

Subscription and Services Agreement

IMPORTANT – READ CAREFULLY: This Subscription and Services Agreement (the “**Agreement**”) is entered into and effective by and between you and Xactly Corporation, a Delaware corporation (“**Xactly**,” “**we**” or “**us**”). If you are agreeing to this Agreement not as an individual but on behalf of your company, then “**Customer**” or “**you**” means your company, and you are binding your company to this Agreement. By clicking on the “I agree” (or similar) button that is presented to you at the time of your Order, or by using or accessing the Service, you indicate your agreement to be bound by this Agreement. This Agreement governs your initial purchase of the Service and related Support Services, as well as any future purchases made by you that reference this Agreement. This Agreement includes any Orders, and any other policies and attachments referenced in this Agreement.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions.

1.1 “Customer Data” means all data or information submitted by or on behalf of Customer to the Service, as set forth in section 5.4.

1.2 “Insights Reports” means the reports, graphs, charts and similar output generated by the Xactly Insights portion of the paid Service.

1.3 “Intellectual Property Right” means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

1.4 “Service” means the online, web-based application provided by Xactly via <http://www.xactlycorp.com> or other designated websites or IP addresses as communicated to Customer by Xactly. The Service as defined in this Agreement shall not include any Professional Services.

1.5 “Subscriber” means an individual (i) who is authorized by Customer to use or access the Service and who has been supplied an identification and password by Customer or at Customer’s direction or (ii) whose information is stored on the Service for compensation calculation, reporting or territory optimization purposes. Customer shall purchase a subscription to the Service for each Subscriber (a “Subscription”). A Subscriber may only include Customer’s or Customer’s Affiliates’ employees, consultants, representatives and agents.

1.6 “Term” means the period during which Xactly permits the Customer to use the Service. \

1.7 “Xactly Materials” means any materials that Xactly provides to Customer as part of, or in the course of providing the Service or Professional Services, and may include the Insights Reports but excludes Customer Data.”.

2. Service.

2.1 Provision of Service. Xactly shall make the Service available to Customer pursuant to this Agreement and Xactly may suspend or terminate Customer’s access to the Service at any time and for any reason. Customer agrees that the provision of the Service is neither contingent upon the delivery of any future functionality or features, nor dependent upon any oral or written public comments made by Xactly with respect to future functionality or features. Customer consents to Xactly’s Privacy Policy located at <https://trust.xactlycorp.com/privacy-policy/> which is incorporated into this agreement by reference.

3. Mutual Rights and Responsibilities.

3.1 Xactly’s Responsibilities. Xactly shall: (i) not use or modify the Customer Data except as otherwise set forth in this Agreement; (ii) use commercially reasonable efforts to maintain the security and integrity of the Service and the Customer Data; (iii) provide Support Services to Customer in accordance with its then-current support policies; (iv) comply with all applicable laws in providing the Service and Professional Services.

If Customer’s use of the Service involves processing personal data pursuant to Regulation 2016/679 (the “GDPR”) and/or transferring personal data outside the European Economic Area or Switzerland to any country not deemed by the European Commission as providing an adequate level of protection for personal data or applicable personal

data regulations, the terms of a separately executed data processing addendum shall apply. Provided however if the parties have not entered into such a separately executed data processing addendum, then the Xactly standard data processing addendum, accessible at <https://www.xactlycorp.com/data-processing-addendum/> shall apply to personal data processing and be incorporated into this Agreement, subject to Customer completing, executing and submitting the Xactly standard data processing addendum in accordance with its terms.

3.2 Customer's Responsibilities. Customer is responsible for all activity that occurs in its Subscriber accounts and for its Subscribers' compliance with this Agreement. Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of all Customer Data; (ii) prevent unauthorized access to, or use of, the Service, and notify Xactly promptly of any such unauthorized access or use; (iii) comply with all applicable laws in using the Service; and (iv) Customer shall not provide Xactly with any Customer Data that is personally identifying information subject to specialized security regimes, including without limitation the Health Insurance Portability and Accountability Act ("HIPAA"), the standards promulgated by the PCI Security Standards Council ("PCI"), and the requirements promulgated by IRS Publication 1075 related to Federal Tax Information data ("FTI"). Xactly is not a "Business Associate" under HIPAA, and Customer shall not provide any protected health information to Xactly. Customer acknowledges that social security numbers, government identification numbers, credit card data, and similarly sensitive information are not required for use of the Service and Customer agrees not to provide Xactly with any such information.

4. Fees and Payment.

5. Proprietary Rights.

5.1 Access to Service. Subject to the terms of this Agreement, Xactly grants Customer (a) a revocable, nonexclusive, royalty-free, nontransferable right, solely during the Subscription Term (i) to access and use the Service solely for Customer's internal business purposes and (ii) to use the Xactly Materials solely in conjunction with Customer's authorized use of the Service, and (b) a nonexclusive, royalty free, worldwide, perpetual license to copy and use the Insights Reports, without modification, solely for Customer's and its Affiliate's internal business purposes. Customer shall not alter or remove, any proprietary trademark or copyright markings incorporated in, marked on or affixed to any Xactly Materials.

5.2 Reservation of Rights. Except for the limited rights expressly granted to Customer hereunder, Xactly reserves all rights, title and interest in and to the Service, the underlying software, the Xactly Materials, and the Professional Services, including all related Intellectual Property Rights inherent therein. No rights are granted to Customer hereunder other than as expressly set forth in this Agreement.

5.3 Restrictions. Customer shall not (i) modify, copy, display, republish or create derivative works based on the Service or the underlying software; (ii) modify, copy or create derivative works of the Xactly Materials; (iii) frame, scrape, link to or mirror any content forming part of the Service, other than on Customer's own intranets or otherwise for its own internal business purposes; (iv) reverse engineer the Service or the underlying software; (v) access the Service in order to build a competitive product or service, or copy any ideas, features, functions or graphics of the Service; (vi) license, sublicense, sell, resell, rent, lease, transfer, assign (except as permitted in 11.6), distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than to Subscribers or as otherwise contemplated by this Agreement; (vii) use the Service to send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (viii) use the Service to send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third-party privacy rights; (ix) upload to the Service or use the Service to send or store viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; (x) interfere with or disrupt the integrity or performance of the Service or the data contained therein; (xi) attempt to gain unauthorized access to the Service or its related systems or networks; or (xii) conduct any platform or system level penetration testing of the Service.

5.4 Customer Data. As between Xactly and Customer, Customer retains ownership of all rights, title and interest in and to all Customer Data. Customer Data is deemed the Confidential Information of Customer under this Agreement. Customer grants Xactly a nonexclusive, worldwide, royalty-free, license to copy, modify, distribute and disclose, display, and, if Customer Opts Into Data Sharing, otherwise use Customer Data to provide the Service and to De-identify Customer Data. "De-identified" means that the data cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular company, or individual person, including by removing, without limitation, the following identifiers: company names and the names of individuals, addresses, phone numbers, e-mail address(es) and any other information which could reasonably identify, when taken in the aggregate, a specific company, organization or individual. Customer Data that has been De-identified shall not be deemed Confidential Information or Customer Data, i.e. Xactly may copy, modify, distribute and disclose, display, and otherwise use and commercialize such De-identified data for any purpose permitted under applicable law.

5.5 Intellectual Property Rights Ownership, Use. Xactly alone (and its suppliers, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to all of Xactly's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) (hereafter, "Xactly Technology") made available to Customer by Xactly in providing the Service, the Xactly Technology, or the Professional Services, and Customer hereby assigns to Xactly any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer relating to the Service, the Xactly Technology, or the Professional Services and hereby grants Xactly a royalty free, worldwide, transferable, sublicensable, irrevocable perpetual license to use or incorporate such into the Service. Xactly may use such submissions as it deems appropriate in its sole discretion. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Service, the Xactly Technology or the Intellectual Property Rights owned by Xactly. The Xactly name, the Xactly logo, and the Xactly product names associated with the Service are trademarks of Xactly, and unless expressly granted herein, no right or license is granted to use them. Customer will not accrue any residual rights to the Xactly technology or the Service, including any rights to the Intellectual Property Rights in connection therewith.

6. Confidentiality.

6.1 Definition of Confidential Information. As used herein, "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**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 or the circumstances of disclosure, including (a) the terms and conditions of this Agreement (b) the Customer Data, (c) a party's proprietary technology or computer software in all versions and forms of expression and the Service, whether or not the same has been patented or the copyright thereto registered, is the subject of a pending patent or registration application, or forms the basis for a patentable invention (collectively the "Proprietary Technology"), (d) the Xactly Materials, Xactly's security information, audits or reports, and (e) each party's respective business and marketing plans, technology and technical information, product designs, and business processes. The obligations in this Section 6 shall not apply to any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party and without an obligation of confidentiality; (iii) was independently developed by the Receiving Party without the use of or reference to the Confidential Information of the Disclosing Party; or (iv) is lawfully received from a third party without breach of any obligation owed to the Disclosing Party and without an obligation of confidentiality.

6.2 Confidentiality. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission. Either party may disclose Confidential Information to its personnel, auditors, accountants, attorneys or advisors who are subject to confidentiality obligations comparable in scope to those herein, which are in no event less than a reasonable standard of care. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information.

6.3 Protection. Receiving Party will use at least the same level of care to prevent unauthorized use of the Confidential Information as it uses for its own confidential and proprietary information of like kind, but in no event less than a reasonable standard of care. The confidentiality obligations contained herein supersede and replace any prior non-disclosure agreement between the Parties regarding the subject matter covered by this Agreement.

6.4 Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prompt prior notice of such compelled disclosure, to the extent legally permitted, and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

6.5 Remedies. If the Receiving Party discloses or uses any Confidential Information of the Disclosing Party in breach of the confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

7. Warranties and Disclaimers.

7.1 Warranties. Customer warrants that: (a) it owns or otherwise has sufficient rights in the Customer Data to grant to Xactly the rights to use the Customer Data granted herein; and (b) its Subscribers will not provide any false information to gain access to the Service.

7.2 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, OR AS LIMITED BY APPLICABLE LAW CUSTOMER UNDERSTANDS AND AGREES THAT THE SERVICE AND CONTENT ARE PROVIDED "AS IS" AND XACTLY, ITS AFFILIATES, SUPPLIERS, RESELLERS, AND ITS LICENSORS MAKE NO WARRANTIES OF ANY KIND WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET

ENJOYMENT AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT: (A) THE SERVICE DOES NOT CONSTITUTE THE PROVISION OF LEGAL ADVICE IN ANY MANNER; (B) THE SERVICE DOES NOT ENSURE CUSTOMER'S COMPLIANCE WITH APPLICABLE LABOR OR EMPLOYMENT LAWS; AND (C) CUSTOMER IS SOLELY RESPONSIBLE FOR ITS COMPLIANCE WITH ALL APPLICABLE LAWS.

8. Indemnification.

8.1 Indemnification by Customer. Customer shall defend Xactly, at Customer's expense, against any Claims made or brought against Xactly by a third party alleging that the Customer Data, or Customer's use of the Service in violation of this Agreement, infringes or otherwise violates a third party's property, privacy or directly infringes a patent, copyright, or trademark of a third party. Further, Customer shall indemnify and hold Xactly harmless against all costs (including reasonable attorneys' fees) finally awarded against Xactly by a court of competent jurisdiction or an arbitrator or agreed to in a written settlement agreement signed by Customer, in connection with such Claims. Promptly upon receiving notice of a Claim, Xactly shall: (a) give Customer written notice of the Claim; (b) give Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases Xactly of all liability); and (c) provide to Customer all reasonable assistance in the defense or settlement of such Claim. Customer's indemnification obligation shall be offset to the extent its ability to defend or settle a claim is jeopardized by Xactly's failure to comply with the preceding sentence.

9. Limitation of Liability.

9.1 Limitation of Liability. (a) IN NO EVENT SHALL XACTLY'S OR ITS LICENSORS' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED \$100.

9.2 Exclusion of Consequential and Related Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR ITS LICENSORS FOR ANY LOST PROFITS OR FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR REVENUE, BUSINESS INTERRUPTION, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER ARISING AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. Term and Termination.

10.1 Term of Agreement. This Agreement is effective beginning when you accept these Terms or first download, install, access, or use the Service, and ends when this Agreement is terminated as described in Section 10.2.

10.2 Termination. A party may terminate this Agreement at any time and for any reason. If Customer breaches Section 5.3 or otherwise violates this Agreement, your access to the Service may be automatically terminated by Xactly and any license you have to use the Service will be immediately revoked. Customer also agrees that Xactly may, at any time and without notice to you, suspend or revoke your access to and use of the Service, and any accounts you may have in connection with the Service including: (i) where we determine in our sole discretion that such action is reasonable in order to comply with legal requirements or to protect the rights or interests of Xactly or any third party; or (ii) in connection with any general discontinuation of the Service. Xactly also reserves the right to modify the Service at any time without notice to you. Xactly will have no liability whatsoever on account of any change to the Service or any suspension or revocation of your access to or use of the Service.

10.3 Return of Customer Data. Customer may retrieve Customer Data from the Service during the term of this Agreement. Immediately upon termination of this Agreement, Xactly shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, be entitled to delete all Customer Data in its systems or otherwise in its possession or under its control.

10.6 Surviving Provisions. The following provisions shall survive any termination or expiration of this Agreement: Sections 1, 4.1, 4.2, 4.3, 4.5, 5.2, 5.3, 5.4, 5.5, 5.6, 6, 7.2, 7.3, 8, 9, 10.4, 10.5, 10.6, and 11.

11. General Provisions.

11.1 Export Control. Customer and its Subscribers shall not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this Agreement without first complying with all export control laws and regulations that may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business, such as the Export Administration Regulations ("EAR") maintained by the United States Department of Commerce, trade and economic sanctions maintained by the United States Treasury Department's Office of Foreign

Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the United States Department of State, and shall not cause Xactly to violate the same.

11.2 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

11.3 Notices. Except as specified in Section 3.1, all Legal notices required to be sent hereunder shall be in writing and shall be deemed to have been given upon (i) the date it was delivered by courier, (ii) the date emailed to Customers registered email address or (iii) if sent by certified mail return receipt requested, on the date received, in each case addressed to the addresses set forth above and, if to Xactly, to the attention of General Counsel, and, if to Customer, to the attention of the signatory of this Agreement, or to such other address or individual as the parties may specify from time to time by written notice to the other party.

11.4 Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

11.5 Severability. 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 full force and effect.

11.6 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without the consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

11.7 Governing Law. This Agreement and any disputes arising out of or related hereto shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its conflicts of laws rules, the United Nations Convention on the International Sale of Goods, or the Uniform Computer Information Transactions Act.

11.8 Venue; Waiver of Jury Trial. The state and Federal courts located in Santa Clara County, California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction of such courts and waives any objection it might otherwise have to venue, personal jurisdiction, inconvenience of forum, and any similar or related doctrine. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

11.9 Force Majeure. Neither party shall be liable for delay or non-performance of its obligations hereunder (or part thereof) if the cause of delay or non-performance is an event which is unforeseeable, beyond the control of the party affected, and cannot be remedied by the exercise of reasonable diligence, including without limitation acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes, computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within Xactly's possession or reasonable control, and denial of service attacks (each a "Force Majeure Event"). The party affected shall be relieved from its obligations (or part thereof) as long as the Force Majeure Event lasts and hinders the performance of said obligations (or part thereof), it being understood that a Force Majeure Event shall not excuse any obligation of Customer to pay invoices due in accordance with the provisions hereof. The party affected shall promptly notify the other party and make reasonable efforts to mitigate the effects of the Force Majeure Event with reasonable dispatch. Either party may terminate this Agreement in the event the Force Majeure Event continues for more than forty-five (45) days.

11.11 Entire Agreement. This Agreement, including all exhibits and addenda hereto, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties are not relying and have not relied on any representations or warranties whatsoever regarding the subject matter of this agreement, express or implied, except for the representations and warranties set forth in this Agreement. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto, the terms of such exhibit or addendum shall prevail. No terms or conditions set forth on any purchase order, preprinted form or document shall add to or vary the terms and conditions of this Agreement, and all such terms or conditions shall be null and void.

11.12 Modifications to this Agreement. Xactly reserves the right to modify the terms and conditions of this Agreement, at its sole discretion. If Xactly modifies the Agreement during your Term and you object to the updated Agreement, as your exclusive remedy, you may choose to terminate this agreement and cease using the service.

11.13 Dispute Resolution and Arbitration

Generally. Customer and Xactly agree that any and all disputes arising in connection with this Agreement shall be resolved by binding arbitration. This agreement to arbitrate disputes includes, but is not limited to all claims arising out of or relating to any aspect of this Agreement, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, and regardless of whether the claims arise during or after the termination of this Agreement. Customer understands and agrees that, by entering into this Agreement, Customer and Xactly are each waiving the right to a trial by jury or to participate in a class action.

Exceptions. Notwithstanding subsection XX, the parties agree that nothing herein shall be deemed to waive, preclude, or otherwise limit either of our right to (i) bring an individual action in small claims court, (ii) pursue enforcement actions through applicable federal, state, or local agencies where such actions are available, (iii) seek injunctive relief in a court of law, or (iv) to file suit in a court of law to address intellectual property infringement claims.

Arbitrator. Any arbitration between Customer and Xactly will be governed by the CONFIRM WHAT WE WANT TO USE Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by these Terms, and will be administered by the AAA. The AAA Rules and filing forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879, or by contacting Xactly.

Notice; Process. A party who intends to seek arbitration must first send a written notice pursuant to Section XX. The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). The parties agree to use good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 120 days after the Notice is received, Customer or Xactly may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Customer or Xactly shall not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any.

Fees. In the event that Customer commences arbitration in accordance with this Agreement, Xactly will reimburse Customer for your payment of the filing fee, unless Customer's claim is for greater than \$10,000, in which case the payment of any fees shall be decided by the AAA Rules. Any arbitration hearings will take place at a location to be agreed upon in San Jose, California, provided that if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a non-appearance based telephonic hearing, or by an in-person hearing as established by the AAA Rules. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In such case, you agree to reimburse Xactly for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

No class actions. CUSTOMER AND XACTLY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both Customer and Xactly agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

Modifications. In the event that Xactly makes any future change to this arbitration provision (other than a change to the Xactly address for Notice), you may reject any such change by sending us written notice within 30 days of the change to Xactly's address for Notice, in which case your account with Xactly shall be immediately terminated and this arbitration provision, as in effect immediately prior to the amendments you reject shall survive.

Enforceability If only Subsection 11.13 is found to be unenforceable or the entirety of this Section 11.13 is found to be unenforceable, then the entirety of this Section XX shall be null and void and, in such case, the parties agree that the exclusive jurisdiction and venue described in Section 11.7 and 11.8 shall govern any action arising out of or related to these Terms.