights expressly granted hereunder, Exterro reserves all rights, title and interest in and to the Subscription Service, and Documentation, including all related Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth herein. Exterro shall have a royalty-free, worldwide, non-exclusive, transferable sub-licensable, irrevocable, perpetual right to make, use, sell, offer for sale, import, or otherwise incorporate into the Subscription Service, Software, Documentation, any suggestions, enhancements, recommendations, or other feedback provided by Customer relating to the Subscription Service, Software, Documentation.
 - 3.1.1. Professional Services. All right, title and interest to all recommendations, ideas, techniques, know-how, designs, programs, development tools, processes, integrations, enhancements and other technical information developed by Exterro in the course of performing Professional Services, or co-developed by the Parties hereunder, including all trade secrets, copyrights and other Intellectual Property Rights pertaining thereto (together the "Exterro Intellectual Property") vests in Exterro. Nothing contained in



this Agreement shall be construed as transferring any such rights to Customer or any third party except as expressly set forth herein.

- 3.1.2. Subject to 3.1.1 above, Exterro grants to Customer a nontransferable and non-assignable term license to access and to use the Exterro Intellectual Property that Exterro incorporates into a Deliverable provided to Customer hereunder, without further license fees. Customer may only use the Deliverables in connection with its authorized use of the Exterro Subscription Service, as such is defined pursuant to this Agreement between the Parties and only during the term set forth therein.
- 3.2. License Grant. Exterro hereby grants Customer a non-exclusive, non-transferable, license to access, configure and use the purchased Subscription Service and Documentation, solely for the internal business purposes of Customer and its Affiliates and solely during the Term, subject to the terms and conditions of this Agreement within scope of use defined in the relevant Order Form.
- 3.3. License Restrictions. Customer shall not, nor permit others to: (i) license, sub-license, sell, re-sell, lease, transfer, distribute or time share the Subscription Service, Software, or Documentation; (ii) create derivative works based on or otherwise modify the Subscription Service, Software, or documentation; (iii) disassemble, reverse engineer or decompile the Subscription Service or Software; (iv) access the Subscription Service, Software, or Documentation in order to develop a competing product or service; (v) use the Subscription Service to provide a service for others; (vi) use the Exterro Software Platform to operate more or different type of applications than permitted under the applicable Order Form; (vii) remove or modify a copyright or other proprietary rights notice on or in the Subscription Service, Software or Documentation; (viii) disable, hack or otherwise interfere with any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by the Subscription Service.
- 3.4. Customer Data. As between Customer and Exterro, Customer owns its Customer Data. All Customer Confidential Information, and all Personally Identifiable Information supplied by, or Personally Identifiable Information input by Customer or its authorized agents shall be, and remain, the property of Customer.
- 3.5. Right to Use Customer Data. For the Term of this Agreement, Customer hereby grants Exterro a non-exclusive, non-transferable, worldwide right to use Customer Data strictly and exclusively for the limited purpose of providing the Subscription Service to Customer.
- 3.6. Aggregate Data. Exterro owns the Aggregate and statistical data derived from the operation of the Subscription Service, including without limitation, the number of records in the Service, the number and types of transactions, configurations, and reports processed in the Service and the performance results for the Service (the "Aggregate Data"). Nothing herein shall be construed as prohibiting Exterro from utilizing the Aggregate Data for purposes of operating Exterro's business, provided that Exterro's use of the Aggregate Data will not reveal any actual Customer Data or the identity, whether directly or indirectly, of any individual or Customer. In no event does the Aggregate Data include any Personally Identifiable Information.

4. CONFIDENTIALITY

- 4.1. Confidential Information. "Confidential Information" means all information disclosed by a Party (the "Disclosing Party") to the other Party (the "Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of the disclosure, including without limitation: each Party's respective business plans and processes; financial and employee data; proprietary technology and product information and designs; the Subscription Service and Software; Customer Data. To the extent permitted by law, the terms of this Agreement, Order Form(s) and pricing are Confidential Information of Exterro. Confidential Information, other than Customer Data, excludes information that: (i) is or becomes publicly known or available; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation to the Disclosing Party; (iii) is received from a third party without any obligation of confidentiality to a third party or breach of any obligation of confidentiality to the Disclosing Party; (iv) or was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information.



4.2. Protection. The Receiving Party shall: (i) at all times protect the confidentiality of the Disclosing Party's Confidential Information with the same degree of care that it uses to protect its own confidential information, and in no event using less than reasonable care; and (ii) not use Confidential Information of the Disclosing Party except to the extent necessary to exercise its rights or fulfill its obligations under this Agreement. To the extent necessary under this Agreement, the Receiving Party may disclose the Confidential Information of the Disclosing Party to the Receiving Party's employees or contractors who are bound by written obligations of confidentiality and non-use and non-disclosure restrictions at least as protective as those set forth herein. In the event of a court order or government regulation compelling disclosure of any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice thereof, and shall reasonably cooperate with the Disclosing Party to seek confidential or other protective treatment. The Receiving Party is not required to pursue any claim, defense, cause of action, or legal process or proceeding on the Disclosing Party's behalf. If a Party discloses or uses (or threatens to disclose or use) any Confidential Information of the other Party in breach of confidentiality protections hereunder, the other Party shall have the right, in addition to any other remedies available, to seek injunctive relief to enjoin such acts, it being acknowledged by the Parties that any other available remedies may be inadequate. Each Party's obligations set forth in this Section 4 shall remain in effect during the Term and three (3) years after expiration or termination of this Agreement, provided that each Party's obligations set forth in this Section 4 with respect to Personally Identifiable Information shall remain in effect indefinitely. The Receiving Party shall promptly return to the Disclosing Party or destroy (with certification of such destruction provided by the Receiving Party upon request of the Disclosing Party) all Confidential Information of the Disclosing Party in its possession or control, other than materials in electronic backup systems or otherwise not reasonably capable of being readily located and segregated without undue burden or expense, upon request from the Disclosing Party, or expiration or termination of this Agreement. The Receiving Party may also securely retain one copy of materials embodying Confidential Information in its files solely for record purposes.

5. CUSTOMER DATA

5.1. Protection. During the Term of this Agreement, and pursuant to Section 2054.138, *Texas Government Code*, Exterro shall implement and maintain formal security programs in accordance with industry standards and consistent with the administrative, technical, and physical security measures available at <https://it.tamu.edu/policy/it-policy/controls-catalog/index.php>, as may be amended from time to time ("Security Controls") to (i) ensure the confidentiality, security, availability and integrity of Customer Data; (ii) protect against threats or hazards to the security or integrity of Customer Data; and (iii) prevent unauthorized access to Customer Data. Exterro shall periodically, but no more than once annually, provide Customer with evidence of its compliance with the Security Controls within thirty (30) days of Customer's request.

5.2. Unauthorized Disclosure. If either Party believes or has reason to believe that there has been a disclosure of Customer Data to anyone other than an Authorized User or Exterro (a "Data Breach"), such Party must notify the other Party within two (2) business days of becoming aware of such actual - Data Breach. Additionally, each Party will reasonably assist the other Party in remediating or mitigating any potential damage, including any notification which should be sent to individuals impacted or potentially impacted, or the provision of credit reporting services to such individuals. Each Party shall bear the costs of such remediation or mitigation to the extent the Data Breach was caused by it.

6. WARRANTIES & DISCLAIMERS

6.1. Warranties.

6.1.1. Each Party warrants that it has the authority to enter into this Agreement and, in connection with its performance of this Agreement, shall comply with all laws applicable to its performance of this Agreement, including without limitation, laws related to data privacy, international communications and the transmission of technical or personal data, including without limitation, the Personally Identifiable Information. The Parties agree to enter into any further agreements necessary to facilitate compliance with applicable laws, including without limitation, the Health Insurance Portability and Accountability Act



of 1996 and its implementing regulations.

Exterro warrants that during the Subscription Term the Subscription Service will operate without a Defect (as defined in the Subscription Service Guide attached hereto as Appendix 1 and incorporated into this Agreement by reference), that causes a material failure of Customer's production instances of the Subscription Service to perform in accordance with product documentation. Customer's exclusive remedy for breach of this warranty is for Exterro to correct or work around the Defect upon request, subject to and in accordance with the procedures and limitations for receiving Support, as defined in the Subscription Service Guide. If the Defect persists in causing a material failure in Customer's production instances of the Subscription Service to conform to product specifications, without correction or work-around forty-five (45) days after written notice to Exterro of a warranty claim under this Section 6.1, then Customer may terminate the affected Subscription Service and Exterro shall refund to Customer any prepaid subscription fees covering the remainder of the Subscription Term of the affected Subscription Service after the date of termination. This Section 6.1.2 sets forth Customer's exclusive rights and remedies (and Exterro's sole liability) in connection with any Defect or other failure of the Subscription Service to perform in accordance with the product specifications or any other manner. Notwithstanding any other provision in this Agreement, Exterro shall have no obligation to support and shall have no liability or obligation due to unavailability, malfunction or degradation of performance in the Subscription Service that is due to modifications of the Exterro Applications by any person other than Exterro or a person acting at Exterro's direction.

6.1.2. Professional Services. Exterro warrants that it shall perform all Professional Services obligations defined in a SOW in a professional and workmanlike manner. As Customer's exclusive remedy and Exterro's sole liability for breach of this warranty, Exterro shall (a) correct the non-conforming Professional Service or Deliverable at no additional charge to Customer or (b) in the event Exterro is unable to correct such deficiencies after good-faith efforts, refund Customer prorated amounts paid for the defective Professional Service or Deliverable. To receive the warranty remedy, Customer must promptly report deficiencies in writing to Exterro, but no later than thirty (30) days after the first date the deficiency is identified by Customer.

6.2. DISCLAIMER OF WARRANTIES. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT ALLOWED BY LAW, EXTERRO DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES ARISING UNDER STATUTE, WARRANTIES OF MERCHANTABILITY, ACCURACY, TITLE, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXTERRO SPECIFICALLY DOES NOT WARRANT THAT THE SERVICES, DELIVERABLES, OR SOFTWARE WILL MEET THE REQUIREMENTS OF CUSTOMER OR OTHERS OR THAT THEY WILL BE ACCURATE OR OPERATE WITHOUT INTERRUPTION OR ERROR. CUSTOMER ACKNOWLEDGES THAT IN ENTERING THIS AGREEMENT IT HAS NOT RELIED ON ANY PROMISE, WARRANTY OR REPRESENTATION NOT EXPRESSLY SET FORTH HEREIN OR INCORPORATED INTO THIS AGREEMENT BY REFERENCE.

7. INDEMNIFICATION

7.1. Exterro Obligation. Subject to the exclusions set forth below, Exterro shall: (i) defend Customer, its officers, directors and employees against any third party suit, claim, action or demand ("Claim") alleging that Customer's use of the Subscription Service in accordance with this Agreement infringes any valid patent, copyright, or trademark of a third party that is issued or registered in the United States, Canada, Australia, the European Union or Switzerland; and (ii) pay any court-ordered award of damages or settlement amount, and reasonable attorney fees, to the extent caused by such Claim. If any portion of the Subscription Service becomes the subject of a Claim, Exterro may: (a) contest the Claim; (b) obtain permission from the claimant for Customer's continued use of the Subscription Service; (c) replace or modify the Subscription Service to avoid infringement, if such replacement or modification has substantially the same capabilities as the Subscription Service; or, if the foregoing (a), (b), and (c) are not available on commercially reasonable terms in Exterro's judgment, then (d) terminate Customer's use of the affected Subscription Service upon forty-five (45) days' written notice and pay to Customer a refund of any prepaid subscription fees covering the remaining



portion of the applicable Subscription Term for the affected Subscription Service after the date of termination. Notwithstanding the above, Exterro shall have no indemnification obligation or liability for any Claim to the extent arising from: (i) any use of the Subscription Service which exceeds the authorized use permitted under this Agreement; (ii) Customer Data where the Subscription Service is non-infringing; (iii) use of the Subscription Service by Customer in violation of applicable law; (iv) use of the affected Subscription Service after termination in accordance with clause (d) of this Section 7.1; (v) modifications to the Subscription Service by any person other than Exterro or a person acting at Exterro's direction; or (vii) use of the Subscription Service in combination with any hardware, software, application or service made or provided other than by Exterro where the use of the Subscription Service alone is non-infringing and except where such combination is reasonably anticipated in Exterro's Documentation or marketing materials.

Process. All of the foregoing indemnity obligations are conditioned on the Customer notifying Exterro promptly in writing of any actual or threatened Claim, subject to the consent of the Attorney General of the State of Texas, the Customer giving Exterro sole control of the defense thereof and any related settlement negotiations, and the Customer cooperating and, at Exterro's request and expense, assisting in such defense.

SECTION 7 STATES EACH PARTY'S ENTIRE LIABILITY, AND THE OTHER PARTY'S EXCLUSIVE REMEDY, FOR THIRD PARTY INFRINGEMENT CLAIMS AND ACTIONS.

8. LIMITATION OF LIABILITY AND DAMAGES

LIMITATIONS OF LIABILITY. TO THE EXTENT PERMITTED BY LAW AND EXCLUDING EXTERRO'S OBLIGATIONS UNDER SECTION 7.1, THE TOTAL, CUMULATIVE LIABILITY OF EACH PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER, WHETHER BASED ON CONTRACT, IN TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL BE LIMITED TO THE AMOUNTS PAID BY CUSTOMER FOR THE SERVICE GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS LIMIT.

- 8.1. EXCLUSION OF DAMAGES. TO THE EXTENT PERMITTED BY LAW, NEITHER EXTERRO NOR CUSTOMER SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR LOST PROFITS (WHETHER DIRECT OR INDIRECT) OR LOSS OF USE OR DATA, COSTS OF SUBSTITUTE GOODS, OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGE TO BUSINESS, REPUTATION OR GOODWILL), OR INDIRECT DAMAGES OF ANY TYPE HOWEVER CAUSED, WHETHER BY BREACH OF WARRANTY, BREACH OF CONTRACT, IN TORT OR ANY OTHER LEGAL OR EQUITABLE CAUSE OF ACTION ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SUBSCRIPTION SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SUBSCRIPTION SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF SUCH DAMAGES IN ADVANCE OR IF SUCH DAMAGES WERE FORESEEABLE.

9. TERM AND TERMINATION

9.1. Term.

The term of this Agreement commences on the Effective Date and continues until the stated term in all Order Forms has expired or has otherwise been terminated in accordance with the terms set forth in this Section 9. Following the initial term defined in the Order Form, an Order shall automatically renew for up to four successive one year terms (each, a "Renewal Term") until such time as Customer provides Exterro with written notice of termination; provided, however, that: (a) such notice be given no fewer than thirty (30) calendar days prior to the last day of the then current term; and, (b) any such termination shall be effective as of the date that would have been the first day of the next Renewal Term. "Term" shall collectively mean and include the Agreement terms represented by the initial term and the Renewal Term.

- 9.2. Termination for Cause. Each Party may terminate this Agreement in its entirety upon written notice if the other Party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership or liquidation, in any jurisdiction, that is not dismissed within sixty (60) days of its commencement or an assignment for the benefit of creditors. Either Party may terminate a Subscription Service or Professional Services effective immediately upon written notice if the other Party materially breaches a material obligation under this Agreement or the applicable Order Form for the affected service and does not cure the breach within thirty (30) days after receiving written notice thereof from the non-breaching Party. Professional



Services are separately ordered from the Subscription Service, and are not required for the Subscription Service. A breach by a Party of its obligations with respect to Professional Services shall not by itself constitute a breach by that Party of its obligations with respect to the Subscription Service even if the services are enumerated in the same Order Form.

- 9.3. Professional Services Termination. Except as set forth in a SOW, Exterro may terminate any Statement of Work by giving Customer fifteen (15) days prior written notice in the event: (i) Customer repeatedly fails to perform its obligations under this Agreement or a Statement of Work resulting in the inability of Exterro to meet its obligations and time frame commitments, or (ii) it is determined that the information provided by Customer, or lack thereof, to Exterro during the discovery stage is materially inaccurate.

Effect of Termination. Upon expiration or other termination of the Subscription Service for any reason, Customer shall stop using, and Exterro shall stop providing, the terminated Subscription Service. (a) If the Subscription Service is terminated by Customer due to Exterro's breach, then Exterro shall refund to Customer, within thirty (30) days after the effective date of termination, all prepaid fees for the remaining portion of the Subscription Term for the terminated Subscription Service after the effective date of termination. (b) If Professional Service is terminated by Customer due to Exterro's breach, then Exterro shall refund to Customer, within thirty (30) days after the effective date of termination, any prepaid amounts for unperformed Professional Service under the applicable SOW or a Service Description. (c) If the Subscription Service is terminated by Exterro due to Customer's breach, then Customer shall pay to Exterro, within thirty (30) days after the effective date of termination, fees for the terminated Subscription Service that would have been payable for the remainder of the Subscription Term after the effective date of termination. (d) Upon expiration or other termination of the Subscription Service for any reason, Customer shall be eligible to request the return of Customer Data in accordance with Section 9.5 (Return of Customer Data).

- 9.4. Return of Customer Data. Following the end of the Subscription Term, where Customer has not renewed, Customer shall have forty-five (45) days to request a copy of the Customer Data from Exterro; and, if requested, Exterro shall use commercially reasonable efforts to provide a copy of that data within fifteen (15) days in a mutually agreed upon, commercially standard format at no cost to Customer unless the Parties working together in good faith determine that the data output is not routine, in which case the Parties shall mutually agree on a statement of work for professional services. After such forty-five (45) day period, Exterro shall have no obligation to maintain or provide any Customer Data and shall promptly thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control and delete Customer's instances of the Subscription Service.
- 9.5. Survival. Upon termination of this Agreement for any reason, Customer shall pay all amounts owed hereunder. Sections 3.1 and 3.4, (Proprietary Rights); Section 3.3 (License Restrictions); and Section 4 (Confidentiality); Section 7 (Indemnification); Section 8 (Limitation of Liability and Damages); and Section 10 (General Provisions) of this Agreement, together with any other provision required for their construction or enforcement, shall survive termination of this Agreement for any reason.

10. GENERAL PROVISIONS

- 10.1. Assignment. Neither Party may assign its rights or obligations, whether by operation of law or otherwise, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, upon notice and without the other Party's consent: (i) in connection with a merger, reorganization or sale of all or substantially all of the assets or equity of such Party, assign this Agreement in its entirety to such Party's successor; and (ii) assign this Agreement in its entirety to any company, partnership or other legal entity which from time to time directly or indirectly Controls, is Controlled by or is under the common Control with such Party, where "Control" means the legal power to direct or cause the direction of the general management of the company, partnership or other legal entity. Any attempted or purported assignment in violation of this Section 10.1 will be null and void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.
- 10.2. Notice. Except as otherwise provided herein, all notices shall be in writing and deemed given upon: (i) personal delivery; (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) the second business day after mailing; or (iv) the first business day after sending by email.



except that email shall not be sufficient for notices of termination or regarding a Claim. Notices shall be sent to the Parties as set forth on the signature page of this Agreement or as otherwise agreed to by the Parties in writing.

- 10.3. **Insurance.** Exterro shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. All coverage must be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to Customer. Exterro acknowledges that Customer has not, by requiring such minimum insurance, assessed the risk that may be applicable to Exterro under this Agreement. Exterro shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Exterro is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. Exterro may not cancel any policy without unconditional written notice to Customer at least ten days before the effective date of the cancellation.

Insurance:

Coverage

Limit

Worker's Compensation

Statutory Benefits (Coverage A)
Employers Liability (Coverage B)

Statutory
\$1,000,000 Each Accident
\$1,000,000 Disease/Employee
\$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for Customer. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted.

Automobile Liability

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

Commercial General Liability

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$100,000
Medical Payments	\$5,000

The required commercial general liability policy must be issued on a form that insures Exterro's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

Umbrella/Excess Liability Insurance with limits of not less than \$4,000,000 in aggregate with a deductible of no more than \$100,000 and will be excess over and be no less broad than and "following form" of all included coverage described above. Inception and expiration dates will be the same as the underlying policies. Drop-down coverage will be provided for reduction and/or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.

Cyber/Privacy Liability Insurance with limits of \$2,000,000 in the aggregate, for claims arising out of the Service and Professional Services including, but not limited to, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy must provide coverage for breach response costs as well as regulatory



finances and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

Exterro shall deliver to Customer evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by Exterro under this Agreement. Exterro shall provide additional evidence of insurance on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than 30 days after each annual insurance policy renewal.

All insurance policies must be endorsed to provide a waiver of subrogation in favor of The Board of Regents of Customer and Customer. No policy may be canceled without unconditional written notice to Customer at least ten days before the effective date of the cancellation. All insurance policies must be endorsed to require the insurance carrier providing coverage to send notice to Customer ten days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Section 10.3.

Any deductible or self-insured retention must be declared to and approved by Customer in the COI provided pursuant to this Agreement, prior to the performance of any services by Exterro under this Agreement. Exterro shall pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions must be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement must be mailed, faxed, or emailed to the following Customer contact:

Name: Jeff Zimmermann
Address: 301 Tarrow St. College Station, Texas 778440
Facsimile Number: (979) 458-6101
Email Address: jzimmermann@tamus.edu

The insurance coverage required by this Agreement must be kept in force until the Service and all Professional Services have been fully performed and accepted by Customer in writing

10.4. Export Compliance. Each Party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Subscription Service. Without limiting the generality



of the foregoing, Customer shall not make the Subscription Service available to any person or entity that: (i) is located in a country that is subject to a U.S. government embargo; (ii) is listed on any U.S. government list of prohibited or restricted Parties; or (iii) is engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction. Exterro certifies that the Subscription Service (a) if subject to the U.S. Export Administration Regulations, are not classified under any ECCN in the Commerce Control List other than EAR99, (b) are not controlled under the U.S. International Traffic in Arms Regulations, and (c) are not otherwise controlled by the U.S. government for national security or foreign policy purposes.

- 10.5. Force Majeure. For purposes of this Agreement, "Force Majeure Event" means, with respect to a Party, any event or circumstance, whether or not foreseeable, that was not caused by that Party (other than a strike or other labor unrest that affects only that Party, an increase in prices or other change in general economic conditions, a change in law, or an event or circumstance that results in that Party's not having sufficient funds to comply with an obligation to pay money) and any consequences of that event or circumstance. If a Force Majeure Event prevents a Party from complying with any one or more obligations under this Agreement, that inability to comply will not constitute a breach if (a) that Party uses reasonable efforts to perform those obligations, (b) that Party's inability to perform those obligations is not due to its failure to (1) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event, and (c) that Party complies with its obligations under this Section 10.5. If a Force Majeure Event occurs, the noncomplying Party shall promptly notify the other Party of the occurrence of that Force Majeure Event, its effect on performance, and how long the noncomplying Party expects it to last. Thereafter the noncomplying Party shall update that information as reasonably necessary. During a Force Majeure Event, the noncomplying Party shall use reasonable efforts to limit damages to the other Party and to resume its performance under this Agreement
- 10.6. U.S. Government Rights (if applicable). All Exterro software is commercial computer software and all services are commercial items. "Commercial computer software" has the meaning set forth in Federal Acquisition Regulation ("FAR") 2.101 for civilian agency purchases and the Department of Defense ("DOD") FAR Supplement ("DFARS") 252.227-7014(a)(1) for defense agency purchases. If the software is licensed or the services are acquired by or on behalf of a civilian agency, Exterro provides the commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of this Agreement as required in FAR 12.212 (Computer Software) and FAR 12.211 (Technical Data) and their successors. If the software is licensed or the services are acquired by or on behalf of any agency within the DOD, Exterro provides the commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of this Agreement as specified in DFARS 227.7202-3 and its successors. Only if this is a DOD prime contract or DOD subcontract, the Government acquires additional rights in technical data as set forth in DFARS 252.227-7015. This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFARS or other clause or provision that addresses Government rights in computer software or technical data.
- 10.7. Amendment. Any modification of this Agreement, an Order Form, the Subscription Service Guide, a SOW or a Service Description must be in writing and signed by authorized representatives of both Parties.
- 10.8. Relationship of the Parties. The Parties are independent contractors. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship. Neither Party shall have any right or authority to assume or create any obligation of any kind expressed or implied in the name of or on behalf of the other Party. Exterro may at any time use one or more subcontractors to perform its obligations under this Agreement provided that Exterro requires that such subcontractors comply with the requirements of this Agreement and that Exterro will remain liable to Customer for the performance under this Agreement.
- 10.9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and the federal laws of the United States of America. Venue for any claim arising out of or relating to this Agreement or any transactions it contemplates must be in Brazos County, Texas or the United States District Court for the Southern District of Texas, Houston Division. In no event shall this Agreement be governed by the United Nations Convention on Contracts for the International Sale of Goods.



Reference Account. Customer agrees that Exterro may include identification of Customer as a customer on Exterro's website, provided that the identification of Customer is no more prominent than the identification of Exterro's other customers and otherwise consistent with Exterro's practice of identifying its customers on Exterro's website as of the Effective Date, and that such identification in context, is not misleading and does not imply an endorsement by Customer. With Customer's prior written consent, Exterro may refer to Customer in other Exterro's other promotional materials. At Customer's sole option, Customer may serve as a reference site and speak with two (2) prospective customers at mutually agreeable times in each twelve (12) month period during the Service Term and/or be featured in a case study (in a form and format approved in advance and in writing by Customer) which may be published in an online or offline periodical, newspaper, journal, or other publication, and posted on Exterro's website with case studies featuring other Exterro customers.

10.10. Miscellaneous. This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the Parties with respect to the subject matter hereof. In the event of a conflict, the provisions of an Order Form shall take precedence over provisions of the body of this Agreement and over any other Exhibit or Attachment. This Agreement supersedes all other prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void. This Agreement may be executed electronically, by facsimile and in counterparts, which taken together shall form one binding legal instrument.

11. DEFINITIONS

- 11.1. Affiliate means with all entities controlling, controlled by or under common control with either Party, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management, operations or policies of such entity, organization or body, whether through ownership of voting securities, by contract or otherwise.
- 11.2. "Authorized User" means Customer's employee, contractor, consultant, or outsourcing service provider who is provided registered access to the Services in order to perform work for or on behalf of Customer.
- 11.3. "Customer Data" means the electronic data or information, including without limitation, Personally Identifiable Information, submitted by Customer to the Subscription Service.
- 11.4. "Deliverables" means the training, specifications, configurations, implementation, data conversions, workflow, performance capabilities, and any other activity or document to be completed during the course of Professional Services for delivery to Customer.
- 11.5. "Documentation" means Exterro's electronic and hardcopy user guide for the Subscription Service, which may be updated by Exterro from time to time.
- 11.6. "Intellectual Property Rights" means any and all common law, statutory and other industrial property rights and intellectual property rights, including copyrights, trademarks, trade secrets, patents and other proprietary rights issued, honored or enforceable under any applicable laws anywhere in the world, and all moral rights related thereto.
- 11.7. "Order Form" means the separate ordering documents under which Customer subscribes to the Exterro Subscription Service and Professional Services pursuant to this Agreement that have been fully executed by the Parties.
- 11.8. "Personally Identifiable Information" means any and all individually identifying information contained in the Customer Data, including without limitation, individually identifying information related to former, current or prospective employees, consultants, contingent workers, independent contractors, or retirees of Customer that is accessed, disclosed, provided, obtained, created, generated, scanned, entered, collected or processed in connection with the Subscription Service or Professional Services.
- 11.9. "Production" means the Customer's use of or Exterro's written verification of the availability of the



Subscription Service to Customer for use in its business processes.

12. GENERAL PROVISIONS

12.1 Exterro represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to Customer under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*). To the extent Exterro becomes aware that the EIRs, or any portion thereof, do not comply, then Exterro shall, at no cost to Customer, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.

12.2 . Cybersecurity Training Program. Pursuant to Section 2054.5192, Texas Government Code, Exterro hereby certifies that Exterro will not have access to Customer's computer system and/or database. Before Exterro may access Customer's computer system and/or database, Exterro shall notify Customer and Exterro's employees and/or officers who have access to Customer's computer system and/or database must complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, and selected by Customer. The cybersecurity training program must be completed by Exterro and its employees, officers, and subcontractors during the term of this Agreement and any renewal period. Exterro shall verify completion of the program in writing to Customer within the first 30 calendar days of the term and any renewal period. Exterro acknowledges that its failure to comply with the requirements of this Section 12.2 is grounds for Customer to terminate this Agreement.

12.4 Certifications. If this Agreement has a value of \$100,000 or more and if Exterro is a company, other than a sole proprietorship, with ten or more fulltime employees, then: (a) pursuant to Texas Government Code § 2271.002, Exterro certifies that Exterro does not boycott Israel and will not boycott Israel during the term of this Agreement; (b) pursuant to Texas Government Code Chapter 2274, Exterro certifies that Exterro does not boycott energy companies and will not boycott energy companies during the term of this Agreement; (c) pursuant to Texas Government Code Chapter 2274, Exterro certifies that Exterro does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association; and (d) pursuant to Chapter 2252, Texas Government Code, Exterro certifies that Exterro is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Customer may terminate this Agreement any of these certifications is inaccurate.

12.5 Certification as to Contracts Related to Persons Involved in Human Trafficking. Pursuant to Section 2155.0061, Texas Government Code, Exterro certifies that Exterro is not ineligible to enter into this Agreement due to financial participation by a person who, during the five-year period preceding the date of this Agreement, has been convicted of any offense related to the direct support or promotion of human trafficking, and acknowledges that Customer may terminate this Agreement and withhold payment if this certification is inaccurate.

12.6 Conflict of Interest. Exterro and each person signing on behalf of Exterro certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of Customer or Customer's Board of Regents, nor any employee or person whose salary is payable in whole or in part by Customer, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

12.7 Debts or Delinquencies. Pursuant to Section 2252.903, Texas Government Code, any payments owing to Exterro under this Agreement may be applied directly toward certain debts or delinquencies that Exterro owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

12.8 Delinquent Child Support Obligations. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or



owner with an ownership interest of at least 25% is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The Texas Family Code requires the following statement: "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

12.9 Disputes. Exterro shall use the dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General to attempt to resolve any claim for breach of contract made by Exterro that cannot be resolved in the ordinary course of business. Exterro shall submit written notice of a claim of breach of contract under this chapter to Customer's designated official, who will examine Exterro's claim and any counterclaim and negotiate with Exterro in an effort to resolve the claim.

12.10 Not Eligible for Rehire. Exterro shall ensure that employees providing services for Customer have not been designated by Customer as Not Eligible for Rehire as defined in Customer Policy 32.02, Section 4.

12.11 Public Information. Exterro acknowledges that Customer is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon Customer's written request, Exterro shall provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under Chapter 552, Texas Government Code, to Customer in a non-proprietary format acceptable to Customer. As used in this provision, "public information" has the meaning assigned in Section 552.002, Texas Government Code, but only includes information to which Customer has a right of access. Exterro acknowledges that Customer may be required to post a copy of the fully-executed Agreement on Customer's website in compliance with Section 2261.253(a)(1), Texas Government Code.

IN WITNESS WHEREOF, the Parties authorized signatories have duly executed this Agreement as of the Effective Date.

The Texas A&M University System

DocuSigned by:
Signature: *Jeff Zimmerman*
E2BE2924E69547F...

Name: Jeff Zimmerman

Title: Director, Procurement & Business Services

Date: 12/7/2021 | 09:31:42 CST

Exterro, Inc.

DocuSigned by:
Signature: *Michelle Spencer*
E03EF9BB7A1A420...

Name: Michelle Spencer

Title: Chief Financial Officer

Date: 12/6/2021 | 17:04:57 PST