Enterprise Terms of Service

BY CLICKING TO ACCEPT THESE GREMLIN TERMS OF SERVICE (THE "**AGREEMENT**") "**YOU**" OR "**CUSTOMER**" AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THE APPLICABLE ENTITY AND ITS AFFILIATES TO THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THIS AGREEMENT, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICE.

1. Scope & License

Gremlin owns and provides a failure as a service offering that assists customers in detecting weaknesses in its software and systems (the "**Platform**"). During the Term, Gremlin may provide Customer with access to (a) the Platform, (b) certain software agents that are installed on the Customer's host or VM using standard Linux package management utilities and facilitate the use of the Platform by Customer (the "**Agent**") and (c) an online, hosted portal where Customer may configure, control, and view results generated by the Platform (the "**Dashboard**") (collectively, the "**Solution**"). Business terms related to Customer's subscription to the Solution will either be specified when Customer creates an account to use the Solution, or be stated on one or more ordering documents executed by the parties and describing the Solution to be provided (collectively an "**Order**"). If permitted by Gremlin, Customer may purchase a subscription to the Solution by issuing a purchase order to Gremlin ("**Purchase Order**"); such Purchase Order, upon being accepted by

Gremlin, will be considered an Order hereunder. No different or additional terms contained or referenced in a Customer Purchase Order will apply to or be binding on Gremlin, regardless of whether such Purchase Order is signed by both parties. For the avoidance of doubt, this Agreement governs all downloads, use, and installation of the Solution, regardless of whether Customer has entered into an Order Form or issued a Purchase Order, or just accessed and used the Solution as part of a free trial. This Agreement also governs all Orders and all Orders are hereby incorporated into and made a part of this Agreement by reference. Customer understands and agrees that the Solution is licensed, not sold. Except as expressly provided in this Agreement, Gremlin retains all right, title and interest in and to the Solution and in all intellectual property rights therein. No license or other rights of any kind, including implied licenses, to the Solution are granted or conveyed to Customer.

2. License Restrictions

Customer will comply with any limitations on its use of or access to the Solution stated on the applicable Order. In addition, Customer agrees that it will not and will not allow third parties or users of the Solution to directly or indirectly (a) modify, translate, copy or create derivative works based on the Solution, (b) reverse assemble, reverse compile, reverse engineer, decompile or otherwise attempt to discover the object code, source code, non-public APIs or underlying ideas or algorithms of the Solution, except as and only to the extent this restriction is prohibited by law, (c) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Solution available to any third party, (d) remove or obscure any copyright, trademark or other proprietary notices, legends or Gremlin-branding contained in or on the Solution, (e) test, evaluate, or otherwise use the Solution with any products competitive with the products of Gremlin; (f) attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the Platform or Dashboard, or (g) use or access the Solution to build or support and/or assist a third party in building or supporting products or services competitive to the Solution, or (h) use the Solution in: (i) violation of law or for any unlawful purposes; or (ii) a manner that would cause a material risk to the security or operations of Gremlin or any of its customers, or to the continued normal operation of other Gremlin customers. If Gremlin reasonably believes that Customer has breached or is breaching the terms of this Section 2, Gremlin reserves the right to suspend Customer's use of or access to the Solution; Gremlin will provide Customer with notice of such suspension as soon reasonably practicable given the circumstances.

3. Customer Data

As part of its use of the Solution, Customer may provide certain information through the Solution such as an email addresses for the purposes of login or the availability zone of Customer's servers; all such data will be "**Customer Data**."Customer hereby grants Gremlin a non-exclusive, worldwide, perpetual, royalty-free, fully paid-up right and license to use, reproduce, create derivative works of, and display the Customer Data solely for the purpose of providing the Solution. Except as provided for herein, Customer retains all right, title, and interest in and to the Customer Data.

4. Fees, Payment, and Taxes

Customer agrees to pay all fees specified on the applicable Order. All payments shall be in US dollars. Except as otherwise expressly stated herein, Orders and all fees due hereunder are non-cancelable and all fees paid are non-refundable. Gremlin may modify or add new fees in Gremlin's sole discretion. If Customer fails to pay any fees in accordance with this Agreement, Gremlin may suspend Customer's access to the Solution pending payment of such overdue invoices; provided that Gremlin gives Customer notice of such non-payment and ten (10) days (from the date of such notice) to remit the overdue fees in full. Fees are exclusive of any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction (collectively, "**Taxes**"). Customer will be responsible for paying all Taxes associated with its purchases, except for those taxes based on Gremlin's net income.

5. Term and Termination

The term of this Agreement will commence on the date you click to accept it and continue until terminated in accordance with this Agreement or all Order terms have expired, whichever comes first (the "**Agreement Term**"). Either party may immediately terminate this Agreement if a party materially breaches its terms and fails to cure such breach within thirty (30) days of receipt of the non-breaching party's notice (email is acceptable) detailing such breach. Upon termination or expiration of this Agreement, (i) the license granted in Section 1 will immediately terminate; (ii) Customer will cease all access or use of the Solution and will permanently remove, delete and uninstall all copies of the Agent in

Customer's possession or control, and (iii) Sections 2 - 9, and 11 - 13 will survive any expiration or termination of this Agreement.

6. Warranty Disclaimer

THE SOLUTION IS MADE AND DESIGNED SPECIFICALLY TO IDENTIFY POTENTIAL POINTS OF FAILURE IN SOFTWARE AND HARDWARE SYSTEMS AND INFORMATION TECHNOLOGY OPERATING ENVIRONMENTS AND TO CAUSE FAILURE IN SUCH SOFTWARE AND HARDWARE SYSTEMS AND INFORMATION TECHNOLOGY OPERATING ENVIRONMENTS. GREMLIN MAKES NO WARRANTY THAT THE SOLUTION IS SAFE FOR USE OR THAT ONLY SOFTWARE AND HARDWARE SYSTEMS AND INFORMATION TECHNOLOGY OPERATING ENVIRONMENTS THAT ARE IDENTIFIED IN A TESTING PLAN WILL BE CAUSED TO FAIL. EXCEPT AS SET FORTH ABOVE, THE SOLUTION IS PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS WITH ALL FAULTS, DEFECTS AND ERRORS, AND WITHOUT WARRANTY OF ANY KIND. GREMLIN DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES (EXPRESS, IMPLIED, ARISING BY LAW OR OTHERWISE) REGARDING THE SOLUTION AND THEIR PERFORMANCE OR SUITABILITY FOR CUSTOMER'S INTENDED USE, INCLUDING ANY REPRESENTATIONS OR WARRANTIES REGARDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. FOR THE AVOIDANCE OF DOUBT, GREMLIN MAKES NO WARRANTY, GUARANTY, COMMITMENT OR OTHER OBLIGATION RELATED TO THE ACCURACY OR COMPLETENESS OF ANY RESULTS (INCLUDING, WITHOUT LIMITATION, ANY PREDICTIONS OR PREDICTIVE ANALYTICS INCLUDED IN SUCH RESULTS) AND CUSTOMER IS SOLELY RESPONSIBLE FOR ITS USE AND RELIANCE ON ANY SUCH RESULTS.

7. Limitation of Liability

GREMLIN WILL NOT BE LIABLE WITH RESPECT TO ANY CAUSE RELATED TO OR ARISING OUT OF THIS AGREEMENT, WHETHER IN AN ACTION BASED ON A CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, HOWEVER ARISING, FOR (A) INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, (B) DAMAGES BASED ON LOST REVENUES OR PROFITS, LOSS OF BUSINESS OR GOODWILL SHALL, LOSS OR CORRUPTION OF DATA OR BREACHES IN SYSTEM SECURITY, OR (C) ANY DAMAGES THAT, IN THE AGGREGATE, EXCEED $100. THES LIMITATIONS SHALL APPLY WHETHER OR NOT GREMLIN HAS BEEN ADVISED OF

POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

8. Indemnification

Customer will defend Gremlin and its Affiliates, and each of their respective directors, officers, employees, contractors and suppliers, from and against all claims, damages, losses, liabilities, costs and expenses (including reasonable attorney and expert witness fees) arising out of Customer's gross negligence, fraud, or willful misconduct, and Customer agrees to pay any settlements that Customer agrees to in a writing signed by Customer's authorized officer or final judgments awarded to the third party claimant by a court of competent jurisdiction.

9. Confidentiality

Each party acknowledges that it may disclose or has already disclosed (the "**Discloser**") certain Confidential Information to the other party (the "**Recipient**"). For the purposes of this Agreement, "**Confidential Information**" means any information, data or know how relating to the Discloser's business, disclosed either directly or indirectly, in writing, orally or by inspection of tangible objects that should reasonably be considered to be confidential given the nature of the information disclosed or the circumstances of disclosure. Notwithstanding anything else to the contrary herein, (a) the Customer Data will be considered the Confidential Information of Customer, and (b) the Solution, and any technical information, or evaluation of the Solution supplied to Customer or prepared by Gremlin for Customer will be considered the Confidential Information of Gremlin. For the avoidance of doubt, any information relating to the Customer's systems and software shall be considered Confidential Information of Customer. Confidential Information will not, however, include any information that (i) is or becomes generally available or known to the public other than as a result of the Recipient's violation of this Agreement, (ii) was in the Recipient's possession or known by it without restriction prior to receipt from the Disclosing Part, (iii) was rightfully disclosed, without an obligation of confidentiality, to the Recipient by a third party, or (iv) was independently developed by or for the Recipient without use of or reference to any Confidential Information of the Discloser. The Recipient agrees to (w) hold all Confidential Information in confidence and not disclose Confidential Information third party, (x) use Confidential Information only to perform its obligations or exerci rights under this Agreement, (y) protect Confidential Information of the Discloser with at

least the same degree of care as it normally exercises to protect its own proprietary information of a similar nature, but never less than a reasonable standard of care, and (z) reproduce the Confidential Information only to the extent necessary to fulfill its obligations or exercise its rights under this Agreement. The Recipient will promptly notify the Discloser of any use or disclosure of the Discloser's Confidential Information in violation of this Agreement. The Recipient agrees that it will only disclose Confidential Information to those employees, agents, consultants, and contractors ("**Representatives**") of the Recipient who have a "need-to-know" such information in order to fulfill its obligations hereunder, and who have agreed to be bound by confidentiality and non-use terms at least as protective of the Discloser's Confidential Information as the terms of this Agreement. Recipient agrees to be liable for any breach of this Agreement by its Representatives. The Recipient and its Representatives are permitted to disclose the Discloser's Confidential Information if required by a valid order issued by a governmental agency court of competent jurisdiction provided that Recipient provides the Discloser with (a) prompt written notice of such requirement (to the extent legally permitted), and (b) reasonable assistance, at the Discloser's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Discloser cannot obtain a protective order, the Recipient will only disclose the portion of Confidential Information that the Recipient's counsel advises the Recipient is legally required to disclose. All Confidential Information will remain the property of the Discloser.

10. Data Security

Gremlin has established and implemented reasonable information security practices regarding the protection of Customer Data, including administrative, technical and physical security processes. Notwithstanding the foregoing, Customer is responsible for maintaining appropriate security, protection and backup of its hardware, software, systems, information, and Customer Data. Gremlin is not responsible for any unauthorized access to, alteration of, or the deletion, destruction, or loss of, or damage to, or failure to store or encrypt, any hardware, software, systems, information, or Customer Data.

11. Feedback

Customer may from time to time provide suggestions, comments or other feedback respect to the Solution ("**Feedback**"). For the avoidance of doubt, Feedback will only suggestions, comments or other feedback provided to Gremlin that regards the Solution

and will not include Customer Data. Gremlin may want to incorporate Feedback into its Solution and this clause provides Gremlin with the necessary license to do so. Customer hereby grants Gremlin and its assigns a royalty-free, worldwide, perpetual, irrevocable, fully transferable and sublicenseable right and license to use, disclose, reproduce, modify, create derivative works from, distribute, display and otherwise distribute and exploit any Feedback as Gremlin sees fit, entirely without obligation or restriction of any kind, except that Gremlin will not identify Customer as the provider of such Feedback.

12. Aggregated Usage Data

Gremlin may collect aggregated and/or anonymized data related to and/or as a result of Customer's use of the Solution ("**Aggregated Data**"). Gremlin does not collect and will never disclose personal, identifying information of the Customer or its users as part of its use of the Aggregated Data. Notwithstanding anything else to the contrary, Gremlin will retain all right, title and interest in and to the Aggregated Data.

13. General Terms

The parties acknowledge and agree that (a) they are acting as independent contractors, (b) each party is solely responsible for its actions or inactions, (c) the parties will not be deemed to be agents of each other, and (d) no joint venture, franchise, agency, or other legal partnership arrangement will be created or implied by this Agreement. Neither party will have the authority to enter into agreements of any kind on behalf of the other party. Except as expressly set forth herein, each party will bear sole responsibility for its own expenses, liabilities, and costs of operation. All notices under this Agreement will be in writing, and will be deemed given when personally delivered, when sent by confirmed fax, or three days after being sent by prepaid certified or registered U.S. mail to the address of the party to be noticed as set forth herein or such other address as such party last provided to the other by written notice. This Agreement will be governed by and construed in accordance with the laws of the State of California without giving effect to any choice or conflict of law principle (whether of the State of California or any other jurisdiction). Any legal claim, suit, action or proceeding arising out of this Agreement (including its breach) will be instituted exclusively in the federal courts of the United States or the courts of the State of California, in each case located in the City of San Francisco, California. Each par[...] irrevocably submits to the exclusive jurisdiction of such courts and waives any obje[...] based on improper venue or forum non conveniens. If any provision of this Agreement is

adjudged by any court of competent jurisdiction to be illegal, unenforceable, or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect. The limitation or elimination of any provision of this Agreement will not affect any other term or provision or invalidate or render unenforceable such term or provision in any other jurisdiction. No waiver by either party of any of the provisions of this Agreement will be effective unless explicitly set forth in writing and signed by the waiving party. This Agreement and the rights and obligations hereunder are not transferable or assignable (by operation of law or otherwise) by either party without the prior written consent of the other party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, Gremlin may assign this Agreement in the event of a merger, or acquisition of all or substantially all of its assets, or for purposes of corporate restructuring. Any attempt to assign this Agreement in contravention of this section will be null and void. This Agreement constitutes the sole and entire agreement between the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement may only be amended, modified or supplemented by an agreement made in writing and signed by each party hereto. Headings herein are for convenience of reference only and will in no way affect interpretation of the Agreement.

Avoid downtime. Use Gremlin to turn failure into resilience.

Gremlin empowers you to proactively root out failure before it causes downtime. See how you can harness chaos to build resilient systems by requesting a demo of Gremlin.

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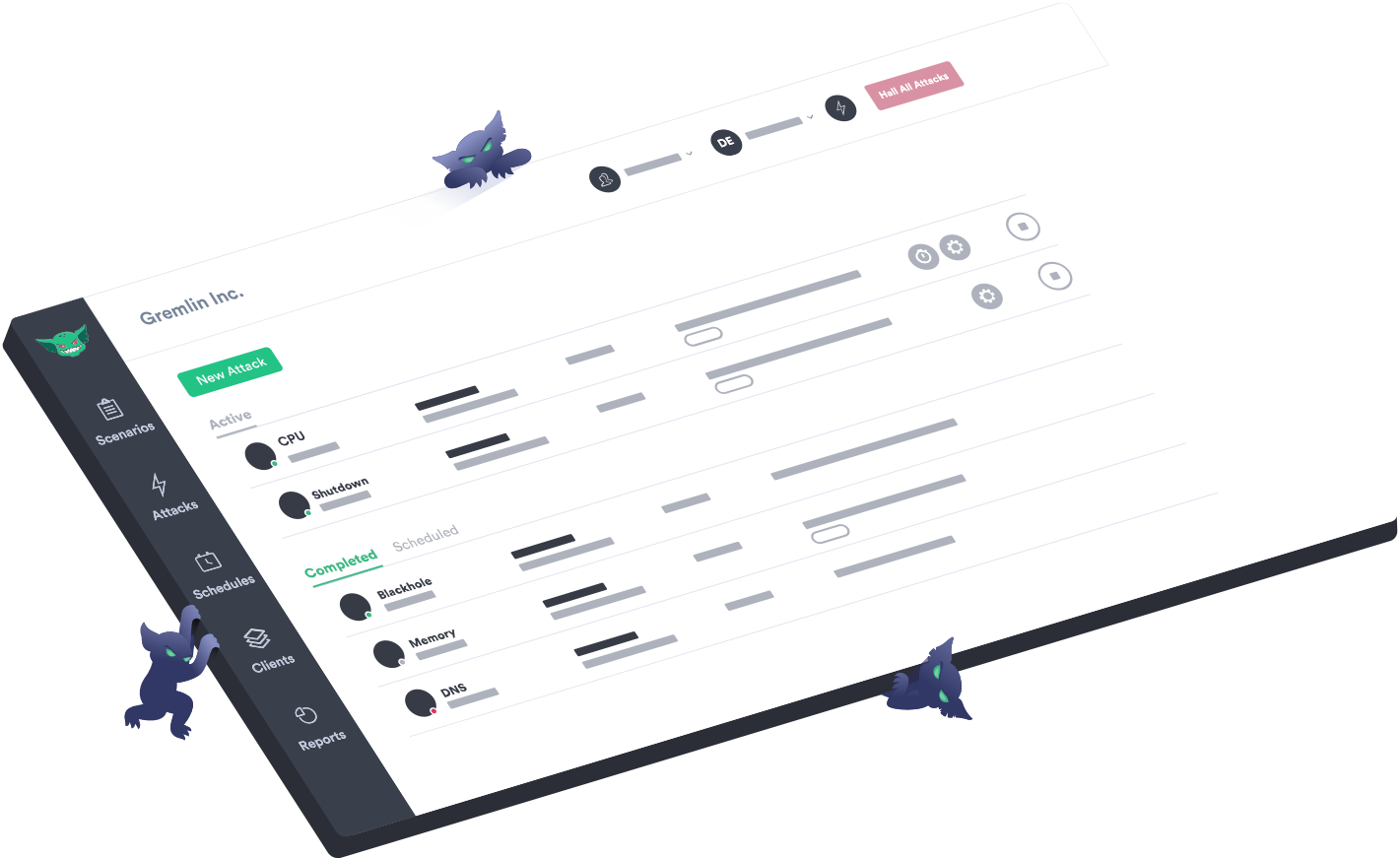
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