

## Pilot Terms and Conditions

Last Updated: March 11, 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. Each of Exafunction and Customer are referred to herein as a "**Party**" and, collectively, as the "**Parties**." Terms used but not defined herein have the meanings given to them in the Order Form.

### 1. LICENSE.

- a) Grant. During the Pilot Period, and subject to Customer's compliance with the terms of this Agreement, those employees that Customer authorizes ("**Authorized Users**") may access and use the Offering only for Customer's internal business purposes, in accordance with the applicable documentation and any limitations set forth in an Order. Only Authorized Users, using their Login Credentials, may access and use the Offering. If the Self Hosted or Hybrid version of an Offering is referenced in the Order Form, during the Pilot Period, and subject to Customer's compliance with the terms of this Agreement, Exafunction grants to Customer's Authorized Users a non-exclusive, non-sublicensable, and non-transferable license to install and use one object code copy of the Offering on computing infrastructure that Customer owns or controls. "**Offering**" means the Offering(s) identified in the Order Form, only for Customer's internal business purposes, in accordance with the applicable documentation and any limitations set forth in an Order.
- b) Limitations. Customer and its Authorized Users shall not and shall not permit or assist anyone else to: (i) use or otherwise exploit the Offering or Exafunction's Confidential Information (as defined in Section 3) for any purpose other than in accordance with this Agreement, (ii) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Offering by any means whatever, or disclose any of the foregoing; (iii) redistribute, rent, lease, sell, alter, modify, or create any derivative works of the Offering or Exafunction's Confidential Information (as defined in Section 3) or any embodiment thereof or do any of the foregoing on behalf of any third party; (iv) provide, lease, lend, use for timesharing or service bureau purposes, or otherwise use or allow others to use the Offering for the benefit of third parties; (v) disclose the results of any benchmarking of the Offering, or use such results for its own competing software development activities, without the prior written permission of Exafunction; (vi) attempt to circumvent or disable any technological or security features or measures in the Offering; or (vii) access or use the Offering in a manner that violates the Exafunction's Acceptable Use Policy posted at [codeium.com/acceptable-use-policy](https://codeium.com/acceptable-use-policy).
- c) No Other Rights. The license granted to Customer is expressly set forth above. No other rights or licenses are granted by Exafunction, whether by implication, estoppel, or otherwise. All rights not expressly granted herein are reserved by Exafunction.

**2. OWNERSHIP.** Exafunction shall retain all right, title, and interest in and to the Offering and Exafunction's Confidential Information (as defined below), including any modifications thereto and all patents, copyrights, trademarks and other intellectual property rights embodied therein. If Customer or its Authorized Users requests any changes or makes any suggestions, improvements or modifications to the Offering, Customer hereby grants to Exafunction the right and license to make, use, sell, reproduce, modify, sublicense, disclose, distribute and otherwise exploit such without restriction.

**3. CUSTOMER DATA.** Customer shall retain all right, title, and interest in and to Customer Data. Customer Data will only be used to provide the Offering, and Exafunction will not use or access Customer Data for any purpose outside of providing the Offering to Customer. Notwithstanding the foregoing, for cloud implementations only (and not hybrid or self-hosted deployments), (i) if an account administrator has enabled features that explicitly require persistent code snippets or other information (e.g. Indexing, Indexing, Memories, Recipes, Web Retrieval), Exafunction may store code snippets and/or other information to provide these Offerings; and (ii) Customer consents to the collection and analysis of anonymized usage data to enhance product functionality, user experience, and service performance.

**4. SUGGESTIONS.** Customer may use the Offering to generate code, outputs, or other functions (collectively, "**Suggestions**"). As between the parties and to the extent permitted by applicable law, Exafunction agrees that Customer owns all Suggestions. Exafunction hereby assigns to Customer all of its right, title, and interest in and to any Suggestions provided or returned to Customer by the Offering. Notwithstanding the foregoing, Customer acknowledges that Suggestions are generated automatically by machine learning technology and may be similar to or the same as Suggestions provided to other customers, and no rights to any Suggestions generated, provided, or returned by the Offering for or to other customers are granted to Customer under this Agreement. Further, any Suggestions generated, provided, or returned by the Offering may contain inaccuracies. ANY SUGGESTIONS ARE PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND.

**5. CONFIDENTIALITY.** "**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: (a) the terms of this Agreement, (b) all non-public information disclosed by Exafunction to Customer under this Agreement, and (c) all Modifications, all Offering performance data, and all other information obtained through evaluation of the Offering. Customer's Confidential Information includes any folders, data, text, and any other works of authorship or other works, including source code (collectively, "**Customer Data**"), that Customer submits, uploads, or otherwise posts to or transmits using the Offering. Each Party will maintain the confidentiality of the other Party's Confidential Information and not disclose to any third party without written consent of the other Party. 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. 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. 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. 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. THIRD-PARTY PLATFORMS.** 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 Exafunction, Customer permits the Exafunction 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).

**7. TERM AND TERMINATION.**

- a) Term. This Agreement shall commence on the Start Date and continue for the Pilot Period set forth on the Order Form, unless terminated earlier. Exafunction may terminate this Agreement and all permissions granted to Customer hereunder at any time and for any reason upon notice to Customer. Exafunction may terminate this Agreement immediately with notice if Exafunction reasonably believes or determines that Exafunction's provision of the Offering to Customer is prohibited by applicable law.
- b) Effect of Termination. Upon expiration or termination of this Agreement, Customer will promptly cease all use of the Offering and return or destroy all copies or derivatives thereof. The following Sections survive termination or expiration of this Agreement: 1(b), 1(c), and 2 through 9.

**8. NO IMPLIED OBLIGATIONS; DISCLAIMERS, LIMITS OF LIABILITY.**

- a) Disclaimer of Consequential Damages. THE SOFTWARE, SUGGESTIONS, CONFIDENTIAL INFORMATION AND ANY OTHER INFORMATION OR ASSISTANCE PROVIDED BY EXAFUNCTION ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, NEITHER PARTY WILL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTION CONTEMPLATED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF SUCH PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.
- b) Limit of Liability. UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT, OTHER THAN INFRINGEMENT OR VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE GREATER OF (A) THE TOTAL AMOUNT PAID BY CUSTOMER TO EXAFUNCTION UNDER THIS AGREEMENT WITHIN 12 MONTHS OF THE DATE SUCH CLAIM IS ASSERTED, OR (B) \$10,000.
- c) Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY EXAFUNCTION TO CUSTOMER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT.

**9. MISCELLANEOUS.**

- a) Relationship of the Parties. The relationship of the Parties established by this Agreement is that of independent contractors and is non-exclusive.
- b) Governing Law. This Agreement is governed by the laws of the State of California, and the federal, state, and local courts in Santa Clara County, California have exclusive jurisdiction over all actions arising hereunder.
- c) Notices. Any notice permitted or required to be given to a Party under this Agreement shall be sent to the address for such Party specified in the Order Form, and such address may be changed by giving written notice to the other Party.
- d) Severability. If any part of this Agreement is held invalid or unenforceable, it will be revised as necessary to make it valid and enforceable, or, if not capable of being so revised, will be deemed severed from this Agreement, and the remainder of this Agreement will survive unaffected.
- e) Assignment. Customer shall not assign this Agreement or any of its rights or obligations under this Agreement without Exafunction's prior written consent, and any such attempted assignment will be void and of no effect. Exafunction may assign this Agreement and all of its rights and obligations hereunder without limitation.
- f) Construction. The captions and headings in this Agreement are intended only for convenience, and will in no event affect the interpretation of this Agreement in any way.

- g) 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.
- h) Authority. Each Party represents and warrants to the other Party that it has all requisite corporate power and authority to enter into and perform its obligations under this Agreement and that the individual executing this Agreement on behalf of such Party is authorized to do so.
- i) Entire Agreement; Amendment; Waiver. This Agreement constitutes the entire agreement of the Parties regarding the subject matter hereof, and supersedes any prior or contemporaneous agreements, whether oral or written, concerning the subject matter of this Agreement. No modification, amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties. No failure or delay by either Party in exercising any right, power, or remedy under this Agreement shall operate as a waiver of any such right, power or remedy.