

EXA CORPORATION CLOUD SERVICES LIMITED TERM LICENSE AGREEMENT

Important information, please read this first.

This Cloud Services Limited Term License Agreement (including Annex 1, the “Agreement”) is a legal agreement between the organizational entity which is entering into this Agreement (the “Licensee”) and Exa Corporation (“Exa”) that governs the use of the Exa cloud services (the “Services”). By executing this Agreement (including via electronic signature, clicking to accept, or execution of or proceeding to use under an Exa generated quote (“Quote”) or other transaction document accepted by Exa from Licensee under this Agreement that identifies, among others, the duration and scope of and fees payable for the License (a “Purchase Order”)) Licensee accepts to be bound by these terms.

TERMS AND CONDITIONS

1. **LICENSE.** Subject to the terms and conditions of this Agreement, Exa grants to Licensee a non-exclusive, non-transferable license (without the right to sublicense) (the “License”) to access and use the Services and software made available to Licensee hereunder (“Software”) in accordance with any related acceptable use policies, usage guidelines and other documentation (the “Documentation”) during the Term of this Agreement for Licensee’s internal business purposes. Exa and its licensors own all right, title and interest in the Services and Software Nothing in this Agreement shall be construed to grant Licensee any rights in the Services or Software beyond those expressly provided herein. Licensee must not (i) remove or obfuscate any notice of proprietary rights from the Services or Software, (ii) modify, decompile, disassemble, or reverse engineer the Services or Software, (iii) interfere with the operation of the Services or Software, or (iii) sell, rent, lease, sublicense, distribute, use or provide access to the Services or Software for the benefit of third parties and will use its best efforts and take all reasonable steps to prevent unauthorized use, copying or dissemination thereof. Licensee must use the Services or Software in full compliance with all applicable laws and regulations.

2. **LICENSEE DATA.**

(a) **Data.** Licensee owns all right, title and interest in all data transmitted or stored by Licensee through the Services or Software (“Licensee Data”). As between Exa and Licensee, Licensee is solely responsible for the contents of Licensee Data (the “Licensee Content”) and the use (other than by Exa as stated in this Section 2(a)) of the Licensee Data. Licensee will ensure that Licensee Data complies with applicable laws and regulations. Subject to the terms and conditions of this Agreement, Licensee grants to Exa a non-exclusive license to use, copy, store and transmit Licensee Data and Licensee Content and have Licensee Data and Licensee Content used, copied, stored and transmitted by Exa, its affiliates and subcontractors, to the extent reasonably necessary to provide, maintain and improve the Services or Software. Exa and its licensors may use anonymized statistical information derived from Licensee’s use of the Service or Software and aggregate it with statistical information from other Licensees (“Non-Identifiable Aggregated Data”) for their business purposes, including without limitation for analyzing Licensee needs and improving their services, and Exa and its licensors shall own all right, title and interest in any such Non-Identifiable Aggregated Data.

(b) **Privacy.** Licensee acknowledges and agrees that it is and shall at all times remain the sole data controller of the Individual Data and Licensee Data that will be processed as part of its access to and use of the Services and therefore, shall be responsible for complying with all Applicable Data Protection Legislation including, but not limited to, (i) transfer of Individual Data, (ii) information of data subjects and (iii) access, modification and deletion rights of data subjects. DS as the data processor will collect, store and process the Individual Data in accordance with the Agreement.

(i) “Applicable Data Protection Legislation” means any applicable data privacy law and all other regulations that may apply to the processing of Personal Data provided by Licensee.

(ii) “Individual Data” means any kind of information relating to an individual as defined by the Applicable Data Protection Legislation.

(c) **Security.** Exa will make commercially reasonable efforts to implement security processes for the Services consistent with industry standards for similar services.

(d) Third Party Content. Exa exercises no control over, and assumes no responsibility or liability for any Licensee Data or Licensee Content or third party content provided or published via the Services or Software.

3. UPDATES AND MAINTENANCE. Subject to the Licensee's timely payment of the subscription and usage fees for the Services, Exa will make available through the Services, from time to time, updates, enhancements and modifications which Exa incorporates into the release of the Services licensed by Licensee.

4. PAYMENT. Licensee agrees to pay the subscription and usage fees for the Services as invoiced by Exa pursuant to the relevant Quote or Purchase Order. The subscription and usage fees are exclusive of all sales, use, excise, VAT and other taxes and delivery charges.

5. TERM. This Agreement is effective as of the earlier of the date: (i) the Services subscription begins as detailed on the Quote or Purchase Order or (ii) upon the physical or digital acceptance of this Agreement and shall continue for the period of time set forth in the Quote or Purchase Order (the "Term"). Subject to Licensee's compliance with this Agreement, Exa will use commercially reasonable efforts to provide the appropriate access rights to the Licensee for the Term subject to any planned downtime and/or unavailability caused by circumstances beyond Exa's reasonable control. The Term will expire on the latest date of expiration or termination set forth in the relevant Quote or Purchase Order, unless sooner terminated in accordance with its terms. For clarity, the initial term and any renewal terms are referred to herein as the Term.

6. TERMINATION. Either party may terminate this Agreement upon written notice to the other party if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach. Upon the termination of this Agreement, (i) the License is revoked and Licensee has no further right to access or use the Services, Software or Documentation; (ii) all subscriptions hereunder shall terminate immediately; (iii) Exa will immediately cease accessing any Licensee Data; (iii) each party will use commercially reasonable efforts to return or destroy any Confidential Information of the other party within its possession; and (iv) in the event that Licensee terminates due to Exa's uncured material breach, Exa will refund any pre-paid fees for the period following termination. Licensee acknowledges that Licensee is responsible for exporting prior to termination any Licensee Data to which Licensee desires continued access after termination. The provisions of Sections 2, 4, 6, 7, 8(b), 8(c), 8(d), 9, 10 and 12 shall survive termination.

7. CONFIDENTIALITY. Each party may have access to information that is confidential to the other party ("Confidential Information"). For purposes of this Agreement, Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential and any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. Licensee Data is Confidential Information of Licensee. Each party shall maintain the confidentiality of the other party's Confidential Information using at least the same degree of care that such party employs to protect its own Confidential Information, and shall restrict disclosure of the other party's Confidential Information to its employees, consultants, agents and representatives who have a need to know such information and are bound by obligations of confidentiality and non-use no less strict than those set forth herein; provided, that a party may disclose the other party's Confidential Information if required by law and must give prompt notice of such requirement and disclosure to the other party to the extent allowed by law. A party's Confidential Information excludes information that (i) is or becomes part of the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and was not obtained by the other party directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (iv) is independently developed by the other party without use of or reference to the other party's Confidential Information. Notwithstanding anything to the contrary in this Section 7, Exa may share, disclose or transmit Licensee Data as reasonably necessary to provide to the Services or Software.

8. LIMITED WARRANTY; LIMITATION OF LIABILITY.

(a) Limited Warranty. Exa warrants that during the Term the Services will perform in accordance with the Documentation. Exa's sole responsibility, and Licensee's sole remedy, under this warranty will be to use reasonable commercial efforts to correct such nonperformance or, if such efforts fail, Licensee may terminate this Agreement and Exa shall refund the pre-paid fees paid by Licensee for the remainder of the then current Term.

(b) Disclaimer of Warranties. THE EXPRESS WARRANTY SET FORTH IN SECTION 8(a) IS THE ONLY WARRANTY GIVEN BY EXA WITH RESPECT TO THE SERVICES OR SOFTWARE FURNISHED HEREUNDER.

EXA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR ARISING BY CUSTOM OR TRADE USAGE, INCLUDING WITHOUT LIMITATION WARRANTIES OF TITLE OR THAT THE SERVICES OR SOFTWARE ARE MERCHANTABLE, FREE OF DEFECTS, NON-INFRINGEMENT, OR FIT FOR ANY PARTICULAR PURPOSE. Without limiting the foregoing disclaimers, Licensee's access to and use of the Services or Software is predicated on Licensee's effective use of Licensee's computer equipment, access to the Internet, and services provided by Licensee's cloud provider if applicable, and Licensee understands and agrees that Exa will not be responsible for the operation, failures, acts or omissions of any of the foregoing.

(c) **Limitation of Liability.** IN NO EVENT SHALL EXA BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, TORT OR CONSEQUENTIAL DAMAGES (INCLUDING ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF BUSINESS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES OR SOFTWARE FURNISHED HEREUNDER, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EXA ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR EXA'S PERFORMANCE OR ASSERTED FAILURE TO PERFORM HEREUNDER, IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE MONIES ACTUALLY RECEIVED BY EXA UNDER THIS AGREEMENT DURING THE TWELVE MONTH PERIOD PRIOR TO THE CLAIM OF LIABILITY BEING MADE FOR THE SOFTWARE AND SERVICES PROVIDED HEREUNDER TO WHICH SUCH LIABILITY RELATES. THE LIMITATIONS OF LIABILITY IN THIS PARAGRAPH SHALL NOT BE CONSTRUED TO LIMIT EXA'S OBLIGATIONS AS SET FORTH IN SECTION 9(a) HEREOF.

(d) **Acknowledgment.** LICENSEE ACKNOWLEDGES THAT EXA'S LICENSORS MAKE NO WARRANTIES OR REPRESENTATIONS TO LICENSEE AND SHALL HAVE NO LIABILITY TO LICENSEE FOR ANY DAMAGES ARISING IN CONNECTION WITH THEIR SOFTWARE OR SERVICES, WHETHER DIRECT, INDIRECT, CONSEQUENTIAL OR OTHERWISE. LICENSEE'S SOLE RECOURSE WITH RESPECT TO THE SERVICES OR SOFTWARE IS AN ACTION AGAINST EXA SUBJECT TO THE LIMITATIONS SET FORTH IN THIS AGREEMENT.

9. INDEMNIFICATION.

(a) **IP Indemnity.** Exa shall defend any third party claim, action or proceeding ("Claim") brought against Licensee on grounds that the Services, Documentation or Software infringes a third party's United States patent or copyright, and shall indemnify Licensee against all damages and costs finally awarded against Licensee by a court of competent jurisdiction in any such action or proceeding. If the Services or Software become, or in Exa's opinion are likely to become, the subject of a valid claim of infringement or the like under any patent, copyright or trade secret law, Exa shall have the right, at its option and expense, either to obtain for Licensee a license permitting the continued use of the Services or Software, to replace or modify the Services or Software so that they becomes non-infringing, or to terminate this Agreement and refund to Licensee any amounts prepaid for the post-termination period. This Section 9(a) sets forth Licensee's sole remedy and Exa's entire liability pertaining to the infringement or misappropriation of third party intellectual property rights.

(b) **Licensee Data and Use Indemnity.** Licensee shall defend Exa against all third party Claims arising from or relating to (i) Licensee's use of the Services or Software in violation of applicable laws or regulations, and/or (ii) any violation, infringement or misappropriation of the rights of a third party resulting from the Licensee Data or Licensee Content, and shall pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Exa by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Licensee arising out of such Claim, provided (i) Exa provides Licensee with prompt written notice of the Claim, and (ii) Exa gives Licensee sole control of the defense of the Claim and any related settlement discussions and provides reasonable cooperation in the defense and settlement of the Claim.

(c) **Conditions.** The indemnification obligations in this Section 9 are conditioned upon the indemnified party (i) promptly notifying the indemnifying party of the Claim; (ii) giving the indemnifying party full authority, information and assistance to defend such Claim; and (iii) giving the indemnifying party control of the defense and compromise or settlement thereof, provided that the indemnifying party must obtain the indemnified party's written consent, not to be unreasonably withheld, prior to entering into a settlement affecting the indemnified party's rights.

(d) **Exceptions.** Notwithstanding the above, Exa shall have no obligation to defend or indemnify Licensee against any Claim related to (i) any modification of the Services or Software by anybody other than Exa, (ii) the use of the Services or Software in combination with other hardware, data or programs not specified by Exa, or (iii) the use of corrective patches or releases other than the most recent one.

10. U.S. GOVERNMENT RESTRICTED RIGHTS; EXPORT RESTRICTIONS. If Licensee is an agency or contractor of the United States Government, Licensee acknowledges and agrees that (a) the Software and Services were developed entirely at private expense, (b) the Software and Services in all respects constitute proprietary data belonging solely to Exa, (c) the Software and Services are not in the public domain, and (d) the Software is “Commercial Computer Software” as defined in DFAR Section 252.227-7014 or FAR Part 12.212. The Services and Software are delivered as “Commercial Computer Software” as defined in DFARS 252.227-7014 or as a “Commercial Item” as defined in FAR 2.101(a) and, consistent with FAR 12.212 and DFARS 227.7202, as applicable, are licensed to Licensee only with those rights as are granted pursuant to this Agreement. Technical data is provided with limited rights only as provided in DFAR 252.227-7015 or FAR 52.227-14, whichever is applicable.

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11. PUBLICITY. With prior written permission, either party may use the other party’s name and/or logo (the “Marks”) on its website, Licensee or vendor list (as applicable) or other marketing materials to refer to the relationship between the parties pursuant to this Agreement. All such use shall be in accordance with the usage policies and guidelines of the party owning the Marks and provided in writing to the other party. If the owner of the Marks objects to any such use or wishes to revoke its permission to use its Marks hereunder, the other party shall cease any such use promptly after receiving notification. Neither party’s use of the other party’s Marks implies or confers any endorsement by either party.

12. GENERAL PROVISIONS. This Agreement, including all Quotes or Purchase Orders, quotes or other purchasing documents formed pursuant to this Agreement, represents the entire agreement between Licensee and Exa with respect to the subject matter hereof, and supersedes all prior proposals, representations and agreements, whether written or oral, with respect thereto; provided however, that Licensee’s purchasing terms and conditions shall not in any way supersede, supplement or otherwise modify the terms of this Agreement whether or not referenced in any Quote or Purchase Order, quote or other purchasing document. This Agreement may be amended or modified only by a written agreement executed by Licensee and Exa. This Agreement may not be assigned (change of control of Licensee constituting such assignment for purposes of the Agreement) without prior written consent of the non-assigning party, except that Exa may assign this Agreement to a successor in business (whether by merger, acquisition, sale of all or substantially all of its assets, change of control or similar transaction) without Licensee’s consent. The terms of this Agreement shall be construed in accordance with the substantive laws of Massachusetts without regard to its principles of conflict of law. Both parties consent to personal jurisdiction and venue in Suffolk or Middlesex County, Massachusetts.

ANNEX 1

Terms Applicable to European Union (EU), Iceland, Liechtenstein and Norway Residents.

(i) Definitions – Definitions for this section:

- “GDPR” means as, from 25 May 2018, the Regulation (EU) 2016/679 (General Data Protection Regulation) and any delegated and implementing acts adopted in accordance with the General Data Protection Regulation and the member state’s laws specifying the provisions of the General Data Protection Regulation applicable to the Processing implemented.
- “Controller”, “Data Subject”, “Personal Data”, “Process/Processing”, “Processor” and “Personal Data Breach” shall have the same meanings as in the GDPR.
- “Sub-Processor” means any Processor appointed by Exa or by any other Sub-Processor of Exa that receives, from Exa or from any other Sub-Processor of Exa, Personal Data for the sole and exclusive purpose of Processing activities to be carried out on Licensee’s behalf in accordance with the terms of this Agreement and the terms of a written subcontract if applicable.

(ii) Data Privacy. Licensee acknowledges and agrees that it is and shall at all times remain, the sole Data Controller of the Personal Data that will be Processed as part of its access to and use of one or more of the Services, and therefore, shall be responsible for complying with the GDPR, including but not limited to (i) transfer of Personal Data, (ii) information of Data Subjects, and (iii) access, modification, and deletion rights of Data Subjects. Exa, as the Data Processor, will collect, store and process the Personal Data in accordance with this Agreement.

(iii) Location of Data Processing. In order for Exa to provide services and support services, Licensee hereby appoints Exa as Processor and agrees that Personal Data provided by Licensee (“Licensee Personal Data”) may be transferred to and stored, accessed, and Processed in any country in which Exa or its affiliates or subcontractors are located. Exa will ensure that the same data protection obligations as set forth in this Agreement shall be imposed on the Sub-Processors by way of a contract and/or the standard contractual clauses from the European Commission in such a manner that the Processing will meet the requirements of the GDPR.

(iv) Exa Obligations. Exa, as a Processor, will:

- to the maximum extent permitted by applicable law or for the duration of licensed use of the Services, whichever is longer, Process Licensee Personal Data in accordance with this Agreement and Licensee’s written reasonable instructions, which shall in all circumstances be consistent with this Agreement;
- ensure that any and all persons who are authorized to Process Licensee Personal Data are bound by appropriate obligations of confidentiality;
- reasonably assist Licensee in ensuring compliance with its obligations as a Data Controller regarding sections 32 to 36 of the General Data Protection Regulation, taking into account the nature of Processing as described in this Agreement. If Exa has reason to believe that a Personal Data Breach affecting Licensee has occurred, Exa will (i) notify Licensee of the Personal Data Breach promptly after Exa becomes aware of such Personal Data Breach, and (ii) provide Licensee with all relevant and available information to allow Licensee to comply with its notification obligations with competent supervisory authority;
- reasonably assist Licensee to fulfill its obligations in response to requests from Data Subjects to exercise their rights under the GDPR in a manner consistent with the use of the Exa Services and Exa’s role as a Processor.
- make available to Licensee all information in Exa’s possession needed to demonstrate Licensee’s compliance with its obligations as required by the GDPR and reflected in this section and, in the event compliance with the GDRP cannot be evidenced through the appropriate documentation provided by Exa, allow for an audit. Licensee shall notify Exa in writing of any such audit at least thirty (30) days in advance by indicating the audit’s scope, which shall be limited to assessing Licensee’s compliance when the documentation provided by Exa does not demonstrate such compliance. Such audit shall be conducted by an independent auditor chosen by Licensee at its sole cost and shall be performed not more than once every twelve (12) months;
- keep a list of the Sub-Processors that will be involved in the Processing of Licensee Personal Data due to the Processing activities implemented on Licensee’s behalf and inform Licensee of any intended changes concerning the addition or replacement of other Sub-Processors, thereby giving Licensee the opportunity to object to such changes. Licensee will be notified at least fifteen (15) days in advance before authorizing any new Sub-Processor to Process Licensee Personal Data with a mechanism to obtain notice of that update, except in case of emergency. Licensee may reasonably object to Exa’s use of a new Sub-Processor if (i) such new

Sub-Processor Processes Licensee Personal Data, and (ii) Licensee demonstrates that it has a legitimate interest and notify Exa, in writing, within fifteen (15) days after Licensee's receipt of the notice, it being understood and accepted that, in the absence of an objection from Licensee, Licensee shall be deemed to have accepted the Sub-Processor. If Licensee notifies Exa of its objection related to the new Sub-Processor within the above timeframe, Licensee may terminate the Exa Services affected by this change of Sub-Processor within fifteen (15) days after Exa's receipt of such notice; and

- upon termination or expiration of this Agreement, delete or return all of Licensee Personal Data, at Licensee's option, and delete all existing copies, except where applicable law requires retention of Licensee Personal Data or where Licensee Personal Data is necessary for proof purposes during the applicable statute of limitation.