

# Master Subscription Agreement

Last Updated: December 9, 2024

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

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- 1.1. **Subscription.** Exafunction agrees to provide Customer the Offering(s) described in the applicable Schedule, subject to the limitations provided in any applicable Order. Each Order will specify Fees, the Subscription Term, and any other terms specific to that Order. License to the Offerings is provided in the applicable Schedule attached hereto.
- 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).
- 1.3. **AI Technologies.** The Offering may contain and provide Customer with access to artificial intelligence technologies and tools. As part of your use of the Offering, you may be able to input, post, upload and Customer Data to the Offering, and you may direct the Offering to generate and output 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. Customer grants Exafunction the right to use the Customer Data to provide the Offerings. Customer Data: (i) is only used to provide the Offerings 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. Exafunction warrants that it shall not sell, share, or otherwise disclose Customer Data in violation of Laws.
- 1.5. **Ownership.** As between the parties, Customer retains all intellectual property rights and other rights in Customer Data. 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) provide access to, distribute, sell, or sublicense the Offering to a third party (other than Users); (b) use the Offering on behalf of, or to provide any product or service to, third parties, except in connection with Customer’s products; (c) use the Offering to develop a similar or competing product or service; (d) reverse engineer, decompile, disassemble, or seek to access the source code or non-public APIs to the Offering, except to the extent expressly permitted by Law (and then only with prior notice to Exafunction); (e) modify or create derivative works of the Offering or copy any element of the Offering; (f) remove or obscure any proprietary notices in the Offering; (g) publish benchmarks or performance information about the Offering; (h) interfere with the operation of the Offering or circumvent any access restrictions; (i) transmit any viruses or other harmful materials to the Offering; (j) take any action that risks harm to others or to the security, availability, or integrity of the Offering; (k) access or use the Offering in a manner that violates the AUP or any Law; or (l) 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.
- 1.8. **Beta Offerings.** In the event Customer has been granted access to beta or pre-release 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 (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.
- 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. **Third-Party Platforms.** Use of Third-Party Platforms (e.g. User IDE’s) 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.
- 1.11. **Feedback.** If 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.

## 2. **WARRANTIES**

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- 2.1. **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 "**Warranties**").
- 2.2. **Warranty Remedy.** If Exafunction breaches a Warranty and Customer makes a reasonably detailed warranty claim in the manner required by Exafunction within 30 days of discovering a breach of the 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, either party 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 the Warranties. 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.
- 2.3. **Disclaimers.** Except as expressly provided 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, and no rights to any outputs generated by the Offering for other customers are granted to Customer under this Agreement. 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 always conduct independent verification of Suggestions and evaluate the accuracy of Suggestions made available via the Offering.

## 3. **INDEMNIFICATION**

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- 3.1. **Indemnification by Exafunction.** Exafunction will defend Customer from and against any third-party claim to the extent alleging that the Offering infringes or misappropriates a third-party's patent, copyright, trademark, or trade secret, and/or that a Suggestion infringes or misappropriates a third-party's copyright, 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 acceptable use policy available at [codeium.com/acceptable-use-policy](https://codeium.com/acceptable-use-policy); (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) 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 (e) settlements or admissions by the Customer about a claim without Exafunction's prior consent. Customer will fully cooperate with Exafunction to assure that no such actions have taken place and reimburse Exafunction for any costs or damages that result from these actions.
- 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, unused fees for the terminated portion of the 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**

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- 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 Service 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 due annually in advance and are invoiced as described on the schedule in the Order. All Fees are due within 30 days of the invoice date, unless otherwise provided in the applicable Order. Fees will be invoiced at the start of each Renewal Term based on the total user count licensed at the end of the prior year at the rate for the prior year (not to include any discounts on incentives), plus 5%. 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**

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- 5.1. **Term.** The term of this Agreement starts on the Effective Date and shall automatically terminate when no Orders remain outstanding between the parties.
- 5.2. **Subscription Term.** With respect to each Order, the initial Subscription Term starts on the Effective Date thereof and continues for the period referenced therein (the "**Initial Subscription Term**"), unless terminated earlier pursuant to this Agreement. Thereafter, the Subscription Term for each Order shall automatically renew for additional successive 12-month periods (each, a "**Renewal Subscription Term**" and, together with the Initial Subscription Term, the "**Subscription Term**") unless either party provides written notice of non-renewal to the other party at least thirty (30) days before the end of the then-current Subscription Term.
- 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. Either party may terminate this Agreement upon 15 days' prior written notice to the other if there are no Orders then-in-effect.
- 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.** These Sections survive expiration or termination of this Agreement: 1.5 (Ownership), 1.6 (Limitations), 1.10 (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.

## 6. **LIMITATION OF LIABILITY**

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- 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, FAILURE OF SECURITY MECHANISMS, 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 IN THE EVENT OF A DATA BREACH 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**

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- 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 Confidential Information, except, in the case where Exafunction is the Recipient, Exafunction may retain the Customer's Confidential Information to the extent required to continue to provide the Offering. 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**

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- 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 and will be deemed given: (a) upon receipt if by personal delivery; (b) if by email with confirmed receipt; (c) upon receipt if by certified or registered U.S. 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. 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.
- 8.5. Amendments. Any amendments, modifications, or supplements to this Agreement must be in writing and signed by each party's authorized representatives or, as appropriate, agreed through electronic means provided by Exafunction. 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.
- 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**").
- 8.8. Independent Contractors. The parties are independent contractors, not agents, partners, or joint venturers.
- 8.9. 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.
- 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 the then-current version of Exafunction's Acceptable Use Policy for the Offering, available at <https://codeium.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.
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 Offering(s) listed in the Order. 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. "**SLA**" means Exafunction's Service Level Agreement applicable to the Service at [codeium.com/docs/SLA-selfhosted.pdf](https://codeium.com/docs/SLA-selfhosted.pdf), as to self-hosted Offerings, [codeium.com/docs/SLA-cloud.pdf](https://codeium.com/docs/SLA-cloud.pdf), as to cloud Offerings.
13. "**Suggestions**" means code, outputs, or other functions generated by the Offering in response to input Customer Data.
14. "**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.
15. "**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.
16. "**Upgrades**" means additions, enhancements, upgrades, new services, or modules that include new features and substantial increases in functionality to the Offering that Exafunction makes available to its customers for an additional fee.
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 information generated from the use of the Offerings, which data does not identify Users, any other natural human persons, and cannot be used to reconstruct Customer Data.

## SELF-HOSTED SCHEDULE

Applicable for Self-Hosted and Hybrid instances of the Offerings.

1. License. During a Subscription Term, subject to Customer's compliance with the terms of this Agreement, Exafunction grants Customer a non-exclusive, non-sublicensable, non-transferable license to (i) install one instance of the Offering on computing infrastructure owned or controlled by Customer (including any public cloud instances controlled by Customer), and (ii) access and use the installed Offering only for its internal business purposes, in accordance with the Documentation, this Agreement, and any limitations set forth in an Order. At Customer's request, Exafunction will provide a limited number of additional keys solely for backup, disaster recovery, testing, and other non-production instances of the Offering.
2. Upgrades. Unless stated otherwise in an Order, Exafunction will make Updates to Offering available to Customer as Exafunction makes them available to its customers generally. Customer's purchase of access to Offering is not contingent on the delivery of any future functionality or features or dependent on any oral or written public or private comments made by Exafunction regarding future functionality or features of the Offering. From time to time, Exafunction, in its sole discretion, may make available new features under additional or different terms. Nothing in this Agreement obligates Exafunction to make every new feature available to Customer as part of the Offering or otherwise unless specifically included in an Order.
3. Additional Exceptions to Indemnification. Exafunction's indemnification obligations pursuant to Section 11 of the Agreement do not apply to any infringement to the extent that it arises out of or relates to: (a) use of a model not provided by Exafunction, and any fine-tuning only with appropriately licensed code; (b) failure to activate all functionality within the Offering that is intended to filter out infringing content; or (c) failure to activate accountability features made available to Customer that are intended to track the forgoing.
4. Records. Exafunction or its agents may, with ten (10) days' notice, audit Customer's records to verify its compliance with the provisions of this Agreement. If an audit indicates an underpayment of five percent (5%) or more of any amounts due hereunder or other non-monetary noncompliance, Customer will promptly reimburse Exafunction for the reasonable cost of the audit. Such rights will remain in effect through a period ending one year from the termination of this Agreement.

## CLOUD SCHEDULE

Applicable for Cloud and Hybrid instances of the Offerings.

1. Use. During a Subscription Term, subject to Customer's compliance with the terms of this Agreement, Customer may access and use the Offering only for its internal business purposes, in accordance with the Documentation and any limitations set forth in an Order. Only Users, using their Login Credentials, may access and use the Offerings. 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 Services.
2. Customer Data. 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. For certain Offerings (e.g. Forge, Cascade), or if an account administrator has enabled features that explicitly require persistent code snippets or other information (e.g. Indexing), Exafunction may store code snippets and/or other information to provide these Offerings.
3. 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 or Section 4 (Restrictions) of this Schedule; (b) Customer's account is 30 days or more overdue; (c) changes to Laws or new Laws require that Exafunction suspend a Service 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.
4. Restrictions. Customer will not (and will not permit anyone else to) transmit any viruses or other harmful materials to the Offering or conduct any security or vulnerability test of the Offering. Additionally, Customer must not use a Service with Prohibited Data. Customer acknowledges that the Offerings are not intended to meet any legal obligations for these uses, including (x) HIPAA requirements, and that Exafunction is not a Business Associate or Subcontractor of Customer or with respect to any Protected Health Information thereof or therefrom (as those terms are defined under HIPAA), or (y) EU GDPR requirements, and that the Offerings are not intended to receive European citizen personal data (as defined in Article 4 of the GDPR). "**Prohibited Data**" means any: (a) special categories of data enumerated in European Union Regulation 2016/679, 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; (f) "personal information" subject to the California Consumer Privacy Act (CCPA); or (g) any data similar to any of the foregoing.