

Filing Fee: See Instructions

ID Number: 000016734



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Office of the Secretary of State
Division of Business Services
148 W. River Street
Providence, Rhode Island 02904-2615

RECEIVED
SECRETARY OF STATE
CORPORATIONS DIV
2018 DEC 20 PM 12:00

ARTICLES OF MERGER OR CONSOLIDATION INTO

Dassault Systemes Simulia Corp.

(Insert full name of surviving or new entity on this line.)

SECTION I: TO BE COMPLETED BY ALL MERGING OR CONSOLIDATING ENTITIES

Pursuant to the applicable provisions of the General Laws of Rhode Island, 1956, as amended, the undersigned entities submit the following Articles of ☒ Merger or ☐ Consolidation (check one box only) for the purpose of merging or consolidating them into one entity.

- a. The name and type (for example, business corporation, non-profit corporation, limited liability company, limited partnership, etc.) of each of the merging or consolidating entities and the state under which each is organized are:

Name of entity	Type of entity	State under which entity is organized
Exa Corporation	corporation	Delaware
Dassault Systemes Simulia Corp. 16734	corporation	Rhode Island

- b. The laws of the state under which each entity is organized permit such merger or consolidation.

- c. The full name of the surviving or new entity is Dassault Systemes Simulia Corp.

which is to be governed by the laws of the state of Rhode Island

- d. The attached Plan of Merger or Consolidation was duly authorized, approved, and executed by each entity in the manner prescribed by the laws of the state under which each entity is organized. (Attach Plan of Merger or Consolidation)

- e. If the surviving entity's name has been amended via the merger, please state the new name:

- f. If the surviving or new entity is to be governed by the laws of a state other than the State of Rhode Island, and such surviving or new entity is not qualified to conduct business in the state of Rhode Island, the entity agrees that it: (i) may be served with process in Rhode Island in any proceeding for the enforcement of any obligation of any domestic entity which is a party to the merger or consolidation; (ii) irrevocably appoints the Secretary of State as its agent to accept service of process in any action, suit, or proceeding; and (iii) the address to which a copy of such process of service shall be mailed to it by the Secretary of State is:

- g. These Articles of Merger or Consolidation shall be effective upon filing unless a specified date is provided which shall be no later than the 90th day after the date of this filing January 1, 2019 12:02 A.M. EST

SECTION II: TO BE COMPLETED ONLY IF ONE OR MORE OF THE MERGING OR CONSOLIDATING ENTITIES IS A BUSINESS CORPORATION PURSUANT TO TITLE 7, CHAPTER 1.2 OF THE RHODE ISLAND GENERAL LAWS, AS AMENDED.

- a. If the surviving or new entity is to be governed by the laws of a state other than the State of Rhode Island, such surviving or new entity hereby agrees that it will promptly pay to the dissenting shareholders of any domestic corporation the amount, if any, to which they shall be entitled under the provisions of Title 7, Chapter 1.2 of the General Laws of Rhode Island, 1956, as amended, with respect to dissenting shareholders.

12:00

FILED

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BY Op2 Z5QRN

b. Complete the following subparagraphs I and II only if the merging business corporation is a subsidiary corporation of the surviving corporation.

I) The name of the subsidiary corporation is Exa Corporation

II) A copy of the plan of merger was mailed to shareholders of the subsidiary corporation (such date shall not be less than 30 days from the date of filing) November 15, 2018

c. As required by Section 7-1.2-1003 of the General Laws, the corporation has paid all fees and franchise taxes.

.....
SECTION III: TO BE COMPLETED ONLY IF ONE OR MORE OF THE MERGING OR CONSOLIDATING ENTITIES IS A NON-PROFIT CORPORATION PURSUANT TO TITLE 7, CHAPTER 6 OF THE RHODE ISLAND GENERAL LAWS, AS AMENDED.

- a. If the members of any merging or consolidating non-profit corporation are entitled to vote thereon, attach a statement for each such non-profit corporation which sets forth the date of the meeting of members at which the Plan of Merger or Consolidation was adopted, that a quorum was present at the meeting, and that the plan received at least a majority of the votes which members present at the meeting or represented by proxy were entitled to cast; OR attach a statement for each such non-profit corporation which states that the plan was adopted by a consent in writing signed by all members entitled to vote with respect thereto.
- b. If any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each such non-profit corporation attach a statement which states the date of the meeting of the board of directors at which the plan was adopted, and a statement of the fact that the plan received the vote of a majority of the directors in office.

.....
SECTION IV: TO BE COMPLETED ONLY IF ONE OR MORE OF THE MERGING OR CONSOLIDATING ENTITIES IS A LIMITED PARTNERSHIP PURSUANT TO TITLE 7, CHAPTER 13 OF THE RHODE ISLAND GENERAL LAWS, AS AMENDED

- a. The agreement of merger or consolidation is on file at the place of business of the surviving or resulting domestic limited partnership or other business entity and the address thereof is:
- _____
- b. A copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic limited partnership or other business entity, on request and without cost, to any partner of any domestic limited partnership or any person holding an interest in any other business entity which is to merge or consolidate.

.....
SECTION V: TO BE COMPLETED BY ALL MERGING OR CONSOLIDATING ENTITIES

Under penalty of perjury, we declare and affirm that we have examined these Articles of Merger or Consolidation, including any accompanying attachments, and that all statements contained herein are true and correct.

Dassault Systemes Simulia Corp.

Print Entity Name

By: 

Susan E. Connole Gregoire, CFO & Treasurer

Name of person signing

Title of person signing

By: _____

Name of person signing

Title of person signing

Exa Corporation

Print Entity Name

By: 

Mark Neil, Secretary

Name of person signing

Title of person signing

By: _____

Name of person signing

Title of person signing

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (hereinafter called this "Agreement"), dated as of December 18, 2018, is entered into by and among the following parties (collectively, the "Constituent Companies"): **EXA CORPORATION**, a Delaware corporation, located at 55 Network Drive, Burlington, MA 01803 ("Exa"), and **DASSAULT SYSTEMES SIMULIA CORP.**, a Rhode Island corporation, located at 1301 Atwood Avenue, Suite 101, Johnston, RI 02919 ("DS Simulia").

RECITALS

WHEREAS, DS Simulia is the sole stockholder of Exa, owning all shares of capital stock thereof; and

WHEREAS, the Board of Directors of DS Simulia and Exa deem it advisable, upon the terms and subject to the conditions herein stated, that Exa be merged with and into DS Simulia, with DS Simulia to be the surviving entity (the "Merger");

NOW, THEREFORE, in consideration of the premises and of the agreements of the parties hereto contained herein, the parties hereto agree as follows:

ARTICLE I. THE MERGER; EFFECTIVE TIME

1.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time (as defined in Section 1.2), Exa shall be merged with and into DS Simulia, whereupon the separate existence of Exa shall cease. DS Simulia shall be the Surviving Company (sometimes hereinafter referred to as the "Surviving Company") in the Merger and shall continue to be governed by the laws of the State of Rhode Island. The Merger shall have the effects specified in the Rhode Island Business Corporation Law, as amended (the "Rhode Island Governance Statutes"), and the General Corporation Laws of the State of Delaware, as amended (the "Delaware Governance Statutes"), and the Surviving Company shall succeed, without further action by any party, to all property (whether real, personal or mixed), rights, powers, immunities, privileges, franchises, patents, trademarks, goodwill, licenses, agreements, registrations and other assets of every kind and description of Exa, and shall assume and be subject to all of the duties, liabilities, obligations and restrictions of every kind and description of Exa, including, without limitation, all outstanding leases, contracts and indebtedness of Exa. Without limiting the generality of the foregoing, at the Effective Time, the obligations of Exa under or with respect to every plan, trust, program or benefit then in effect or administered by Exa for the benefit of the directors, officers or employees of any of the Constituent Companies shall become the lawful obligations of the Surviving Company and shall be implemented and administered in the same manner and without interruption until the same are amended or otherwise lawfully altered or terminated.

1.2 Effective Time. Provided that the condition set forth in Section 5.1 has been fulfilled or waived in accordance with this Agreement and that this Agreement has not been terminated or abandoned pursuant to Section 6.1, on the date of the closing of the Merger, Exa and DS Simulia shall cause a Certificate of Merger to be executed and filed with the Secretary of State of Rhode Island and with the Delaware Secretary of State. The Merger shall become effective upon the later to occur of (i) that date and time when the both of the above filings shall have been made with the Rhode Island Secretary of State and the Delaware Secretary of State, or (ii) 12:02 a.m. Eastern Standard Time on January 1, 2019, but, for all accounting purposes, the effective date of the merger shall be treated as of the opening of business on January 1, 2019.

1.3 Additional Actions. If, at any time after the Effective Time, the Surviving Company shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable (i) to vest, perfect or confirm of record or otherwise in Surviving Company its right, title or interest in, to or under any of the rights, properties or assets of Exa acquired or to be acquired by Surviving Company as a result of, or in connection with, the Merger or (ii) to otherwise carry out any of the purposes or intent of this Agreement, Exa and its officers shall be deemed to have granted to the Surviving Company an irrevocable power of attorney to execute and deliver all such deeds, bills of sale, assignments and assurances and to take and do all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in Surviving Company and otherwise to carry out any of the purposes or intent of this Agreement; and the officers and directors of the Surviving Company are fully authorized in the name and on behalf of Exa or otherwise to take any and all such actions. Nothing in this Agreement is intended to alter the nature or effect of the Merger as provided in the Rhode Island Governance Statutes or the Delaware Governance Statutes, which Merger for all purposes shall be deemed automatically to vest (and not to constitute a transfer or assignment of) ownership of all property (whether real, personal or mixed), rights, powers, immunities, privileges, franchises, patents, trademarks, goodwill, licenses, agreements, registrations and other assets of every kind and description of Exa in and to the Surviving Company, as successor by merger.

ARTICLE II. ORGANIZATIONAL DOCUMENTS AND MANAGEMENT OF THE SURVIVING COMPANY

2.1 Certificate of Incorporation. The certificate of incorporation of DS Simulia, including without limitation the name of DS Simulia as set forth therein, in effect at the Effective Time shall be the certificate of incorporation of the Surviving Company, until amended in accordance with the provisions of applicable law.

2.2 By-Laws. The by-laws of DS Simulia in effect at the Effective Time shall be the by-laws of the Surviving Company, until amended in accordance with the provisions provided therein or applicable law.

2.3 Officers. The officers of DS Simulia at the Effective Time, from and after the Effective Time, shall be the officers of the Surviving Company, until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal.

2.4 Directors. The directors of DS Simulia at the Effective Time, from and after the Effective Time, shall be the directors of the Surviving Company, until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal.

ARTICLE III. REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS

3.1 Exa. Exa represents and warrants that it is a corporation validly existing under the laws of the State of Delaware; that DS Simulia owns 100% of the issued and outstanding shares of common stock of Exa, being the only class of equity of Exa that is authorized or issued; and that no party holds any option or other right to hold (other than the rights of DS Simulia as member, as set forth above) or to acquire any equity right or interest in or to Exa; and that Exa has full power and authority to enter into this Agreement and, subject to Article V hereof, to consummate the transactions contemplated hereby. Subject to Article V hereof, Exa has taken all action required by law and its certificate of formation and operating agreement or otherwise to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, and this Agreement is a valid and binding

obligation of Exa enforceable in accordance with its terms, except as limited by bankruptcy, insolvency and similar laws affecting the rights of creditors generally and by the availability of equitable remedies, and no other act or proceeding (other than as set forth in Article V) on the part of Exa is necessary to authorize this Agreement or the transactions contemplated hereby.

3.2 DS Simulia. DS Simulia represents and warrants that it is a corporation validly existing under the laws of the State of Rhode Island; and that DS Simulia has full power and authority to enter into this Agreement and, subject to Article V hereof, to consummate the transactions contemplated hereby. Subject to Article V hereof, DS Simulia has taken all action required by law and its charter and by-laws or otherwise to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, and this Agreement is a valid and binding obligation of DS Simulia enforceable in accordance with its terms, except as limited by bankruptcy, insolvency and similar laws affecting the rights of creditors generally and by the availability of equitable remedies, and no other act or proceeding (other than as set forth in Article V) on the part of DS Simulia is necessary to authorize this Agreement or the transactions contemplated hereby.

3.3 Additional Covenants. Until the Effective Time (or, in the absence of the Merger, until termination of this Agreement), neither Exa nor DS Simulia shall take any action inconsistent with its respective representations and warranties or the performance of its respective obligations hereunder.

ARTICLE IV. EFFECT OF MERGER ON CAPITAL STOCK

4.1 Effect of Merger on Capital Stock. At the Effective Time, as a result of the Merger and without any action on the part of DS Simulia, Exa or any of their respective shareholders or members, each share of capital stock of Exa immediately prior to the Merger forthwith shall cease to exist and shall be cancelled, and all classes of capital stock of DS Simulia, and the rights and interests of all holders of each class of capital stock of DS Simulia, shall remain and continue in full force and effect.

4.2 Minority Shareholders' Rights. As of the Effective Date of this Agreement, DS Simulia is the sole stockholder of Exa.

ARTICLE V. CONDITION

5.1 Condition to Each Party's Obligation to Effect the Merger. The respective obligations of each party hereto to effect the Merger is subject to receipt prior to the Effective Time of the requisite approval of this Agreement and the transactions contemplated hereby by the holders of common stock or membership units, as the case may be, pursuant to the laws of its state of incorporation or formation and its applicable charter documents.

ARTICLE VI. TERMINATION

6.1 Termination. This Agreement may be terminated, and the Merger may be abandoned, at any time prior to the Effective Time, whether before or after approval of this Agreement by the shareholder of DS Simulia or the member of Exa, if the board of directors of DS Simulia determines for any reason, in its sole judgment and discretion, that the consummation of the Merger would be inadvisable or not in the best interests of the DS Simulia, Exa or any of their respective members or shareholders. In the event of the termination and abandonment of this Agreement, this Agreement shall become null and void and have no effect, without any liability on the part of the DS Simulia or Exa, or any of their respective shareholders, directors or officers.

ARTICLE VII. MISCELLANEOUS AND GENERAL

7.1 Modification or Amendment. Subject to the provisions of applicable law, at any time prior to the Effective Time, the parties hereto may modify or amend this Agreement; provided, however, that an amendment made subsequent to the approval of this Agreement by the holder of common stock of DS Simulia and the common stock of Exa shall not, without the approval of such holders in accordance with applicable law (i) alter or change the amount or kind of shares and/or rights to be received in exchange for or on conversion of all or any of the shares or any class or series thereof of such business entity, (ii) alter or change any provision of the certificate of incorporation of the Surviving Company, or (iii) alter or change any of the terms or conditions of this Agreement, if, in any such case, such alteration or change would adversely affect the holders of any class or series of capital stock or membership interest of any of the parties hereto.

7.2 Copy of this Agreement Available for Inspection. A copy of this Agreement shall be filed and made available at the principal place of business of the Surviving Company, such copy to be furnished on request, without cost, to any shareholder or member of the Constituent Companies.

7.3 Counterparts. This Agreement may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement. This Agreement may be signed electronically and delivered by FAX, email or other electronic means.

7.4 Governing Law. This agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the law of the State of Rhode Island, without regard to the conflict of law principles thereof.

7.5 Entire Agreement. This Agreement constitutes the entire agreement and supersedes all other prior agreements, understandings, representations and warranties, both written and oral, among the parties, with respect to the subject matter hereof.

7.6 No Third Party Beneficiaries. This Agreement is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder.

7.7 Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any person or any circumstance, is determined by any court or other authority of competent jurisdiction to be invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

7.8 Headings. The headings therein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized representatives of the parties hereto, as of the date first written above.

DASSAULT SYSTEMES SIMULIA CORP.

DocuSigned by:
By: Susan Gregoire
7F0A08C353384F8
Name: Susan Gregoire
Title: CFO & Treasurer

EXA CORPORATION

DocuSigned by:
By: Bruno Latchague
63EDEF4412364AF
Name: Bruno Latchague
Title: President and CEO