

Pilot Terms & Conditions

Last Updated: June 18, 2025

These Pilot Terms and Conditions (“**Terms**”) are 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. **Pilot.** Exafunction will make the Offering available to Customer in accordance with the terms and conditions of this Agreement, the Documentation, and an applicable Pilot Order, solely for Customer’s internal business purposes, and solely During the Pilot Period, Each Pilot Order will specify fees (if any), the Pilot Period, and any other terms specific to that Pilot 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 you may direct the Offering to generate and output Suggestions based thereon.
- 1.4. **AI Inputs.** 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 Pilot Period, 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. As between the parties, Customer retains all intellectual property rights and other rights in Customer Data. Customer Data is only used in accordance with the Data Use Guidelines attached hereto as Exhibit B.
- 1.5. **AI Outputs.** 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. Suggestions are (i) provided by the Offering in real-time (ii) are deleted once generated; (iii) are not used for any other purpose, including the training of models; (iv) are encrypted during transit; and (v) are not stored at rest.
- 1.6. **Ownership.** 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.
- 1.7. **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); (d) 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. .
- 1.8. **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 provided as-is, and may or may not function as intended.
- 1.9. **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. **Warranties.** Exafunction represents and warrants to Customer that 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; (v) 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. **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, bug, virus or error-free. Customer should conduct independent verification of Suggestions and evaluate the accuracy of Suggestions made available via the Offering. SUGGESTIONS ARE PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND.

3. **TERM AND TERMINATION**

- 3.1. **Pilot Period.** The Pilot Period starts on the Start Date stated in the Pilot Order and continues for the period referenced therein (the "**Pilot Period**"), unless terminated earlier pursuant to this Agreement.
- 3.2. **Termination.** Either party may terminate this Agreement at any time and for any reason upon notice to the other party.
- 3.3. **Effect of Termination.** Upon expiration or termination of this Agreement or an Pilot Order, Customer's rights to access and use the Offering described in the Pilot 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.
- 3.4. **Survival.** The following Sections shall survive expiration or termination of this Agreement: 1.6 (Ownership), 1.7 (Limitations), 1.10 (Feedback), 2.2 (Disclaimers), 2.2 (Effect of Termination), 2.4 (Survival), 4 (Limitations of Liability), 5 (Confidentiality), 6 (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.

4. **LIMITATION OF LIABILITY**

- 4.1. **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.
- 4.2. **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 GREATER OF (A) 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; OR (B) 10,000.
- 4.3. **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.

5. **CONFIDENTIALITY**

- 5.1. **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.
- 5.2. **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.
- 5.3. **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.
- 5.4. **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.

- 5.5. 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.

6. **GENERAL TERMS**

- 6.1. 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.
- 6.2. 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.
- 6.3. Notices. Except as set out in this Agreement, any notice or consent under this Agreement must be in writing to the addresses on the Pilot Order (Attention: Legal) and will be deemed given: (a) upon receipt if by personal delivery; (b) if by email with confirmed receipt (if to Exafuction 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. Exafuction may also send operational notices to Customer by email or through the Offering.
- 6.4. Entire Agreement. This Agreement (which includes all Pilot 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 Pilot Order entered into with a reseller will be deemed to modify the Agreement unless authorized in writing by Exafuction. 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.
- 6.5. 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.
- 6.6. Independent Contractors. The parties are independent contractors, not agents, partners, or joint venturers.
- 6.7. Export. Customer will comply with all relevant U.S. and foreign export and import Laws in using any Offering. Customer: (a) represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country; (b) agrees not to access or use Offering in violation of any U.S. export embargo, prohibition, or restriction; and (c) will not submit to the Offering any information controlled under the U.S. International Traffic in Arms Regulations.

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 Pilot 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 Pilot Order, together with any Updates during the Pilot Period. The Offering(s) include all applicable Documentation but does not include SLAs, Customer Data or Suggestions.
11. **"Pilot 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. **"Suggestions"** means code, outputs, or other functions generated by the Offering in response to input Customer Data.
15. **"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.
16. **"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.
17. **"User"** means any employee or contractor of Customer or its Affiliates that Customer allows to use the Offering on Customer's behalf.
18. **"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).