



## Exa Corporation CFD Simulation Services Statement of Work

This Statement of Work (“SOW”) is entered into as of [REDACTED], 2018, between [REDACTED] (“Customer”), a [REDACTED] Corporation with offices at [REDACTED], and Exa Corporation (“Exa”), a Delaware Corporation with offices at 55 Network Drive, Burlington, MA 01803. Unless specifically stated otherwise below, the Terms and Conditions set forth in Attachment A shall apply to this SOW. Further, unless specifically identified otherwise below, all Deliverables created by Exa pursuant to this SOW that involve the delivery by Customer of Customer data for the purpose of creating a test result generated by Exa’s [name of product], shall be Output Deliverables owned by Customer as defined in Attachment A.

Customer shall retain all intellectual property rights in Customer’s products or data made available to Exa by Customer in the course of performing the SOW. Except as otherwise expressly provided hereunder, Exa shall own and retain all intellectual property rights in Exa’s products and except as expressly granted hereunder, all right, title and interest to any products, reports, programs (source and object code), development tools (including SDKs), inventions, ideas, concepts, techniques, know-how, information, methodologies, technologies, techniques, works, and works of authorship owned by Exa prior to or outside of the work or services under this SOW. Exa shall retain all right, title and interest in any improvements, derivatives, modifications or enhancements made to such intellectual property rights, whether created while in performing this SOW.

### **Description of Output Deliverables:**

### **Responsibilities of Exa:**

### **Responsibilities of Customer:**

### **Term:**

### **Contract Sum:**

### **Payment Terms:**

### **Additional Terms:**



## Attachment A

### Exa Corporation General Terms and Conditions for Services

The agreement between EXA and Customer ("Agreement") is comprised of these General Terms and Conditions for Services ("T&Cs"), the quote ("Quote"), or a fully executed Statement of Work ("SOW") to which they are attached, as applicable. If there is an inconsistency between the T&Cs, the Quote and the SOW, the order of precedence shall be: these T&Cs, the Quote or the SOW, as applicable.

#### 1. Intellectual property

**1.1 Rights and Ownership.** In consideration of the payment of all fees mentioned in the Agreement, EXA grants Customer a worldwide, perpetual, non-exclusive and non-transferable right, to use any tangible materials provided by EXA to Customer ("Deliverables") and services solely for its internal business use. Services and Deliverables are collectively referred to as "EXA Services". Deliverables identified in the Quote or SOW as "Standard Deliverables" mean any Deliverables other than Special Deliverables or Output Deliverables, such as training manuals, self-study guides and documentation. Deliverables identified in the Quote or SOW as "Special Deliverables" mean any Deliverables prepared by EXA specifically for Customer and that may be used, reproduced and modified by Customer solely for its internal business use and for maintenance and upward compatibility with Customer's environment. Authorized users of the foregoing EXA Services are (a) Customer's employees, or (b) employees of Customer's consultant(s) or subcontractor(s) (i) who use the EXA Services solely for the exclusive internal needs of Customer and (ii) whose usual workplace is located within Customer's premises.

Customer shall own the Deliverables that are the result data derived from Customer's data as processed using any software product offered by EXA or any of its affiliates, except for any EXA methodologies contained in such Deliverables. Such methodologies shall be considered as Special Deliverables under this Agreement ("Output Deliverables").

Deliverables shall not include any software and related documentation owned or developed by or for EXA or any of its affiliates, and which are distributed directly and/or indirectly by EXA, any of its affiliates or its authorized distributors under a separate agreement.

**1.2 Scope.** Except as expressly provided above, Customer may not: (i) provide for general distribution of any Standard Deliverable or Special Deliverable by any means, and whether alone or bundled or delivered with any product, data, information, software, or other element; (ii) install and/or operate and/or give access to any Standard Deliverable or Special Deliverable on any hardware and/or software environment owned by or under control of any third party, unless otherwise expressly authorized in the SOW; (iii) represent or imply to any party that it is an authorized or certified provider of services for EXA; or (iv) provide a license or sublicense to any Standard Deliverable or Special Deliverable or derivative work to a third party.

Customer shall retain all intellectual property rights in Customer's products or data made available to EXA by Customer in the course of performing the EXA Services. Except as otherwise expressly provided hereunder, EXA shall own and retain all intellectual property rights in EXA's products, data and EXA Services and, except as expressly granted hereunder, all modifications, enhancements or other derivative works thereof.

Deliverables are licensed, not sold, except as otherwise expressly set forth herein. Customer shall preserve and reproduce all copyright, patent and trademark notices which appear in any EXA Services on all partial or integral copies thereof. Customer recognizes that (i) any developments of any software product or service provided by EXA or any of its affiliates, or any enhancements or source code modifications of any software product or service provided by EXA or any of its affiliates, including any related support services, are not covered by the Agreement, (ii) the inventions, discoveries, innovations, improvements, ideas, techniques or know-how conceived by EXA during the performance of EXA Services, and the methodologies and techniques contained in or expressed within the EXA Services, are proprietary information or trade secrets of EXA or its suppliers, whether or not marked as "confidential". Customer shall treat them as Confidential Information (as defined below) and not disclose them. This ownership includes the right to obtain and hold in its own name copyrights, registrations and similar protection, which may be available for such items.

Except as expressly provided herein, the Agreement does not grant or convey either directly, by implication or otherwise, any right or license to any intellectual property right of either party to the other party.

**1.3 Intellectual Property Indemnification.** EXA shall defend Customer against third party claims that a Deliverable infringes a third party copyright and shall pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Customer by a court of competent jurisdiction or agreed to in a written settlement agreement signed by EXA arising out of such claim, provided that Customer: (i) provides EXA with prompt written notice of the claim, (ii) gives EXA sole control of the defense of the claim and any related settlement discussions, and (iii) provides reasonable cooperation in the defense and settlement of the claim. If a claim is made or in EXA's reasonable opinion, is likely to be made, EXA may at EXA's expense, either secure the right for Customer to continue using the Deliverable, modify it so that it is not infringing, or replace it with another Deliverable which is functionally equivalent. If none of the foregoing options is available on terms which are reasonable in EXA's judgment, EXA may terminate the licenses to the Deliverable and refund Customer in an amount equal to the corresponding fees paid for such Deliverable licenses, depreciated on a straight-line over three (3) years upon return or destruction of all copies of the affected Deliverable as certified by an officer of Customer. EXA shall have no obligation to defend or indemnify Customer against any claim related to (i) any modification of the Deliverable other than by EXA, or (ii) use of one or more of the Deliverables in combination with other hardware, data or programs not specified by EXA in the Agreement, or (iii) Deliverables created or modified in accordance with Customer's specifications. This section states EXA's entire liability and Customer's exclusive remedy for any claim of infringement of intellectual property rights under the Agreement.

Customer shall defend EXA against third party claims that any data and/or materials made available to EXA by Customer in the course of performing the EXA Services infringes a third party copyright, 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 Customer arising out of such claim, provided that EXA: (i) provides Customer with prompt written notice of the claim, (ii) gives Customer sole control of the defense of the claim and any related settlement discussions, and (iii) provides reasonable cooperation in the defense and settlement of the claim.

## 2. Payment and Taxes

Unless otherwise expressly specified in the Quote or SOW, Customer shall pay all invoices by wire transfer within thirty (30) days from the date of invoice. In all cases, Customer shall pay interest for late payment at a rate of one and one-half percent (1.5%) (eighteen percent (18%) per annum) plus reasonable attorneys' fees and costs incurred in collecting unpaid amounts.

All prices are exclusive of taxes. Customer shall be responsible for payment of any and all taxes, including fees, duties, excises, import VAT, or similar charges of any nature whatsoever, now in force or enacted in the future, that are levied, assessed, charged, withheld or collected for or in connection with the EXA Services provided hereunder or otherwise arising in connection with the Agreement, but excluding domestic taxes based on EXA's net income. If Customer is required to withhold, deduct, or pay for any tax from the amount of fees to be paid under the Agreement, then Customer shall pay such additional amount to EXA as is necessary to ensure that EXA receives a sum equal to what would have been received had no such withholding, deduction or payment been required.

## 3. Warranties, Limitation of Liability

EXA warrants that all EXA Services will be performed in good and workmanlike manner and that each Deliverable will materially conform to its specifications as described in the Agreement. If the EXA Services do not conform as mentioned above, and Customer has so notified EXA within thirty (30) days from the delivery of the relevant EXA Services, EXA will attempt to make such EXA Services conform as warranted. If EXA has not corrected the non-conformity within ninety (90) days from the date of such notification, Customer may terminate the relevant EXA Services, including the right to use the non-conforming Deliverable within ninety (90) days and receive a full refund of all fees paid for the non-conforming EXA Services. This refund represents EXA's sole liability and Customer's sole remedy for breach of this warranty. **The foregoing warranties are (i) not applicable in case of any modification of the Deliverable other than by EXA, or use of the Deliverable in conditions not specified by EXA in the Agreement, and (ii) in lieu of and exclude all other warranties, representations or conditions for EXA Services, whether express or implied, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose, title or non-infringement.**

**EXA's maximum liability for damages shall not exceed the amount of fees actually paid by Customer hereunder for the EXA Services which caused the damages in the preceding twelve (12) month period prior to the occurrence of the cause of action giving rise to the claim. EXA shall have no liability for indirect, incidental, consequential or punitive damages, including without limitation, claims for lost profits, business interruption and loss of data, that in any way relate to the Agreement or any EXA**

## **Services, whether or not EXA has been advised of the possibility of such damages and notwithstanding the essential purpose of any remedy.**

The limitations stated in this section shall apply regardless of the form of action, whether the asserted liability or damages are based on contract (including without limitation, breach of warranty), tort (including without limitation, negligence), statute, or any other legal or equitable theory.

Nothing in the Agreement shall operate so as to exclude or limit the liability of either party to the other for death or personal injury or for any damage arising out of gross negligence or intentional misconduct, or in cases where liability cannot be excluded or limited by applicable law.

Customer waives any and all claims related to the Agreement or any EXA Services provided hereunder, for damages of any nature on any basis, against any EXA licensors or any EXA group company other than EXA.

Any legal action against EXA must be filed with the appropriate judicial jurisdiction within two (2) years after the applicable cause of action has arisen.

## 4. Confidentiality

"Confidential Information" means any information of a confidential nature that when disclosed: (a) in writing, is clearly marked with a restrictive legend, such as "confidential"; or (b) orally or visually, is identified as confidential at the time of disclosure. Confidential Information does not include ideas and concepts that may occur to individuals who have been exposed to Confidential Information.

For a period of five (5) years following disclosure of Confidential Information, the party receiving Confidential Information undertakes to protect the other party's Confidential Information by using the same degree of care that it uses with respect to its own confidential information of a similar nature to avoid disclosure, publication or dissemination of such Confidential Information. EXA is authorized to disclose Customer's Confidential Information to third parties who have entered into an appropriate confidential disclosure agreement with EXA to the extent necessary to provide the EXA Services.

The obligation of confidentiality shall not apply to any information that: (i) is already in the possession of the receiving party without any obligation of confidentiality at the time the information was received from the disclosing party; (ii) is independently developed by the receiving party without reference to the Confidential Information of the disclosing party; (iii) is or becomes publicly available without breach of the Agreement; (iv) is rightfully received by the receiving party from a third party without an obligation of confidentiality; (v) is released for disclosure by the disclosing party with its written consent; or (vi) is required to be disclosed in accordance with a judicial or administrative decision, provided that the receiving party provides prompt information to the disclosing party and reasonably cooperates with the disclosing party to limit the disclosure and use of the Confidential Information.

## 5. Term and Termination

The Agreement shall remain in full force and effect until the EXA Services are



completed or until terminated as provided hereunder, whichever occurs first. This Agreement and/or any EXA Services may be terminated by providing at least thirty (30) days prior written notice. If termination is for breach, the breaching party may cure the breach during the notice period, in which case termination will not occur. Customer shall pay EXA for all EXA Services performed until the date of termination, and for all costs incurred by EXA in connection with those EXA Services.

## 6. Export

Exchange of information under the Agreement is subject to all applicable export laws and regulations. Unless provided for in a separate agreement, the parties shall not disclose any information requiring an authorization to be exported unless the authorization is required solely for export to countries subject to trade sanctions.

## 7. Customer's responsibilities

In performing the EXA Services, EXA depends on Customer, at no charge to EXA, to: (i) fully cooperate in the performance of EXA Services, including performing any tasks and providing access (to Customer's premises and technical environment, whether on premise or remotely) as may be required, (ii) ensure it has appropriate rights to allow EXA to use any hardware or software element, or any data provided by Customer to EXA for the performance of EXA Services, (iii) allocate the appropriate resources and (iv) provide accurate and complete data to EXA. Customer is responsible for maintaining backups of its data and programs.

## 8. Non-solicitation

While the Agreement remains in effect and for six (6) months thereafter, Customer agrees to obtain EXA's prior written consent before taking any action to employ or retain any personnel of EXA who has performed EXA Services under the Agreement. This consent requirement will apply to any direct or indirect solicitation of, acceptance of solicitation from, employment, retention or other engagement of the services of any such personnel. This section does not apply to hiring in response to general advertisements unrelated to the Agreement.

## 9. Insurance

EXA Group maintains general liability insurance with one or more reputable insurance companies. EXA is covered by this insurance. EXA will give Customer, at its request, the corresponding certificates from the insurance companies concerned.

## 10. Miscellaneous

- a) Customer's purchasing or other terms and conditions shall not in any way supersede, supplement or otherwise modify the terms of the Agreement.
- b) Any notice shall be given in writing at the address set forth on the Quote or SOW by pre-paid first class mail, personal delivery, or overnight courier service.

c) Neither party hereto shall be liable for any default in the performance of its obligations under the Agreement resulting from (i) a case of force majeure as defined by the law governing the Agreement and the courts in such jurisdiction, or (ii) the following causes: strikes (whether previously announced or not), war (declared or not), riots, governmental action, acts of terrorism, acts of God (fire, flood, earthquake, etc.), or any electrical, utility or telecommunication outages.

d) The relationship between EXA and Customer is that of independent contractors. Nothing contained in the Agreement shall be construed to create a partnership, a corporation, a joint venture or agency relationship between the parties, and no employee of EXA shall be deemed to be an employee of Customer. EXA shall be responsible for its employees' supervision, daily direction and control, as well as for payment of salary and benefits, including without limitation applicable employment taxes. EXA shall be entitled to (i) determine the assignment of its employees for the EXA Services performance, and (ii) replace or reassign such employees.

e) If any provision of the Agreement is found by a court of competent jurisdiction or arbitrator to be illegal, void or unenforceable, the other provisions shall remain in full force and effect, and the affected provision will be modified so as to render it enforceable and effective to the maximum extent possible in order to effect the original intent of the parties.

f) Any subcontract, assignment, delegation, or other transfer (including without limitation, by way of merger, acquisition, divestiture, or change of control or contribution in kind) of the Agreement or any of Customer's rights, duties, benefits or obligations hereunder is subject to EXA's prior written approval. Any attempt to do so without such consent is void. EXA may assign, delegate, subcontract or otherwise transfer any of its rights or obligations hereunder, in whole or in part, without Customer's consent. The Agreement shall be binding upon, and inure to the benefit of EXA and its successors and assigns.

g) No waiver, alteration, modification, or cancellation of any of the provisions of the Agreement shall be binding unless made by written amendment signed by both parties. A party's failure at any time to require performance of any provision hereof shall in no manner affect its right at a later time to enforce that or any other provision.

h) The Agreement is provided in English and may be provided, for informational purposes only, in a language other than English. The English version shall be the only binding and enforceable version of the Agreement.

i) The following sections of this Agreement shall survive termination thereof: Sections 1.1 (except with respect to any Customer's right to EXA Services that is expired or terminated), 1.2, 1.3, 2, 3, 4, 5, 6, 8 and 10.

j) The Agreement shall be governed and construed in accordance with the laws of The Commonwealth of Massachusetts. The Massachusetts courts shall have exclusive jurisdiction to hear any dispute arising out of or in connection with the interpretation and/or performance of the Agreement. Customer acknowledges and agrees that the foregoing shall not prevent, restrict or otherwise limit in any manner, EXA's rights to seek equitable remedies, including injunctive relief before any competent court in any jurisdiction.



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55 NETWORK DRIVE, BURLINGTON, MA USA 01803 • 1.781.564.0200 • 1.781.564.0299 FAX