

THE PEAK CONSULTANCY

Terms and Conditions

for

GCloud 14 Services

THE PEAK CONSULTANCY

Terms and Conditions: GCloud 14 Services

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These Terms and Conditions ("Terms") set out the basis upon which Peak Consultancy will provide the Services (defined below).

The Client has evaluated the Services and satisfied itself as to their suitability and confirms that it has not relied on any representation or statement other than as set out in the Agreement.

1. Definitions

"Affiliate" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"Approval" means the approval given by the Client when it confirms its acceptance (by any means, including signature or by email) of a SOW (and **"Approved"** should be construed accordingly);

"App(s)" means software application(s) or extension(s) for use with the Software;

"Agreement" means the agreement between the Client and Peak Consultancy comprising: (i) these Terms, (ii) the SoW, and (iii) any documents specifically referred to or incorporated into these Terms;

"Atlassian" means Atlassian Corporation plc.;

"Atlassian University" means the Atlassian training material, courses and certification offered through the website <https://www.atlassian.com/university> and related facilities including without limitation the certification portal, <https://cp.certmetrics.com/atlassian/en/home/dashboard>;

"Atlassian University Training Credits" means the facility offered by Atlassian to procure training credits that can be exchanged for courses or exams, described here: <https://university.atlassian.com/student/activity/782212-training-credits>.

"Business Day" means any weekday other than a bank or public holiday in England;

"Business Hours" means the hours of 9:00 am to 5:00 pm, inclusive, on Business Days;

"Charges" means the fees payable in respect of the Services, as specified in the Order, or otherwise agreed in writing by the parties from time to time;

"Confidential Information" means:

- any information disclosed by or on behalf of a Disclosing Party to a Receiving Party (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
 - was marked as "confidential"; or
 - should have been reasonably understood by the Receiving Party to be confidential;
- in relation to the Client, the Client Data; and in relation to Peak Consultancy, any information in relation to its business which is of a confidential nature (including trade secrets and any information of commercial value);

"Control" means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** should be construed accordingly);

"Controller" has the meaning given to it in the Data Protection Legislation;

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“Client” means the legal person (whether company, partnership, individual or otherwise), identified in the SoW, to whom the Services will be provided;

“Client Data” means all data, works and materials supplied by the Client to Peak Consultancy;

“Client Personal Data” means Personal Data that is processed by Peak Consultancy on behalf of the Client in relation to this Agreement;

“Data Protection Legislation” means:

- all applicable Law about the processing of personal data and privacy;
- The Data Protection Act 2018, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable Laws and regulations about the processing of personal data and privacy, including if applicable legally binding guidance and codes of practice issued by the Information Commissioner; and
- to the extent that it relates to the processing of personal data and privacy, any Laws that come into force which amend, supersede or replace existing Laws including the GDPR, the (LED Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time including the European Union (Withdrawal) Act 2018;

“Data Subject” takes the meaning given in the Data Protection Legislation;

“Deliverable” means any Documentation, data, design (whether registrable or otherwise), software, licence, know-how or other works created or supplied by Peak Consultancy during the provision of the Services (whether alone or jointly);

“Disclosing Party” means the party to this Agreement that is disclosing its Confidential Information to the other party;

“Documentation” means any documentation, policies, or manuals in relation to the Services produced by Peak Consultancy and delivered or made available by Peak Consultancy to the Client (as may be amended from time to time);

“Effective Date” means the date on which the SoW is Approved by the Client;

“Effective Term” means the effective term of this Agreement, as set out in the SoW;

“Force Majeure Event” means an event, or a series of related events, which is beyond the reasonable control of the party affected and includes, without limit, an event which falls into one or more of the following categories:

- Acts of God;
- Compliance with a law or governmental order, rule, regulation or direction and/or any action taken by a government or public authority, including without limitation imposing an

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embargo, export or import restriction, quota or other restriction or prohibition, or the failure to grant any necessary licence or consent;

- Failures of the internet or any public telecommunications network;
- Hacker attacks, denial of service attacks, virus or other malicious software attacks or infections;
- Power failures;
- Industrial disputes affecting any third party;
- Disasters, explosions, fires or floods;
- Strikes or industrial disputes;
- Riots, rebellions, terrorist attacks, or wars;
- Pandemics;
- Difficulty or increased costs in obtaining workers, goods or transport; and
- Any consequences arising as a result of or in connection with the United Kingdom's withdrawal from the European Union ("EU Withdrawal");

"GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or non-registrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, and rights in designs);

"Laws" means any applicable law, statute, by law, regulation, order, regulatory policy (including any requirement or notice of any regulatory body), guidance or industry code of practice, rule of court or directives, delegated or subordinate legislation in force from time to time. For the avoidance of doubt, this shall include any Laws arising out of or in connection with EU Withdrawal;

"Maintenance Event": means any routine or planned maintenance which may interrupt the Client's use of the Software;

"Managed Services": the hosting and setup, configuration, migration, maintenance and/or other managed services described in the SoW, if any;

"Managed Services SLA": the SLA applicable to the Managed Services, as described in the SoW;

"Order" means the order made by the Client when it confirms acceptance of a SoW by any means, including by email or by issuing a purchase order pursuant to the SoW;

"Payment Terms" means the terms relating to invoicing and payment, as set out in the SoW;

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“Peak Consultancy” means Peak Consultancy Consulting Ltd., a company incorporated in England (registration number 09323688) having its registered office at W8a Knoll Business Centre, 325-327 Old Shoreham Road, Hove, England, BN3 7GS;

“Personal Data” has the meaning given to it in the Data Protection Legislation;

“Processor” has the meaning given to it in the Data Protection Legislation;

“Receiving Party” means the party to this Agreement that is receiving the other party’s Confidential Information;

“Security Classification” has the meaning given to it in the Government Security Classifications Policy and any superseding policies or legislation.

“Services” means the services provided by Peak Consultancy, as set out in the SoW;

“Software” means the Atlassian proprietary software, and such applicable Atlassian or third party software Apps or other offerings, including, without limitation all updates, revisions, bug-fixes, upgrades and enhancements thereto, each as described in the SoW;

“Software Licence” means the licence from Atlassian under which the Client uses the Software, including all applicable terms and conditions; the licence is defined in Appendix A: Atlassian Customer Agreement;

“SoW (Statement of Work)” means the document issued by Peak Consultancy which describes the key aspects of the Services, including (without limitation) the project Deliverables, proposed charges, delivery timetable, and Payment Terms. The SOW shall be binding once Peak Consultancy accepts the Client’s Approval, either expressly or by delivering Services pursuant to the approved SOW;

“Support Services” means the service desk, first line and/or other support services as described in the SOW, if any;

“Support SLA” means the service level agreements covering the Support Services, as set out in the SoW;

“Third Party Terms” means third party terms applicable to the use of any Apps; the terms are defined in Appendix B: Atlassian Marketplace Terms of Use;

“Training Terms” means terms applicable to the use of Atlassian University and Atlassian University Training Credits; the terms are defined in Appendix C: Atlassian Training Terms and Policies;

“Usage Limits” means the usage limits applicable to the Services, whether with respect to capacity, users or otherwise, details of which are set out in the SoW;

“Website” means Peak Consultancy’s website at <https://www.thepeakconsultancy.co.uk>;

“Workers” means any employee, contractor, or subcontractor employee or contractor engaged in providing the Services.

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2. Basis of Agreement

- 2.1. Peak Consultancy shall issue a Statement of Work (SoW), which shall include (without limitation) a description of the Services, including the project Deliverables, proposed charges, delivery timetable, and Payment Terms.
- 2.2. Other than those specifically incorporated into a SoW, any samples, mock-up designs, illustrations, or other content issued or published by Peak Consultancy (e.g. in marketing campaigns or on the Website) are issued or published for the sole purpose of illustration or to provide an approximate idea of the services described in them and shall, therefore, have no contractual force.
- 2.3. The Client's Approval of a SoW by any means, including by issuing a purchase order in response to the SoW, shall comprise an Order for the purpose of these Terms. By submitting an Order or by otherwise accepting these Terms, the Client agrees to contract on the basis of these Terms. Save to the extent that the parties have agreed otherwise in writing, the Client agrees that these Terms prevail over any other terms (without limitation) which the Client may seek to impose or introduce.
- 2.4. An Agreement will be formed and shall start on the Effective Date.
- 2.5. The Agreement will supersede all and any previous agreements, arrangements, and understandings between the parties in relation to the Services, including (without limitation) any non-disclosure agreements entered into by the parties in anticipation of the provision of the Services.

3. Client Obligations

- 3.1. Save to the extent that the parties have agreed otherwise in writing, the Client shall provide to Peak Consultancy, or procure for Peak Consultancy, such:
 - 3.1.1. co-operation, support and advice;
 - 3.1.2. information and Documentation; and
 - 3.1.3. governmental, legal and regulatory licences, consents and permits,as are reasonably necessary to enable Peak Consultancy to perform its obligations under this Agreement.
- 3.2. The Client shall provide to Peak Consultancy, or procure for Peak Consultancy, such access to the Client's computer hardware, software, networks and systems as may be reasonably required by Peak Consultancy to enable Peak Consultancy to perform its obligations under this Agreement.
- 3.3. The Client shall appoint a key contact who shall have the authority contractually to bind Peak Consultancy on matters relating to the Services.
- 3.4. The Client shall make available such Client staff and applicable sub-contractors or suppliers as may be required for Peak Consultancy to provide the Services and ensure that they cooperate fully with Peak Consultancy in all material aspects.

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- 3.5. The Client shall carry out all other Client responsibilities set out in the Agreement in a timely and efficient manner.
- 3.6. Peak Consultancy shall not be liable in any way for any inability to provide the Services in accordance with this Agreement or any breach of its obligations under this Agreement where these are directly or indirectly due to the Client failing to perform its obligations as outlined in this Clause 3.

4. Client Data

- 4.1. The Client hereby grants to Peak Consultancy a non-exclusive licence to copy, store, export, adapt, edit and translate the Client Data, together with the right to sub-license these rights to its hosting, connectivity and telecommunications service providers (if applicable), for the performance of Peak Consultancy's obligations under this Agreement only and subject to Clause 9.1.5.
- 4.2. Peak Consultancy warrants to the Client that the use of the Client Data by Peak Consultancy in accordance with this Agreement will not:
 - 4.2.1. breach the provisions of any law, statute or regulation;
 - 4.2.2. infringe the Intellectual Property Rights or other legal rights of any person; or
 - 4.2.3. give rise to any cause of action against Peak Consultancy or the Client,in each case in any jurisdiction and under any applicable law.
- 4.3. The parties will comply with the then-current Government Security Classification Policy, any superseding security classification policy or legislation and any applicable Client security policies as appropriate.

5. Charges and Payments

- 5.1. The Client shall on or prior to the Effective Date provide to Peak Consultancy valid, up-to-date and complete payment details or approved purchase order information acceptable to Peak Consultancy and any other required valid, up-to-date and complete contact and billing details.
- 5.2. Peak Consultancy entitlement to charge the Client for any hotel, subsistence, travelling and any other expenses reasonably incurred by Peak Consultancy while delivering the Services, and the cost of any materials or services reasonably and properly provided by third parties required by Peak Consultancy for the supply of the Services, will be defined in the SoW;
- 5.3. Peak Consultancy shall invoice the Client and the Client will pay all Charges, expenses and applicable VAT, each in accordance with the Payment Terms. Where the Client provides payment details, Peak Consultancy is hereby authorised to take payment upon the issue of an invoice.

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- 5.4. The Client shall promptly notify Peak Consultancy of any changes to their bank account, billing address, and email addresses for the Client.
- 5.5. All Charges referred to in the SoW, pursuant to the Order, are:
 - 5.5.1. non-cancellable and non-refundable; and
 - 5.5.2. exclusive of any applicable value-added taxes, which will be added to the Charges and payable by the Client to Peak Consultancy.
- 5.6. (*Time & Materials Consultancy*) If the Charges are based in whole or part upon the time spent by Peak Consultancy performing the Services:
 - 5.6.1. the Charges payable shall be calculated in accordance with Peak Consultancy's daily fee rates set out in the SoW;
 - 5.6.2. standard daily fee rates are calculated on the basis of an eight-hour day worked in Business Hours;
 - 5.6.3. Peak Consultancy shall be entitled to charge at an overtime rate of (i) 150% of the normal rate for any time worked on Business Days outside the Business Hours on a pro-rata basis, and (ii) 200% of the normal rate for any time worked on non-Business Days;
 - 5.6.4. Peak Consultancy shall ensure that all team members complete time sheets recording time spent on delivering the Services, and Peak Consultancy shall use such time sheets to calculate the charges covered by each relevant invoice;
 - 5.6.5. each invoice shall set out the time spent by each team member and, where applicable, shall provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts; and
 - 5.6.6. Peak Consultancy shall notify the Client before performing any Services that result in any estimate of time-based Charges given to the Client being exceeded or any budget for time-based Charges agreed by the parties being exceeded.
- 5.7. (*Fixed Price Consultancy*) If the Charges in the SoW are fixed price:
 - 5.7.1. the total price for the Services shall be the amount set out in the SoW; and
 - 5.7.2. where staged payments have been agreed, the Charges are payable on Peak Consultancy's achievement of the agreed and corresponding milestone. On achieving a milestone, Peak Consultancy shall invoice the Client for the Charges that are then payable, together with expenses and the costs of materials as applicable.
- 5.8. (*Support Services*) If the Charges in the SoW include providing Support Services:
 - 5.8.1. unless otherwise agreed, Peak Consultancy will provide the Support Services during Business Hours in accordance with the Support SLA in effect at the time the Support Services are provided. Peak Consultancy may, on prior notice to the

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Client, make changes to the Support Services or Support SLA, provided such changes do not have a material adverse effect on the Client's business operations;

- 5.8.2. save where otherwise provided in the applicable SLA, no representation or warranty is given that all faults or interruptions will be fixed or that they will be fixed within a specified time; and
- 5.8.3. For the avoidance of doubt, Peak Consultancy shall have no obligation to provide the Support Services where faults or interruptions arise from:
 - 5.8.3.1. misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by Peak Consultancy);
 - 5.8.3.2. use of the Software in combination with any equipment or software not approved or designated by Peak Consultancy for use with the Software, or any fault in any such equipment or software;
 - 5.8.3.3. modifications of the Software code, hosting, setup, data or configuration by any person other than Peak Consultancy or a person acting under Peak Consultancy's instructions;
 - 5.8.3.4. the running or insertion of any custom code in the Software without the prior written approval of Peak Consultancy; or
 - 5.8.3.5. any breach of the Client's obligations under this Agreement howsoever arising or having the Software maintained, manipulated or interfered with by a third party.
- 5.9. (*Managed Services*) If the charges in the SoW include providing Managed Services:
 - 5.9.1. Peak Consultancy will provide the Managed Services in accordance with the Managed Services SLA;
 - 5.9.2. Peak Consultancy shall at all times endeavour to keep any service interruptions due to maintenance to a minimum. Maintenance Events will, wherever possible, be carried out outside applicable Business Hours. Peak Consultancy will aim to carry out any emergency maintenance during the daily window of 6.00 pm to 2.00 am UK time unless circumstances require more immediate remedy. Peak Consultancy may also interrupt the Managed Services outside Business Hours for unscheduled maintenance, provided that it has given the Client at least three days' advance notice; and
 - 5.9.3. Any Maintenance Events which were not requested or caused by the Client, shall be considered downtime for the purpose of measuring service availability. However (i) planned maintenance notified by Peak Consultancy and/or (ii) unscheduled maintenance performed outside Normal Business Hours, provided that Peak Consultancy has given the Client reasonable advance notice and the Client has raised no objection against the time elected by Peak Consultancy to

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undertake such Maintenance operations, shall not be considered downtime for the purpose of measuring service availability.

5.10. (*Licence Reseller Services*) If the charges in the SoW include reselling Software Licences:

5.10.1. The Client uses the Software under the terms of the Software Licence and (where applicable) shall use any Apps under the relevant Third Party Terms. All responsibility regarding the use of the Software and the Apps rests with the Client, including (without limitation) payment of all relevant fees, compliance with the terms of the Software Licence and/or Third Party Terms and all related liability. The Client agrees and accepts that its contract for the use of the Software is directly with Atlassian and the applicable third party provider(s). The Client agrees that Peak Consultancy is not a party to, and has no responsibility under, those contracts, whether or not Peak Consultancy has acted as a reseller. Any failures, breaches or defaults under the terms of the Software Licence or the Third Party Terms are the exclusive responsibility of the Client, including any which may impact on Peak Consultancy's ability to provide the Services in accordance with the Agreement; and

5.10.2. Unless otherwise agreed, the Services are provided:

5.10.2.1. in relation only to the Software, any add-ons to the Software developed under the Agreement by Peak Consultancy for the Client, and any Apps specified in the SoW; and

5.10.2.2. subject to the Usage Limits which, if exceeded will give rise to additional charges, including upgrade charges.

5.11. (*Training Reseller Services*) If the charges in the SoW include reselling Atlassian Training:

5.11.1. The Client uses the Software under the Training Terms. All responsibility regarding the use of the Atlassian University functionality rests with the Client, including (without limitation) payment of all relevant fees, compliance with the Training Terms and all related liability. The Client agrees and accepts that its contract for the use of the Atlassian University is directly with Atlassian. The Client agrees that Peak Consultancy is not a party to, and has no responsibility under, those contracts, whether or not Peak Consultancy has acted as a reseller. Any failures, breaches or defaults under the terms of the Training Terms are the exclusive responsibility of the Client, including any which may impact on Peak Consultancy's ability to provide the Services in accordance with the Agreement.

5.12. Peak Consultancy may suspend the provision of all or any part of the Services if any amount due to be paid by the Client to Peak Consultancy is overdue, and remains overdue for a period of 15 days' following written notice from Peak Consultancy of the late payment. Peak Consultancy shall not be liable for any costs, damages, delays, interruptions or claims arising from any suspension of any Service caused by such suspension.

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- 5.13. If the Client does not pay any amount properly due to Peak Consultancy under this Agreement, Peak Consultancy may:
- 5.13.1. charge the Client interest on the overdue amount at the rate of 4% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - 5.13.2. claim interest and statutory compensation from the Client pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.14. All amounts under this Agreement will be paid in full without any deduction or withholding other than as required by law and the Client will not be entitled to assert any rights of set-off against Peak Consultancy in order to justify the withholding of any payments due under this Agreement.

6. Confidentiality Obligations

- 6.1. The Receiving Party must:
- 6.1.1. keep any Confidential Information it receives strictly confidential;
 - 6.1.2. not disclose any Confidential Information it receives to any person without the Disclosing Party's prior written consent, and then only under conditions of confidentiality approved in writing by the Disclosing Party;
 - 6.1.3. use the same degree of care to protect the confidentiality of any Confidential Information it receives as the Receiving Party uses to protect its own Confidential Information of a similar nature, being at least a reasonable degree of care;
 - 6.1.4. act in good faith at all times in relation to any Confidential Information it receives; and
 - 6.1.5. must only use any Confidential Information it receives for performing its obligations and/or exercising its rights under this Agreement.
- 6.2. Notwithstanding Clause 6.1, Peak Consultancy may disclose the Client's Confidential Information it receives to Peak Consultancy's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Client's Confidential Information for the performance of Peak Consultancy's obligations under this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Client's Confidential Information, subject to Clause 9.1.4.
- 6.3. This Clause 6 imposes no obligations upon the Receiving Party with respect to any Confidential Information that it receives that:
- 6.3.1. is known to the Receiving Party before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
 - 6.3.2. is or becomes publicly known through no act or default of the Receiving Party; or

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- 6.3.3. is obtained by the Receiving Party from a third party in circumstances where the Receiving Party has no reason to believe that there has been a breach of an obligation of confidentiality.
- 6.4. The restrictions in this Clause 6 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request.
- 6.5. The provisions of this Clause 6 shall continue in force for a period of 5 years following the termination of this Agreement, at the end of which period they will cease to have effect.

7. Data Protection

- 7.1. The parties will comply with the Data Protection Legislation and agree that the Client is the Controller and Peak Consultancy the Processor, in respect of all such data processing activities which Peak Consultancy carries out under this Agreement.
- 7.2. The Client warrants to Peak Consultancy that it has the legal right to disclose all Personal Data that it does, in fact, disclose to Peak Consultancy under or in connection with this Agreement, and that the processing of that Personal Data by Peak Consultancy to fulfil its obligations and exercise its rights set out in this Agreement will comply with the Data Protection Legislation.
- 7.3. Peak Consultancy warrants to the Client that:
 - 7.3.1. it will act only on instructions from the Client in relation to the processing of Client Personal Data;
 - 7.3.2. it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Client Personal Data and against loss or corruption of Client Personal Data;
 - 7.3.3. it will only process the Client Personal Data for the purposes of performing its obligations and exercising its rights under this Agreement;
 - 7.3.4. it will process the Client Personal Data in compliance with all applicable Laws;
 - 7.3.5. it will not transfer or permit the transfer of Client Personal Data to any place outside the EEA without the prior written consent of the Client, and:
 - 7.3.5.1. the Client or Peak Consultancy has provided appropriate safeguards in relation to the transfer as determined by the Client;
 - 7.3.5.2. the Data Subject has enforceable rights and effective legal remedies;
 - 7.3.5.3. Peak Consultancy complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Client in meeting its obligations); and

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- 7.3.5.4. Peak Consultancy complies with any reasonable instructions notified to it in advance by the Client to the processing of the Personal Data.
- 7.4. Peak Consultancy shall comply with any notification requirements under the Data Protection Legislation and both Parties will observe their obligations under it, and:
 - 7.4.1. Peak Consultancy will notify the Client immediately if they become aware that any of the Client Personal Data is lost or destroyed, or becomes damaged, corrupted or unusable;
 - 7.4.2. Peak Consultancy will notify the Client immediately if they receive any communication from a third party relating to the parties' obligations under the Data Protection Legislation;
 - 7.4.3. Peak Consultancy will provide all reasonable assistance to the Client to prepare any Data Protection Impact Assessment as may be required and must notify the Client immediately if it considers that the Client's instructions infringe the Data Protection Legislation.
- 7.5. Peak Consultancy shall co-operate with the Client in relation to:
 - 7.5.1. any request from the Client to amend or delete any of the Client Personal Data;
 - 7.5.2. any complaint or regulatory notification relating to the processing of any of the Client Personal Data; and
 - 7.5.3. any request from a Data Subject for access to any of the Client Personal Data, at the Client's own cost and expense.

8. Intellectual Property

- 8.1. All Intellectual Property Rights created during the performance of the Services (including in any Documentation, software, know-how or other works created or supplied by Peak Consultancy) (whether alone or jointly) shall belong to Peak Consultancy, and the Client shall have no rights in respect of any such Intellectual Property Rights except as expressly granted under this Agreement. The Client shall do or procure to be done all such further acts and things and sign or procure the signature of all such other documents as Peak Consultancy may from time to time require for the purpose of giving Peak Consultancy the full benefit of the provisions of this clause 8.1.
- 8.2. Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from Peak Consultancy to the Client, or from the Client to Peak Consultancy.
- 8.3. Peak Consultancy hereby grants to the Client a revocable, worldwide, non-exclusive licence to use the Intellectual Property Rights owned by Peak Consultancy solely for the purposes of receiving the Services in accordance with the terms of this Agreement during the Effective Term. This licence shall automatically expire on the termination of this Agreement.

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- 8.4. The licence granted by Peak Consultancy to the Client under Clause 8.3 is subject to the following limitations (except to the extent expressly permitted in this Agreement):
- 8.4.1. the Services may only be used by the officers, employees, agents and subcontractors of either the Client or an Affiliate of the Client;
 - 8.4.2. the Client must not sub-license its right to access and use the Services;
 - 8.4.3. the Client must not permit any unauthorised person to access or use the Services;
 - 8.4.4. the Client must not use the Services to provide services to third parties;
 - 8.4.5. the Client must not republish or redistribute any content or material from the Services;
 - 8.4.6. the Client must not make any alteration to the Services.

9. Warranties

- 9.1. Peak Consultancy warrants to the Client that:
- 9.1.1. Peak Consultancy has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
 - 9.1.2. Peak Consultancy shall at all times use its reasonable endeavours to carry out and provide the Services in compliance with all relevant Laws, including any change in Laws;
 - 9.1.3. Peak Consultancy has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement; and
 - 9.1.4. All Workers involved in delivering the Services shall have the required skills, HMG vetting, qualifications and resources to provide the Services to the required standard.
- 9.2. Peak Consultancy warrants to the Client that the Services, when used by the Client in accordance with this Agreement, will not infringe the UK Intellectual Property Rights of any person.
- 9.3. If Peak Consultancy reasonably determines, or any third party alleges, that the use of the Services by the Client in accordance with this Agreement infringes any person's UK Intellectual Property Rights, Peak Consultancy may at its own cost and expense:
- 9.3.1. modify the Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
 - 9.3.2. procure for the Client the right to use the Services in accordance with this Agreement.
- 9.4. The Client warrants to Peak Consultancy that:

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- 9.4.1. it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
- 9.4.2. the Client will comply with all applicable legal and regulatory requirements applying to the exercise of the Client's rights and the fulfilment of the Client's obligations under this Agreement.
- 9.5. All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

10. Acknowledgements and warranty limitations

10.1. The Client acknowledges that:

- 10.1.1. clause 9.3 constitutes the Client's exclusive remedy and Peak Consultancy's only liability in respect of Clause 9.2 and, for the avoidance of doubt, is subject to Clause 3;
- 10.1.2. software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, Peak Consultancy gives no warranty or representation that the Services will be wholly free from defects, errors and bugs;
- 10.1.3. complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, Peak Consultancy gives no warranty or representation that the Services will be entirely secure; and
- 10.1.4. Peak Consultancy will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Services; and, except to the extent expressly provided otherwise in this Agreement, Peak Consultancy does not warrant or represent that the Services or the use of the Services by the Client will not give rise to any legal liability on the part of the Client or any other person.

11. Indemnities

- 11.1. The Client shall indemnify and shall keep indemnified Peak Consultancy against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by Peak Consultancy and arising directly or indirectly as a result of any breach by the Client of this Agreement.
- 11.2. The Client shall indemnify and shall keep indemnified Peak Consultancy against any and all claims made against Peak Consultancy alleging that the use by Peak Consultancy of any data, information, or materials supplied by the Client that Peak Consultancy uses in performing the Services, or any data, information, or materials uploaded or stored in Peak Consultancy's hardware, software, networks and systems by the Client infringes the Intellectual Property Rights of a third party (including legal expenses and amounts reasonably paid in settlement of legal claims).

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12. Limitation of Liability

12.1. 12.1 Nothing in this Agreement will:

- 12.1.1. limit or exclude any liability for death or personal injury resulting from negligence;
- 12.1.2. limit or exclude any liability for fraud or fraudulent misrepresentation;
- 12.1.3. limit any liabilities in any way that is not permitted under applicable law; or
- 12.1.4. exclude any liabilities that may not be excluded under applicable law.

12.2. The limitations and exclusions of liability set out in this Clause 12.2 and elsewhere in this Agreement:

- 12.2.1. are subject to Clause 12.1; and
- 12.2.2. govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in negligence and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

12.3. Peak Consultancy shall not be liable to the Client in respect of any losses arising out of a Force Majeure Event.

12.4. Peak Consultancy shall not be liable to the Client and the Client shall not be liable to Peak Consultancy in respect of any:

- 12.4.1. loss of profits or anticipated savings;
- 12.4.2. loss of revenue or income;
- 12.4.3. loss of use or production;
- 12.4.4. loss of business, contracts or opportunities;
- 12.4.5. loss or corruption of any data, database or software;
- 12.4.6. any special, indirect or consequential loss or damage.

12.5. The aggregate liability of Peak Consultancy to the Client under this Agreement shall in no circumstances exceed the lower of a) the total amount paid by the Client to Peak Consultancy under this Agreement in the calendar year in which the liability arises, and b) £5,000,000.

13. Force Majeure Event

13.1. If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

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- 13.2. If a Force Majeure Event continues for 90 days, Peak Consultancy may terminate this agreement by giving 10 days' written notice to the Client.
- 13.3. A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
 - 13.3.1. promptly notify the other; and
 - 13.3.2. inform the other of the period for which it is estimated that such failure or delay will continue.
- 13.4. A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

14. Termination

- 14.1. Either party may terminate this Agreement with immediate effect by giving written notice of termination to the other party if:
 - 14.1.1. the other party commits any material breach of this Agreement, and:
 - 14.1.2. the breach is not remediable; or
 - 14.1.3. the breach is remediable, but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied.
- 14.2. Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
 - 14.2.1. the other party:
 - 14.2.1.1. is dissolved;
 - 14.2.1.2. ceases to conduct all (or substantially all) of its business;
 - 14.2.1.3. is or becomes unable to pay its debts as they fall due;
 - 14.2.1.4. is or becomes insolvent or is declared insolvent; or
 - 14.2.1.5. convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - 14.2.2. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - 14.2.3. an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement).

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14.3. Peak Consultancy may terminate this Agreement immediately by giving written notice to the Client if:

14.3.1. any amount due to be paid by the Client to Peak Consultancy under this Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and

14.3.2. Peak Consultancy has given to the Client at least 30 days' written notice, following the failure to pay, of its intention to terminate this Agreement in accordance with this Clause 14.3.

15. Effects of Termination

15.1. Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect in accordance with their express terms or otherwise indefinitely: Clauses 1 (Definitions), 3.6 (Client Obligations), 4.2 and 4.3 (Client Data), 5 (Charges and Payments), 6 (Confidentiality Obligations), 8.1 and 8.2 (Intellectual Property), 11 (Indemnities), 12 (Limitation of Liability), 15 (Effects of Termination), 16 (Notices), 19 (No Waivers), 20 (Severability), 21 (Third-party rights), 22 (Variation), 23 (Entire Agreement), 24 (Dispute Resolution), 25 (Law and Jurisdiction) and 26 (Interpretation).

15.2. The termination of this Agreement shall not affect the accrued rights of either party.

15.3. Within 30 days following the termination of this Agreement for any reason:

15.3.1. the Client must pay to Peak Consultancy any Charges in respect of Services provided to the Client before the termination of this Agreement; and

15.3.2. Peak Consultancy must refund to the Client any Charges paid by the Client to Peak Consultancy in respect of Services that were to be provided to the Client after the termination of this Agreement, without prejudice to the parties' other legal rights.

16. Notices

16.1. Any notice from one party to the other party under this Agreement must be given by one of the following methods and directed to the individual nominated by each party:

16.1.1. delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery;

16.1.2. sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting; or

16.1.3. sent by electronic mail, in which case the notice shall be deemed to have been received within 24 hours following sending in the absence of a failed delivery receipt; providing that if the stated time of deemed receipt is not within 9.00 am

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and 6.00 pm on Business Days, then the time of deemed receipt shall be at 9.00 am on the next Business Day.

17. Relationship of the Parties

- 17.1. The Parties are independent legal entities. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.
- 17.2. Peak Consultancy may subcontract any of its obligations under this Agreement. Where Peak Consultancy engages subcontractors to deliver part or all of its obligations:
 - 17.2.1. Peak Consultancy shall remain responsible to the Client for the performance of any subcontracted obligations.
 - 17.2.2. All subcontractors and their employees or representatives engaged in providing the Services shall be subject to Clause 9.1.4.
 - 17.2.3. Peak Consultancy shall comply with all relevant off-payroll working rules and shall be solely responsible for completing and issuing the status determination statement to the contractor as applicable.
 - 17.2.4. The Client understands and accepts that Peak Consultancy is deemed the end client under the off payroll working rules and that Peak Consultancy retains complete discretion and responsibility over the status determination of any subcontractors used to provide all or part of the Services.
- 17.3. Each Party agrees, for the Effective Term of this Agreement and for a further period of twelve (12) months thereafter, not to solicit or induce any officer, employee, agent or contractor of the other Party to terminate their employment or engagement with that Party without the prior written consent of that Party. In the event of a breach of this Section 29, the Party in breach shall pay to the other Party a fee equivalent to one full year of the individual's then basic annual salary.

18. Assignment

- 18.1. The Client hereby agrees that Peak Consultancy may assign, transfer or otherwise deal with Peak Consultancy's contractual rights and obligations under this Agreement.
- 18.2. The Client must not assign, transfer or otherwise deal with the Client's contractual rights and/or obligations under this Agreement without the prior written consent of Peak Consultancy. Such consent not to be unreasonably withheld or delayed.

19. No Waivers

- 19.1. No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.

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- 19.2. No waiver of any breach of any provision of this Agreement shall be construed as a further or continuing waiver of any breach of that provision or any other provision of this Agreement.

20. Severability

- 20.1. If a provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.
- 20.2. If any unlawful and/or unenforceable provision of this Agreement would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

21. Third-Party Rights

- 21.1. This Agreement is for the benefit of the parties and is not intended to benefit or be enforceable by any third party.
- 21.2. The exercise of the parties' rights under this Agreement is not subject to the consent of any third party.

22. Variation

- 22.1. Peak Consultancy reserves the right to amend or vary these Terms at any time. Peak Consultancy shall provide 30 days' notice of any such change(s), which shall take effect upon expiry of the said notice. In the event that the Client does not accept the changes, it has the right to terminate the Agreement prior to the end of the 30 day notice period. Save as aforementioned, no variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

23. Entire Agreement

- 23.1. The Agreement, including Appendix A: Atlassian Marketplace Terms & Conditions, and any documents referred to in it, shall constitute the entire agreement between the parties and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 23.2. Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Agreement.
- 23.3. The provisions of this Clause 23 are subject to Clause 12.1

24. Dispute Resolution

- 24.1. It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters of performance, procedure and management arising out of this Agreement. Accordingly, it is agreed that the procedure set out in this Clause 24 shall be followed before the serving of written notice terminating this Agreement, or in relation to any matter of dispute between the parties concerning performance, procedure or management.

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- 24.2. If any disagreement or difference of opinion arises out of this Agreement, the matter shall be disposed of as follows:
- 24.2.1. the individuals at Peak Consultancy and the Client who are respectively responsible for the co-ordination of the Services shall meet to attempt resolution;
 - 24.2.2. should they not meet within 7 days of the date on which either party convenes a meeting to resolve the matter, or should they not be able to resolve the matter with 14 days of first meeting; then
 - 24.2.3. the matter shall promptly be referred by either party to the CEO (or such equivalent position) of the Client and the CEO of Peak Consultancy for immediate resolution.
- 24.3. If, within 14 days of the matter first having been referred to the parties referred to in Clause 24.2.3 no agreement has been reached as to the matter in dispute, the dispute resolution process set out in this Clause 24 shall be deemed to have been exhausted in respect of the matter in dispute, and each party shall be free to pursue the rights granted to it under Clause 24.2 without further reference to the dispute resolution process.
- 24.4. For the avoidance of doubt, this Clause 24 shall not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the other of the first-named party's Intellectual Property Rights.

25. Law and Jurisdiction

- 25.1. This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Laws of England and Wales.
- 25.2. Subject to clause 24, any disputes or claims arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the courts of England and Wales.

26. Interpretation

- 26.1. In this Agreement, a reference to a statute or statutory provision includes a reference to:
- 26.1.1. that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - 26.1.2. any subordinate legislation made under that statute or statutory provision.
- 26.2. Clause headings do not affect the interpretation of this Agreement.
- 26.3. In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

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- 26.4. Any words following the terms 'including', 'include', 'in particular', 'for example' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

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Appendix A: Atlassian Customer Agreement

Effective starting: April 1, 2024

This Agreement is between Customer and Atlassian. “**Customer**” means the entity on behalf of which this Agreement is accepted or, if that does not apply, the individual accepting this Agreement. “**Atlassian**” means the Atlassian entity that owns or operates the Products that Customer uses or accesses listed [here](#).

If you (the person accepting this Agreement) are accepting this Agreement on behalf of your employer or another entity, you agree that: (i) you have full legal authority to bind your employer or such entity to this Agreement, and (ii) you agree to this Agreement on behalf of your employer or such entity.

If you are accepting this Agreement using an email address from your employer or another entity, then: (i) you will be deemed to represent that party, (ii) your acceptance of this Agreement will bind your employer or that entity to these terms, and (iii) the word “you” or “Customer” in this Agreement will refer to your employer or that entity.

By clicking on the “Agree” (or similar button or checkbox) that is presented to you at the time of placing an Order, downloading Products, or by using or accessing the Products, you confirm you are bound by this Agreement. If you do not wish to be bound by this Agreement, do not click “Agree” (or similar button or checkbox), download the Products, or use or access the Products.

1. Overview

This Agreement applies to Customer’s Orders for Products and related Support and Advisory Services. The terms of this Agreement apply to both Cloud Products and Software Products, although certain terms apply only to Cloud Products or Software Products, as specified below. In addition, some Products are subject to additional Product-Specific Terms, and Support and Advisory Services are subject to the applicable Policies.

2. Use of Products

2.1. Permitted Use. Subject to this Agreement and during the applicable Subscription Term, Atlassian grants Customer a non-exclusive, worldwide right to use the Products and related Support and Advisory Services for its and its Affiliates’ internal business purposes, in accordance with the Documentation and Customer’s Scope of Use.

2.2. Restrictions. Except to the extent otherwise expressly permitted by this Agreement, Customer must not (and must not permit anyone else to): (a) rent, lease, sell, distribute or sublicense the Products or (except for Affiliates) include them in a service bureau or outsourcing offering, (b) provide access to the Products to a third party, other than to Users, (c) charge its customers a specific fee for use of the Products, but Customer may charge an overall fee for its own offerings (of which the Products are ancillary), (d) use the Products to develop a similar or competing product or service, (e) reverse engineer, decompile, disassemble or seek to access the source code or non-public APIs to the Products, (f) modify or create derivative works of the Products, (g) interfere with or circumvent Product usage limits or Scope of Use restrictions, (h) remove, obscure or modify in any way any proprietary or other notices or attributions in the Products, or (i) violate the [Acceptable Use Policy](#).

2.3. DPA. The DPA applies to Customer’s use of Products and related Support and Advisory Services and forms part of this Agreement.

3. Users

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3.1. Responsibility. Customer may authorize Users to access and use the Products, in accordance with the Documentation and Customer's Scope of Use. Customer is responsible for its Users' compliance with this Agreement and all activities of its Users, including Orders they may place, apps and Third Party-Products enabled, and how Users access and use Customer Data.

3.2. Login Credentials. Customer must ensure that each User keeps its login credentials confidential and must promptly notify Atlassian if it becomes aware of any unauthorized access to any User login credentials or other unauthorized access to or use of the Products.

3.3. Domain Ownership. Where a Cloud Product requires Customer to specify a domain (such as www.example.com) for the Cloud Product's or a feature's operation, Atlassian may verify that Customer or an Affiliate owns or controls that domain. Atlassian has no obligation to provide that Cloud Product or feature if Atlassian cannot verify that Customer or an Affiliate owns or controls the domain. Product administrators appointed by Customer may also take over management of accounts previously registered using an email address belonging to Customer's domain, which become "managed accounts" (or similar term), as described in the Documentation.

3.4. Age Requirements. The Products are not intended for use by anyone under the age of 16. Customer is responsible for ensuring that all Users are at least 16 years old.

4. Cloud Products

This Section 4 only applies to Cloud Products.

4.1. Customer Data. Atlassian may process Customer Data to provide the Cloud Products and related Support or Advisory Services in accordance with this Agreement.

4.2. Security Program. Atlassian has implemented and will maintain an information security program that uses appropriate physical, technical and organizational measures designed to protect Customer Data from unauthorized access, destruction, use, modification or disclosure, as described in its [Security Measures](#). Atlassian will also maintain a compliance program that includes independent third-party audits and certifications, as described in its Security Measures. Further information about Atlassian's security program is available on the [Atlassian Trust Center](#), as updated from time to time.

4.3. Service Levels. Where applicable, service level commitments for the Cloud Products are set out in the [Service Level Agreement](#).

4.4. Data Retrieval. The Documentation describes how Customer may retrieve its Customer Data from the Cloud Products.

4.5. Removals and Suspension. Atlassian has no obligation to monitor Customer Data. Nonetheless, if Atlassian becomes aware that: (a) Customer Data may violate Law, Section 2.2 (Restrictions), or the rights of others (including relating to a takedown request received following the guidelines for [Reporting Copyright and Trademark Violations](#)), or (b) Customer's use of the Cloud Products threatens the security or operation of the Cloud Products, then Atlassian may: (i) limit access to, or remove, the relevant Customer Data, or (ii) suspend Customer's or any User's access to the relevant Cloud Products. Atlassian may also take any such measures where required by Law, or at the request of a governmental authority. When practicable, Atlassian will give Customer the opportunity to remedy the issue before taking any such measures.

5. Software Products

This Section 5 only applies to Software Products.

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5.1. Modifications. Atlassian may provide some portions of the Software Products in source code form for Customer to use internally to create bug fixes, configurations or other modifications of the Software Products, as permitted in the Documentation (“**Modifications**”). Customer must keep such source code secure (on computer devices and online repositories controlled by Customer), confidential, and only make it available to Customer’s employees who have a legitimate need to access and use the source code to create and maintain Modifications. Customer may only use Modifications with the Software Products, and only in accordance with this Agreement, including the [Third-Party Code Policy](#), the Documentation, and Customer’s Scope of Use. Customer must not distribute source code or Modifications to third parties. Customer must securely destroy the source code at the earliest of: (a) Customer no longer needing to use source code to create or maintain Modifications, (b) termination or non-renewal of a relevant Subscription Term, or (c) Atlassian’s request for any reason. Notwithstanding anything else in this Agreement, Atlassian has no support, warranty, indemnity or other responsibility for Modifications.

5.2. License Verification. Upon Atlassian’s written request, Customer will promptly confirm in writing whether its use of the Software Products is in compliance with the applicable Scope of Use. Atlassian or its authorized agents may audit Customer’s use of the Software Products no more than once every twelve (12) months to confirm compliance with Customer’s Scope of Use, provided Atlassian gives Customer reasonable advance notice and uses reasonable efforts to minimize disruption to Customer. If Customer exceeds its Scope of Use, Atlassian may invoice for that excess use, and Customer will pay Atlassian promptly after invoice receipt.

5.3. Number of Instances. Unless otherwise specified in the Order or the Product-Specific Terms, Customer may install up to one (1) production instance of each Software Product included in an Order on systems owned or operated by Customer or its Users.

6. Customer Obligations

6.1. Disclosures and Rights. Customer must ensure it has made all disclosures and obtained all rights and consents necessary for Atlassian to use Customer Data and Customer Materials to provide the Cloud Products, Support or Advisory Services.

6.2. Product Assessment. Customer is responsible for determining whether the Products meet Customer’s requirements and any regulatory obligations related to its intended use.

6.3. Sensitive Health Information and HIPAA. Unless the parties have entered into a ‘Business Associate Agreement,’ Customer must not (and must not permit anyone else to) upload to the Cloud Products (or use the Cloud Products to process) any patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act.

7. Third-Party Code and Third-Party Products

7.1. Third-Party Code. This Agreement and the [Third-Party Code Policy](#) apply to open source software and commercial third-party software Atlassian includes in the Products.

7.2. Third-Party Products. Customer may choose to use the Products with third-party platforms, apps, add-ons, services or products, including offerings made available through the Atlassian Marketplace (“**Third-Party Products**”). Use of such Third-Party Products with the Products may require access to Customer Data and other data by the third-party provider, which, for Cloud Products Atlassian will permit on Customer’s behalf if Customer has enabled that Third-Party Product. Customer’s use of Third-Party Products is subject to the relevant provider’s terms of use, not this Agreement. Atlassian does not control and has no liability for Third-Party Products.

8. Support and Advisory Services

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Atlassian will provide Support and Advisory Services as described in the Order and applicable Policies. Atlassian's provision of Support or Advisory Services is subject to Customer providing timely access to Customer Materials and personnel reasonably requested by Atlassian.

9. Ordering Process and Delivery

No Order is binding until Atlassian provides its acceptance, including by sending a confirmation email, providing access to the Products, or making license or access keys available to Customer. No terms of any purchase order or other business form used by Customer will supersede, supplement, or otherwise apply to this Agreement or Atlassian. Atlassian will deliver login instructions or license keys for Products electronically, to Customer's account (or through other reasonable means) promptly upon receiving payment of the fees. Customer is responsible for the installation of Software Products, and Atlassian has no further delivery obligations with respect to the Software Products after delivery of license keys.

10. Billing and Payment

10.1. Fees.

(a) Direct Purchases. If Customer purchases directly from Atlassian, fees and any payment terms are specified in Customer's Order with Atlassian.

(b) Resellers. If Customer purchases through a Reseller, Customer must pay all applicable amounts directly to the Reseller, and Customer's order details (e.g., Products and Scope of Use) will be specified in the Order placed by the Reseller with Atlassian on Customer's behalf.

(c) Renewals. Unless otherwise specified in an Order and subject to the Product, Support or Advisory Services continuing to be generally available, a Subscription Term will automatically renew at Atlassian's then current rates for: (i) if Customer's prior Subscription was for a period less than twelve (12) months, another Subscription Term of a period equal to Customer's prior Subscription Term, or (ii) if Customer's prior Subscription Term was for twelve (12) months or more, twelve (12) months. Either party may elect not to renew a Subscription Term by giving notice to the other party before the end of the current Subscription Term. Customer must provide any notice of non-renewal through account settings in the Products, by contacting Atlassian's support team or by otherwise providing Atlassian notice.

(d) Increased Scope of Use. Customer may increase its Scope of Use by placing a new Order or modifying (by mutual agreement with Atlassian) an existing Order. Unless otherwise specified in the applicable Order, Atlassian will charge Customer for any increased Scope of Use at Atlassian's then-current rates, prorated for the remainder of the then-current Subscription Term.

(e) Refunds. All fees and expenses are non-refundable, except as otherwise provided in this Agreement. For any purchases Customer makes through a Reseller, any refunds from Atlassian payable to Customer relating to that purchase will be remitted by that Reseller, unless Atlassian specifically notifies Customer otherwise at the time of refund.

(f) Credit Cards. If Customer uses a credit card or similar online payment method for its initial Order, then Atlassian may bill that payment method for renewals, additional Orders, overages to scopes of use, expenses, and unpaid fees, as applicable.

10.2. Taxes.

(a) Taxes Generally. Fees and expenses are exclusive of any sales, use, GST, value-added, withholding or similar taxes or levies that apply to Customer's Orders. Other than taxes on

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Atlassian's net income, Customer is responsible for any such taxes or levies and must pay those taxes or levies, which Atlassian will itemize separately, in accordance with an applicable invoice.

(b) Withholding Taxes. To the extent Customer is required to withhold tax from payment to Atlassian in certain jurisdictions, Customer must provide valid documentation it receives from the taxing authority in such jurisdictions confirming remittance of withholding. This documentation must be provided at the time of payment of the applicable invoice to Atlassian.

(c) Exemptions. If Customer claims exemption from any sales tax, VAT, GST or similar taxes under this Agreement, Customer must provide Atlassian a valid tax exemption certificate or tax ID at the time of Order, and after receipt of valid evidence of exemption, Atlassian will not include applicable taxes on the relevant Customer invoice.

10.3. Return Policy. Within thirty (30) days of its initial Order for a Product, Customer may terminate the Subscription Term for that Product, for any or no reason, by providing notice to Atlassian. Following such termination, upon request (which may be made through Customer's Atlassian account), Atlassian will refund Customer the amount paid for that Product and any associated Support under the applicable Order. Unless otherwise specified in the Policies or Product-Specific Terms, this return policy does not apply to Advisory Services.

10.4. Suspension for Non-payment. Atlassian may suspend Customer's rights to use Products or receive Support or Advisory Services if payment is overdue, and Atlassian has given Customer no fewer than ten (10) days' written notice.

11. Atlassian Warranties

11.1. Performance Warranties. Atlassian warrants to Customer that: (a) the Products will operate in substantial conformity with the applicable Documentation during the applicable Subscription Term, (b) Atlassian will not materially decrease the functionality or overall security of the Products during the applicable Subscription Term, and (c) Atlassian will use reasonable efforts designed to ensure that the Products, when and as provided by Atlassian, are free of any viruses, malware or similar malicious code (each, a "**Performance Warranty**").

11.2. Performance Warranty Remedy. If Atlassian breaches a Performance Warranty and Customer makes a reasonably detailed warranty claim within 30 days of discovering the issue, Atlassian will use reasonable efforts to correct the non-conformity. If Atlassian determines such remedy to be impracticable, either party may terminate the affected Subscription Term. Atlassian will then refund to Customer any pre-paid, unused fees for the terminated portion of the Subscription Term. These procedures are Customer's exclusive remedy and Atlassian's entire liability for breach of a Performance Warranty.

11.3. Exclusions. The warranties in this Section 11 (Atlassian Warranties) do not apply to: (a) the extent the issue or non-conformity is caused by Customer's unauthorized use or modification of the Products, (b) unsupported releases of Software Products or Cloud Clients, or (c) Third-Party Products.

11.4. Disclaimers. **Except as expressly provided in this Section 11 (Atlassian Warranties), the Products, Support and Advisory Services and all related Atlassian services and deliverables are provided "AS IS." Atlassian makes no other warranties, whether express, implied, statutory or otherwise, including warranties of merchantability, fitness for a particular purpose, title or non-infringement. Atlassian does not warrant that Customer's use of the Products will be uninterrupted or error-free. Atlassian is not liable for delays, failures or problems inherent in use of the internet and electronic communications or other systems outside Atlassian's control.**

12. Term and Termination

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12.1. Term. This Agreement commences on the date Customer accepts it and expires when all Subscription Terms have ended.

12.2. Termination for Convenience. Customer may terminate this Agreement or a Subscription Term upon notice for any reason. Subject to Section 10.3 (Return Policy), Customer will not be entitled to any refunds as a result of exercising its rights under this Section 12.2, and any unpaid amounts for the then-current Subscription Terms and any related service periods will become due and payable immediately upon such termination.

12.3. Termination for Cause. Either party may terminate this Agreement or a Subscription Term if the other party: (a) fails to cure a material breach of this Agreement (including a failure to pay fees) within 30 days after notice, (b) ceases operation without a successor, or (c) seeks protection under a bankruptcy, receivership, trust deed, creditors' arrangement, composition or comparable proceeding, or if such a proceeding is instituted against that party and not dismissed within 60 days. If Customer terminates this Agreement or a Subscription Term in accordance with this Section 12.3, Atlassian will refund to Customer any pre-paid, unused fees for the terminated portion of the Agreement or applicable Subscription Term.

12.4. Effect of Termination. Upon expiration or termination of this Agreement or a Subscription Term: (a) Customer's rights to use the applicable Products, Support or Advisory Services will cease, (b) Customer must immediately cease accessing the Cloud Products and using the applicable Software Products and Cloud Clients, and (c) Customer must delete (or, on request, return) all license keys, access keys and any Product copies. Following expiration or termination, unless prohibited by Law, Atlassian will delete Customer Data in accordance with the Documentation.

12.5. Survival. These Sections survive expiration or termination of this Agreement: 2.2 (Restrictions), 4.2 (Security Program), 10.1 (Fees), 10.2 (Taxes), 11.4 (Disclaimers), 12.4 (Effect of Termination), 12.5 (Survival), 13 (Ownership), 14 (Limitations of Liability), 15 (Indemnification by Atlassian), 16 (Confidentiality), 17.4 (Disclaimer), 18 (Feedback), 20 (General Terms) and 21 (Definitions).

13. Ownership

Except as expressly set out in this Agreement, neither party grants the other any rights or licenses to its intellectual property under this Agreement. As between the parties, Customer owns all intellectual property and other rights in Customer Data and Customer Materials provided to Atlassian or used with the Products. Atlassian and its licensors retain all intellectual property and other rights in the Products, any Support and Advisory Services deliverables and related source code, Atlassian technology, templates, formats and dashboards, including any modifications or improvements.

14. Limitations of Liability

14.1. Damages Waiver. **Except for Excluded Claims or Special Claims, to the maximum extent permitted by Law, neither party will have any liability arising out of or related to this Agreement for any loss of use, lost data, lost profits, interruption of business or any indirect, special, incidental, reliance or consequential damages of any kind, even if informed of their possibility in advance.**

14.2. General Liability Cap. **Except for Excluded Claims or Special Claims, to the maximum extent permitted by Law, each party's entire liability arising out of or related to this Agreement will not exceed in aggregate the amounts paid to Atlassian for the Products, Support and Advisory Services giving rise to the liability during the twelve (12) months preceding the first event out of which the liability arose. Customer's payment obligations under Sections 10.1 (Fees) and 10.2 (Taxes) are not limited by this Section 14.2.**

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14.3. Excluded Claims. “**Excluded Claims**” means: (a) Customer’s breach of Section 2.2 (Restrictions) or Section 6 (Customer Obligations), (b) either party’s breach of Section 16 (Confidentiality) but excluding claims relating to Customer Data or Customer Materials, or (c) amounts payable to third parties under Atlassian’s obligations in Section 15 (Indemnification by Atlassian).

14.4. Special Claims. For Special Claims, Atlassian’s aggregate liability under this Agreement will be the lesser of: (a) two times (2x) the amounts paid to Atlassian for the Products, Support and Advisory Services giving rise to the Special Claim during the twelve (12) months preceding the first event out of which the Special Claim arose, and (b) US\$5,000,000. “**Special Claims**” means any unauthorized disclosure of Customer Data or Customer Materials caused by a breach by Atlassian of its obligations in Section 4.2 (Security Program).

14.5. Nature of Claims and Failure of Essential Purpose. The exclusions and limitations in this Section 14 (Limitations of Liability) apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy in this Agreement fails of its essential purpose.

15. Indemnification by Atlassian

15.1. IP Indemnification. Atlassian must: (a) defend Customer from and against any third-party claim to the extent alleging that the Products, when used by Customer as authorized by this Agreement, infringe any intellectual property right of a third party (an “**Infringement Claim**”), and (b) indemnify and hold harmless Customer against any damages, fines or costs finally awarded by a court of competent jurisdiction (including reasonable attorneys’ fees) or agreed in settlement by Atlassian resulting from an Infringement Claim.

15.2. Procedures. Atlassian’s obligations in Section 15.1 (IP Indemnification) are subject to Customer providing: (a) sufficient notice of the Infringement Claim so as to not prejudice Atlassian’s defense of the Infringement Claim, (b) the exclusive right to control and direct the investigation, defense and settlement of the Infringement Claim, and (c) all reasonably requested cooperation, at Atlassian’s expense for reasonable out-of-pocket expenses. Customer may participate in the defense of an Infringement Claim with its own counsel at its own expense.

15.3. Settlement. Customer may not settle an Infringement Claim without Atlassian’s prior written consent. Atlassian may not settle an Infringement Claim without Customer’s prior written consent if settlement would require Customer to admit fault or take or refrain from taking any action (other than relating to use of the Products).

15.4. Mitigation. In response to an actual or potential Infringement Claim, Atlassian may, at its option: (a) procure rights for Customer’s continued use of the Products, (b) replace or modify the alleged infringing portion of the Products without reducing the overall functionality of the Products, or (c) terminate the affected Subscription Term and refund to Customer any pre-paid, unused fees for the terminated portion of the Subscription Term.

15.5. Exceptions. Atlassian’s obligations in this Section 15 (Indemnification by Atlassian) do not apply to the extent an Infringement Claim arises from: (a) Customer’s modification or unauthorized use of the Products, (b) use of the Products in combination with items not provided by Atlassian (including Third-Party Products), (c) any unsupported release of the Software Products or Cloud Clients, or (d) Third-Party Products, Customer Data or Customer Materials.

15.6. Exclusive Remedy. **This Section 15 (Indemnification by Atlassian) sets out Customer’s exclusive remedy and Atlassian’s entire liability regarding infringement of third-party intellectual property rights.**

16. Confidentiality.

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16.1. Definition. “**Confidential Information**” means information disclosed by one party to the other under or in connection with this Agreement that: (a) is designated by the disclosing party as proprietary or confidential, or (b) should be reasonably understood to be proprietary or confidential due to its nature and the circumstances of its disclosure. Atlassian’s Confidential Information includes any source code and technical or performance information about the Products. Customer’s Confidential Information includes Customer Data and Customer Materials.

16.2. Obligations. Unless expressly permitted by the disclosing party in writing, the receiving party must: (a) hold the disclosing party’s Confidential Information in confidence and not disclose it to third parties except as permitted in this Agreement, and (b) only use such Confidential Information to fulfill its obligations and exercise its rights in this Agreement. The receiving party may disclose such Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know (including, for Atlassian, the subcontractors referenced in Section 20.11 (Subcontractors and Affiliates)), provided the receiving party remains responsible for their compliance with this Section 16 (Confidentiality) and they are bound to confidentiality obligations no less protective than this Section 16 (Confidentiality).

16.3. Exclusions. These confidentiality obligations do not apply to information that the receiving party can demonstrate: (a) is or becomes publicly available through no fault of the receiving party, (b) it knew or possessed prior to receipt under this Agreement without breach of confidentiality obligations, (c) it received from a third party without breach of confidentiality obligations, or (d) it independently developed without using the disclosing party’s Confidential Information. The receiving party may disclose Confidential Information if required by Law, subpoena or court order, provided (if permitted by Law) it notifies the disclosing party in advance and cooperates, at the disclosing party’s cost, in any reasonable effort to obtain confidential treatment.

16.4. Remedies. Unauthorized use or disclosure of Confidential Information may cause substantial harm for which damages alone are an insufficient remedy. Each party may seek appropriate equitable relief, in addition to other available remedies, for breach or anticipated breach of this Section 16 (Confidentiality).

17. Free or Beta Products

17.1. Access. Customer may receive access to certain Products or Product features on a free, fully discounted or trial basis, or as an alpha, beta or early access offering (“**Free or Beta Products**”). Use of Free or Beta Products is subject to this Agreement and any additional terms specified by Atlassian, such as the applicable scope and term of use.

17.2. Termination or Modification. At any time, Atlassian may terminate or modify Customer’s use of (including applicable terms) Free or Beta Products or modify Free or Beta Products, without any liability to Customer. For modifications to Free or Beta Products or Customer’s use, Customer must accept those modifications to continue accessing or using the Free or Beta Products.

17.3. Pre GA. Free or Beta Products may be inoperable, incomplete or include errors and bugs or features that Atlassian may never release, and their features and performance information are Atlassian’s Confidential Information.

17.4. Disclaimer. **Notwithstanding anything else in this Agreement, to the maximum extent permitted by Law, Atlassian provides no warranty, indemnity, service level agreement or support for Free or Beta Products and its aggregate liability for Free or Beta Products is limited to US\$100.**

18. Feedback

If Customer provides Atlassian with feedback or suggestions regarding the Products or other Atlassian offerings, Atlassian may use the feedback or suggestions without restriction or obligation.

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19. Publicity

Atlassian may identify Customer as a customer of Atlassian in its promotional materials. Atlassian will promptly stop doing so upon Customer request sent to sales@atlassian.com.

20. General Terms

20.1. Compliance with Laws. Each party must comply with all Laws applicable to its business in its performance of obligations or exercise of rights under this Agreement.

20.2. Code of Conduct. Atlassian must comply with its Code of Conduct in its performance of obligations or exercise of rights under this Agreement.

20.3. Assignment.

(a) Customer may not assign or transfer any of its rights or obligations under this Agreement or an Order without Atlassian's prior written consent. However, Customer may assign this Agreement in its entirety (including all Orders) to its successor resulting from a merger, acquisition, or sale of all or substantially all of Customer's assets or voting securities, provided that Customer provides Atlassian with prompt written notice of the assignment and the assignee agrees in writing to assume all of Customer's obligations under this Agreement and complies with Atlassian's procedural and documentation requirements to give effect to the assignment.

(b) Any attempt by Customer to transfer or assign this Agreement or an Order, except as expressly authorized above, will be null and void.

(c) Atlassian may assign its rights and obligations under this Agreement (in whole or in part) without Customer's consent.

20.4. Governing Law, Jurisdiction and Venue.

(a) If Customer is domiciled: (i) in Europe, the Middle East, or Africa, this Agreement is governed by the laws of the Republic of Ireland, with the jurisdiction and venue for actions related to this Agreement in the courts of the Republic of Ireland, or (ii) elsewhere, this Agreement is governed by the laws of the State of California, with the jurisdiction and venue for actions related to this Agreement in the state and United States federal courts located in San Francisco, California.

(b) This Agreement will be governed by such laws without regard to conflicts of laws provisions, and both parties submit to the personal jurisdiction of the applicable courts. The United Nations Convention on the International Sale of Goods does not apply to this Agreement.

20.5. Notices.

(a) Except as specified elsewhere in this Agreement, notices under this Agreement must be in writing and are deemed given on: (i) personal delivery, (ii) when received by the addressee if sent by a recognized overnight courier with receipt request, (iii) the third business day after mailing, or (iv) the first business day after sending by email, except that email will not be sufficient for notices regarding Infringement Claims, alleging breach of this Agreement by Atlassian, or of Customer's termination of this Agreement in accordance with Section 12.3 (Termination for Cause).

(b) Notices to Atlassian must be provided according to the details provided [here](#), as may be updated from time to time.

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(c) Notices to Customer must be provided to the billing or technical contact provided to Atlassian, which may be updated by Customer from time to time in Customer's account portal. However, Atlassian may provide general or operational notices via email, on its website or through the Products. Customer may subscribe to receive email notice of updates to this Agreement, as described [here](#).

20.6. Entire Agreement. This Agreement is the parties' entire agreement regarding its subject matter and supersedes any prior or contemporaneous agreements regarding its subject matter. In the event of a conflict among the documents making up this Agreement, the main body of this Agreement (i.e., Sections 1 through 21, inclusive) will control, except that the Policies, Product-Specific Terms and DPA will control for their specific subject matter.

20.7. Other Atlassian Offerings. Atlassian makes available other offerings that can be used with the Products which, in some cases, are subject to separate terms and conditions, available [here](#). These other offerings include training services, developer tools and the Atlassian Marketplace. For clarity, this Agreement controls over any such terms and conditions with respect to Customer's use of the Products (including any Atlassian Apps).

20.8. Interpretation, Waivers and Severability. In this Agreement, headings are for convenience only and "including" and similar terms are to be construed without limitation. Waivers must be granted in writing and signed by the waiving party's authorized representative. If any provision of this Agreement is held invalid, illegal or unenforceable, it will be limited to the minimum extent necessary so the rest of this Agreement remains in effect.

20.9. Changes to this Agreement.

(a) Atlassian may modify this Agreement (which includes the Policies, Product-Specific Terms and DPA) from time to time, by posting the modified portion(s) of this Agreement on Atlassian's website. Atlassian must use commercially reasonable efforts to post any such modification at least thirty (30) days prior to its effective date.

(b) For free subscriptions, modifications become effective during the then current Subscription Term, in accordance with Atlassian's notice.

(c) For paid subscriptions:

(i) except as specified below, modifications to this Agreement will take effect at the next Order or renewal unless either party elects to not renew pursuant to Section 10.1(c) (Renewals), and

(ii) Atlassian may specify that modifications will become effective during a then-current Subscription Term if: (A) required to address compliance with Law, or (B) required to reflect updates to Product functionality or introduction of new Product features. If Customer objects, Customer may terminate the remainder of the then-current Subscription Term for the affected Products as its exclusive remedy. To exercise this right, Customer must notify Atlassian of its termination under this Section 20.9(c) within thirty (30) days of the modification notice, and Atlassian will refund any pre-paid fees for the terminated portion of the applicable Subscription Term.

20.10. Force Majeure. Neither party is liable for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) due to events beyond its reasonable control and occurring without that party's fault or negligence.

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20.11. Subcontractors and Affiliates. Atlassian may use subcontractors or its Affiliates in the performance of its obligations under this Agreement, but Atlassian remains responsible for its overall performance under this Agreement and for having appropriate written agreements in place with its subcontractors to enable Atlassian to meet its obligations under this Agreement.

20.12. Independent Contractors. The parties are independent contractors, not agents, partners or joint venturers.

20.13. Export Restrictions.

(a) The Products may be subject to U.S. export restrictions and import restrictions of other jurisdictions. Customer must comply with all applicable export and import Laws in its access to, use of, and download of the Products or any part of the Products. Customer must not (and must not allow anyone else to) export, re-export, transfer or disclose the Products or any direct product of the Products: (i) to (or to a national or resident of) any U.S. embargoed jurisdiction (ii) to anyone on any U.S. or applicable non-U.S. restricted- or denied-party list, or (iii) to any party that Customer has reason to know will use the Products in violation of U.S. export Law, or for any restricted end user under U.S. export Law.

(b) Customer must not provide Atlassian any data subject to the U.S. International Traffic in Arms Regulations or similar Laws in other jurisdictions governing defense articles, technology or services and must not use the Products for any activity subject to such Laws.

20.14. Government End-Users. If Customer is a United States federal, state or local government customer, this Agreement is subject to, and is varied by, the [Government Amendment](#).

20.15. No Contingencies. The Products, Support and Advisory Services in each Order are purchased separately and not contingent on purchase or use of other Atlassian products and services, even if listed in the same Order. Customer's purchases are not contingent on delivery of any future functionality or features.

21. Definitions

"**Acceptable Use Policy**" means Atlassian's [Acceptable Use Policy](#).

"**Advisory Services**" means advisory services as described in the Advisory Services Policy.

"**Advisory Services Policy**" means Atlassian's [Advisory Services Policy](#).

"**Affiliate**" means an entity that, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with a party, where "ownership" means the beneficial ownership of more than fifty percent (50%) of an entity's voting equity securities or other equivalent voting interests and "control" means the power to direct the management or affairs of an entity.

"**Agreement**" means this Atlassian Customer Agreement, as well as the Product-Specific Terms, the DPA and the Policies.

"**Atlassian Apps**" means apps developed by Atlassian for use with Cloud Products or Software Products, as designated by Atlassian in the Atlassian Marketplace.

"**Atlassian Marketplace**" means the online platform to purchase apps for Atlassian products currently branded the Atlassian Marketplace and accessible [here](#).

"**Cloud Products**" means Atlassian's cloud products, including client software for its cloud products ("Cloud Clients").

"**Code of Conduct**" means the Atlassian Code of Business Conduct & Ethics, available [here](#).

"**Customer Data**" means any data, content or materials provided to Atlassian by or at the direction of Customer or its Users via the Cloud Products, including from Third-Party Products.

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“Customer Materials” means materials and other resources that Customer provides to Atlassian in connection with Support or Advisory Services.

“Documentation” means Atlassian’s usage guidelines and standard technical documentation for the applicable Product available [here](#), unless otherwise specified in the Product-Specific Terms.

“DPA” means the Atlassian [Data Processing Addendum](#).

“Laws” means all applicable laws, regulations, conventions, decrees, decisions, orders, judgments, codes and requirements of any government authority (federal, state, local or international) having jurisdiction.

“Order” means Atlassian’s ordering document or online order specifying the Products, Support or Advisory Services to be provided under this Agreement, accepted by Atlassian in accordance with Section 9 (Ordering Process and Delivery).

“Policies” means the [Acceptable Use Policy](#), [Advisory Services Policy](#), guidelines for [Reporting Copyright and Trademark Violations](#), [Privacy Policy](#), [Security Measures](#), Service Level Agreement, [Support Policy](#), [Third-Party Code Policy](#) and any additional Atlassian policies specified in the Product-Specific Terms.

“Privacy Policy” means Atlassian’s [Privacy Policy](#).

“Products” means the applicable Cloud Products or Software Products made available by Atlassian in connection with an Order. Products also include Atlassian Apps.

“Product-Specific Terms” means product-specific terms that apply only to certain Products, available [here](#).

“Reseller” means a partner authorized by Atlassian to resell Atlassian’s Products, Support and Advisory Services to customers.

“Scope of Use” means Customer’s entitlements to the Products specified in an Order, which may include: (a) number and type of Users, (b) numbers of licenses, copies or instances, or (c) entity, division, business unit, website, field of use or other restrictions or billable units.

“Security Measures” means Atlassian’s [security practices](#).

“Service Level Agreement” means the service level commitments, if any, for a Cloud Product as described [here](#).

“Software Products” means Atlassian’s installed software products and any generally-available bug fixes, updates and upgrades it provides to Customer, including through Support.

“Subscription Term” means the term for Customer’s use of or access to the Products and related Support and Advisory Services as identified in an Order.

“Support” means the level of support for the Products corresponding to Customer’s Scope of Use, as identified in the Support Policy.

“Support Policy” means the Atlassian support offerings documentation available [here](#).

“Third-Party Code Policy” means Atlassian’s [Third-Party Code Policy](#).

“User” means any individual that Customer authorizes to use the Products. Users may include: (i) Customer’s and its Affiliates’ employees, consultants, contractors and agents (ii) third parties with which Customer or its Affiliates transact business (iii) individuals invited by Customer’s users (iv) individuals under managed accounts, or (v) individuals interacting with a Product as Customer’s customer.

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Appendix B: Atlassian Marketplace Terms of Use

Use of the Atlassian Marketplace is governed by these Atlassian Marketplace Terms of Use (“**Terms of Use**”), which form a legally binding agreement between you (defined in Section 1.1) and Atlassian Pty Ltd, an Australian corporation (ABN 53 102 443 916) (“**Atlassian**” or “**we**”).

By placing an Order for an App, or accessing or using the Atlassian Marketplace, you indicate your assent to be bound by these Terms of Use. If you do not agree to these Terms of Use, do not place an Order or use or access the Atlassian Marketplace.

1. Introduction

1.1. Who are You? Because all Apps available through the Atlassian Marketplace are designed for use with Atlassian Products, in these Terms of Use, “**you**” refers to the Atlassian customer (e.g., person or entity) who holds a license or subscription to the Atlassian Product with which the App will be enabled or used. That Atlassian customer is fully responsible for compliance with these Terms of Use by anyone using the Atlassian Marketplace or placing Orders on its behalf. Any person using the Atlassian Marketplace or placing an Order on behalf of an Atlassian customer is binding that Atlassian customer to these Terms of Use. These Terms of Use also apply to you if you are browsing the Marketplace or leaving a review.

1.2. Types of Apps. Some Marketplace Apps are made available at no charge, and others require payment of fees. The listing for each App will identify the provider of the App (“**Vendor**”), which may be Atlassian or a third party. Apps for which Atlassian is the Vendor are “**Atlassian Apps**,” and Apps for which the Vendor is a third party are “**Third Party Apps**”. Most Vendors are third parties, who create, own and are responsible for their own Apps as further described in these Terms of Use. In all cases, you may only use Apps with the Atlassian Products with which they are designed to be used (as identified in the App’s listing).

1.3. Finding Apps and Placing Orders. We want it to be easy to find great Apps throughout your Atlassian experience. Therefore, “Atlassian Marketplace” includes <https://marketplace.atlassian.com> and any other webpage, application, interface, service or in-product experience at which we make available or list Apps (such as our [Universal Plugin Manager](#)). Likewise, when we refer to “Orders”, that includes any order, purchase, installation, trial, download or enablement of an App (including renewals and upgrades), whether through the Atlassian Marketplace, Atlassian Products or other processes or interfaces we make available. All Orders are subject to these Terms of Use.

1.4. Marketplace Policies. Your Orders and use of the Atlassian Marketplace are also subject to Atlassian’s marketplace [FAQs](#) and posted policies, as may be modified from time to time (“**Marketplace Policies**”), which are incorporated into these Terms of Use.

2. Your Orders

2.1. Order Details. Your Order will identify the Vendor, your authorized scope of use of the App (such as the platform or number of seats) and license or subscription term, as applicable. Once you complete your Order, Atlassian will provide with you access to the applicable Apps, including any relevant license or access keys, as described in the Marketplace Policies.

2.2. Paid Apps. To receive access to paid Apps, you must pay Atlassian the fees, including all taxes, indicated at the time of your Order. Terms for renewals, including pricing, will be described within the App’s listing on the Atlassian Marketplace (or if different, your Order). You can disable renewals by visiting my.atlassian.com or by emailing sales@atlassian.com (but you will not receive any refunds except as described in Section 2.3). For any Third Party App, you acknowledge and agree that Atlassian is the Vendor’s commercial agent and that you are required to make any related

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payments directly to Atlassian (and your sales contract with Atlassian includes these Terms of Use and the applicable Order). However, after you complete your Order, your usage of any Third Party Apps will be governed by the applicable Vendor Terms, as described in Section 3.

Note: this Section 2.2 does not apply to Paid-via-Vendor Apps (see Section 2.5 below).

2.3. Return Policy. Returns and refunds of Atlassian Apps are governed by the Atlassian Terms, as defined in Section 3.1(b). For Third Party Apps, you have thirty (30) days from the date you place your Order to cancel your Order and return the App. If you cancel your Order of a Third Party App within this 30-day period, Atlassian will refund the amount you paid for the applicable Third Party App, and you must cease using the App and delete any copies of the App in your possession. Except as expressly provided in this Section 2.3, all Orders are non-cancelable and non-refundable.

Note: this Section 2.3 does not apply to Paid-via-Vendor Apps (see Section 2.5 below).

2.4. Trial Periods. The Atlassian Marketplace may offer free trial periods for Apps. After expiration of the trial period, if you do not place an Order for the App, the App will cease to function and you must cease using and delete your copies of the App and any related license or access keys.

2.5. Paid-via-Vendor Apps. While most Apps are provisioned by Atlassian as described in Section 2.1, some Third Party Apps may be enabled or paid for through a third party Vendor's own website ("**Paid-via-Vendor Apps**"). Paid-via-Vendor Apps will be identified in their listings or when you enable or pay for the App. Section 2.2 (Paid Apps) and Section 2.3 (Return Policy) do not apply to Paid-via-Vendor Apps and returns, if any, would be governed by the applicable Vendor Terms.

3. Use of Marketplace Apps.

3.1. Vendor Terms. Without limiting the disclaimers, restrictions or other provisions in these Terms of Use, usage of Apps is subject to the license or subscription terms, privacy policies and other applicable terms specified by the Vendor ("**Vendor Terms**"), including any usage limits described therein. Vendor Terms are typically included on the App's listing page or presented through the Order process. You may not use an App if you do not agree to the relevant Vendor Terms.

(a) Third Party Apps. Third Party Apps are subject to the third party's Vendor Terms, not the Atlassian Terms. By ordering, installing or enabling any Third Party App, you are entering into the Vendor Terms directly with the applicable third party Vendor. Atlassian is not a party to, or responsible for compliance with, any third party Vendor Terms, and does not guarantee any third party Vendor Terms are adequate for your own needs. Please see Section 4 (Data Collection and Sharing) for additional information about how third party Vendors use your data.

(b) Atlassian Apps. If Atlassian is the Vendor of the App, the Vendor Terms are the Atlassian terms that govern the Atlassian Product with which the App is enabled or used (listed [here](#)) and as may be modified from time to time (the "**Atlassian Terms**"). The Atlassian Terms include the [Atlassian Privacy Policy](#). In event of a conflict between these Terms of Use and the Atlassian Terms, the Atlassian Terms will control as to each party's rights and responsibilities related to the App itself, while these Terms of Use will control as to the Atlassian Marketplace generally.

3.2. Support and Maintenance. Any support and maintenance of Third Party Apps will be provided by the applicable Vendor and only to the extent described in the applicable Vendor Terms. Atlassian is not responsible for any support and maintenance for Third Party Apps, and a Vendor's failure to provide any support or maintenance does not entitle you to any refund. If Atlassian is the Vendor, it will provide any support and maintenance in accordance with the Atlassian Terms.

3.3. Reservation of Rights. Except for the rights explicitly granted to you in these Terms of Use and in the Vendor Terms for each App, all right, title and interest (including intellectual property rights) in the Atlassian Marketplace are reserved by Atlassian, and all right, title and interest (including intellectual property rights) in the Apps are reserved and retained by their respective Vendors and

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licensors. Apps are provided on a license or subscription basis, not sold, and you do not acquire any ownership rights in the Atlassian Marketplace or the Apps.

4. Data Collection and Sharing.

4.1. Order Information. If you order a Marketplace App through Atlassian, Atlassian will provide the Vendor with the information you provide in completing the order, such as your name, company name (if any), addresses (including e-mail address) and phone number.

4.2. Third Party Vendor Use of Data. As referenced in the Atlassian Terms, if you place an Order for Third Party Apps, you authorize Vendors to access or use certain data in the applicable Atlassian Products. This may include transmitting, transferring, modifying or deleting such data, or storing such data on Vendor or third party systems. Any third party Vendor's use of accessed data (whether data in the Atlassian Products or separately collected from you or your device) is subject to the applicable Vendor Terms. **Atlassian is not responsible for any access, use, transfer or security of data or information by third party Vendors or by Third Party Apps, or for the security or privacy practices of any third party Vendor or such Vendor's Third Party Apps and third party processors. You are solely responsible for your decision to permit any third party Vendor or Third Party App to access or use data to which you've granted access.**

4.3. Atlassian Use of Marketplace Data. Any data that Atlassian collects from you based on your use of the Atlassian Marketplace and your Orders, or that it receives from third party Vendors on your behalf (e.g., order details related to purchases under Section 2.5 (Paid-via-Vendor Apps)), is subject to the Atlassian Privacy Policy.

4.4. Analytics and Usage Data. In addition, you authorize the Vendor and Atlassian (if Atlassian is not the Vendor) to collect and use technical data and related information (including technical information relating to your device, system, and the App), in non-personally identifiable form, to facilitate the provision of software updates, product support, marketing efforts and other services to you related to the App. Vendor and Atlassian (if Atlassian is not the Vendor) may each use this information, as long as it is in a form that does not personally identify individual users, to improve their respective products or to provide services or technology to you (including with respect to Atlassian, the Atlassian Marketplace and Atlassian Products).

5. Reviews of Marketplace Apps.

The Atlassian Marketplace allows users to post reviews (e.g., a star rating) of Marketplace Apps and to post comments on your or other users' reviews.

5.1. User Names Displayed. Reviews and comments are posted under the name and profile of the user submitting the content (as listed in his or her [Atlassian account](#)). Users who do not want their names or other profile information (such as profile photographs) to appear may not post reviews or comments on the Atlassian Marketplace.

5.2. Rules for Reviews. All reviews and comments must comply with Atlassian's [Acceptable Use Policy](#) and the terms below. To make your reviews and comments useful to others:

- Reviews must be made in good faith after reasonable evaluation of the relevant App.
- Users may post only one review per App, unless the latter review reflects a good-faith rating change based on further evaluation. Any modified reviews will be marked as "edited".
- You (including anyone acting on your behalf) may not review or comment on your own App, an App owned by a company you work for, or those of competitors. As an exception, you

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may provide informational responses to support requests or other inquiries directed to you within the reviews or comments section of your App listing.

- A Review must evaluate the App itself and not be an evaluation of the underlying product with which the App integrates or functions.
- Reviews or comments unrelated to the relevant App are prohibited – for example, discussing Atlassian’s employees, business or stock, or those of other companies, or unrelated products or services.

5.3. Atlassian Rights. Atlassian reserves the right, in its sole discretion and for any reason at any time, to remove or edit any review or comment on the Atlassian Marketplace. Atlassian does not claim ownership of the content of reviews or comments you post on the Atlassian Marketplace. However, you hereby grant Atlassian a nonexclusive, worldwide, irrevocable, perpetual, transferable, sublicenseable (through multiple tiers), fully paid-up, royalty-free license to use, distribute, reproduce, modify, excerpt, attribute, adapt, publicly perform and publicly display that content (in whole or in part) and to incorporate it into other works in any format or medium now known or later developed, and to permit others to do so.

6. Your Responsibilities.

6.1. Representations and Warranties. You (including anyone acting on your behalf) represent and warrant that you have all necessary right, power and authority (i) to enter into and be legally bound by these Terms of Use, (ii) to place any Orders, and (iii) and to authorize Vendors to access and use your data and information as described in Section 4, all without violation of any other agreements or policies.

6.2 Compliance with Law and Reservation of Rights. You must use the Atlassian Marketplace and Marketplace Apps in compliance with all applicable laws.

6.3. Indemnification. You agree to indemnify, defend (at Atlassian’s request) and hold harmless Atlassian, its affiliates, and its and their officers, agents and employees from any claims by third parties, and any related damages, losses or costs (including reasonable attorney fees and costs) arising out of your violation of these Terms of Use or the applicable Vendor Terms, your violation of any rights of a third party, or any content you submit to or publish on the Atlassian Marketplace. You may not settle any such claim without Atlassian’s prior written consent.

7. Term and Termination.

7.1. For Cause. Your rights hereunder will automatically terminate upon your failure to comply with any of the provisions in these Terms of Use. In case of such termination, you must cease all use of the Atlassian Marketplace, and Atlassian may immediately revoke your access to the Atlassian Marketplace without notice to you and without refund of any purchases.

7.2. Discontinuation of Marketplace. Atlassian may terminate these Terms of Use without notice to you if Atlassian, in its discretion, discontinues the Atlassian Marketplace.

7.3. Effect on Apps. If these Terms of Use terminate, your rights to use any previously obtained Apps will survive in accordance with the applicable Vendor Terms.

7.4. Survival. The following Sections will survive any termination or expiration of these Terms of Use: 3.1(b) (Atlassian Terms) (if applicable for continued use of Atlassian Apps), 3.3 (Reservation of Rights), 4 (Data Collection and Sharing), 5.3 (Atlassian Rights) and 6 (Your Responsibilities) through 10 (General).

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8. Important Disclaimers and Limitations of Liability.

8.1. Third Party Apps. A significant portion of the Marketplace Apps in the Atlassian Marketplace are provided by parties other than Atlassian. Third party Vendors are solely responsible for their Apps and any related content or materials included in their Apps. **Atlassian has no liability or responsibility whatsoever for any Third Party Apps, including their accuracy, reliability, availability, security, data handling, data processing, completeness, usefulness or quality, even if Atlassian is hosting such App.** These disclaimers apply even if an App complies with Atlassian's guidelines for Third Party Apps (located on Atlassian's web properties such as developer.atlassian.com), and even if Atlassian has reviewed, certified, or approved the Third Party App, if the Vendor participates in any one of Atlassian's App programs such as those described [here](#) ("App Programs"). Any use of Third Party Apps is at your sole discretion and risk. Vendors are solely responsible for ensuring that any information they submit in connection with any App Program is accurate, complete and correct, and Atlassian is not responsible for the standards or business practices of any third party Vendor (whether support, availability, security or otherwise), even if the Vendor participates in an App Program. You should always independently verify that any Third Party Apps or Vendor business practices meet your needs. In addition, Atlassian is not responsible for any third party websites to which the Atlassian Marketplace links or their terms of use or privacy policies. You should use your discretion when visiting third party websites.

8.2. Removal of Apps. At any time, Atlassian may remove an App from the Atlassian Marketplace in accordance with its applicable policies, and Vendors may also update, modify or remove their own Apps at any time.

8.3. Interoperability. Atlassian makes no guarantee that any Apps will work properly with Atlassian Products or that Apps will continue to work with Atlassian Products as they change over time. Some Apps rely on hosted or cloud services provided by the Vendor or third parties, and these Apps may not function properly or may become inoperable if those services are discontinued.

8.4. Disclaimer of Warranties. To the maximum extent permitted by law, Atlassian offers the Atlassian Marketplace and all Third Party Apps "AS IS" and "AS AVAILABLE", and Atlassian hereby disclaims all warranties, whether express, implied or statutory, including but not limited to any implied warranties of title, non-infringement, merchantability or fitness for a particular purpose, relating to the Atlassian Marketplace or this Agreement. You may have other statutory rights, in which case the duration of any statutory warranties will be limited to the maximum extent permitted by law.

8.5. Limitations of Liability. To the maximum extent permitted by law, in no event will Atlassian be liable for any direct, indirect, consequential, special, exemplary, punitive or other liability related to the Atlassian Marketplace or any Third Party Apps, including for any loss of use, lost or inaccurate data, failure of security mechanisms, interruption of business or costs of delay. If the foregoing disclaimer of direct damages is not enforceable at law for any reason, in no event will Atlassian's aggregate liability to you under these Terms of Use exceed the greater of (1) the amount you paid to Atlassian for the Third Party App related to your claim, or (2) fifty dollars (US\$50).

8.6. Disclaimers and Limitations of Liability for Atlassian Apps. Section 8.4 (Disclaimer of Warranties) and 8.5 (Limitations of Liability) do not alter the disclaimers or limitations of liability for Atlassian Apps in the Atlassian Terms, which continue to fully apply.

8.7. Basis of Bargain; Failure of Essential Purpose. Atlassian entered into these Terms of Use relying on the limitations of liability, disclaimers of warranty and other provisions relating to allocation of risk herein, and you agree that such provisions are an essential basis of the bargain between the

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parties. You agree that the waivers and limitations specified in this Section 8 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in these Terms of Use is found to have failed of its essential purpose.

8.8. Atlassian Affiliates and Contractors. You acknowledge and agree that Atlassian's affiliates, contractors and service providers may exercise all rights of Atlassian under these Terms of Use, and that all limitations of liability and disclaimers in these Terms of Use apply fully to and benefit Atlassian's affiliates.

9. Dispute Resolution; Governing Law.

9.1. Informal Resolution. In the event of any controversy or claim arising out of or relating to these Terms of Use, the parties will consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties. If the parties do not reach settlement within a period of sixty (60) days, either party may pursue relief as may be available under these Terms of Use pursuant to Section 9.2 (Governing Law; Jurisdiction). All negotiations pursuant to this Section 9.1 will be confidential and treated as compromise and settlement negotiations for purposes of all similar rules and codes of evidence of applicable legislation and jurisdictions.

9.2. Governing Law; Jurisdiction. These Terms of Use will be governed by and construed in accordance with the applicable laws of the State of California, USA, without giving effect to the principles of that State relating to conflicts of laws. Each party irrevocably agrees that any legal action, suit or proceeding arising out of or related to these Terms of Use must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of, the State or Federal court in San Francisco, California, USA, and each party irrevocably submits to the sole and exclusive personal jurisdiction of the courts in San Francisco, California, USA, generally and unconditionally, with respect to any action, suit or proceeding brought by it or against it by the other party.

9.3. Injunctive Relief; Enforcement. Notwithstanding the provisions of Section 9.1 (Informal Resolution) and 9.2 (Governing Law; Jurisdiction), nothing in these Terms of Use will prevent Atlassian from seeking injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction.

9.4. Exclusion of UN Convention and UCITA. The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to these Terms of Use. The Uniform Computer Information Transactions Act (UCITA) will not apply to these Terms of Use regardless of when or where adopted.

10. General.

10.1. Changes to Terms. Atlassian may modify these Terms of Use at its sole discretion by posting the revised terms on the Atlassian Marketplace. You may be required to click to agree to the modified Terms of Use in order to continue using the Marketplace, and in any event your continued use of the Atlassian Marketplace (including any future Orders) after the effective date of the modifications constitutes your acceptance of the modified terms. For clarity, the version of these Terms of Use in place at the time of your Order will apply for purposes of that Order. Except as provided in this Section 10.1, all changes or amendments to these Terms of Use require the written agreement of you and Atlassian.

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10.2. Reporting Copyright and Trademark Violations. If you believe that any content in the Atlassian Marketplace violates your copyright, please follow the process described at [Reporting Copyright and Trademark Violations](#).

10.3. Contact Information. For communications concerning these Terms of Use (other than copyright and trademark concerns covered in Section 10.2), please write to legal@atlassian.com. Atlassian may send you notices through your [Atlassian account](#) or to your email address that is on file with Atlassian.

10.4. Entire Agreement. These Terms of Use constitute the entire agreement between the parties with respect to their subject matter and supersedes any and all prior or contemporaneous agreements between the parties with respect to their subject matter. For clarity, this does not limit the Vendor Terms, which apply in accordance with Section 3 above.

10.5. Interpretation. If any provision of these Terms of Use is held invalid by a court with jurisdiction over the parties to these Terms of Use, such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and the remainder of these Terms of Use will remain in full force and effect. Atlassian's failure to enforce any provision of these Terms of Use will not constitute a waiver of Atlassian's rights to subsequently enforce the provision. In these Terms of Use, headings are for convenience only and terms such as "including" are to be construed without limitation.

10.6. Assignment. You may not assign or transfer these Terms of Use. Atlassian may freely assign, transfer and delegate its rights and obligations under these Terms of Use.

10.7. No agency. Nothing in these Terms of Use or any Order is intended to, or shall be deemed to, make Atlassian your agent, or authorize Atlassian to make or enter into any commitments for you or on your behalf.

10.8. Export Laws and Regulations. You may not use or otherwise export or re-export the Marketplace Apps except as authorized by United States law and the laws of the jurisdiction in which the App was obtained. In particular, but without limitation, Apps may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals and Consolidated Sanctions list or the U.S. Department of Commerce's Denied Persons, Entity, or Unverified Lists. By using any Marketplace App, you represent and warrant that you are not located in any such country or on any such list. You agree not to use or provide the Apps for any prohibited end use, including to support any nuclear, chemical, or biological weapons proliferation, or missile technology, without the prior permission of the United States government.

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Appendix C: Atlassian Training Terms and Policies

Welcome to Atlassian Pty Ltd's (ABN 53 102 443 916) ("**Atlassian**") online training platform (the "**Service**")! Through the Service, you'll be able to access our library of training courses ("**Courses**") for our products and services ("**Atlassian Products**"). For the purposes of these Training Terms of Use, the Courses and Materials (as defined below) are deemed to be part of the "Service."

By accessing the Service or ordering any Course, you are agreeing to Atlassian's Training Terms of Use and all other policies or notices posted by us through the Service or referenced herein (collectively, these "**Terms**"). These Terms govern your initial access to the Service and any subsequent order of Courses you make via any ordering document, online registration, order description, or order confirmation referencing these Terms ("**Order**"). If you don't agree to these Terms, do not access the Service. These Terms apply no matter how you access the Service, whether on our website, via our mobile applications, or through other means. If you are accessing or using the Service on behalf of your company, you represent that you are authorized to accept these Terms on behalf of your company, and all references to "you" reference your company. **Any use of or access to the Service by anyone under the age of 13 is prohibited.**

For the avoidance of doubt, use and provisioning of Atlassian Products are subject to separate terms, such as our [Customer Agreement](#), and these Terms do not apply to use of or access to the Atlassian Products.

From time to time, we may modify these Terms. Unless we specify otherwise, changes become effective upon our posting of the updated Terms, and the updated Terms will apply to all purchases made after they are posted. We will use reasonable efforts to notify you of the changes through communications via the Service, email or other means.

1. THE SERVICE.

1.1. Access to the Service. You may access the Service via your accounts for Atlassian Products to view the Courses you have purchased, but solely for your own benefit and in accordance with these Terms. You acknowledge that we may use your personal data (including for registration for Courses) in accordance with our Privacy Policy (located at <https://www.atlassian.com/legal/privacy-policy>) and that such personal data is processed and stored in the United States. You will ensure that your use of the Service and all User Content (as defined below) is at all times in compliance with all applicable laws.

1.2. Materials. Courses may include supplementary materials that you may download or otherwise access online, including Course descriptions, toolkits, and other written materials designed to supplement your training ("**Materials**"). If any Materials are provided with the Courses you have purchased, then subject to these Terms, Atlassian hereby grants you a non-transferable, non-sublicensable, non-exclusive license to copy and use the Materials solely for your personal, non-commercial, educational use in connection with the applicable Courses.

1.3. General Restrictions. You will not (and will not permit any third party to): (a) rent, lease, sell, provide access to or sublicense the Service to a third party; (b) use the Service to provide any product or service to a third party; (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to the Service; (d) copy or modify the Service, or create any derivative work from any of the foregoing; (e) remove or obscure any proprietary or other notices contained in the Service; or (f) publicly disseminate information regarding the performance of the Service.

2. Courses. Information on the different types of Courses you may order is available at <https://training.atlassian.com/faq> (the "**Information Page**"), which is hereby incorporated into these Terms.

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3. OWNERSHIP AND USER CONTENT.

3.1. Ownership of the Service. You agree that we or our suppliers retain all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Service. Except as expressly set forth in these Terms, no rights in the Service are granted to you.

3.2. Feedback. We look forward to receiving your comments, requests and other feedback regarding the Service and you agree that we are free to incorporate and use your feedback without restriction of any kind, including in our promotional materials, in a manner that is attributable back to you.

3.3. User Content. The Service may enable you to share your content, such as projects, assignments, and the like (“**User Content**”), with us, instructors, and/or other users. For the avoidance of doubt, any User Content does not constitute “Materials” for the purposes of these Terms. You retain all intellectual property rights in, and are responsible for, the User Content you share. Your use of the Service and all User Content must comply with our [Acceptable Use Policy](https://www.atlassian.com/legal/acceptable-use-policy) (located at <https://www.atlassian.com/legal/acceptable-use-policy>) at all times. To the extent that you provide User Content, you grant us a royalty-free, perpetual, sublicensable, transferable, non-exclusive, worldwide license to copy, distribute, modify, create derivative works of, publicly perform, publicly display, and otherwise use the User Content. We do not promise to store or make available on the Service any User Content for any length of time. We reserve the right to remove or modify User Content for any reason, including User Content that we believe violates these Terms.

3.4. No Confidential Information. You should not provide to us any information that you consider confidential (including in any feedback or User Content you provide) and you agree that we are not subject to any confidentiality obligations or use restrictions related to information or materials that you may provide to us in relation to the Service.

4. FEES & PAYMENT; REFUNDS.

4.1. Fees and Payment. Fees for Courses are as set forth on the Information Page. You are responsible for paying all fees for Courses you purchase as set forth in the applicable Order with a payment mechanism permitted during the Order process. You are required to pay any sales, use, GST, value-added, withholding, or similar taxes or levies, whether domestic or foreign, other than taxes based on our income. If your payment method fails or your account is past due, we may collect fees using other collection mechanisms. Fees may vary based on your location and other factors, and we reserve the right to change any fees at any time at our sole discretion. Any fee change will be effective immediately upon posting through the Service.

4.2. Refunds. Our refund policies are set forth on the Information Page.

5. TERM AND TERMINATION.

5.1. Term and Terminations. These Terms are effective as of the earlier of (a) the date you first access or use the Service or (b) the date of your first Order, and continue in effect while you are accessing the Courses. We may terminate these Terms and your access to the Service at any time upon notice to you if you breach these Terms.

5.2. Effect of Termination. Upon any expiration or termination of these Terms, you will immediately cease any and all use of and access to the Service. Provided these Terms were not terminated for your breach, you may retain copies of any Materials, so long as you do not copy, distribute or otherwise use them in violation of these Terms. Except where an exclusive remedy is specified, the exercise of either party of any remedy under these Terms, including termination, will be without prejudice to any other remedies it may have under these Terms, by law or otherwise.

5.3. Survival. The following Sections will survive any expiration or termination of these Terms: 1.3 (General Restrictions), 3 (Ownership and User Content), 4 (Fees & Payment; Refunds), 5 (Term and

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Termination), 6 (Warranty Disclaimer), 8 (Limitation of Remedies and Damages), 9 (Indemnity), 10 (Dispute Resolution) and 11 (General Terms).

6. **WARRANTY DISCLAIMER.** The service is provided “as is”. we and our suppliers do not make any warranties, express or implied, statutory or otherwise, including but not limited to warranties of merchantability, title, fitness for a particular purpose or noninfringement. We do not warrant that your use of the service will be uninterrupted or error-free. We shall not be liable for delays, interruptions, website failures or other problems inherent in use of the internet and electronic communications or other systems outside our reasonable control. The courses are provided for guidance only, and we make no warranties as to its accuracy or reliability. The service is accessed and used at your own discretion and risk and we shall not be responsible for any damage caused to your computer or data or for any bugs, viruses, trojan horses or other destructive code resulting from access to or use of the service. You may have other statutory rights, but the duration of statutorily required warranties, if any, shall be limited to the shortest period permitted by law.

7. **SUPPORT.** If you have any support inquiries regarding the Service, please see our online support resources available at <https://getsupport.atlassian.com/servicedesk/customer/portal/9/>. For the avoidance of doubt, the Service does not include support services.

8. **LIMITATION OF REMEDIES AND DAMAGES.**

8.1. **Consequential Damages Waiver.** Except for claims arising from your breach of section 1.3 (general restrictions) or your indemnification obligations under section 9, neither party nor its suppliers shall have any liability arising out of or related to these terms for any loss of use, lost or inaccurate data, lost profits, failure of security mechanisms, interruption of business, costs of delay or any indirect, special, incidental, reliance or consequential damages of any kind, even if informed of the possibility of such damages in advance.

8.2. **Liability Cap.** Our and our suppliers’ entire liability to you arising out of or related to these terms shall not exceed the amount actually paid by you to us for the service during the prior twelve (12) months under these terms.

8.3. **Nature of Claims and Failure of Essential Purpose.** The parties agree that the waivers and limitations specified in this Section 8 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in these Terms is found to have failed of its essential purpose.

9. **INDEMNITY.** You will defend, indemnify, and hold us harmless from and against any claim by a third party arising from or related to: (a) your use or attempted use of the Service in violation of these Terms, (b) your violation of any law or rights of any third party, or (c) any User Content, including without limitation any claim of infringement, misappropriation, or violation of any intellectual property, privacy, or other rights.

10. **DISPUTE RESOLUTION.**

10.1. **Dispute Resolution; Arbitration.** In the event of any controversy or claim arising out of or relating to these Terms, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties. If the parties do not reach settlement within a period of sixty (60) days, any unresolved controversy or claim arising out of or relating to these Terms shall proceed to binding arbitration under the Rules of Arbitration of the International Chamber of Commerce. The parties shall seek to mutually appoint an arbitrator. If the parties cannot agree on a single arbitrator, then there shall be three (3) arbitrators: one selected by each party, and a third selected by the first two. Arbitration will take place in one of the following cities as mutually agreed between the parties: Sydney (Australia), Amsterdam (Netherlands) or San Francisco, CA (USA). If the parties are unable to agree to one of these cities, then the arbitration shall proceed in San Francisco, CA. All negotiations and arbitration proceedings pursuant to this Section will be confidential and treated as compromise and settlement negotiations

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for purposes of all similar rules and codes of evidence of applicable legislation and jurisdictions. The language of the arbitration shall be English.

10.2. **Governing Law; Jurisdiction.** These Terms will be governed by and construed in accordance with the applicable laws of the State of California, USA, without giving effect to the principles of that State relating to conflicts of laws. Each party irrevocably agrees that any legal action, suit or proceeding that is not otherwise subject to the arbitration provisions of Section 10.1 (Dispute Resolution; Arbitration) must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of, the State or Federal court in San Francisco, California, USA, and each party irrevocably submits to the sole and exclusive personal jurisdiction of the courts in San Francisco, California, USA, generally and unconditionally, with respect to any action, suit or proceeding brought by it or against it by the other party. Notwithstanding the foregoing, Atlassian may bring a claim for equitable relief in any court with proper jurisdiction.

10.3. **Injunctive Relief; Enforcement.** Notwithstanding the provisions of Section 10.1 (Dispute Resolution; Arbitration), nothing in these Terms shall prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction.

10.4. **Exclusion of UN Convention and UCITA.** The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to these Terms. The Uniform Computer Information Transactions Act (UCITA) shall not apply to these Terms regardless of when or where adopted.

11. GENERAL TERMS.

We may provide you with required or permitted notices via email or the Service, as determined by us in our discretion. Any notices you give to us under these Terms will be deemed given only when personally delivered, delivered by reputable international courier requiring signature for receipt, or three (3) business days after being deposited in the mail, first class, postage prepaid, in each case to: Atlassian Pty Ltd, c/o Atlassian, Inc., 1098 Harrison Street, San Francisco, CA USA 94103, Attn: General Counsel. The parties are independent contractors, and there is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. If a court having proper authority decides that any portion of these Terms is invalid, only the part that is invalid will not apply, and the rest of these Terms will still be in effect. If we waive any of our rights under these Terms in any particular instance, it does not mean that we are waiving our rights generally or in the future. Furthermore, just because we may not enforce all our rights all of the time, it does not mean that we are waiving our rights, as we may decide to enforce them at a later date. Except as set forth herein, all amendments to these Terms must be in writing and signed by both parties. These Terms are the entire agreement between the parties with respect to its subject matter and supersede any prior agreements relating to such subject matter. These Terms, and any rights and licenses granted under these Terms, may not be transferred or assigned by you without our prior written consent, but may be assigned by us without restriction. We won't be liable to you for any delay or failure to perform any obligation we have under these Terms if the delay or failure is due to events which are beyond our reasonable control, including but not limited to any strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval or a license by a government agency. We may use the services of subcontractors and permit them to exercise the rights granted to us in order to provide the Service under these Terms. From time to time, we may add, remove, or change the Courses we offer to you or otherwise modify the Service. We will use reasonable efforts to notify you of any addition or removal of Courses.