Master Services Agreement

Last Updated: October 27, 2025

This Master Services Agreement (together with any applicable Order Form, the "Agreement") govern the relationship between Exafunction, Inc. ("Licensor", "we", "us") and the entity or person ("Customer", "you, "your") using or accessing the Services.

You agree that by accessing the Services, you have read, understood, and agree to be bound by all of these Terms.

1. Definitions

1.1. **Acceptable Use Policy** or **AUP:** means Licensor's Acceptable Use Policy as posted on Licensor's website.

1.2. **Authorized User:** means your employees, consultants, and agents (i) who are expressly authorized by you to access and use the Services under and in accordance with the rights granted to you pursuant to this Agreement; and (ii) for whom access to the Services has been purchased.

1.3. **Customer Data:** means (i) information, data, Inputs, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by you or on your behalf or your Authorized User's behalf through the Services; and (ii) data that is generated and made available to you by the Services through use of such data, including Outputs. Customer Data expressly excludes: (i) any content owned by or licensed to Licensor; and (ii) Usage Data.

1.4. **Documentation:** means Licensor's user manuals, handbooks, and guides and other training and supporting materials relating to the Services, which may be provided by Licensor to you either electronically or in hard copy form.

1.5. **High Risk Activities**: means activities where use or failure of the Services could lead to death, personal injury, or environmental damage, including life support systems, emergency services, nuclear facilities, autonomous vehicles, or air traffic control.

1.6. **Input:** means the prompts, inputs, and other materials that you or your Authorized Users upload, submit, or otherwise make available to the Services.

1.7. **Licensor IP:** means the Services, Documentation, and all other technology, including software and other works of authorship, graphical user interfaces, workflows, products, processes and algorithms, data, know-how and trade secrets, designs, techniques, inventions and other tangible or intangible technical material or information provided by or on behalf of Licensor in connection with the foregoing, whether created, developed, or reduced to practice as part of the provision of the Services or otherwise, and all improvements, enhancements, modifications, and derivative works of any of the foregoing, in each case, together with all intellectual property rights therein. For the avoidance of doubt, Licensor IP does not include Customer Data.

1.8. **Order Form**: means an order that describes the Services, is executed by the parties, and references this Master Services Agreement.

1.9. **Output:** means the outputs generated and returned by the Services based on the Inputs you or your Authorized Users provide.

1.10. **Privacy Policy:** means Licensor's Privacy Policy as posted on Licensor's website.

1.11. **Services:** means the current version of the software and services listed in an Order Form as of the effective date of the Order Form, together with any updates provided to Customer during the Term. The Services include all applicable Documentation but do not include Customer Data.

1.12. **Term:** means the term identified in the Order Form.

1.13. **Usage Data:** means the anonymized and/or aggregated data (or metadata), metrics, logs, or other information about the provision, use, and performance of the Services that does not (i) identify Authorized Users or include their personal information and (ii) include Customer's Confidential Information or Customer Data.

2. Access and Use

2.1. **Rights Granted:** Subject to your compliance with the terms and conditions of this Agreement, Licensor hereby grants you a non-exclusive, non-sublicensable, non-transferable right to access and use the Services for your internal business purposes only, solely for use by you and your Authorized Users during the Term. Licensor reserves all rights in and to the Services and other Licensor IP that are not expressly granted to you in this Agreement.

2.2. **Your responsibilities.** You and your Authorized Users may be asked to create a user account to access the Services. You are responsible for all uses of the Services that results from your or your Authorized Users' access to or use of the Services, directly or indirectly, whether such access or use is permitted by or is in violation of this Agreement. Without limiting the generality of the foregoing, you are responsible for (i) all acts and omissions of Authorized Users, and for any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by you; and (ii) safeguarding the confidentiality of all passwords and usernames associated with your account and your Authorized Users' accounts, and for any use or misuse of the Services by anyone using such passwords or usernames, whether or not authorized by you. You agree to use all reasonable efforts to make all Authorized Users aware of the provisions of this Agreement that are applicable to such Authorized User's use of the Services, and you will cause Authorized Users to comply with such provisions.

2.3. **Restrictions:** You may not use the Services for any purposes beyond the scope of the access granted in this Agreement. You may not, at any time, directly or indirectly, and must ensure that your Authorized Users do not: (i) copy, reproduce, modify, translate, or create derivative works of the Services, in whole or in part; (ii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iii) use the Services or the Output to (A) create or develop any products or services that compete with the products or services of Licensor or (B) to train artificial intelligence models, in each case of (A) or (B), except as expressly approved by Licensor in writing; (iv) make the Services available to anyone other than Authorized Users; (v) publicly publish benchmarks or performance information about the Services; (vi) access or use the Services in a manner that violates the AUP; or (vii) use the Services for High-Risk Activities (collectively, the "Use Restrictions").

2.4. **Limitations of Outputs:** It is your responsibility to evaluate whether Output is appropriate for your use case (including where human review is appropriate) before any use or sharing of any Output. You acknowledge and agree, and are required to notify your Authorized Users, that factual assertions in Output should not be relied upon without independently checking their accuracy.

2.5. **Suspension:** We reserve the right to temporarily suspend your access and any Authorized User's access to any portion or all of the Services if, in our sole discretion, we reasonably determine that: (i) there is a creditable risk of harm or liability to Licensor or any Licensor IP, including repeated or material violations of Agreement or the AUP; (ii) your use or any of your Authorized User's use of the Licensor IP disrupts or poses a security risk to Licensor IP or to any third party; (iii) you or your Authorized Users are using the Licensor IP for fraudulent or illegal activities; (iv) it is necessary to do so to comply with, or if otherwise required by, applicable law, including for changes to applicable laws or to comply with new

applicable laws that require that Licensor suspend the Services or that otherwise may impose risks of material liability to Licensor or Customer; or (v) you have ceased to continue business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding. Where practicable, Licensor will use reasonable efforts to provide Customer with prior notice of the suspension (email sufficing). Licensor will use commercially reasonable efforts to promptly restore Customer's and its Authorized Users' access to the Services once the issue that led to the suspension is resolved.

2.6. **Availability**. The Services are subject to modification and change, in Licensor's sole discretion. Licensor will use commercially reasonable efforts to provide reasonable advance notice of a material degradation to the Services. For the avoidance of doubt, Licensor makes no guarantees regarding the quality, stability, availability, or reliability of the Services, unless otherwise agreed upon in writing in an Order Form.

2.7. **Windsurf**. For Windsurf Services, Customer Data shall be processed in accordance with the Data Use Guidelines attached hereto.

3. Content Rights; Intellectual Property

3.1. **Ownership:** Licensor owns all right, title, and interest, including all intellectual property rights, in and to the Services and Licensor IP, and reserves all rights not expressly granted to you in this Agreement. As between the parties hereto, you own all right, title, and interest, including all intellectual property rights, in and to Customer Data, including Outputs, to the fullest extent permitted by applicable law. Licensor does not represent or warrant that Output will not be similar to or the same as output provided to other customers.

3.2. **License:** By using the Services, you hereby grant to Licensor, its affiliates, successors, and assigns a non-exclusive, worldwide, royalty-free, fully paid, sublicensable, transferable license to reproduce, distribute, modify, and otherwise use, display, and perform all acts with respect to the Customer Data as may be necessary for Licensor to provide the Services to you or as otherwise permitted under this Agreement. You hereby represent and warrant that: (i) you have all necessary rights, consents and permissions to grant Licensor the license set forth in this section 3, and to allow Licensor to exercise its rights under such license without infringement of the intellectual property rights, privacy rights, rights of publicity, moral rights, or other proprietary rights of any third party; and (ii) Licensor's receipt and processing of Customer Data in accordance with this Agreement does not and will not violate any applicable laws or regulations.

3.3. **Use of Customer Data:** Licensor will not use, or permit any third party to use, any Customer Data to train or otherwise optimize any artificial intelligence model without your express prior written consent. With Customer's prior written consent, Licensor may use Customer Data to fine tune or optimize the Services exclusively for use by Customer. For clarity, Licensor may utilize Usage Data for internal analytics and business purposes, including to extract generalized insights or patterns derived from Usage Data for the purpose of improving the Services' performance or functionality generally.

3.4. **Marketing:** You hereby grant Licensor the non-exclusive right to use your name, logo, and trademarks in connection with Licensor's promotional activities, including displaying your name, logo, or trademark on Licensor's website and marketing materials. Additionally, subject to your prior written consent and mutual agreement on timeline, you will participate in a written case study at Licensor's request, detailing the collaboration and outcomes of the project.

3.5. **Feedback:** Upon request by Licensor, you and Authorized Users may report to Licensor, and reasonably assist Licensor in connection with correcting any errors, problems, or defects in the Services you discover. In addition, if you or any Authorized Users send or transmit any communications or materials to Licensor by mail, email, telephone, or otherwise, suggesting or recommending changes to the Licensor IP, including new features or functionality relating thereto, or any comments, questions,

suggestions, or similar feedback (collectively with any error, problem or defect reports submitted by you and Authorized Users in accordance hereto, "**Feedback**"), Licensor is free to use such Feedback irrespective of any other obligation or limitation governing such Feedback. You hereby grant to Licensor a perpetual, irrevocable, worldwide license to use any Feedback without compensation, without any obligation to report on such use, and without any other restriction. The rights granted in the previous sentence include the right to exploit Feedback in any and every way, as well as the right to grant sublicenses under copyright, patent, and any other form of intellectual property. Notwithstanding Section 6, Feedback will not be considered Customer's Confidential Information. For the avoidance of doubt, Customer is not required to provide any Feedback nor is Licensor required to use any Feedback.

4. Security and Privacy

4.1. **Data Security:** Where Licensor has access to Customer Data, Licensor will implement and maintain commercially reasonable safeguards designed to protect Customer Data against security breaches. You will be responsible for routinely backing up Customer Data, and Licensor has no obligation or liability for any loss, alteration, destruction, damage, corruption, or recovery of Customer Data.

4.2. **Customer Obligations**: You represent and warrant that all Customer Data has been collected and disclosed to Licensor in compliance with applicable law, including with respect to any obligation to provide notice to and/or obtain consent from Authorized Users and other individuals, and that you have and will continue to make any necessary filings with data protection authorities, and comply with any request made under laws applicable to Customer from Authorized Users or authorities to access, rectify, delete or otherwise in relation to Customer Data.

4.3. **Personal Data:** Other than account information of Authorized Users, which Licensor processes according to its Privacy Policy and applicable data protection laws, you acknowledge that the Services are not designed to process data defined as "personal data", "personal information" or similar terms under applicable data protection laws on your behalf. You agree not to share with us or otherwise process any protected health information. You further agree not to share with us or otherwise process any other categories of sensitive personal data such as social security numbers, birth dates, passport information, bank account, and credit card numbers in using the Services.

5. Payment and Billing

5.1. **Payment:** You will pay all fees for the Services as specified in the applicable Order Form. Unless otherwise specified in the Order Form, all fees are quoted and payable in United States dollars. Fees will be exclusive of taxes, and you are responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by you, other than taxes imposed on Licensor's income. Unless set forth in the applicable Order Form, payment for all invoices are due within thirty (30) days of receipt of the relevant invoice. Failure to pay by the payment due date may result in a suspension or termination of the Services, and all outstanding fees due will become due and payable immediately without further action or notice.

5.2. **Disputes:** In the event that you dispute the amounts payable in an invoice in good faith, you must deliver a written statement to Licensor no later than the date that the applicable payment is due with a detailed description of the basis for such dispute and the disputed amount.

5.3. **Billing:** We may invoice you through a third-party payment service provider. The third party service provider's terms of services shall govern and supersede this Agreement in case of conflict only as to the payment and billing terms.

6. Confidentiality

6.1. **Confidential Information:** Either party may disclose or make available (in such capacity, the "Disclosing Party") to the other party (in such capacity, the "Receiving Party") information about its business affairs, products, intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, that the Receiving Party would reasonably deem to be confidential, whether or not marked, designated or otherwise identified as such (collectively, "Confidential Information"). Confidential Information does not include information that: (i) at the time of disclosure is, or subsequently becomes (through no action or inaction on the part of the Receiving Party) in the public domain; (ii) is known to the Receiving Party at the time of disclosure; (iii) after the date of this Agreement is rightfully obtained by the Receiving Party on a non-confidential basis from a third party; or (iv) is independently developed by the Receiving Party without use of or reference to any Confidential Information of the Disclosing Party.

6.2. **Obligations:** The Receiving Party shall not use any Confidential Information of the Disclosing Party for any purpose outside the performance or receipt of the Services, as applicable, except with the Disclosing Party's prior written permission. The Receiving Party shall not disclose the Disclosing Party's Confidential Information to any person or entity, except to the Receiving Party's employees, agents and contractors who have a need to know such Confidential Information in order for the Receiving Party to exercise its rights or perform its obligations hereunder that are bound by written or professional obligations of confidentiality no less restrictive than those contained in this Agreement in all material respects. On expiration or termination of this Agreement, the Receiving Party shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and, promptly after the Disclosing Party's written request, certify in writing to the Disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five (5) years after the expiration or termination of this Agreement; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

6.3. **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 for such required disclosure.

7. Term and Termination

7.1. **Term:** The Term of this Agreement will commence on the Effective Date of an Order Form and continue in effect for the duration stated in the Order Form, unless terminated earlier as set forth in this section.

7.2. **Termination:** Either party may terminate the Agreement upon written notice if: (a) the other party materially breaches this Agreement and such breach is either incapable of cure, or if capable or cure, remains uncured 30 days after the non-breaching party provides the breaching party written notice; or (b) the other party becomes insolvent, ceases to do business, makes an assignment for the benefit of creditors, files a petition in bankruptcy, or appoints a receiver, trustee, custodian, or similar agent to take charge of or sell any material portion of its property or business. Licensor reserves the right to suspend your access to the Services or terminate this Agreement or any Order Form if: (i) you fail to pay any amount when due, and such failure continues for more than ten (10) business days; or (ii) your use or your Authorized Users' use of the Services are in violation of the Use Restrictions or you or your Authorized Users breach the confidentiality provisions of this Agreement.

7.3. **Effect of Termination:** Upon expiration or earlier termination of this Agreement, you must immediately discontinue use of the Licensor IP and Services, and, without limiting your obligations under the confidentiality provisions of this Agreement, you must delete, destroy, or return all copies of the Licensor IP and Services and certify in writing that such copies have been destroyed. No expiration or termination will affect your obligation to pay all Fees that may have become due before such expiration or termination, or entitle you to any refund. Sections 1 (Definitions), 3.1 (Ownership), 3.5 (Feedback) 6 (Confidentiality) 7.3 (Effect of Termination) 9 (indemnification), 10 (Limitations of Liability), 11 (Dispute Resolution), and 12 (Miscellaneous) survive any termination or expiration of this Agreement.

8. Limited Warranties and Disclaimer

8.1. Limited Mutual Warranties. Each party represents and warrants 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 required to perform hereunder; and (iii) it is duly authorized or qualified to do business and is in good standing in every jurisdiction in which an authorization or qualification is required to perform hereunder.

8.2. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE LICENSOR IP AND SERVICES ARE PROVIDED "AS IS" AND LICENSOR HEREBY DISCLAIMS ALL WARRANTIES IN CONNECTION WITH THE LICENSOR IP AND SERVICES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. LICENSOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. LICENSOR MAKES NO WARRANTY OF ANY KIND THAT THE LICENSOR IP AND SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, LICENSOR HAS NO LIABILITY FOR ANY USES OF THE SERVICES IN CONNECTION WITH HIGH-RISK ACTIVITIES.

9. Indemnification

9.1. **Licensor Indemnification:** Licensor shall defend Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("Losses") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("Third-Party Claim") that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party's patents, copyrights, or trade secrets, and will indemnify and hold harmless Customer against any damages and costs awarded against Customer (including reasonable attorneys' fees) or agreed in a settlement resulting from the Third-Party Claim, provided that, in each case, Customer (i) promptly notifies Licensor in writing of such Third Party Claim; (ii) cooperates with Licensor in connection with such Third Party Claim; and (iii) allows Licensor sole authority to control the defense and any settlement of such Third Party Claim. If such a Third-Party Claim is made or appears possible, Customer agrees to permit Licensor, at Licensor's sole discretion, to (A) modify or replace the Services, or component or part thereof, to make the Services, or such component or part, as applicable, non-infringing; or (B) obtain the right for Customer to continue use of the Services, or component or part thereof, as applicable. If Licensor determines that neither alternative is reasonably available, Licensor may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer. Notwithstanding the foregoing, this Section 9.1 will not apply, and Licensor shall have no obligation, with respect to any Third-Party Claim arising from or relating to: (1) compliance with Customer specifications; (2) use of the Services in combination with data, software, hardware, equipment, technology or other products or services not supplied or expressly

authorized in writing by Licensor; (3) any adaptation or modification of the Services other than by Licensor; (4) Customer's failure to comply with the Documentation or otherwise follow instructions provided by Licensor which would have cured the cause of action; (5) use of the Services in a manner not authorized by this Agreement; (6) Customer's continued use of a version of the Services other than the most recently released version; or (7) Customer Data.

9.2. **Customer Indemnification:** Customer shall indemnify, hold harmless, and, at Licensor's option, defend Licensor from and against any Losses resulting from any Third-Party Claim (i) that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights; and (ii) based on Customer's or any Authorized User's (A) negligence or willful misconduct; (B) use of the Services in a manner not authorized by this Agreement; (C) use of the Services in combination with data, software, hardware, equipment, technology or other products or services not supplied or expressly authorized in writing by Licensor; or (D) any adaptation or modification of the Services other than by Licensor, provided, that Customer may not settle any Third-Party Claim against Licensor unless Licensor consents to such settlement, and provided, further, that Licensor will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

9.3. **Sole Remedy:** THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND LICENSOR'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

10. Limitations of Liability

10.1. **Exclusion of Consequential and Related Damages.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, REPRESENTATIVES OR CONTRACTORS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (A) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (B) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (C) LOSS OF GOODWILL OR REPUTATION; (D) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (E) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE, REGARDLESS OF WHETHER THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.

10.2. **Liability Limitation**. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, REPRESENTATIVES OR CONTRACTORS ARISING OUT OF OR RELATED TO ANY CLAIM ARISING IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT LIABILITY, EXCEED THE TOTAL AMOUNTS PAID TO LICENSOR UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

11. Dispute Resolution and Mandatory Arbitration

11.1. IN THE EVENT A DISPUTE, CONTROVERSY, OR CLAIM ARISES OUT OF OR RELATING TO THESE TERMS ("DISPUTE"), THE DISPUTE WILL BE RESOLVED BY BINDING ARBITRATION RATHER THAN IN COURT. The parties will first try in good faith to settle any Dispute within 30 days

after the Dispute arises. If the Dispute is not resolved within 30 days, it shall be resolved by binding arbitration by the American Arbitration Association's International Centre for Dispute Resolution in accordance with its Expedited Commercial Rules in force as of the date of this Agreement ("Rules"). The parties will mutually select one arbitrator. The arbitration will be conducted in English in New York, New York, USA. By agreeing to mandatory arbitration as set forth herein, you and Licensor knowingly and irrevocably waive any right to trial by jury in any action, proceeding, or counterclaim, except that either party may apply to any competent court for injunctive relief necessary to protect its rights pending resolution of the arbitration. The arbitrator may order equitable or injunctive relief consistent with the remedies and limitations in the Agreement. The arbitral award will be final and binding on the parties and its execution may be presented in any competent court, including any court with jurisdiction over either party or any of its property. Each party will bear its own lawyers' and experts' fees and expenses, regardless of the arbitrator's final decision regarding the Dispute.

12. Miscellaneous

12.1. **Notices:** All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; or (iii) the second business day after sending by email. Notices shall be sent to the notice addresses on the Order Form.

12.2. **Force Majeure:** In no event shall Licensor be liable to Customer, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Licensor's reasonable control, including but not limited to acts of God, pandemic, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo. Licensor may terminate this Agreement immediately with notice if Licensor reasonably believes or determines that the provision of the Services to Customer is prohibited by applicable law, and shall promptly provide Customer a refund of unused prepaid fees.

12.3. **Independent Contractor:** Each party agrees that its relationship with the other party is that of an independent contractor and that nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. Neither party shall be responsible to the other party and neither party has the authority to act for, bind, or incur any debts or liabilities on behalf of the other party.

12.4. **Third Party Beneficiaries**. This Agreement is not intended and shall not be construed to create any rights or benefits upon any person not a party to this Agreement.

12.5. **Counterparts**. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which shall constitute one and the same instrument.

12.6. **Waiver; Cumulative Remedies; Severability:** 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. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

12.7. **Governing Law:** This Agreement is governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of New York.

12.8. **Assignment:** You may not assign any of your rights or delegate any of your obligations hereunder without Licensor's prior written consent. Licensor may assign this Agreement to an affiliate or in the

event of a sale of all or substantially all of its stock, assets or business to which this Agreement relates without consent. Any attempted assignment in violation of this section shall be null and void.

12.9. **Equitable Relief:** Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 6 or, in the case of Customer, Section 2.3, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

12.10. **Export**: Customer shall at all times comply with all applicable international, federal, state and local laws and shall not engage in any illegal or unethical practices. Customer acknowledges and understands that the Services is subject to export control and sanctions laws and regulations. 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 Services in violation of any U.S. export embargo, prohibition, or restriction; and (c) will not submit to the Services any information controlled under the U.S. International Traffic in Arms Regulations.

12.11. **Headings; Construction**. The headings to the clauses, sub-clause and parts of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. The terms “this Agreement,” “hereof,” “hereunder” and any similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement. As used in this Agreement, the words “include” and “including,” and variations thereof, will be deemed to be followed by the words “without limitation” and the word “discretion” means sole discretion.

12.12. **Entire Agreement; Modifications; Conflicts:** This Agreement, together with all related exhibits, Order Forms, and any other documents incorporated by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. 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. In the event of any conflict between the Terms, the Order Form, the AUP or any exhibit hereto, the documents will control in the following order: (i) the Order Form, (ii) any exhibit to these Terms or an Order Form, (iii) the AUP, and (iv) the Terms. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation (excluding the Order Form) shall be incorporated into or form any part of this Agreement, and all such terms or conditions are hereby rejected and shall be null and void.

Windsurf
Data Use Guidelines
(specific to Exafunction Services only)

1. Input will only be used to provide the Services and Output to Customer, and Licensor 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 Services and to generate Output in real-time (ii) is deleted once Output is 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), Licensor may store code snippets and/or other information solely to provide the Services to Customer; (2) Input 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 Services to Customer. “Profile Data” means any information voluntarily provided by an Authorized User for the purpose of personalizing or maintaining an account, service preferences, or user identity within the Services.
4. Use of Customer Integrations is subject to Customer’s agreement with the relevant provider and not this Agreement. Licensor does not control and has no liability for Customer Integrations, including their security, functionality, operation, availability, or interoperability with the Services or how the Customer Integrations or their providers use Customer Data. By enabling a Third-Party Integration to interact with the Services, Customer permits the Services to exchange Customer Data with such Customer Integrations. “Customer Integration” means any third-party integration, add-on, service, or product not provided by Licensor that Customer elects to integrate or enable for use with the Services (e.g. IDEs, IDE Plugins not provided by Licensor, GitHub, Web Search, MCP Servers).