

# GitPrime, Inc. Self-Serve Cloud Services Agreement

This Services Agreement (this “Agreement”) is entered into by and between GitPrime, Inc. a Delaware C-Corp, (“Company”) and the business represented by the user or the individual in the event the user is not representing a business or acting in their capacity as an employee of a business (“Customer”) effective as of the date (“Effective Date”) of the first login.

## 1. Services

Subject to the terms and conditions of this Agreement, during the term of this Agreement, Company shall provide to Customer access to the features and functionality selected by the customer (the “Service” or “Service Order”). From time to time, the parties may add or modify the Service Order which will be the subject to the terms and conditions of this Agreement.

## 2. Fees and Billing

**2.1 Fees.** Customer shall pay all fees due according to the Service Order.

**2.2 Billing and Payment Terms.** Unless otherwise indicated in the applicable Service Order, Company shall invoice Customer periodically in advance for fees for all Services, and payment of fees will be due. All payments must be made in U.S. dollars. Late payments hereunder will accrue interest at a rate of 1 ½% per month, or the highest rate allowed by applicable law, whichever is lower.

**2.3 Taxes.** All payments required by this Agreement exclude all sales, value-added, use, on other taxes and obligations, all of which Customer will be responsible for and will pay in full, except for taxes based on Company’s net income.

## 3. Customer's Obligations

**3.1 Compliance with Law.** Customer acknowledges that Company exercises no control over the content of the information passing through the Customer's websites and that it is the sole responsibility of Customer to ensure that the information it transmits and receives complies with all applicable laws and regulations.

**3.2 No Resale.** The Services are for use by Customer only and not for resale to any third party.

## **4. Confidential Information**

**4.1 Confidential Information.** Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products, including the terms and conditions of this Agreement ("Confidential Information"). Confidential Information will include, but not be limited to, each party's proprietary software and developer information. Each party shall not disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information and shall take reasonable precautions to protect the confidentiality of such information, except as expressly permitted by this Agreement.

**4.2 Exceptions.** Information will not be deemed Confidential Information if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party.

## **5. Intellectual Property and Ownership**

**5.1 "Intellectual Property"** means all intellectual property rights of every kind and description, including without limitation all U.S. and non-U.S. (a) rights in or to trademarks and service marks (whether or

not registered), trade names and other designations of source of origin, together with all goodwill related to the foregoing, (b) patents and patent applications, (c) rights in or to copyrights, whether or not registered, (d) rights in or to trade secrets and confidential information, including without limitation know-how, technology methods, ideas and inventions, (e) rights in software and computer code (whether in source code, object code or any other form) and (f) all applications and registrations of any of the foregoing.

**5.2 No Ownership Rights.** Use of Company services or software shall in no way assign or transfer Customer any right, license, or claim of ownership of any kind to any Company Intellectual Property. Customer irrevocably waives any and all claims to any and all Company Intellectual Property.

**5.3 Customer Data.** Customer Data means all data imported or entered by Customer by any means. All Customer Data is irrevocably deemed the exclusive property of Customer. Company irrevocably waives any and all claims to any and all Customer Data.

**5.4 No Work Product.** No Work Product of any kind is provided under this agreement or any other agreement. At no time during or after the term of this agreement shall any artifact exist that could be considered Customer property other than the aforementioned Customer Data.

## **6. Representations and Warranties**

**6.1 Warranties by Customer** (a) Customer's Business. Customer represents and warrants that Customer's services, products, materials, data, and information used by Customer in connection with this Agreement as well as Customer's and its permitted customers' and users' use of Services ("Customer's Business") does not as of the Installation Date and will not during the term of this Agreement operate in any manner that would violate any applicable law or regulation. (b) Breach of Warranties. In the event of any breach, or reasonably anticipated breach, of any of Customer's warranties herein, in addition to any other remedies available at law or in equity, Company will have the right to immediately, in Company's sole discretion, suspend any related Services if deemed reasonably necessary by Company to prevent any harm to Company or its business.

**6.2 Warranties and Disclaimers by Company.** THE SERVICES ARE PROVIDED ON AN “AS IS” BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. COMPANY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. Company does not warrant that the Services will be uninterrupted, error-free, or completely secure.

## **7. Limitations of Liability**

**7.1 Exclusions.** Company will not be liable to Customer for any lost revenue, lost profits, replacement goods, loss of technology, rights or services, incidental, punitive, indirect or consequential damages, loss of data, or interruption of Customer’s Business, even if Company is advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

**7.2 Maximum Liability.** COMPANY'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER RELATED TO OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER TO COMPANY HEREUNDER FOR THE PRIOR 12 MONTH PERIOD.

**7.3 Basis of the Bargain; Failure of Essential Purpose.** Customer acknowledges that Company has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found to have failed of their essential purpose.

## **8. Indemnification**

**8.1 Company's Indemnification of Customer.** Company shall indemnify, defend and hold Customer harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, “Losses”) resulting from any claim, suit, action, or proceeding (each, an “Action”) brought

against Customer alleging the infringement of any third party registered U.S. copyright or issued U.S. patent resulting from the provision of Services pursuant to this Agreement, but excluding any infringement contributorily caused by Customer's Business.

## **9. Term and Termination**

**9.1 Term.** This Agreement is effective on the Effective Date and continues indefinitely thereafter unless and until terminated according to the provisions of this Section.

**9.2 Auto-Renewal.** This Agreement renews automatically for successive one year periods at the expiration of the Initial Term, unless terminated by either party by written notice given to the other at no sooner than but within 90 days prior to its termination date.

**9.3 Termination** (a) For Convenience. Either party may terminate this Agreement for convenience upon written notice at any time during which no Service Order is in effect. (b) For Cause. Either party will have the right to terminate this Agreement, or the applicable Service Order, if the other party breaches any material term or condition of this Agreement and fails to cure such breach within 30 days after receipt of written notice of the same, except in the case of failure to pay fees, which must be cured within five days after receipt of written notice from Company. Either party may terminate this Agreement if: (i) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (ii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within 60 days of filing.

**9.4 No Liability for Termination.** Neither party will be liable to the other for any termination or expiration of this Agreement in accordance with its terms. The Company is not obligated to provide any refund in any amounts in the event the Customer cancels prior to the term of the Service Order.

**9.5 Effect of Termination.** Upon the effective date of expiration or termination of this Agreement: (a) Company may immediately cease providing Services hereunder; (b) any and all payment obligations of

Customer under this Agreement will become due immediately; (c) within 30 days after such expiration or termination, each party shall return or destroy all Confidential Information of the other party in its possession at the time of expiration or termination and shall not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement.

9.6 **Survival.** The following provisions will survive any expiration or termination of the Agreement: Sections 2, 3, 4, 5, 6, 7, 8, and 9.

## 10. Miscellaneous Provisions

10.1 **Force Majeure.** Except for the obligation to pay money, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including act of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet, provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to correct promptly such failure or delay in performance

10.2 **Marketing.** Customer acknowledges that Company may refer to Customer by trade name and trademark and may briefly describe Customer's Business in Company's marketing materials and web site. Customer hereby grants Company a license to use any Customer trade names and trademarks solely in connection with the rights granted to Company pursuant to this Section.

10.3 **Government Regulations.** Customer shall not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business.

10.4 **Non-Solicitation.** During the period beginning on the Effective Date and ending on the first anniversary of the termination or expiration of this Agreement in accordance with its terms, Customer shall not, and shall ensure that its affiliates do not, directly or indirectly, solicit or attempt to solicit for employment any persons employed by Company during such period.

### **10.5 Governing Law; Dispute Resolution, Severability; Waiver.**

This Agreement is made under and will be governed by and construed in accordance with the laws of the State of Colorado of the United States of America, excluding Colorado conflict of laws rules, and specifically excluding from application to this Agreement that law known as the United Nations Convention on the International Sale of Goods. Any dispute relating to the terms, interpretation or performance of this Agreement (other than claims for preliminary injunctive relief or other pre-judgment remedies) will be resolved at the request of either party through binding arbitration. Arbitration will be conducted in Durango, Colorado, and will be administered by JAMS pursuant to its Comprehensive Arbitration Rules & Procedures and in accordance with the Expedited Procedures in those rules. The parties agree to pay their own expenses, including travel, reasonable fees, costs and disbursements of counsel. The parties agree to equally share the fees of the arbitrator and any administrative fees of JAMS. The parties agree that the arbitrator shall issue a binding written award that sets forth the essential findings and conclusions on which the award is based. The parties agree that the decision of the arbitrator is final and waive all rights to appeals or further forms of dispute resolution. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default and will not act to amend or negate the rights of the waiving party.

**10.6 Assignment.** Customer may not assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of Company, except that Customer may assign this Agreement in whole as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets. Any attempted assignment or delegation without such consent will be void. Company may assign this Agreement in whole or part. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

**10.7 Notices.** Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, if to Company, to the address on the company website, and if to Customer, to the address on the company website, or at such other address as may hereafter be furnished in writing by either party

hereto to the other. Such notice will be deemed to have been given as of the date it is delivered, mailed or sent, whichever is earlier. 10.8 **Relationship of Parties.** Company and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Company and Customer. Neither Company nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

10.9 **Entire Agreement; Counterparts.** This Agreement, including all documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. In the event this agreement conflicts in whole or in part with any and all license agreements between Customer and Company including but not limited to shrink-wrap or click-wrap agreements, this agreement shall prevail.

Customer and Company hereby agree to the terms of this Agreement by the Customer's use of the Service.

March 21, 2019