

GITPOD STANDARD TERMS AND CONDITIONS FOR AWS MARKETPLACE

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2.4 Open Source Software. Subject to the requirements of Section 5.1, the Gitpod Services may contain or be provided with Open Source Software. If Licensee's use of the Gitpod Services subjects Licensee to the terms of any license governing the use of Open Source Software, then information identifying such Open Source Software and the applicable license shall be incorporated or referenced in the Order Form or Documentation. The terms of this

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2.5 **High-Risk Activities.** The Gitpod Services are not designed or developed for use in high- risk, hazardous environments requiring fail-safe performance, including without limitation in the operation of nuclear facilities, aircraft navigation or control systems, air traffic control, weapons systems, or any other application in which the failure of the Gitpod Services could lead to severe physical or environmental damages (“**High Risk Activities**”). Licensee will not use the Gitpod Services for any High Risk Activities.

3. **Services.**

3.1 **SaaS Service.** If Licensee is purchasing a SaaS Service Subscription, Gitpod will provide the Gitpod Services to Licensee as a SaaS Service in accordance with the Order Form promptly following purchase of the Subscription and continuing until termination of the Subscription. Gitpod will provide Licensee all license keys, access credentials, and passwords necessary for access and use of the Gitpod Services via the SaaS Service (“**Keys**”) as set forth in the Order Form.

3.2 **Support Services.** Gitpod will make available to Licensee Documentation concerning the use and operation of the Gitpod Services, and Gitpod will provide Support Services to Licensee as described, incorporated or referenced in the Order Form.

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5.2 Services. Gitpod represents and warrants that any Support Services will be performed in a professional manner with a level of care, skill, and diligence performed by experienced and knowledgeable professionals in the performance of similar services and in accordance with the Order Form and Documentation.

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5.5 Compliance with Laws. Each Party represents and warrants to the other Party that it will comply with all applicable international, national, state and local laws, ordinances, rules, regulations and orders, as amended from time to time ("**Laws**") applicable to such Party in its performance under this Agreement.

5.6 Power and Authority. Each Party represents and warrants to the other Party that: (a) it has full power and authority to enter in and perform this Agreement and that the execution and delivery of this Agreement has been duly authorized; and (b) this Agreement and such Party's performance hereunder will not breach any other agreement to which the Party is a party or is bound or violate any obligation owed by such Party to any third party.

5.7 Disclaimer. EXCEPT FOR THE WARRANTIES SPECIFIED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE LICENSED MATERIALS, SERVICES, BUYER MATERIALS AND BUYER DATA, AND EACH PARTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. GITPOD DOES NOT WARRANT: (A) THAT THE LICENSED MATERIALS WILL MEET BUYER'S REQUIREMENTS; OR (B) THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE.

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6.2 Obligations. The Parties will maintain as confidential and will avoid disclosure and unauthorized use of Confidential Information of the other Party using reasonable precautions. Each Party will protect such Confidential Information with the same degree of care that a prudent person would exercise to protect its own confidential information of a like nature, and to prevent the unauthorized, negligent, or inadvertent use, disclosure, or publication thereof or access thereto. Each Party will restrict Confidential Information to individuals who need to know such Confidential Information and who are bound to confidentiality obligations at least as protective as the restrictions described in this Section 6. Except as otherwise permitted under this Agreement, neither Party will use Confidential Information of the other Party for any purpose except in fulfilling its obligations or exercising its rights under this Agreement or as necessary for proper use of the Gitpod Services. Each Party will promptly notify the other Party if it becomes aware of any unauthorized use or disclosure of the other Party's Confidential Information, and reasonably cooperate with the other Party in attempts to limit disclosure.

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6.4 NDA. Licensee and Gitpod may agree to a separate nondisclosure agreement between Licensee and Gitpod (or the respective Affiliates of Licensee and Gitpod) ("NDA") that applies to disclosures occurring during the term of the Subscription, in which case the terms and conditions thereof are incorporated herein by reference and will apply instead of subsections 6.1 through 6.3 of this Section 6.

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any device (e.g. computer, mobile telephone, or browser) used to access or use the Gitpod Services as originating through Licensee or its Affiliates or interacting with Licensee or its Affiliates; or (b) either Party's use of any data, records, files, content, or other information related to any third party that is collected, received, stored, or maintained by a Party independently from this Agreement.

7.5 Security; Breach Notification. Gitpod will comply with the security practices (if any) incorporated or referenced in the Order Form and Documentation for the Gitpod Services, provided however that at all times Gitpod will, consistent with industry standard practices, implement and maintain physical, administrative, and technical safeguards and other security measures: (a) to maintain the security and confidentiality of Licensee Data; and (b) to maintain the availability and integrity of Licensee Data and to protect Licensee Data from known or reasonably anticipated threats or hazards to its security, including accidental loss, unauthorized use, access, alteration, or disclosure. Gitpod will inform Licensee promptly upon discovery of any material unauthorized access to, any unauthorized loss, use, or disclosure of any Licensee Data (a "**Security Incident**"), provided that such notification is not prohibited by Law. Gitpod will investigate the cause of the Security Incident and take reasonable steps to prevent further unauthorized access, loss, use, or disclosure of Licensee Data. At Licensee's request and cost, Gitpod will reasonably cooperate with Licensee in complying with its obligations under applicable law pertaining to responding to a Security Incident. Gitpod's obligation to report or respond to a Security Incident under this Section is not an acknowledgement by Gitpod of any fault or liability with respect to the Security Incident.

7.6 Data Protection Legislation.

7.6.1 Each Party will comply with all Data Protection Laws, and any implementations of such Laws, applicable to its performance under this Agreement. The Parties acknowledge and agree that they will consider in good faith implementing any codes of practice and best practice guidance issued by relevant authorities as they apply to applicable country specific Data Protection Laws or their implementations.

7.6.2 Without limiting the generality of the foregoing, if Gitpod is collecting or furnishing Personal Data to Licensee or if Gitpod is Processing Personal Data on behalf of Licensee, then Gitpod and Licensee and/or their Affiliate(s), as applicable, will agree to supplemental privacy and security terms consistent with applicable Data Protection Law. Unless Gitpod and Licensee expressly agree to be bound by other terms and conditions that reflect their respective legal obligations with respect to Personal Data, Gitpod and Licensee agree to the terms and conditions of the attached Data Processing Addendum. For the avoidance of doubt, no Personal Data should be processed or transferred under this Agreement without Privacy and Security Terms necessary for compliance with applicable Data Protection Law.

7.7 Remedies. Each Party agrees that in the event of a breach or threatened breach of this Section 7, the non-breaching Party will be entitled to injunctive relief against the breaching Party in addition to any other remedies to which the non-breaching Party may be entitled.

8. Limitations of Liability.

8.1 Disclaimer; General Cap. SUBJECT TO SECTIONS 8.2, 8.3, AND 8.4, IN NO EVENT WILL (a) EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY

INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH DAMAGES ARE BASED IN CONTRACT, TORT, OR OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (b) EITHER PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES FROM CLAIMS BASED IN CONTRACT, TORT, OR OTHER LEGAL THEORY, EXCEED THE FEES AND OTHER AMOUNTS PAID AND REQUIRED TO BE PAID UNDER THIS AGREEMENT IN THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

8.2 Exception for Gross Negligence, Willful Misconduct or Fraud. THE EXCLUSIONS OF AND LIMITATIONS ON LIABILITY SET FORTH IN SECTION 8.1(a) AND (b) WILL NOT APPLY TO A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD.

8.3 Exception for Certain Indemnification Obligations. THE EXCLUSIONS OF AND LIMITATIONS ON LIABILITY SET FORTH IN SECTIONS 8.1(a) AND (b) WILL NOT APPLY TO ANY COSTS OF DEFENSE AND ANY AMOUNTS AWARDED AGAINST THE INDEMNIFIED PARTY BY A COURT OF COMPETENT JURISDICTION OR AGREED UPON PURSUANT TO SETTLEMENT AGREEMENT THAT ARE SUBJECT TO SUCH PARTY'S INDEMNIFICATION AND DEFENSE OBLIGATIONS UNDER THIS AGREEMENT.

8.4 Special Cap for Security Breach.

8.4.1 FOR SAAS SERVICE SUBSCRIPTIONS, THE EXCLUSIONS OF AND LIMITATIONS ON LIABILITY SET FORTH IN SECTIONS 8.1(a) AND (b) WILL NOT APPLY TO, AND INSTEAD SECTION 8.4.2 WILL APPLY TO: (a) GOVERNMENT FINES AND PENALTIES INCURRED BY BUYER AND BUYER'S OUT-OF-POCKET, REASONABLE AND DOCUMENTED COSTS OF INVESTIGATION, NOTIFICATION, REMEDIATION AND MITIGATION SPECIFIED IN SECTION 9.5 RESULTING FROM ANY SECURITY INCIDENT RESULTING FROM BREACH OF GITPOD'S OBLIGATIONS UNDER THE PRIVACY AND SECURITY TERMS OR ANY VIOLATION BY GITPOD OF DATA PROTECTION LAWS, AND GITPOD'S OBLIGATIONS WITH RESPECT THERETO PURSUANT TO SECTION 9.5; AND (b) ANY LIABILITIES ARISING FROM CLAIMS BROUGHT BY THIRD PARTIES AGAINST BUYER ARISING FROM ANY SECURITY INCIDENT RESULTING FROM BREACH OF GITPOD'S OBLIGATIONS UNDER ANY PRIVACY AND SECURITY TERMS OR ANY VIOLATION BY GITPOD OF DATA PROTECTION LAWS, INCLUDING OUT-OF-POCKET COSTS OF DEFENSE AND ANY AMOUNTS AWARDED AGAINST BUYER BY A COURT OF COMPETENT JURISDICTION OR AGREED UPON PURSUANT TO A SETTLEMENT AGREEMENT.

8.4.2 FOR SAAS SERVICE SUBSCRIPTIONS, GITPOD'S AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR ANY SECURITY INCIDENT RESULTING FROM BREACH OF GITPOD'S OBLIGATIONS UNDER ANY PRIVACY AND SECURITY TERMS OR RESULTING FROM BREACH OF GITPOD'S OBLIGATIONS UNDER THE PRIVACY AND SECURITY TERMS OR ANY VIOLATION BY GITPOD OF DATA PROTECTION LAWS, INCLUDING GOVERNMENT FINES AND PENALTIES

INCURRED BY BUYER AND BUYER'S OUT-OF-POCKET, REASONABLE AND DOCUMENTED COSTS SET FORTH IN SECTION 9.5 AND GITPOD'S INDEMNIFICATION AND DEFENSE OBLIGATIONS PURSUANT TO SECTION 9.1(b) AND ITS OBLIGATIONS PURSUANT TO SECTION 9.5 AND GITPOD'S OBLIGATIONS WITH RESPECT THERETO PURSUANT TO SECTION 9.5, WHETHER SUCH DAMAGES ARE BASED IN CONTRACT, TORT OR OTHER LEGAL THEORY, WILL NOT EXCEED (IN LIEU OF AND NOT IN ADDITION TO THE AMOUNT SET FORTH IN SECTION 8.1) THREE TIMES THE FEES AND OTHER AMOUNTS PAID AND REQUIRED TO BE PAID UNDER THIS AGREEMENT IN THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE DAMAGES.

9. Indemnification.

9.1 Gitpod Indemnity. Gitpod will, at its expense, defend Licensee and its Affiliates and their respective officers, directors, employees, agents and representatives (collectively "**Licensee Indemnified Parties**") from and against any and all claims, actions, proceedings and suits brought by a third party (including government investigations), ("**Claims**") to the extent arising out of or alleging of any of the following: (a) infringement, misappropriation, or violation of any Proprietary Rights by the Licensed Materials or Licensee's use thereof as permitted under this Agreement; and (b) any unauthorized access, use, or disclosure of Licensee Data resulting from breach of Gitpod's obligations under the Privacy and Security Terms or any violation by Gitpod of Data Protection Laws. Gitpod will pay all costs, damages and amounts finally awarded by a court or agreed upon in settlement (as set forth in Section 9.3 below) and any government fines and penalties assessed against or incurred by Licensee in any such Claims.

9.2 Licensee Indemnity. Licensee will, at its expense, defend Gitpod and its Affiliates and their respective officers, directors, employees, agents and representatives (collectively "**Gitpod Indemnified Parties**") from and against any and all Claims to the extent arising out of or alleging of any of the following: (a) infringement, misappropriation, or violation of any Proprietary Rights by the Licensee Materials or Licensee Data or Gitpod's use thereof as permitted under this Agreement; and (b) any unauthorized or unlawful Processing of Licensee Data by Gitpod in the performance of its obligations as permitted under this Agreement resulting from any inaccuracy or breach of Licensee's representations, warranties, and/or obligations under Section 7.2.2. Licensee will pay all costs, damages and amounts finally awarded by a court or agreed upon in settlement (as set forth in Section 9.3 below) and any government fines and penalties assessed against or incurred by Gitpod in any such Claims. Notwithstanding any provisions herein to the contrary, if Licensee is a Government Entity, this Section 9.2 will not apply except as permitted by applicable Law.

9.3 Process. The party(ies) seeking indemnification pursuant to this Section 9 (each, an "**Indemnified Party**" and collectively, the "**Indemnified Parties**") will give the other Party (the "**Indemnifying Party**") prompt notice of each Claim for which it seeks indemnification, provided that failure or delay in providing such notice will not release the Indemnifying Party from any obligations hereunder except to the extent that the Indemnifying Party is prejudiced by such failure. The Indemnified Parties will give the Indemnifying Party their reasonable cooperation in the defense of each Claim for which indemnity is sought, at the Indemnifying Party's expense. The Indemnifying Party will keep the Indemnified Parties informed of the status of each Claim. An Indemnified Party may participate in the defense at its own expense. The Indemnifying Party will control the defense or settlement of the Claim, provided that the

Indemnifying Party, without the Indemnified Parties' prior written consent: (a) will not enter into any settlement that; (i) includes any admission of guilt or wrongdoing by any Indemnified Party; (ii) imposes any financial obligations on any Indemnified Party that Indemnified Party is not obligated to pay under this Section 9; (iii) imposes any non-monetary obligations on any Indemnified Party; and (iv) does not include a full and unconditional release of any Indemnified Parties; and (b) will not consent to the entry of judgment, except for a dismissal with prejudice of any Claim settled as described in (a). The Indemnifying Party will ensure that any settlement into which it enters for any Claim is made confidential, except where not permitted by applicable Law.

9.4 Infringement Remedy. In addition to Gitpod's obligations under Section 9.1, if the Gitpod Services or other Licensed Materials is held, or in Gitpod's opinion is likely to be held, to infringe, misappropriate or violate any Proprietary Rights, or, if based on any claimed infringement, misappropriation or violation of Proprietary Rights, an injunction is obtained, or in Gitpod's opinion an injunction is likely to be obtained, that would prohibit or interfere with Licensee's use of the Licensed Materials under this Agreement, then Gitpod will at its option and expense either: (a) procure for Licensee the right to continue using the affected Licensed Materials in accordance with the license granted under this Agreement; or (b) modify or replace the affected Licensed Materials so that the modified or replacement Licensed Materials are reasonably comparable in functionality, interoperability with other software and systems, and levels of security and performance and do not infringe, misappropriate or violate any third-party Proprietary Rights. If, in such circumstances, Gitpod cannot not successfully accomplish any of the foregoing actions on a commercially reasonable basis, Gitpod will notify Licensee and either Party may terminate the Subscription and this Agreement, in which case Gitpod will refund to Licensee any fees prepaid to Gitpod by Licensee prorated for the unused portion of the Subscription. For clarity, Gitpod's indemnification and defense obligations under this Section include infringement Claims based on use of the Licensed Materials by Licensee Indemnified Parties following an initial infringement Claim except that, if Gitpod responds to an infringement Claim by accomplishing the solution in (b), Gitpod will have no obligation to defend and indemnify Licensee for infringement Claims arising from Licensee's use after the accomplishment of (b) of the infringing Licensed Materials for which Gitpod provided modified or replacement Licensed Materials and a reasonable time to implement the modified or replacement Licensed Materials.

9.5 Security Breach Remedy. In the case of a SaaS Service Subscription, in addition to Gitpod's obligations under Section 9.1, in the event of any Security Incident resulting from breach of Gitpod's obligations under any Privacy and Security Terms or any violation by Gitpod of Data Protection Laws, Gitpod will pay the government fines and penalties and other out-of-pocket costs incurred by Licensee, to the extent reasonable and documented, for (a) investigating and responding to the Security Incident; (b) legal advice regarding the Security Incident; (c) providing notification to affected individuals, applicable government and relevant industry self-regulatory agencies and the media; (d) providing credit monitoring and/or identity theft services to affected individuals; (e) operating a call center to respond to questions from affected individuals; and (f) any other investigation, mitigation, remediation, or notification required by law or regulators to be undertaken by Licensee in response to such Security Incident.

9.6 Limitations.

9.6.1 Gitpod will have no liability or obligation under this Section 9 with respect to any infringement Claim to the extent attributable to any: (a) modifications to the Licensed Materials not provided by Gitpod or its Personnel; (b) use of the Gitpod Services in combination with third-party equipment or software not provided or made accessible by Gitpod or not specifically referenced for use with the Licensed Materials by the Order Form or Documentation; or (c) use of the Licensed Materials by Licensee in breach of this Agreement. Gitpod's liability under this Section 9 with respect to any infringement Claim that is attributable to use of the Gitpod Services in combination with third-party equipment or software provided or made accessible by Gitpod or specifically referenced by the Order Form or Documentation is limited to Gitpod's proportional share of defense costs and indemnity liability based on the lesser of: (i) the value of the contribution of the Licensed Materials to the total value of the actual or allegedly infringing combination; or (ii) the relative contribution of the Licensed Materials to the actual or allegedly infringed claims (e.g., the Licensed Materials are alleged to satisfy one limitation of a claim with four separate limitations and Gitpod would be responsible for a 25% share of the defense and indemnity obligations).

9.6.2 Licensee will have no liability or obligation under this Section 9 with respect to any infringement Claim to the extent attributable to any: (a) modifications to the Licensee Materials or Licensee Data not provided by Licensee or its Personnel; or (b) use of the Licensee Materials or Licensee Data by Gitpod in breach of this Agreement.

9.6.3 This Section 9 states the entire liability of Gitpod with respect to infringement, misappropriation or violation of Proprietary Rights of third parties by any Licensed Materials or any part thereof or by any use thereof by Licensee, and this Section 9 states the entire liability of Licensee with respect to infringement, misappropriation or violation of Proprietary Rights of third parties by any Licensee Materials, Licensee Data or any part thereof or by any Processing thereof by Gitpod.

9.7 **Not Limiting.** The foregoing indemnities will not be limited in any manner whatsoever by any required or other insurance coverage maintained by a Party.

10. Term and Termination.

10.1 **Term.** This Agreement will continue in full force and effect until conclusion of the Subscription, unless terminated earlier by either Party as provided by this Agreement.

10.2 **Termination.** Either Party may terminate the Subscription or this Agreement if the other Party materially breaches this Agreement and does not cure the breach within 30 days following its receipt of written notice of the breach from the non-breaching Party. In the case of a SaaS Service Subscription, termination by Gitpod pursuant to this Section does not prejudice Licensee's right, and Gitpod's obligation, to extract or assist with the retrieval or deletion of Licensee Data as set forth in Section 10.3.2 following such termination.

10.3 Effect of Termination.

10.3.1 Upon termination or expiration of the Subscription or this Agreement, Licensee's right to use the Gitpod Services licensed under such Subscription will terminate,

and Licensee's access to the Gitpod Services and Service provided under such Subscription may be disabled and discontinued. Termination or expiration of any Subscription purchased by Licensee from Gitpod will not terminate or modify any other Subscription purchased by Licensee from Gitpod.

10.3.2 Within 45 days (or such other period as may be agreed upon by the Parties) following termination or expiration of any SaaS Service Subscription for any reason and on Licensee's written request at any time before termination or expiration, Gitpod will extract from the Gitpod Services and/or Gitpod's Computing Environment (as applicable) and return to Licensee all Licensee Data, or if Licensee is able directly to retrieve or delete Licensee Data using the SaaS Service, then for a period of 45 days (or such other period as may be mutually agreed upon by the Parties in writing) following termination or expiration of this Agreement for any reason, Licensee may retrieve or delete Licensee Data itself with support from Gitpod as reasonably requested by Licensee. If Licensee retrieves or deletes Licensee Data itself, Gitpod will assist Licensee, as reasonably requested by Licensee, in validating whether the retrieval or deletion was successful. Licensee Data must be provided or extractable in a then-current, standard nonproprietary format. Notwithstanding anything herein to the contrary, Gitpod's duty to return or enable Licensee's retrieval or deletion of the Licensee Data pursuant to this Section 10.3.2 may be delayed but will not be discharged due to the occurrence of any Force Majeure Event (defined below). Following delivery to Licensee of the Licensee Data and Licensee's confirmation thereof, or Licensee's retrieval or deletion of Licensee Data and Gitpod's validation thereof or expiration of the applicable period, whichever is soonest, Gitpod may, and within a reasonable time thereafter will, permanently delete and remove Licensee Data (if any) from its electronic and hard copy records and will, upon Licensee's request, certify to such deletion and removal to Licensee in writing. If Gitpod is not able to delete any portion of the Licensee Data or Licensee Confidential Information, it will remain subject to the confidentiality, privacy and data security terms of this Agreement.

10.3.3 Sections 4 (Proprietary Rights), 6 (Confidentiality), 7.2.1 (Licensee Data and Licensee Materials), 8 (Limitations of Liability), 9 (Indemnification), 10.3 (Effect of Termination), 11 (Insurance), 12 (General), and 13 (Definitions) and any perpetual license granted under this Agreement, together with all other provisions of this Agreement that may reasonably be interpreted or construed as surviving expiration or termination, will survive the expiration or termination of this Agreement for any reason; but the nonuse and nondisclosure obligations of Section 6 will expire five years following the expiration or termination of this Agreement, except with respect to, and for as long as, any Confidential Information constitutes a trade secret.

11. Insurance.

11.1 **Coverages.** Each Party will obtain and maintain appropriate insurance necessary for implementing and performing under this Agreement in accordance with applicable Law and in accordance with the requirements of this Section 11. Subject to Gitpod's right to self-insure as described below, Gitpod will at its own cost and expense, acquire and continuously maintain the following insurance coverage during the term of this Agreement and for one year after:

11.1.1 Commercial General Liability insurance, including all major coverage categories, including premises-operations, property damage, products/completed operations,

contractual liability, personal and advertising injury with limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate;

11.1.2 Professional Liability insurance, covering liabilities for financial loss resulting or arising from acts, errors or omissions in rendering Services in connection with this Agreement including acts, errors or omissions in rendering computer or information technology services, proprietary rights infringement, data damage/destruction/corruption, failure to protect privacy, unauthorized access, unauthorized use, virus transmission and denial of service from network security failures with a minimum limit of \$2,000,000 each claim and annual aggregate;

11.1.3 If a SaaS Service Subscription, Cyber Liability or Technology Errors and Omissions, with limits of \$2,000,000 each claim and annual aggregate, providing for protection against liability for: (a) system attacks; (b) denial or loss of service attacks; (c) spread of malicious software code; (d) unauthorized access and use of computer systems; (e) liability arising from loss or disclosure of personal or corporate confidential data; (f) cyber extortion; (g) breach response and management coverage; (h) business interruption; and (i) invasion of privacy; and

11.1.4 If a SaaS Service Subscription, Computer Crime Insurance with limits of \$1,000,000 and Employee Theft/Licensee Insurance Coverage with limits of \$500,000.

11.2 Umbrella Insurance; Self-Insurance. The limits of insurance may be satisfied by any combination of primary and umbrella/excess insurance. In addition, either Party may satisfy its insurance obligations specified in this Agreement through a self-insured retention program. Upon request by Licensee, Gitpod will provide evidence of Gitpod's self-insurance program in a formal declaration (on Gitpod's letterhead, if available) that declares Gitpod is self-insured for the type and amount of coverage as described in Section 11.1. Gitpod's declaration may be in the form of a corporate resolution or a certified statement from a corporate officer or an authorized principal of Gitpod. The declaration also must identify which required coverages are self-insured and which are commercially insured.

11.3 Certificates and Other Requirements. Prior to execution of this Agreement and annually thereafter during the term, Licensee may request that Gitpod furnish to Licensee a certificate of insurance evidencing the coverages set forth above. Gitpod's Commercial General Liability and any umbrella insurance relied upon to meet the obligations in this Section will be primary and non-contributory coverage and the policies will not contain any intra-insured exclusions as between insured persons or organizations. Gitpod's Commercial General Liability policy will provide a waiver of subrogation in favor of Licensee and its Affiliates. The stipulated limits of coverage above will not be construed as a limitation of any potential liability to Licensee, and failure to request evidence of this insurance will not be construed as a waiver of Gitpod's obligation to provide the insurance coverage specified.

12. General.

12.1 Applicable Law. This Agreement will be governed and interpreted under the laws of the State of New York, excluding the principles of conflict of laws thereof and of any other jurisdiction. The Parties agree that any legal action or proceeding relating to this Agreement will be instituted solely in the state and federal courts located in New York City, New York. Each Party irrevocably submits to the jurisdiction of such courts, and each Party waives any objection

that it may have to the laying of the venue of any such action or proceeding in the manner provided in this Section. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

12.2 Assignment. Neither Party may assign or transfer this Agreement or any rights or delegate any duties herein without the prior written consent of the other Party, which will not be reasonably withheld, delayed or conditioned. Notwithstanding the foregoing, and without gaining the other Party's written consent, Gitpod may assign this Agreement, in its entirety, and delegate its obligations to its Affiliates or to any entity acquiring all or substantially all of its assets, whether by sale of assets, sale of stock, merger or otherwise and Licensee may assign this Agreement, in its entirety, to any Affiliates or entity acquiring all or substantially all of its assets related to Licensee's account or the Licensee's entire business, whether by sale of assets, sale of stock, merger or otherwise. Any attempted assignment, transfer or delegation in contravention of this Section will be null and void. This Agreement will inure to the benefit of the Parties hereto and their permitted successors and assigns.

12.3 Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, and there are no other representations, understandings or agreements between the Parties relating to the subject matter hereof. This Agreement is solely between Licensee and Gitpod. Neither Amazon Web Services, Inc. nor any of its Affiliates are a party to this Agreement and none of them will have any liability or obligations hereunder. The terms and conditions of this Agreement will not be changed, amended, modified, or waived unless such change, amendment, modification, or waiver is in writing and signed by authorized representatives of the Parties. **NEITHER PARTY WILL BE BOUND BY, AND EACH SPECIFICALLY OBJECTS TO, ANY PROVISION THAT IS DIFFERENT FROM OR IN ADDITION TO THIS AGREEMENT (WHETHER PROFFERED ORALLY OR IN ANY QUOTATION, PURCHASE ORDER, INVOICE, SHIPPING DOCUMENT, ONLINE TERMS AND CONDITIONS, ACCEPTANCE, CONFIRMATION, CORRESPONDENCE, OR OTHERWISE), UNLESS SUCH PROVISION IS SPECIFICALLY AGREED TO IN A WRITING SIGNED BY BOTH PARTIES.**

12.4 Export Laws. Each Party will comply with all applicable customs and export control laws and regulations of the United States and/or such other country, in the case of Licensee, where Licensee or its Users use the Gitpod Services or other Services, and in the case of Gitpod, where Gitpod provides the Gitpod Services or other Services. Each Party certifies that (i) it and its Personnel are not on any of the relevant U.S. Government Lists of prohibited persons, including but not limited to the Treasury Department's List of Specially Designated Nationals and the Commerce Department's list of Denied Persons and (ii) neither it nor its Personnel are the subject or target of any sanctions program, including but not limited to the sanctions programs of the U.S., the European Union, and UN Security Council. Neither Party will export, re-export, ship, or otherwise transfer the Licensed Materials, Services, or Licensee Data to any country subject to an embargo or other sanction by the United States or other applicable jurisdiction.

12.5 Force Majeure. Neither Party will be liable hereunder for any failure or delay in the performance of its obligations in whole or in part, on account of riots, fire, flood, earthquake, explosion, epidemics, war, strike or labor disputes (not involving the Party claiming force majeure), embargo, civil or military authority, act of God, governmental action or other causes beyond its reasonable control and without the fault or negligence of such Party or its Personnel

and such failure or delay could not have been prevented or circumvented by the non-performing Party through the use of alternate sourcing, workaround plans or other reasonable precautions (a “**Force Majeure Event**”). If a Force Majeure Event continues for more than 14 days for any Subscription with Entitlement Pricing, Licensee may cancel the unperformed portion of the Subscription and receive a pro rata refund of any fees prepaid by Licensee to Gitpod for such unperformed portion.

12.6 Government Rights. As defined in FARS §2.101, the Gitpod Services and Documentation are “commercial items” and according to DFARS §252.227 and 7014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation”. Consistent with FARS §12.212 and DFARS §227.7202, any use, modification, reproduction, release, performance, display or disclosure of such commercial software or commercial software documentation by the U.S. government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

12.7 Headings. The headings throughout this Agreement are for reference purposes only, and the words contained therein will in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

12.8 No Third-Party Beneficiaries. Except as specified in Section 9 with respect to Licensee Indemnified Parties and Gitpod Indemnified Parties, nothing express or implied in this Agreement is intended to confer, nor will anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

12.9 Notices. To be effective, notice under this Agreement must be given in writing. Each Party consents to receiving electronic communications and notifications from the other Party in connection with this Agreement. Each Party agrees that it may receive notices from the other Party regarding this Agreement: (a) by email to the email address designated by such Party as a notice address for the Terms; (b) by personal delivery; (c) by registered or certified mail, return receipt requested; or (d) by nationally recognized courier service. Notice will be deemed given upon written verification of receipt.

12.10 Nonwaiver. Any failure or delay by either Party to exercise or partially exercise any right, power or privilege under this Agreement will not be deemed a waiver of any such right, power or privilege under this Agreement. No waiver by either Party of a breach of any term, provision or condition of this Agreement by the other Party will constitute a waiver of any succeeding breach of the same or any other provision hereof. No such waiver will be valid unless executed in writing by the Party making the waiver.

12.11 Publicity. Neither Party will issue any publicity materials or press releases that refer to the other Party or its Affiliates, or use any trade name, trademark, service mark, or logo of the other Party or its Affiliates in any advertising, promotions, or otherwise, without the other Party’s prior written consent.

12.12 Relationship of Parties. The relationship of the Parties will be that of independent contractors, and nothing contained in this Agreement will create or imply an agency relationship between Licensee and Gitpod, nor will this Agreement be deemed to constitute a joint venture or

partnership or the relationship of employer and employee between Licensee and Gitpod. Each Party assumes sole and full responsibility for its acts and the acts of its Personnel. Neither Party will have the authority to make commitments or enter into contracts on behalf of, bind, or otherwise oblige the other Party.

12.13 **Severability.** If any term or condition of this Agreement is to any extent held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby, and each term and condition will be valid and enforceable to the fullest extent permitted by law.

12.14 **Subcontracting.** Gitpod may use Subcontractors in its performance under this Agreement, provided that: (a) Gitpod remains responsible for all its duties and obligations hereunder and the use of any Subcontractor will not relieve or reduce any liability of Gitpod or cause any loss of warranty under this Agreement; and (b) Gitpod agrees to be directly liable for any act or omission by such Subcontractor to the same degree as if the act or omission were performed by Gitpod such that a breach by a Subcontractor of the provisions of this Agreement will be deemed to be a breach by Gitpod. The performance of any act or omission under this Agreement by a Subcontractor for, by or through Gitpod will be deemed the act or omission of Gitpod. Upon request, Gitpod will identify to Licensee any Subcontractors performing under this Agreement, including any that have access to Licensee Data, and such other information reasonably requested by Licensee about such subcontracting.

13. Definitions.

13.1 “**Affiliate**” means, with respect to a Party, any entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with such Party.

13.2 “**AWS Marketplace**” means the marketplace operated by Amazon Web Services, Inc., which is currently located at <https://aws.amazon.com/marketplace/>, as it may be updated or relocated from time to time.

13.3 “**Contractor**” means any third party contractor of Licensee or other third party performing services for Licensee, including outsourcing suppliers.

13.4 “**Data Protection Law(s)**” means all data protection and privacy laws and regulations, now in effect or hereinafter enacted, in any jurisdiction of the world, and applicable to the Processing of Personal Data under the Agreement, including Regulation 2016/679 (General Data Protection Regulation) (“**GDPR**”), and Cal. Civ. Code 1798.100 et seq. (California Consumer Privacy Act) (“**CCPA**”).

13.5 “**Documentation**” means the user guides, manuals, instructions, specifications, notes, documentation, printed updates, “read-me” files, release notes, and other materials related to the Gitpod Services (including all information included or incorporated by reference in the applicable Order Form), its use, operation, or maintenance, together with all enhancements, modifications, derivative works, and amendments to those documents, that Gitpod publishes or provides under this Agreement.

13.6 “**Entitlement Pricing**” means any Subscription pricing model where

Licensee purchases a quantity of usage upfront, including prepaid and installment payment pricing models.

13.7 “**Gitpod’s Computing Environment**” means the computing infrastructure and systems used by Gitpod to provide the Gitpod Services via SaaS Service.

13.8 “**Gitpod Services**” means the computer software and any associated data, content and/or services identified in the applicable Order Form that Gitpod provides or is obligated to provide as part of a Subscription, including any patches, bug fixes, corrections, remediation of security vulnerabilities, updates, upgrades, modifications, enhancements, derivative works, new releases, and new versions of the foregoing that Gitpod provides, or is obligated to provide, as part of the Subscription.

13.9 “**Governmental Entity**” means the government of any nation or any political subdivision thereof, whether at the national, state, territorial, provincial, municipal, or any other level, including any agency, authority, regulatory body, court, central bank, or other governmental entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of government (including any supra-national bodies such as the European Union or the European Central Bank).

13.10 “**International Data Transfer Mechanism**” means the special protections that some jurisdictions require two or more parties that transfer information across international borders to adopt to make the transfer lawful, e.g., Standard Contractual Clauses, Binding Corporate Rules, or statutory obligations that require the parties to adopt certain technical, organizational, or contractual measures. “**Transfer**,” in the context of an International Data Transfer Mechanism, means to disclose or move Personal Data from a storage location in one jurisdiction to another, or to permit a party in one jurisdiction to access Personal Data that the other party stores in another jurisdiction that requires an International Data Transfer Mechanism.

13.11 “**Licensed Materials**” means the Gitpod Services, Documentation, and any other items, materials, or deliverables that Gitpod provides, or is obligated to provide, as part of a Subscription.

13.12 “**Licensee Data**” means all data, Personal Data, records, files, information, or content, including text, sound, video, images, and software, that is (a) input or uploaded by Licensee or its Users to or collected, received, transmitted, processed, or stored by Licensee or its Users using the Gitpod Services or SaaS Service in connection with this Agreement, or (b) derived from (a). Licensee Data is Confidential Information of Licensee.

13.13 “**Licensee Materials**” means any property, items, or materials, including Licensee Data, furnished by Licensee to Gitpod for Gitpod’s use in the performance of its obligations under this Agreement.

13.14 “**Licensee’s Computing Environment**” means the Licensee computing environment in which Gitpod authorizes use of the Subscription.

13.15 “**Open Source Software**” means software distributed under a licensing or distribution model that is publicly available and makes the source code to such software

available to licensees for use, modification and redistribution.

13.16 “**Order Form**” means the description of Gitpod Services and other product information listed on the AWS Marketplace and offered by Gitpod or its authorized reseller, including Support Services and Gitpod’s policies and procedures incorporated or referenced in the product information. The Order Form may also describe, incorporate or reference Gitpod’s security practices or disclosures concerning Open Source Software.

13.17 “**Personal Data**” means information the Licensee Data that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a natural person. “Personal Data” includes equivalent terms in other Data Protection Law, such as the CCPA-defined term “Personal Information,” as context requires, to the extent such information forms part of the Licensee Data.

13.18 “**Personnel**” means a Party or its Affiliate’s directors, officers, employees, non-employee workers, agents, auditors, consultants, contractors, subcontractors, and any other person performing services on behalf of such Party (but excludes the other Party and any of the foregoing of the other Party).

13.19 “**Privacy and Security Terms**” means Section 7.5, the attached Data Protection Addendum (if applicable), and any other terms and conditions regarding the privacy and security of data agreed upon by the parties that are a part of this Agreement, whether in an addendum or amendment to these Terms.

13.20 “**Process**” or “**Processing**” means any operation or set of operations that are performed on Personal Data, whether or not by automated means, including, but not limited to, accessing, collecting, recording, organizing, structuring, using, storing, transferring, retaining, disclosing, selling, sharing, deleting, and destroying Personal Data.

13.21 “**Proprietary Rights**” means all intellectual property and proprietary rights throughout the world, whether now known or hereinafter discovered or invented, including, without limitation, all: (a) patents and patent applications; (b) copyrights and mask work rights; (c) trade secrets; (d) trademarks; (e) rights in data and databases; and (f) analogous rights throughout the world.

13.22 “**SaaS Service**” means access and use of the Gitpod Services, or a component of the Gitpod Services, as deployed and hosted by Gitpod in the Gitpod’s Computing Environment, and any software and other technology provided or made accessible by Gitpod in connection therewith (and not as a separate product or service) that Licensee is required or has the option to use in order to access and use the Gitpod Services.

13.23 “**Services**” means all services and tasks that Gitpod provides or is obligated to provide under this Agreement, including without limitation Gitpod Services and Support Services.

13.24 “**Subcontractor**” means any third party subcontractor or other third party to whom Gitpod delegates any of its duties and obligations under this Agreement.

13.25 “**Subscription**” means the Gitpod Services subscription for a specific use capacity purchased by Licensee and fulfilled by Gitpod for the licensing and provision of Gitpod Services, whether deployed in Licensee’s Computing Environment and/or provided as a SaaS Service through Gitpod’s Computing Environment.

13.26 “**Support Services**” means the support and maintenance services for the Gitpod Services that Gitpod provides, or is obligated to provide, as described in the Order Form.

13.27 “**System Data**” means data and data elements (other than Licensee Data) collected by the Gitpod Services, SaaS Service, or Gitpod’s Computer Environment regarding configuration, environment, usage, performance, vulnerabilities, and security of the Gitpod Services or SaaS Service that may be used to generate logs, statistics and reports regarding performance, availability, integrity, and security of the Gitpod Services or SaaS Service.

13.28 “**User**” means Licensee, its Affiliates and any person or software program or computer systems authorized by Licensee or any of its Affiliates to access and use the Gitpod Services as permitted under this Agreement, including Contractors of Licensee or its Affiliates.

DATA PROCESSING ADDENDUM

This Data Processing Addendum (this “**Addendum**”) is part of the Gitpod Standard Terms and Conditions for AWS Marketplace (the “**Terms**”) between Gitpod (who is the Processor) and Licensee (who is the Controller) and governs Gitpod’s Processing of Personal Data in its capacity as a Processor in connection with Gitpod’s provision of the Services it provides pursuant to the Terms. This Addendum shall only apply if Gitpod and Licensee have not entered into a separate data processing agreement or similar contractual arrangement with respect to the Processing of Personal Data. All capitalized terms used but not defined in this Addendum have the meanings given to them in the Terms.

Processing of Personal Data

I. DEFINITIONS

1. “**Controller**” means the entity that determines the purposes and means of the Processing of Personal Data. “Controller” includes equivalent terms in other Data Protection Law, such as the CCPA-defined term “Business” or “Third Party,” as context requires.
2. “**Personal Data Breach**” means a confirmed Security Incident, such as a breach of security of the Services that caused an accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data, or an event that qualifies as a reportable data breach under applicable Data Protection Law.
3. “**Processor**” means an entity that processes personal data on behalf of another entity. “Processor” includes equivalent terms in other Data Protection Law, such as the CCPA-defined term “Service Provider,” as context requires.
4. “**Sensitive Personal Data**” means the following types and categories of Personal Data, as defined under applicable Data Protection Law, such as: (a) data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership; (b) genetic data; (c) biometric data; (d) data concerning health, including protected health information governed by the Health Insurance Portability and Accountability Act; (e) data concerning a natural person’s sex life or sexual orientation; (f) government identification numbers (e.g., SSNs, driver’s license); (g) payment card information; (h) nonpublic personal information governed by the Gramm-Leach-Bliley Act; (i) an unencrypted identifier in combination with a password or other access code that would permit access to a data subject’s account; and (j) precise geolocation. “Sensitive Personal Data” includes equivalent terms in other Data Protection Law, such as “special categories or personal data” or “sensitive personal information,” as context requires.

II. INTERNATIONAL DATA TRANSFERS

1. **International Data Transfer.** Before Licensee transfers Personal Data to Gitpod, or permits Gitpod to access Personal Data located in a jurisdiction that requires an International Data Transfer Mechanism, Licensee will notify Gitpod of the relevant requirement and the parties will work together in good faith to fulfill the requirements of that International Data Transfer Mechanism. The parties will institute and comply with any International Data Transfer

Mechanism that may be required by applicable Data Protection Law.

III. DATA PROTECTION GENERALLY

- 1. Compliance.** The parties will comply with their respective obligations under Data Protection Law and their respective privacy notices.
- 2. Confidentiality.** Gitpod will restrict access to Personal Data to those authorized persons who need such information to provide the Services. Such authorized persons are obligated to maintain the confidentiality of any Personal Data.
- 3. Security.** Gitpod will implement appropriate technical and organizational measures to ensure a level of security appropriate to the Personal Data provided by Licensee and processed by Gitpod. Such security measures will be at least as protective as the security requirements set forth in the Terms. When choosing security controls, Gitpod will consider the state of the art, the cost of implementation, the nature, scope, context, and purposes of Personal Data Processing, and the risk to data subjects of a Security Incident or Personal Data Breach affecting Personal Data.
- 4. Retention.** Personal Data received from Licensee will be retained only for so long as may be reasonably required in connection with Gitpod's performance of the Terms or as otherwise required under Data Protection Law.
- 5. Cooperation.** Gitpod will cooperate to the extent reasonably necessary in connection with Licensee's requests related to data protection impact assessments and consultation with supervisory authorities and for the fulfillment of Licensee's obligation to respond to requests for exercising a data subject's rights under Data Protection Law. Gitpod reserves the right to charge Licensee for its reasonable costs in collecting and preparing Personal Data for transfer and for any special arrangements for making the transfer.
- 6. Third Party Requests.** If Gitpod receives a request from a third party in connection with any government investigation or court proceeding that Gitpod believes would require it to produce any Personal Data, Gitpod will inform Licensee in writing of such request and cooperate with Licensee if Licensee wishes to limit, challenge or protect against such disclosure, to the extent permitted by applicable Law.
- 7. Instructions from the Licensee.** Notwithstanding anything in the Terms to the contrary, Gitpod will only Process Personal Data in order to provide the Services to Licensee, in accordance with Licensee's written instructions, as permitted by the last sentence of Section III.8 below, or as required by applicable Law. Gitpod will promptly inform Licensee if following Licensee instructions would result in a violation of Data Protection Law or where Gitpod must disclose Personal Data in response to a legal obligation (unless the legal obligation prohibits Gitpod from making such disclosure).
- 8. Scope of Processing.** Gitpod is prohibited from: (a) Selling (as such term is defined in the CCPA) Personal Data, (b) Processing the Personal Data for any purpose other than for the specific business purpose of performing Licensee's documented instructions for the business purposes defined in this Addendum, including retaining, using, or disclosing the Personal Data for a commercial purpose other than performing Licensee's instructions, or (c) Processing the

Personal Data outside of the direct business relationship between the parties as defined in this Agreement. Gitpod certifies that it understands these restrictions. Notwithstanding the foregoing, Gitpod may Process Personal Data to retain or employ another person as a Sub-Processor (as defined in Section III.10 below) in accordance with this Addendum, for internal use by the Gitpod to improve the quality of its services (provided that Gitpod does not use the Personal Data to perform services on behalf of another person), or to detect data Security Incidents or protect against malicious, deceptive, fraudulent, or illegal activity.

9. Sensitive Information. Licensee will inform Gitpod if Personal Data is Sensitive Personal Data.

10. Sub-processors. Licensee grants Gitpod general authorization, as a Processor, to engage other processors (“**Sub-Processors**”) to assist in providing the Services consistent with the Terms. Gitpod will maintain a list of Sub-Processors at <https://www.gitpod.io/sub-processors> and will add the names of new and replacement Sub-Processors to the list prior to them starting sub-processing of Personal Data. Gitpod will notify Licensee of any changes to the list of Sub-Processors by updating such list from time to time in order to give Licensee an opportunity to object to such changes.

11. Sub-processor Liability. Where Gitpod engages a Sub-Processor for carrying out specific processing activities on behalf of Licensee, substantially similar data protection obligations as set out in this Addendum will be imposed on that Sub-Processor by way of a contract, in particular providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the Processing will meet the requirements of Data Protection Law. Gitpod will be liable for the acts or omissions of its Sub-Processors to the same extent as Gitpod would be liable if performing the services of the Sub-Processor directly.

12. Recordkeeping. Upon a request issued by a supervisory authority for records regarding Personal Data, Gitpod will cooperate to provide the supervisory authority with records related to processing activities performed on Licensee’s behalf, including information on the categories of Personal Data Processed and the purposes of the Processing, the use of service providers with respect to such Processing, any data disclosures or transfers to third parties and a general description of technical and organizational measures to protect the security of such data.

13. Transfer of Personal Data; Appointment. Licensee authorizes Gitpod to Process Personal Data in the United States or any other country in which Gitpod or its Sub-Processors maintain facilities. Licensee appoints Gitpod to perform any such transfer of Personal Data to any such country and to store and process Personal Data in order to provide the Services. Gitpod will conduct all such activity in compliance with the Terms, this Addendum, Data Protection Law, any applicable International Data Transfer Mechanism and Licensee instructions.

14. Deletion or Return. When instructed by Licensee, Gitpod will delete any Personal Data or return it to Licensee in a secure manner and delete all remaining copies of Personal Data after such return except where otherwise required under applicable Law. Gitpod will relay Licensee’s instructions to all Sub-Processors.

15. Breach Notification. After becoming aware of a Personal Data Breach, Gitpod will notify Licensee without undue delay of: (a) the nature of the Personal Data Breach; (b) the number and categories of data subjects and data records affected; and (c) the name and contact

details for the relevant contact person at Gitpod.

16. Audits. Upon request, Gitpod will make available to Licensee all information necessary, and allow for and contribute to audits, including inspections, conducted by Licensee or another auditor mandated by Licensee, to demonstrate compliance with Data Protection Law. For clarity, such audits or inspections are limited to Gitpod's Processing of Personal Data only, not any other aspect of Gitpod's business or information systems. If Licensee requires Gitpod to contribute to audits or inspections that are necessary to demonstrate compliance, Licensee will provide Gitpod with written notice at least 60 days in advance of such audit or inspection. Such written notice will specify the things, people, places or documents to be made available. Such written notice, and anything produced in response to it (including any derivative work product such as notes of interviews), will be considered Confidential Information and, notwithstanding anything to the contrary in the Terms, will remain Confidential Information in perpetuity or the longest time allowable by applicable Law after termination of the Terms. Such materials and derivative work product produced in response to Licensee's request will not be disclosed to anyone without the prior written permission of Gitpod unless such disclosure is required by applicable Law. If disclosure is required by applicable Law, Licensee will give Gitpod prompt written notice of that requirement and an opportunity to obtain a protective order to prohibit or restrict such disclosure except to the extent such notice is prohibited by applicable Law or order of a court or governmental agency. Licensee will make every effort to cooperate with Gitpod to schedule audits or inspections at times that are convenient to Gitpod. If, after reviewing Gitpod's response to Licensee's audit or inspection request, Licensee requires additional audits or inspections, Licensee acknowledges and agrees that it will be solely responsible for all costs incurred in relation to such additional audits or inspections.