



APPENDIX D
EXAGRID SYSTEMS, INC.
SYSTEM SALE, EVALUATION AND LICENSE AGREEMENT
DIR CONTRACT NO. DIR-SDD-1622

CUSTOMER NAME:

CUSTOMER CONTACT NAME:

CONTACT ADDRESS:

TEL:

FAX:

CELL:

EMAIL:

This SYSTEM SALE, EVALUATION AND LICENSE AGREEMENT ("Agreement") is entered into by and between ExaGrid Systems, Inc., a Delaware corporation with offices at 2000 West Park Drive, Westborough, MA 01581 ("EXAGRID"), and the party identified as "CUSTOMER" above, and is effective as of the date of EXAGRID's signature below ("Effective Date"). In consideration of the mutual promises contained in this Agreement and other valuable considerations, the parties agree on the terms and conditions set forth below.

TERMS AND CONDITIONS

- 1. DEFINITIONS** As used in this Agreement:
- 1.1 Attachment.** "Attachment" means a document identified as an Attachment to this Agreement. The terms set forth in all Attachments shall be included as part of this Agreement.
- 1.2 Distributor.** "Distributor" means entities that resell Systems and/or related Services to Resellers.
- 1.3 Evaluation System.** "Evaluation System" means a System loaned to CUSTOMER by EXAGRID for evaluation by CUSTOMER under this Agreement and configured as separately agreed by CUSTOMER and EXAGRID. Special terms, applicable to Evaluation Systems only, are set forth in Section 11 of this Agreement.
- 1.4 EXAGRID Software.** "EXAGRID Software" means EXAGRID's Intelligent Disk-based Data Protection software, in object code format only, including all copies in whole or part, backups, related documentation and manuals, information relating to the software, printed listings of code, and any patches, bug fixes, workarounds, upgrades, enhancements, and updates provided by EXAGRID to CUSTOMER under this Agreement. The term "EXAGRID Software" shall not be deemed to include any Microsoft Software or Third Party Software, but shall be deemed to include Updates.
- 1.5 Microsoft Software.** "Microsoft Software" means software produced by Microsoft Corporation and sublicensed by EXAGRID to CUSTOMER under this Agreement for use with Systems.
- 1.6 MS.** "MS" means Microsoft Licensing, GP, a general partnership organized under the laws of the State of Nevada that has licensed EXAGRID to sublicense the Microsoft Software to end user customers.
- 1.7 Resellers.** "Resellers" means entities that resell Systems and related Services to end users.
- 1.8 Services.** "Services" means any work to be performed by EXAGRID for CUSTOMER as specified in an accepted CUSTOMER purchase order, and shall include any documentation or other tangible items produced by EXAGRID in connection with such work.
- 1.9 System(s).** "System(s)" means a combination of interoperable computer hardware and software sold, licensed and sublicensed by EXAGRID to its customers and comprised of third party hardware, EXAGRID Software, Microsoft Software, and Third Party Software.
- 1.10 Third Party Software.** "Third Party Software" means computer software owned by third parties, licensed to EXAGRID, and redistributed by EXAGRID to its customers as part of a System.

1.11 Updates. "Updates" means error corrections, bug fixes, patches, additions, upgrades or modified versions of the EXAGRID Software made available by EXAGRID to its customers generally.

2. ORDERS

CUSTOMER shall purchase and license Systems and Services by submitting written and signed purchase orders for written acceptance by EXAGRID or a Distributor or Reseller. Each purchase order shall reference DIR Contract No. DIR-SDD-1622 and this Agreement and specify the items and configurations of hardware, software, and Services being ordered and their prices. Upon acceptance of the purchase order by EXAGRID or the Distributor or Reseller, the purchase and license of the Systems and the provision of Services shall be governed by the terms of DIR Contract No. DIR-SDD-1622 and this Agreement. Any preprinted provisions of CUSTOMER's purchase orders or other terms that conflict with the terms of this Agreement shall not apply, exception to such provisions and terms is hereby given, and as between EXAGRID and CUSTOMER the terms set forth in DIR Contract No. DIR-SDD-1622 and this Agreement shall be applicable and control.

3. DELIVERY AND SHIPMENT

Delivery and shipment terms are detailed in Paragraph 4.E. Shipping and Handling Fees of DIR Contract No. DIR-SDD-1622.

4. PAYMENT AND SECURITY INTEREST

Payment terms will be governed by Chapter 2252, Texas Government Code as detailed in Paragraph 7. Purchase Orders, Invoices and Payments of DIR Contract No. DIR-SDD-1622.

5. LICENSES AND CONDITIONS

5.1 EXAGRID Software.

(i) Subject to the terms and conditions of this Agreement, EXAGRID hereby grants to CUSTOMER a limited, nonexclusive, personal, non-transferable license under EXAGRID's intellectual property rights to use the EXAGRID Software for CUSTOMER's internal business purposes solely upon and in connection with each System (or its temporary or permanent replacement) for which license fees have been paid. The EXAGRID Software supplied to CUSTOMER includes proprietary information owned by EXAGRID or its third party licensors and is provided to CUSTOMER solely under license and not by sale. EXAGRID and its third party licensors will continue to own their respective interests and will be entitled to terminate this Agreement in accordance with Section 10.2 below, and demand the return of their software, upon any failure of CUSTOMER to comply with

the terms of this Agreement or the conditions or restrictions imposed by third parties and referred to in Section 5.3 below.

(ii) EXAGRID reserves the right to make changes to any EXAGRID Software whenever such changes, (a) are required for safety, (b) facilitate performance in accordance with specifications, or (c) represent substitutions and modifications in accordance with applicable product performance specifications, provided however that such changes shall not impede CUSTOMER's use of any EXAGRID Software.

(iii) CUSTOMER shall not itself, or through any affiliate, agent, or third party: (a) disassemble, reverse engineer, or decompile the EXAGRID Software or otherwise attempt to derive source code from it, except to the extent applicable laws specifically prohibit such restrictions; (b) modify, adapt, translate, or create derivative works based upon the EXAGRID Software; (c) transfer, lease, loan, sublicense, sell, resell for profit, distribute, or otherwise grant any rights in the EXAGRID Software in any form to any other party; or (d) use the EXAGRID Software on a commercial time-sharing, rental, or service bureau basis, or in any manner or for any purpose other than as described in the System documentation. CUSTOMER shall only have the rights with respect to the EXAGRID Software expressly set forth in this Agreement; all other rights are expressly reserved to EXAGRID and its licensors.

(iv) To the extent allowable by the Texas Public Information Act, CUSTOMER acknowledges that the EXAGRID Software, and all trade secret, copyright, patent, trademark, trade name, and other intellectual and proprietary rights in the EXAGRID Software, are and at all times shall remain the valuable property of EXAGRID and its licensors, or their respective successors or assigns. CUSTOMER agrees that, except as provided in this Section 5, nothing contained in this Agreement shall be construed as granting or conferring by implication, estoppel, or otherwise, any license or right under any patent, trademark, copyright, or other proprietary right, whether now existing or hereafter obtained, and no such license or other right shall arise from this Agreement or from any acts or omissions in connection with the execution of this Agreement or the performance of the obligations of the parties.

(v) CUSTOMER agrees (a) to respect and observe and not to alter, remove, or conceal any copyright, trademark, trade name, or other proprietary marking that may appear on or in the EXAGRID Software, and (b) that CUSTOMER is responsible for itself obtaining any additional software, hardware, or technologies not provided by EXAGRID under this Agreement and required to operate the Systems, including but not limited to communications devices and Internet access services.

5.2 Microsoft Software Sublicense.

The Systems provided by EXAGRID or the Reseller to CUSTOMER under this Agreement may contain certain software licensed to EXAGRID by MS. MS requires as a condition of EXAGRID's right to sublicense such software to CUSTOMER that CUSTOMER agree to the terms of the EULA set forth in Attachment I to this Agreement. CUSTOMER hereby affirms and agrees that it has read the EULA and that it agrees to accept, observe and be bound by the terms of the EULA as fully as if such terms were set forth in the body of this Agreement.

5.3 Third Party Software.

EXAGRID will redistribute certain Third Party Software to CUSTOMER for CUSTOMER's use with Systems. As a condition of its use of the Third Party Software, CUSTOMER agrees to familiarize itself with, and to comply with and be responsible for observing, the conditions and restrictions required of software users by the owners of such Third Party Software as set forth in <http://www.exagrid.com/thirdparty/exagridthirdpartylicenseagreements.asp>.

6. SERVICES

6.1 Availability. All Services shall be provided to CUSTOMER by EXAGRID. CUSTOMER may purchase Services from EXAGRID or the Reseller in accordance with the terms and prices of DIR Contract No. DIR-SDD-1622. EXAGRID will not be responsible for providing Services for (i) any Third Party Software, or hardware, or (ii) any EXAGRID Software that is not configured in accordance with the specifications set forth in the applicable purchase order.

6.2 Conditions. Services to be provided by EXAGRID under

this Agreement require cooperation between CUSTOMER and EXAGRID, and CUSTOMER recognizes and accepts certain responsibilities. These CUSTOMER responsibilities include but are not limited to (i) providing EXAGRID with specific details regarding CUSTOMER's business requirements and operating procedures as they relate to the application of the Services to be performed by EXAGRID, and (ii) proper installation of and timely access to all necessary computer hardware, facilities, and software in accordance with mutually agreeable and reasonable schedules.

7. LIMITED WARRANTY

7.1 EXAGRID Software. EXAGRID warrants that the EXAGRID Software for which a license is purchased by CUSTOMER as part of a System will for a period of ninety (90) days from the date of shipment perform substantially as specified in the applicable System documentation. If CUSTOMER satisfactorily demonstrates to EXAGRID within such ninety (90) day period that the EXAGRID Software contains errors, then as EXAGRID's sole and exclusive liability and as CUSTOMER's sole and exclusive remedy, EXAGRID shall at its sole option use commercially reasonable efforts to correct the EXAGRID Software errors reported by CUSTOMER or replace the EXAGRID Software with substantially conforming software. EXAGRID does not warrant the results of its correction or replacement services. Correction or replacement under the immediately preceding sentence, and the issuance of any corrections, patches, bug fixes, workarounds, upgrades, enhancements, or Updates by EXAGRID to CUSTOMER, shall not be deemed to begin a new, extended, or additional warranty period.

7.2 No Other Warranties.

(i) THE LIMITED WARRANTY IN SECTION 7.1 ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE. EXAGRID SPECIFICALLY BUT WITHOUT LIMITATION DOES NOT WARRANT THAT: (A) THE EXAGRID SOFTWARE SHALL MEET ALL OF CUSTOMER'S REQUIREMENTS OR SHALL OPERATE IN ALL THE COMBINATIONS WHICH MAY BE SELECTED FOR USE BY CUSTOMER; (B) THE OPERATION OF THE EXAGRID SOFTWARE SHALL BE ERROR-FREE OR UNINTERRUPTED; OR (C) ALL ERRORS OR DEFECTS IN THE EXAGRID SOFTWARE SHALL BE CORRECTED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO THAT THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMER. THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS. CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

(ii) ALL HARDWARE, THE THIRD PARTY SOFTWARE, ANY EVALUATION SYSTEM, AND THE MICROSOFT SOFTWARE ARE PROVIDED TO CUSTOMER "AS IS" WITHOUT WARRANTY OF ANY KIND BY EXAGRID, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. Except for Evaluation Systems, in cases in which EXAGRID's vendors or licensors permit EXAGRID to pass through any warranties of such vendors or licensors to CUSTOMER, EXAGRID will use commercially reasonable efforts to help CUSTOMER accomplish such pass through, provided that CUSTOMER shall be responsible for all necessary charges or fees and for taking whatever actions are required on its part, and that any warranties passed through shall not be deemed to originate from or be binding on EXAGRID.

(iii) No representation or other affirmation of fact, whether made by EXAGRID employees, a Distributor or Reseller or otherwise, shall be deemed a warranty by EXAGRID for any purpose or give rise to any liability of EXAGRID whatever unless contained in this Agreement.

8. INFRINGEMENT

Indemnification provisions are detailed in Paragraph 9.A. Indemnification of Appendix A to DIR Contract No. DIR-SDD-1622.

9. LIMITATION OF LIABILITY

Limitation of Liability terms are detailed in Paragraph 9.K. Limitation of Liability of Appendix A to DIR Contract No. DIR-SDD-1622.

10. TERM; TERMINATION

10.1 Term. This Agreement shall be effective from the Effective Date, shall continue in full force and effect for a period of one (1) year, and will automatically renew upon its anniversary date for successive twelve (12) month periods unless and until terminated as set forth elsewhere in this Agreement. After the initial one year term, either party may, at its discretion, terminate this Agreement at any time by notifying the other party of its decision to terminate in writing not less than thirty (30) days prior to the proposed termination date.

10.2 General. Upon any material breach or default of this Agreement by either party, the other party shall have the right to terminate this Agreement and any licenses granted under it effective on thirty (30) days' notice. Such termination shall become automatically effective unless the breaching or defaulting party shall have cured any material breach or default prior to the expiration of the thirty (30) day period. This Agreement may also be terminated upon (i) bankruptcy, insolvency, or placing of the assets or the business of the other party in the hands of a receiver or trustee, (ii) filing of a petition for bankruptcy or reorganization by or against the other party, or (iii) dissolution or liquidation of the other party.

10.3 Consequences. In the event of termination of this Agreement for any reason, CUSTOMER shall promptly (i) discontinue all use of the EXAGRID Software; (ii) erase or destroy any EXAGRID Software contained in the computer memory or data storage apparatus under the control of CUSTOMER; (iii) return to EXAGRID all copies of the EXAGRID Software provided by EXAGRID in CUSTOMER's possession; and (iv) certify in writing to EXAGRID, within thirty (30) days of termination of this Agreement, that CUSTOMER has complied with the foregoing.

10.4 Survival. Sections 4, 5, 7 through 10, 11.6, 11.7, 11.8 and 12 shall survive any termination of this Agreement.

11. SPECIAL TERMS APPLICABLE TO EVALUATION SYSTEMS ONLY

11.1 Components and Terms. CUSTOMER and EXAGRID shall agree separately on the components comprising the Evaluation System and the length of the evaluation period. The use of the Evaluation System and the provision of any related Services shall be governed by the terms of this Agreement.

11.2 Delivery and Shipment. EXAGRID or its Distributor or Reseller will notify CUSTOMER of scheduled Evaluation System shipments, and all transportation and insurance charges shall be paid by EXAGRID.

11.3 System Loan. EXAGRID shall loan the Evaluation System to CUSTOMER at no charge. Title to the Evaluation System shall at all times remain in EXAGRID and its licensors.

11.4 CUSTOMER Responsibilities.

11.4.1 CUSTOMER shall: (i) provide appropriate space in its facility for the Evaluation System, including necessary electrical and communications connections; (ii) be responsible for the proper use and deployment of the Evaluation System, and for training anyone using the Evaluation System on its proper use in accordance with any System use procedures; (iii) use the Evaluation System solely for the limited purposes of conducting its own internal tests to evaluate the performance and functionality of the Evaluation System in CUSTOMER's internal business environment or for CUSTOMER's business purposes; (iv) make the Evaluation System available for maintenance and support purposes as requested by EXAGRID on a reasonable basis, subject to mutual agreement between the parties on scheduling; (v) take appropriate action, by means of agreement, instruction or otherwise, with respect to its employees or other third parties permitted access to the Evaluation System in furtherance of its permitted use to ensure that all of its obligations under this Agreement are satisfied; and (vi) return the Evaluation System to EXAGRID at the conclusion of the evaluation in the same condition in which it was delivered, normal wear and tear excepted.

11.4.2 CUSTOMER shall not: (i) use or permit third parties to use the Evaluation System for production purposes or other commercial purposes; (ii) modify or attempt to maintain or repair the Evaluation System without first obtaining EXAGRID's prior written permission; (iii) permit the imposition of any lien, charge or encumbrance on the Evaluation System while in CUSTOMER's possession, or move the Evaluation System from its initial installation location without first obtaining EXAGRID's prior written permission; (iv)

publicly disclose performance information, test results or analyses created by or for CUSTOMER (including, without limitation, benchmarks) relating to the Evaluation System, which restriction shall survive any termination of this Agreement.

11.5 Availability of Services. EXAGRID shall provide such maintenance and support Services as it shall determine in its sole discretion are necessary or desirable, at no charge to CUSTOMER. EXAGRID will not be responsible for providing Services for (i) any Third Party Software, or hardware, or (ii) any EXAGRID Software that is not configured in accordance with the specifications separately agreed to by the parties.

11.6 Exclusion of Warranties. EXAGRID DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE EVALUATION SYSTEM, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE. This risk allocation reflects the lack of charges for the use of the Evaluation System.

11.7 Confidentiality

11.7.1 Each party acknowledges that by reason of its relationship to the other party under this Agreement it may have access to certain information and material concerning the other party's business, plans, customers, technology, and products that are confidential and of substantial value to the disclosing party ("Information"), which value would be impaired if such Information were disclosed to third parties. To the extent allowable by the Texas Public Information Act, each party agrees to maintain all Information received from the other, both orally and in writing, in confidence and agrees not to disclose or otherwise make available such Information to any third party without the prior written consent of the disclosing party. Each party further agrees to use the Information only for the purpose of performing this Agreement. No Information shall be deemed confidential unless so marked if given in writing or, if given orally, identified as confidential orally prior to disclosure, except that to the extent allowable by the Texas Public Information Act, CUSTOMER agrees that any Information in whatever form relating to (i) the design, functionality, operational methods or coding of EXAGRID Software, including but not limited to any complete or partial source or object code versions, and (ii) performance information, test results or analyses created by or for CUSTOMER (including, without limitation, benchmarks) relating to the Evaluation System, shall be deemed confidential Information of EXAGRID regardless of the presence or absence of any confidential markings or identification.

11.7.2 The parties' obligations of non-disclosure under this Agreement shall not apply to Information that: (i) is or becomes a matter of public knowledge through no fault of or action by the receiving party; (ii) was rightfully in the receiving party's possession prior to disclosure by the disclosing party; (iii) subsequent to disclosure, is rightfully obtained by the receiving party from a third party who is lawfully in possession of such Information without restriction; or (iv) except as otherwise provided in Section 11.7.1(ii) above, is independently developed by the receiving party without resort to Information.

11.7.3 Whenever requested by a disclosing party, a receiving party shall immediately return to the disclosing party all manifestations of the Information or, at the disclosing party's option, shall destroy all such Information as the disclosing party may designate. Recipient's obligation of confidentiality shall survive this Agreement for a period of five (5) years from the date of its termination, and thereafter shall terminate and be of no further force or effect.

11.7.4 Each party acknowledges that any breach of any of its obligations with respect to the other party's confidential information hereunder may cause or threaten irreparable harm to such party. Accordingly, each party agrees that in such event each party shall be entitled to seek equitable relief to protect its interests, including but not limited to temporary restraining orders, preliminary and permanent injunctive relief, as well as money damages.

11.8 Consequences of Termination. In the event of termination of this Agreement or the evaluation for any reason, CUSTOMER shall promptly (i) discontinue all use of the Evaluation System; (ii) erase or destroy any EXAGRID Software or CUSTOMER data contained in the computer memory or data storage apparatus under the control of

CUSTOMER; (iii) return to EXAGRID all copies of the EXAGRID Software provided by EXAGRID in CUSTOMER's possession; and (iv) promptly make the Evaluation System available for removal by EXAGRID.

11.9 Conversion to Purchase. In the event CUSTOMER elects to purchase the Evaluation System prior to its removal by EXAGRID, CUSTOMER shall do so in accordance with the provisions of Sections 2 and 4 above and the terms and conditions of this Agreement (or other applicable written EXAGRID agreement in the case of a Distributor or Reseller) shall govern such purchase.

12. GENERAL

12.1 Notices. All notices required or permitted under this Agreement will be in writing and will be deemed given: (i) when delivered personally; (ii) when sent by confirmed telex or facsimile; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) day after deposit with a commercial overnight carrier specifying next day delivery, with written verification of receipt. All communications will be sent to the principal office of each party or to such other address as may be designated by a party by giving written notice to the other party pursuant to this Section 12.1. If the communication is from CUSTOMER to EXAGRID, it shall be addressed to "Attn: President." If the communication is from EXAGRID to CUSTOMER, it shall be addressed to the Chief Executive Officer of CUSTOMER.

12.2 Assignment. DIR or Vendor may assign the Contract without prior written approval to: i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company or affiliate, or iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party. Any other assignment by a party shall require the written consent of the other party. Each party agrees to cooperate to amend the Contract as necessary to maintain an accurate record of the contracting parties.

12.3 Waiver. The failure of either party to enforce in any one or more instances any of the terms and conditions of this Agreement shall not be construed as a waiver of future performance of any such term or condition. Waiver of any term or condition shall only be deemed to have been made if expressed in writing by the party granting such waiver.

12.4 Severability. If any provision of this Agreement shall be held by a court of law of competent jurisdiction to be illegal, invalid, or unenforceable, that provision shall be reformed, construed, and enforced to the maximum extent permissible and the remaining provisions shall remain in full force and effect.

12.5 Governing Law and Jurisdiction. The laws of the State of Texas shall govern the construction and interpretation of this Agreement. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

12.6 Entire Agreement. DIR Contract No. DIR-SDD-1622 and this Agreement and its Attachments, any separate agreement referenced in Sections 1.3 and 11.1, and the Third Party Software restrictions and conditions referred to in Section 5.3 above, constitute the entire understanding between the parties, and supersede all prior discussions, representations, understandings or agreements (including any pre-existing nondisclosure agreement, except as to its surviving terms), whether oral or in writing, between the parties with respect to the subject matter of this Agreement. In the event of any conflict

between the terms of this Agreement and terms other than quantity, price, and the like set forth in an accepted purchase order, the terms of DIR Contract No. DIR-SDD-1622 shall prevail, except that with regard to the Microsoft Software the terms of Attachment I set forth below shall control. Any modification or amendment to this Agreement must be in writing and signed by authorized representatives of both parties. Except as otherwise provided in Section 5.3 above, any item or service furnished by EXAGRID in furtherance of this Agreement, although not specifically identified in it or in a purchase order referencing this Agreement, shall nevertheless be covered by this Agreement unless specifically covered by some other written agreement executed by CUSTOMER and an authorized representative of EXAGRID. The headings and captions used in this Agreement are for convenience only, and shall not affect the interpretation of the provisions of this Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

12.7 U.S. Government Restricted Rights. In the event that CUSTOMER is an agency of the United States Government, or that the license granted under this Agreement is pursuant to a contract with either a defense or civilian agency of the United States Government, CUSTOMER agrees that the EXAGRID Software is provided with restricted rights and that the EXAGRID Software and all other software that forms a part of any System is a "commercial item," as that term is defined in 48 C.F.R. §2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. §12.212. Consistent with 48 C.F.R. §12.212 and 48 C.F.R. §227.7202-1 through 227.7202-4, all U.S. Government end users acquire the EXAGRID Software with only those rights set forth in those C.F.R. provisions or equivalent and in this Agreement.

12.8 Export Control. CUSTOMER agrees to comply with all applicable export and re-export control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the United States Department of Commerce. CUSTOMER agrees to indemnify EXAGRID, to the fullest extent permitted by law, from and against any fines or penalties that may arise as a result of CUSTOMER's breach of this provision. This export control clause shall survive termination of this Agreement.

12.9 Use of Customer Name. To the extent allowable by DIR Contract No. DIR-SDD-1622, EXAGRID may include CUSTOMER's name or logo as an EXAGRID customer in a list of representative customers. EXAGRID agrees to display the CUSTOMER's name or logo in compliance with any publishing standards defined by CUSTOMER. Prior to developing and publicizing any profile, case study or similar document published on EXAGRID's Web site or in hardcopy describing how EXAGRID's products are used by CUSTOMER, EXAGRID Software agrees to obtain CUSTOMER's specific approval.

12.10 Independent Contractors. The relationship of EXAGRID and CUSTOMER established by this Agreement is that of independent contractors, and nothing contained in the Agreement will be construed to constitute the parties as partners, joint venturers, co-owners, or otherwise as participants in a joint or common undertaking. For a period of one year following the completion of any Services performed for CUSTOMER under this Agreement, CUSTOMER shall not directly or indirectly employ, solicit for employment, or contract with any EXAGRID personnel performing Services for CUSTOMER under this Agreement.

The parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

EXAGRID SYSTEMS, INC. ("EXAGRID")

CUSTOMER

By: _____

Name: _____

Signature

By: _____

Signature

Name (please print)

Name (please print)

Title

Date

Title

Date

ATTACHMENT I
To the
EXAGRID SOFTWARE, INC.
SYSTEM SALE AND LICENSE AGREEMENT

EULA (End User License Agreement) Terms
For software licensed by EXAGRID from MS, an affiliate of Microsoft Corporation

- You (“CUSTOMER” as defined in the body of the EXAGRID SYSTEMS, INC. SYSTEM SALE AND LICENSE AGREEMENT to which these terms are an Attachment) have acquired a device (“Device”) that includes SOFTWARE licensed by EXAGRID from an affiliate of Microsoft Corporation (“MS”). Those installed software products of MS origin, as well as associated media, printed materials, and “online” or electronic documentation (“SOFTWARE”) are protected by international intellectual property laws and treaties. Manufacturer, MS and its suppliers (including Microsoft Corporation) own the title, copyright, and other intellectual property rights in the SOFTWARE. The SOFTWARE is licensed, not sold. All rights reserved.
- This EULA is valid and grants the end-user rights only if the SOFTWARE is genuine and a genuine Certificate of Authenticity for the SOFTWARE included. For more information on identifying whether your SOFTWARE is genuine, please see <http://www.microsoft.com/piracy/howtotell>
- IF YOU DO NOT AGREE TO THIS END USER LICENSE AGREEMENT (“EULA”), DO NOT USE THE DEVICE OR COPY THE SOFTWARE. INSTEAD, PROMPTLY CONTACT EXAGRID FOR INSTRUCTIONS ON RETURN OF THE UNUSED DEVICE FOR A REFUND. **ANY USE OF THE SOFTWARE, INCLUDING BUT NOT LIMITED TO USE ON THE DEVICE, WILL CONSTITUTE YOUR AGREEMENT TO THIS EULA (OR RATIFICATION OF ANY PREVIOUS CONSENT).**
- **GRANT OF SOFTWARE LICENSE.** This EULA grants you the following license:
 - You may use the SOFTWARE only on the Device.
 - **Restricted Functionality.** You are licensed to use the SOFTWARE to provide only the limited functionality (specific tasks or processes) for which the Device has been designed by its manufacturer and marketed by EXAGRID. This license specifically prohibits any other use of the software program or functions, or inclusion of additional software programs or functions that do not directly support the limited functionality on the Device. Notwithstanding the foregoing, you may install or enable on a Device, systems utilities, resource management or similar software solely for the purpose of administration, performance enhancement and/or preventive maintenance of the Device.
 - If you use the Device to access or utilize the services or functionality of Microsoft Windows Server products (such as Microsoft Windows Server 2003), or use the Device to permit workstation or computing devices to access or utilize the services or functionality of Microsoft Windows Server products, you may be required to obtain a Client Access License for the Device and/or each such workstation or computing device. Please refer to the end user license agreement for your Microsoft Windows Server product for additional information.
 - **NOT FAULT TOLERANT.** THE SOFTWARE IS NOT FAULT TOLERANT. EXAGRID HAS INDEPENDENTLY DETERMINED HOW TO USE THE SOFTWARE IN THE DEVICE, AND MS HAS RELIED UPON EXAGRID TO CONDUCT SUFFICIENT TESTING TO DETERMINE THAT THE SOFTWARE IS SUITABLE FOR SUCH USE.
 - **NO WARRANTIES FOR THE SOFTWARE.** THE SOFTWARE IS PROVIDED “AS IS” AND WITH ALL FAULTS. THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT (INCLUDING LACK OF NEGLIGENCE) IS WITH YOU. ALSO, THERE IS NO WARRANTY AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE SOFTWARE OR AGAINST INFRINGEMENT. **IF YOU HAVE RECEIVED ANY WARRANTIES REGARDING THE DEVICE OR THE SOFTWARE, THOSE WARRANTIES DO NOT ORIGINATE FROM, AND ARE NOT BINDING ON MS.**
 - No liability for certain damages. **EXCEPT AS PROHIBITED BY LAW, MS SHALL HAVE NO LIABILITY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING FROM OR IN CONNECTION WITH THE USE OF PERFORMANCE OF THE SOFTWARE. THIS LIMITATION SHALL APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL MS BE LIABLE FOR ANY AMOUNT IN EXCESS OF U.S. TWO HUNDRED FIFTY DOLLARS (U.S. \$250.00).**
 - **Restricted Uses.** The SOFTWARE is not designed or intended for use or resale in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, or other devices or systems in which malfunction of the SOFTWARE would result in foreseeable risk of injury or death to the operator of the device or system, or to others.
 - **Limitations on Reverse Engineering, Recompilation, and Disassembly.** You may not reverse engineer, decompile, or disassemble the SOFTWARE, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.
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