

Master Subscription Agreement

Last Updated: June 11, 2025

This Master Subscription Agreement ("Agreement") is between Exafunction, Inc. ("Exafunction") and the entity or organization that you represent ("Customer"). Certain capitalized terms are defined in Exhibit A attached hereto and others are defined contextually in this Agreement.

1. THE OFFERING

- 1.1. Subscription. Exafunction will make the Offering available to Customer in accordance with the terms and conditions of this Agreement, the Documentation, and an applicable Order, solely for Customer's internal business purposes. Each Order will specify Fees, the Subscription Term, and any other terms specific to that Order.
- 1.2. Credentials. Only Users, using their Login Credentials, may access and use the Offering. Each User must keep its Login Credentials confidential and not share them with anyone else. Customer is responsible for its Users' compliance with this Agreement and all actions taken through their Login Credentials (excluding misuse of the Login Credentials caused by Exafunction's breach of this Agreement). Customer will promptly notify Exafunction if it becomes aware of any compromise of any Login Credentials. Exafunction may Process Login Credentials in connection with Exafunction's provision of the Offerings.
- 1.3. AI Technologies. The Offering may contain and provide Customer with access to artificial intelligence technologies and tools. As part of Customer's use of the Offering, Customer may be able to input, post, and upload Customer Data to the Offering, and Customer may direct the Offering to generate Suggestions based thereon.
- 1.4. Customer Data. Customer is responsible for the Customer Data, including its content and accuracy, and will comply with Laws applicable to Customer when using the Offering. During the Subscription Term, Customer grants Exafunction the right to use the Customer Data solely to provide the Offering to Customer. Customer represents and warrants that it has made all disclosures, provided all notices, and has obtained all rights, consents, and permissions necessary for Exafunction to process Customer Data set forth in this Agreement without violating or infringing Laws, third-party rights, or terms or policies that apply to the Customer Data. Customer Data is only used in accordance with the Data Use Guidelines attached hereto as Exhibit B.
- 1.5. Ownership. As between the parties, Customer retains all intellectual property rights and other rights in Customer Data. As between the parties and to the extent permitted by applicable law, Exafunction agrees that Customer owns all Suggestions. Exafunction does not anticipate obtaining any rights in Suggestions under this Agreement. Exafunction assigns to Customer all its right, title, and interest in the Suggestions used by Customer. Except for Customer's use rights in this Agreement, Exafunction and its licensors retain all intellectual property rights and other rights in the Offering, Documentation, Usage Data, and Exafunction technology, including any modifications or improvements to these items made by Exafunction.
- 1.6. Limitations. Customer will not (and will not permit anyone else to) do any of the following: (a) reverse engineer, disassemble, or decompile the Offering or apply any other process or procedure to derive the source code of the Offering (except to the extent applicable law doesn't allow this restriction); (b) provide access to, distribute, sell, or sublicense the Offering to a third party (other than Users); (c) use the Offering on behalf of, or to provide any product or service to, third parties, except in connection with Customer's products; (d) use the Offering to develop a similar or competing product or service; (e) publish benchmarks or performance information about the Offering; (f) access or use the Offering in a manner that violates the AUP or any Law; (g) prompt an Offering with Sensitive Data; or (h) use the Offering for High Risk Activities. Notwithstanding anything else in this Agreement, Exafunction has no liability for use of an Offering for High-Risk Activities.
- 1.7. Support. During the applicable Subscription Term, Exafunction will provide the Offering support to Customer in accordance with the SLA. Some support services may be automated. Exafunction's support team may review input to the automated support agent (without access to other Customer Data) and refine responses to improve the quality and relevance of the information provided.
- 1.8. Beta Offerings. In the event Customer has been granted access to beta or pre-release models or versions of Offerings (a "Beta Offering") by/from Exafunction, subject to Customer's compliance with the terms and conditions of this Agreement, Exafunction grants to Customer a revocable, non-exclusive, non-transferable and non-sublicensable license to use the Beta Offering for Customer's internal evaluation and review purposes and not for production (the "Beta License"). Customer is explicitly not permitted to offer the Beta Offering to any third-party. Customer's rights to use the Beta Offering will immediately terminate upon the earlier of (i) the expiration of any evaluation period published or otherwise established by Exafunction, or (ii) such time that Customer purchases a license to a non-evaluation version of the Beta Offering. Exafunction reserves the right to terminate this Beta License at any time in its sole and absolute discretion. Beta Offerings are not subject to the Performance Warranty, are provided as-is, and may or may not function as intended.
- 1.9. Exafunction Extensions. Any extension that Exafunction publishes on the Visual Studio Marketplace may only be used with Microsoft Visual Studio, Visual Studio for Mac, Visual Studio Code, GitHub Codespaces, and platforms based on Visual Studio Code that are made available under an open source license. Exafunction Windsurf extensions, as published on OpenVSX or otherwise, may only be used with the Windsurf IDE.
- 1.10. Feedback. Customer may provide Exafunction with feedback or suggestions regarding the Offering or other Exafunction offerings (collectively, "Feedback"). Exafunction may use such Feedback without restriction or obligation, provided it

does not include and cannot be used to reconstruct Customer Confidential Information. To the extent that Customer provides Feedback, it does so strictly AS-IS, without warranty or indemnification of any kind, and Exafunction is solely responsible for any use it may make of such Feedback.

2. WARRANTIES

- 2.1. General Warranties. Exafunction represents and warrants to Customer that (i) it is a legal entity duly organized or incorporated, validly existing and in good standing under the laws of the state of its organization or incorporation; (ii) it has all requisite corporate or organizational power and authority and all applicable permits and licenses required to perform hereunder; (iii) it is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required to perform hereunder; (iv) it will provide the Offering in accordance with its obligations under Laws applicable to Exafunction's provision of the Offering to its customers generally, irrespective of Customer's particular use of the Offering, including, but not limited to, those relating to data protection and privacy, artificial intelligence, anti-corruption, forced labor, and human trafficking.
- 2.2. Performance Warranties. Exafunction warrants to Customer that the Offering will perform materially as described in its Documentation and Exafunction will not materially decrease the overall functionality of the Offering during the relevant Subscription Term (the "**Performance Warranties**").
- 2.3. Performance Warranty Remedy. If Exafunction breaches a Performance Warranty then Exafunction will use reasonable efforts to correct the non-conformity. If Exafunction cannot do so within 30 days of receipt of Customer's warranty claim, Customer may terminate the affected Order as it relates to the non-conforming Offering. Exafunction will then refund to Customer any pre-paid fees for the terminated portion of the applicable Subscription Term. This Section sets forth Customer's exclusive remedy and Exafunction's entire liability for breach of Performance Warranties. Performance Warranties do not apply to: (a) issues caused by Customer's or Users' misuse of the applicable Offering; (b) issues in or caused by Third-Party Platforms; or (c) use of the applicable Offering other than according to the Documentation.
- 2.4. Disclaimers. Except as expressly provided in this Section, the Offering is provided "AS IS". Exafunction, on its own behalf and on behalf of its suppliers and licensors, makes no other warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability, fitness for a particular purpose, title, or noninfringement. Without limiting the foregoing, Exafunction does not represent or warrant that Suggestions will not be similar to or the same as Suggestions provided to other customers. In addition, AI technologies may occasionally generate incorrect information, and Exafunction does not warrant that Suggestions will be accurate, complete, reliable, current, or bug, virus, or error free. Customer should always conduct independent verification of Suggestions and evaluate the accuracy of Suggestions made available via the Offering.

3. INDEMNIFICATION

- 3.1. Indemnification by Exafunction. Exafunction will defend Customer from and against any third-party claim to the extent alleging that the Offering and/or Suggestions infringe or misappropriate a third-party's patent, copyright, trademark, or trade secret, and will indemnify and hold harmless Customer against any damages and costs awarded against Customer (including reasonable attorneys' fees) or agreed in a settlement by Exafunction resulting from the claim.
- 3.2. Indemnification by Customer. Customer will defend Exafunction from and against any third-party claim to the extent arising from Customer Data and will indemnify and hold harmless Exafunction against any damages and costs awarded against Exafunction (including reasonable attorneys' fees) or agreed in a settlement by Customer resulting from the claim.
- 3.3. Procedures. The indemnifying party's obligations in this Section are subject to it receiving: (a) prompt written notice of the claim; (b) the exclusive right to control and direct the investigation, defense, and settlement of the claim; and (c) all reasonably necessary cooperation of the indemnified party, at the indemnifying party's expense for reasonable out-of-pocket costs. The indemnifying party may not settle any claim without the indemnified party's prior consent if settlement would require the indemnified party to admit fault or take or refrain from taking any action (other than relating to use of the Offering, when Exafunction is the indemnifying party). The indemnified party may participate in a claim with its own counsel at its own expense.
- 3.4. Exceptions. Exafunction's obligations in this Section do not apply to any infringement to the extent that it arises out of: (a) use of the Offering outside of the scope of the license granted herein; (b) use in violation of Exafunction's AUP; (c) any modification of or addition to the Offering or Suggestions not made by Exafunction where such infringement would not have occurred absent such modification or addition; ~~or~~ (d) failure to activate all functionality within the Offering that is intended to filter out infringing content; (e) designs, requirements, or specifications required by or provided by Customer, if the alleged infringement would not have occurred but for such designs, requirements, or specifications; or (fe) settlements or admissions by the Customer about a claim without Exafunction's prior consent. Customer will cooperate with Exafunction to assure that no such actions have taken place.
- 3.5. Mitigation. In response to an actual or potential infringement or misappropriation claim or otherwise relating to violation of intellectual property rights, if required by settlement or injunction or as Exafunction determines necessary to avoid material liability, Exafunction may at its option: (a) procure rights for Customer's continued use of the applicable Offering or Suggestion; (b) replace or modify the allegedly infringing portion of the applicable Offering or Suggestion to avoid infringement or misappropriation without reducing the overall functionality of the Offering or Suggestion; or (c) terminate the affected Order and refund to Customer any pre-paid fees for the terminated portion of the Subscription Term. The foregoing in this section sets out Customer's exclusive remedy and Exafunction's entire liability regarding infringement or misappropriation of third-party intellectual property rights.

4. FEES

- 4.1. **Fees.** If Customer is purchasing the Offering via a reseller, then all pricing and payment terms will be determined by and between Customer and the reseller. If Customer is purchasing the Offering directly from Exafunction, Customer shall pay to Exafunction the fees set forth in each applicable Order ("**Fees**"). All Fees will be paid in US dollars unless otherwise provided in an Order. Fees are invoiced annually in advance unless otherwise provided in the Order. All Fees are due within 30 days of the invoice date, unless otherwise provided in the applicable Order. Late payments are subject to a service charge of 1.5% per month or the maximum amount allowed by Law, whichever is less. All Fees are non-refundable except as otherwise expressly set forth herein. In the event of Customer's failure to pay any fees set forth in this Agreement, Exafunction shall be entitled to recover its costs and expenses, including but not limited to reasonable attorneys' fees, incurred in any collection efforts or legal action.
- 4.2. **Taxes.** Customer is responsible for any sales, use, GST, value-added, withholding, or similar taxes or levies that apply to Orders, whether domestic or foreign, other than Exafunction's income tax ("**Taxes**"). Fees are exclusive of all Taxes. Taxes will not be deducted from payments to Exafunction, except as required by applicable law, in which case Customer will increase the amount payable as necessary so that, after making all required deductions and withholdings, Exafunction receives and retains (free from any liability for Taxes) an amount equal to the amount it would have received had no such deductions or withholdings been made. Upon Exafunction's request, Customer will provide to Exafunction its proof of withholding tax remittance to the respective tax authority.

5. TERM AND TERMINATION

- 5.1. **Term.** The term of this Agreement starts on the Effective Date and shall continue through the Subscription Term referenced in any Order.
- 5.2. **Subscription Term.** With respect to each Order, the Subscription Term starts on the Start Date thereof and continues for the period referenced therein (the "**Subscription Term**"), unless terminated earlier pursuant to this Agreement.
- 5.3. **Termination.** Either party may terminate this Agreement (including any or all Orders) if the other party: (a) fails to cure a material breach of this Agreement (including a failure to pay fees) within 30 days after notice; (b) ceases operation without a successor; or (c) seeks protection under a bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if such a proceeding is instituted against that party and not dismissed within 60 days.
- 5.4. **Effect of Termination.** Upon expiration or termination of this Agreement or an Order, Customer's rights to access and use the Offering described in the Order will cease. Confidential Information may be retained in Recipient's standard backups notwithstanding any obligation to delete the applicable Confidential Information but will remain subject to this Agreement's confidentiality restrictions.
- 5.5. **Survival.** The following Sections shall survive expiration or termination of this Agreement: 1.5 (Ownership), 1.6 (Limitations), 1.11 (Feedback), 2.3 (Disclaimers), 3 (Indemnification), 4 (Fees) (to the extent arising prior to termination), 5.4 (Effect of Termination), 5.5 (Survival), 6 (Limitations of Liability), 7 (Confidentiality), 8 (General Terms), Exhibit A (Definitions), and applicable terms on an Schedules. Except where an exclusive remedy is provided in this Agreement, exercising a remedy under this Agreement, including termination, does not limit other remedies a party may have.
- 5.6. **Suspension of Service.** Exafunction may suspend Customer's access to any or all of the Offerings if: (a) Customer breaches Section 1.6 (Limitations) of the Agreement; (b) Customer's account is 30 days or more overdue; (c) changes to Laws or new Laws require that Exafunction suspend an Offering or otherwise may impose additional liability on the part of Exafunction; or (d) Customer's actions risk harm to any of Exafunction's other customers or the security, availability, or integrity of an Offering. Where practicable, Exafunction will use reasonable efforts to provide Customer with prior notice of the suspension (email sufficing). If the issue that led to the suspension is resolved, Exafunction will restore Customer's access to the Offerings.

6. LIMITATION OF LIABILITY

- 6.1. **Incidental/Consequential Damages.** NEITHER PARTY (NOR ITS SUPPLIERS OR LICENSORS) WILL HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOSS OF USE, LOST DATA, LOST PROFITS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THEIR POSSIBILITY IN ADVANCE.
- 6.2. **Limitation of Liability.** EACH PARTY'S (AND ITS SUPPLIERS' AND LICENSOR'S) ENTIRE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED IN AGGREGATE THE AMOUNTS PAID OR PAYABLE BY CUSTOMER TO EXAFUNCTION PURSUANT TO THIS AGREEMENT DURING THE 12 MONTHS PRIOR TO THE DATE ON WHICH THE APPLICABLE CLAIM GIVING RISE TO THE LIABILITY AROSE UNDER THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, EXAFUNCTION'S TOTAL LIABILITY (A) IN THE EVENT OF A DATA BREACH SHALL NOT EXCEED \$1,000,000; and (B) WITH RESPECT TO EXAFUNCTION'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 3 WITH RESPECT TO SUGGESTIONS SHALL NOT EXCEED \$1,000,000.
- 6.3. **Nature of Claims.** The waivers and limitations in this Section apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy in this Agreement fails of its essential purpose.

7. CONFIDENTIALITY

- 7.1. **Definition.** "**Confidential Information**" means information disclosed to the receiving party ("**Recipient**") under this Agreement that is designated by the disclosing party ("**Discloser**") as proprietary or confidential or that should be reasonably understood to be proprietary or confidential due to its nature and the circumstances of its disclosure.

Exafunction's Confidential Information includes the terms and conditions of this Agreement and any technical or performance information about the Offering. Customer's Confidential Information includes Customer Data.

- 7.2. **Obligations.** As Recipient, each party will: (a) hold Confidential Information in confidence and not disclose it to third parties except as permitted in this Agreement; and (b) only use Confidential Information to fulfill its obligations and exercise its rights in this Agreement. At Discloser's request, Recipient will delete all the Discloser's Confidential Information in its possession. Recipient may disclose Confidential Information to its employees, agents, contractors, and other representatives having a legitimate need to know, provided it remains responsible for their compliance with this Section and they are bound to confidentiality obligations no less protective than this Section.
- 7.3. **Exclusions.** These confidentiality obligations do not apply to information that Recipient can document: (a) is or becomes public knowledge through no fault of the Recipient; (b) it rightfully knew or possessed prior to receipt under this Agreement; (c) it rightfully received from a third party without breach of confidentiality obligations; or (d) it independently developed without using Confidential Information.
- 7.4. **Remedies.** Unauthorized use or disclosure of Confidential Information may cause substantial harm for which damages alone may be an insufficient remedy. Each party may seek appropriate equitable relief, in addition to other available remedies, for breach or threatened breach of this Section.
- 7.5. **Required Disclosures.** Nothing in this Agreement prohibits either party from making disclosures, including of Customer Data and other Confidential Information, if required by Law, subpoena, or court order, provided (if permitted by Law) it notifies the other party in advance and cooperates in any effort to obtain confidential treatment.

8. GENERAL TERMS

- 8.1. **Assignment.** Neither party may assign this Agreement without the prior consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all its assets or voting securities to the other party involved in such transaction. Any non-permitted assignment is void. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns.
- 8.2. **Governing Law, Jurisdiction and Venue.** This Agreement is governed by the laws of the State of California and the United States without regard to conflicts of laws provisions that would result in the application of the laws of another jurisdiction and without regard to the United Nations Convention on the International Sale of Goods. The jurisdiction and venue for actions related to this Agreement will be the state and United States federal courts located in Santa Clara County, California and both parties submit to the personal jurisdiction of those courts.
- 8.3. **Notices.** Except as set out in this Agreement, any notice or consent under this Agreement must be in writing to the addresses on the Order (Attention: Legal) and will be deemed given: (a) upon receipt if by personal delivery; (b) if by email with confirmed receipt (if to Exafunction to legal@windsurf.com); (c) upon receipt if by certified or registered mail (return receipt requested); or (d) one day after dispatch if by a commercial overnight delivery service. Notices may not be sent via email unless otherwise expressly permitted elsewhere in this Agreement. Either party may update its address with notice to the other party. Exafunction may also send operational notices to Customer by email or through the Offering.
- 8.4. **Entire Agreement.** This Agreement (which includes all Orders) is the parties' entire agreement regarding its subject matter and supersedes any prior or contemporaneous agreements regarding its subject matter. No term in any Order entered into with a reseller will be deemed to modify the Agreement unless authorized in writing by Exafunction. In this Agreement, headings are for convenience only and "including" and similar terms are to be construed without limitation. This Agreement may be executed in counterparts (including electronic copies and PDFs), each of which is deemed an original and which together form one and the same agreement. This Agreement is intended for the sole and exclusive benefit of the parties and the Affiliates of Customer, and is not intended to benefit any third party, and there are no third party beneficiaries to this Agreement.
- 8.5. **Amendments.** Any amendments, modifications, or supplements to this Agreement must be in writing and signed by each party's authorized representatives. The terms in any Customer purchase order or business form will not amend or modify this Agreement and are expressly rejected by Exafunction; any of these Customer documents are for administrative purposes only and have no legal effect. Reference in an Order to PO Required is a billing mechanic and failure to provide a purchase order does not void the Order.
- 8.6. **Waivers and Severability.** Waivers must be signed by the waiving party's authorized representative and cannot be implied from conduct. If any provision of this Agreement is held invalid, illegal, or unenforceable, it will be limited to the minimum extent necessary so the rest of this Agreement remains in effect.
- 8.7. **Force Majeure.** Neither party is liable for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) due to events beyond its reasonable control, such as a strike, blockade, war, pandemic or threat thereof, act of terrorism, riot, Internet or utility failures, refusal of government license, or natural disaster ("**Force Majeure Events**"). Exafunction may terminate this Agreement immediately with notice if Exafunction reasonably believes or determines that Exafunction's provision of the Offering to Customer is prohibited by applicable law.
- 8.8. **Independent Contractors.** The parties are independent contractors, not agents, partners, or joint venturers.
- 8.9. **Export.** Customer acknowledges and understands that the Offering and Suggestions are subject to U.S. export control and sanctions laws and regulations, including but not limited to the U.S. Department of Commerce's Export Administration Regulations and trade and economic sanctions maintained by the Office of Foreign Assets Control ("OFAC") at the U.S. Department of the Treasury, and may be subject to foreign export and import Laws (collectively, "Trade Controls"). Customer will comply with all applicable Trade Controls in using any Offering and Suggestions. Specifically, Customer represents and warrants that it is not and agrees not to export, re-export, or transfer (in-

country) to or otherwise allow the use of Offering, Suggestions, or items incorporating Suggestions by or for: (1) persons or entities listed on, or owned or controlled by, a U.S. restricted party list including but not limited to the Entity List, Denied Persons List, Unverified List, List of Specially Designated Nationals, or comparable lists of restricted persons published by the U.S. government or the government of another applicable foreign jurisdiction, (2) persons or entities who are, or are owned or controlled by persons or entities, located in or governments of sanctioned countries or territories (which currently include Belarus, Cuba, Iran, North Korea, Russia, Syria, Venezuela, and the Crimea, LNR, and DNR regions of Ukraine), or (3) any prohibited end use including but not limited to (i) military end uses, (ii) rocket systems or unmanned aerial vehicles, (iii) nuclear end-uses, (iv) chemical, biological, or nuclear weapons end-uses, (v) advanced computing, and (vi) supercomputing. Customer agrees that it shall not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any Offering, Suggestions and/or products derived from, based on, or that incorporate Suggestions, to any destination, entity, or person or for any use prohibited by the laws or regulations of the United States or applicable foreign jurisdictions without obtaining prior authorization from the competent government authorities as required by those laws and regulations. Customer will not submit to the Offering any information controlled under the U.S. International Traffic in Arms Regulations and warrants that any requested Suggestion is classified for export under EAR99.

- 8.10. Government End-Users. Elements of the Offering are commercial computer Offering. If the user or licensee of the Offering is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Offering or any related documentation of any kind, including technical data and manuals, is restricted by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Offering was developed fully at private expense. All other use is prohibited.
- 8.11. Conflicts in Interpretation. If there are inconsistencies or conflicts between the terms of the body of this Agreement and the terms of any Orders, exhibits, attachments, addenda, or other documents attached to or incorporated by reference in this Agreement, the order of precedence is as follows: (a) the terms of the Order; (b) the terms contained in the body of this Agreement; (c) the terms of the applicable exhibits, attachments, addenda, and policies to this Agreement; and (d) the Documentation.

Exhibit A

Definitions

Capitalized terms have the meaning ascribed to them in the Agreement, with the addition of:

1. **"Affiliate"** means an entity directly or indirectly owned or controlled by a party, where "ownership" means the beneficial ownership of 50% or more of an entity's voting equity securities or other equivalent voting interests and "control" means the power to direct the management or affairs of an entity.
2. **"AUP"** means Exafunction's Acceptable Use Policy for the Offering, available at windsurf.com/acceptable-use-policy.
3. **"Customer Data"** means any data or information that Customer (including its Users) submits to the Offering, including from Third-Party Platforms.
4. **"Data Protection Laws"** means: (a) the California Consumer Privacy Act of 2018 (California Civil Code §§ 1798.100 to 1798.199) and its implementing regulations, as amended or superseded from time to time; (b) the General Data Protection Regulation (EU) 2016/679 ("GDPR"), and the e-Privacy Directive 2002/58/EC (as amended by Directive 2009/136/EC), their national implementations in the European Economic Area ("EEA"), and all other data protection laws of the EEA including laws of the European Union ("EU"), the data protection laws of the United Kingdom ("UK") and Switzerland, each as applicable, and as may be amended or replaced from time to time; and (c) any similar Laws applicable to Exafunction's processing of personal information generally.
5. **"Documentation"** means the then-current version of Exafunction's written usage guidelines and standard technical documentation for the Offering made available or provided to Customer.
6. **"Effective Date"** the date that this Agreement is first entered into, generally the date than an applicable Order is last signed.
7. **"High Risk Activities"** means activities where use or failure of an Offering could lead to death, personal injury, or environmental damage, including life support systems, emergency services, nuclear facilities, autonomous vehicles, or air traffic control.
8. **"Laws"** means all applicable relevant local, state, federal and international laws, regulations and conventions, including applicable Data Protection Laws.
9. **"Login Credentials"** means the methodology provided by Exafunction that permits Users to log into and access the Offering.
10. **"Offering"** means the then-current version of the software listed in the Order, together with any Updates during the Subscription Term. The Offering(s) include all applicable Documentation but does not include SLAs, Customer Data or Suggestions.
11. **"Order"** means an order that describes the Offering being licensed by Customer that is executed by the parties and references this Agreement.
12. **"Profile Data"** means any information voluntarily provided by a User for the purpose of personalizing or maintaining an account, service preferences, or user identity within the Offering.
13. **"Sensitive Data"** (a) special categories of data enumerated in European Union Regulation 2016/679 (GDPR), Article 9(1) or any successor legislation; (b) patient, medical, or other protected health information regulated by the Health Insurance Portability and Accountability Act (as amended and supplemented) ("HIPAA"); (c) credit, debit, or other payment card data subject to the Payment Card Industry Data Security Standards ("PCI DSS"); (d) other information subject to regulation or protection under specific Laws such as the Children's Online Privacy Protection Act or Gramm-Leach-Bliley Act (or related rules or regulations); (e) social security numbers, driver's license numbers, or other government ID numbers; or (f) any data similar to any of the foregoing.
14. **"SLA"** means Exafunction's Service Level Agreement applicable to the Offering at windsurf.com/docs/SLA-cloud.pdf.
15. **"Suggestions"** means code, outputs, or other functions generated by the Offering in response to input Customer Data.
16. **"Third-Party Platform"** means any third-party platform, add-on, service, or product not provided by Exafunction that Customer elects to integrate or enable for use with any Offering.
17. **"Updates"** means any updates, modifications, or bug fixes to the Offering or Documentation that Exafunction provides free of additional charge to its customers using an offering.
18. **"User"** means any employee or contractor of Customer or its Affiliates that Customer allows to use the Offering on Customer's behalf.
19. **"Usage Data"** means data, metrics, logs, or other information about the provision, use, and performance of the Offerings, which does not identify Users or their Personally Identifiable Information (PII), and cannot be used to reconstruct Customer Data.

Exhibit B
Data Use Guidelines

1. Any data that Customer uploads will only be used to provide the Offering and Suggestions to Customer, and Exafunction will not use or access any such data for any purpose outside of providing services to Customer under this Agreement.
2. Customer Data: (i) is only used to provide the Offering and to generate Suggestions in real-time (ii) is deleted once Suggestions are generated; (iii) is not used for any other purpose, including the training of models; (iv) is encrypted during transit; and (v) is not stored at rest.
3. For cloud implementations only (and not for hybrid deployments), (1) if an account administrator has enabled features that explicitly require persistent code snippets or other information (e.g. Remote Indexing, Memories, Recipes, Trajectory Sharing, Web Retrieval, Deploys, Reviews, Knowledge Base), Exafunction may store code snippets and/or other information solely to provide the Offering to Customer; (2) inputs may be stored if flagged as potentially violating the AUP; and (3) Profile Data may be stored for authentication and otherwise solely to provide the Offering to Customer.
4. Use of Third-Party Platforms is subject to Customer's agreement with the relevant provider and not this Agreement. Exafunction does not control and has no liability for Third-Party Platforms, including their security, functionality, operation, availability, or interoperability with the Offering or how the Third-Party Platforms or their providers use Customer Data. By enabling a Third-Party Platform to interact with the Offering, Customer permits the Offering to exchange Customer Data with such Third-Party Platform. "Third-Party Platform" means any third-party platform, add-on, service, or product not provided by Exafunction that Customer elects to integrate or enable for use with the Offering (e.g. IDEs, Web Search, MCP Servers).