OPENCODE CUSTOMER AGREEMENT

PLEASE READ THIS CUSTOMER AGREEMENT (THIS "**AGREEMENT**") BEFORE USING THE OPENCODE SERVICES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT (AS DEFINED BELOW) IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE AUTHORITY TO BIND SUCH COMPANY OR ENTITY TO THIS AGREEMENT. BY ACCESSING OR USING THE OPENCODE SERVICES, YOU (THE "**CUSTOMER**") SIGNIFY ACCEPTANCE OF, AND AGREE TO, THE TERMS AND CONDITIONS OF THIS AGREEMENT BETWEEN CUSTOMER AND ANOMALY INNOVATIONS INC., A DELAWARE CORPORATION DOING BUSINESS AS OPENCODE ("**OPENCODE**" AND, TOGETHER WITH CUSTOMER, THE "**PARTIES**" AND, EACH, A "**PARTY**"). IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT ACCESS OR USE THE OPENCODE SERVICES. THE "**EFFECTIVE DATE**" OF THIS AGREEMENT IS THE DATE WHICH IS THE EARLIER OF (A) CUSTOMER'S INITIAL ACCESS TO THE OPENCODE SERVICES THROUGH ANY ONLINE PROVISIONING, REGISTRATION OR ORDER PROCESS OR (B) THE EFFECTIVE DATE OF THE FIRST ORDER REFERENCING THIS AGREEMENT. THIS AGREEMENT WILL GOVERN THE CUSTOMER'S INITIAL PURCHASE ON THE EFFECTIVE DATE AS WELL AS ANY FUTURE PURCHASES MADE BY CUSTOMER.

FROM TIME TO TIME, OPENCODE MAY MODIFY THE TERMS AND CONDITIONS OF THIS AGREEMENT. UNLESS OTHERWISE SPECIFIED BY OPENCODE, CHANGES BECOME EFFECTIVE FOR CUSTOMER UPON RENEWAL OF THE THEN-CURRENT ORDER TERM OR UPON THE EFFECTIVE DATE OF A NEW ORDER AFTER OPENCODE PUBLISHES AN UPDATED VERSION OF THIS AGREEMENT. OPENCODE WILL USE REASONABLE EFFORTS TO NOTIFY CUSTOMER OF CHANGES TO THE TERMS AND CONDITIONS THROUGH COMMUNICATIONS VIA CUSTOMER'S ACCOUNT, EMAIL OR OTHER MEANS. CUSTOMER MAY BE REQUIRED TO CLICK TO ACCEPT OR OTHERWISE AGREE TO THE MODIFIED AGREEMENT BEFORE RENEWING AN ORDER OR UPON THE EFFECTIVE DATE OF A NEW ORDER, AND IN ANY EVENT CONTINUED USE OF ANY OPENCODE SERVICES AFTER AN UPDATED VERSION OF THIS AGREEMENT GOES INTO EFFECT WILL CONSTITUTE CUSTOMER'S ACCEPTANCE OF THE UPDATED VERSION.

This Agreement was last updated on November 25, 2026.

1. DEFINITIONS.

(a) "**Affiliate**" of any Person means any Person that controls, is controlled by, or is under common control with such Person. As used in the context of Affiliates, the term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or other interests, by contract or otherwise.

(b) "**Authorized Users**" means Customer's employees, consultants, contractors, and agents who have been authorized by Customer to access and use the OpenCode Services solely on Customer's behalf.

(c) "**Customer Data**" shall mean any data, information or other material provided, uploaded, or submitted by an Authorized User to the OpenCode Services in the course of using the OpenCode Services.

(d) "**Documentation**" means OpenCode user materials relating to the OpenCode Services, which are provided by OpenCode to Customer through OpenCode's support site, either electronically or in hard copy form.

(e) "**Order**" means an order placed by Customer, which may be submitted through the OpenCode Services, on the OpenCode website, or through one or more order forms executed by Customer and OpenCode.

(f) "**Person**" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership or other entity.

(g) "**OpenCode Hosting Services**" means the OpenCode managed service offering that provides Customer with access to the OpenCode OSS Offering on a hosted basis and as further described on the Order. For clarity, the OpenCode Hosting Services do not include the OpenCode Inference Service or any Third Party Services.

(h) "**OpenCode Inference Service**" means OpenCode's artificial intelligence and inference service (including OpenCode's model gateway) that provides Customer access to artificial intelligence models, including third-party large language models, for generating Outputs as described in the Documentation or through the applicable Order. For clarity, Customer may access the OpenCode Inference Service independently of the OpenCode Hosting Services.

(i) "**OpenCode OSS Offering**" means the OpenCode console software in its entirety, including all software that provides the OpenCode Hosting Services, which OpenCode makes available as open-source software under the MIT License at https://github.com/anomalyco/opencode.

(j) "**OpenCode Services**" means the OpenCode Hosting Services and OpenCode Inference Service.

2. ACCESS AND USE.

(a) Open-Source Licensing. The OpenCode OSS Offering, is made available by OpenCode as open-source software under the MIT License, the terms of which are available at https://github.com/anomalyco/opencode/blob/dev/LICENSE. The MIT License exclusively governs Customer's rights in and use of the OpenCode OSS Offering as software, including any copy Customer obtains, installs, runs, modifies, or distributes outside of the OpenCode Services. Customer's rights under the MIT License are perpetual and irrevocable in accordance with that license and are not conditioned on, limited by, or affected by this Agreement or its expiration or termination. This Agreement governs Customer's access to and use of the OpenCode Hosting Services provided by OpenCode.

(b) Provision of Access. Subject to and conditioned on Customer's timely payment of all Fees and full compliance with all terms and conditions of this Agreement, OpenCode hereby grants Customer a limited, non-exclusive, non-transferable right during the Term to access and use the OpenCode Services, and to permit its Authorized Users to access and use the OpenCode Services, solely for Customer's internal business purposes and in accordance with the Documentation. OpenCode shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the OpenCode Services. OpenCode may, in its sole discretion, modify, enhance or otherwise change the OpenCode Services from time to time, including by adding or discontinuing Third Party Services or third-party AI models available through the OpenCode Services; *provided*, that OpenCode will not materially decrease the core functionality of the OpenCode Services during the Term.

(c) Use Restrictions. Customer shall not, and shall not permit any Authorized Users to, directly or indirectly: (i) use or access the OpenCode Services for timesharing or service bureau purposes or for any purpose other than for the internal benefit of Customer as set forth in this Agreement; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the OpenCode Services, or any account, API key, credentials, or Credits, to any third party, except as expressly approved by OpenCode in writing; (iii) remove any product identification, proprietary, copyright or other notices from the OpenCode Services or the OpenCode OSS Offering; (iv) use the OpenCode Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any Person, or that violates any applicable laws or regulations; (v) use OpenCode's names, logos, or trademarks except as expressly permitted by OpenCode; (vi) use the OpenCode Services or any Outputs to develop, train, or improve artificial intelligence models that compete with the OpenCode Services or any Third Party Services, or otherwise in violation of the applicable terms of any Third Party Services; (vii) create, maintain, or use accounts in bulk, or multiple accounts to circumvent usage limits, access restrictions, billing obligations, suspensions, or any other restriction applicable to the OpenCode Services; and (viii) permit any third party to do any of the foregoing. Customer will use commercially reasonable efforts to prevent any unauthorized use of the OpenCode Services, and will promptly notify OpenCode of any unauthorized use that comes to Customer's attention and provide all reasonable cooperation to prevent and terminate such use.

(d) Suspension. Notwithstanding anything to the contrary in this Agreement, OpenCode may temporarily suspend Customer's and any Authorized User's access to any portion or all of the OpenCode Services if: (i) OpenCode reasonably determines that (A) there is a threat or attack on any of the OpenCode Services; (B) Customer's or any Authorized User's use of the OpenCode Services disrupts or poses a security risk to the OpenCode Services or to any other customer or vendor of OpenCode; (C) Customer, or any Authorized User, is using the OpenCode Services for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) OpenCode's provision of the OpenCode Services to Customer or any Authorized User is prohibited by applicable law; (F) OpenCode reasonably believes that Customer or any Authorized User has breached Section 2(c) or Section 7(d), or that Customer's account is associated with fraudulent or abusive activity or (ii) in accordance with Section 7(a)(iii) (any such suspension described in sub-clause (i), or (ii) of this Section, a "**Service Suspension**"). OpenCode shall use commercially reasonable efforts to provide prior notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the OpenCode Services following any Service Suspension. OpenCode shall use commercially reasonable efforts to resume providing access to the OpenCode Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. OpenCode will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(e) Usage Limits. OpenCode may set and adjust limits on Customer's use of the OpenCode Services, including limits on account balances, purchase amounts, spending, and request rates, based on factors such as Customer's account history. These limits are not guaranteed minimums and may change at any time.

3. SERVICE LEVELS AND SUPPORT. Subject to Customer's payment of all applicable Fees, OpenCode will undertake commercially reasonable efforts to make the OpenCode Services available twenty-four (24) hours a day, seven (7) days a week. Notwithstanding the foregoing, OpenCode reserves the right to suspend Customer's access to the OpenCode Services: (i) for scheduled or emergency maintenance, or (ii) in the event Customer is in breach of this Agreement, including in accordance with Section 2(d).

4. CUSTOMER DATA; ARTIFICIAL INTELLIGENCE.

(a) Customer Data. As between the Parties, Customer is and shall remain the sole and exclusive owner of all Customer Data. To the extent Customer shares Customer Data with OpenCode through the OpenCode Services, OpenCode will use the Customer Data solely to enable Customer's use of the applicable service. Customer represents and warrants that it has all rights necessary to provide the Customer Data to OpenCode as contemplated hereunder, in each case without any infringement, violation or misappropriation of any third party rights (including intellectual property rights and rights of privacy). Customer grants OpenCode no rights in Customer Data except as set forth in this Agreement.

(b) Third Party Services. Customer acknowledges and agrees that (i) the OpenCode Services may integrate with, connect to, or otherwise use platforms, products, large language models, or services operated or provided by third parties (e.g., other vendors of Customer) ("**Third Party Services**"), including via use of application programming interfaces provided by such Third Party Services; (ii) the availability and operation of the OpenCode Services or certain portions thereof may be dependent on OpenCode's ability to access such Third Party Services; and (iii) Customer's failure to provide adequate access or any retraction of permissions relating to such Third Party Services may result in a suspension or interruption of the OpenCode Services. Similarly, the OpenCode Inference Service is designed to enable Customer to access third party large language or other artificial intelligence model services; Customer understands and agrees that such third party model services are Third Party Services. Customer hereby represents and warrants that it has all rights, licenses, permissions and consents necessary to connect, use and access any Third Party Services that it integrates with the OpenCode Inference Service, and Customer will indemnify, defend and hold harmless OpenCode and its Affiliates, officers, directors, employees, agents, successors and assigns for all claims, damages and liabilities arising out of Customer's use of any Third Party Services in connection with or through the OpenCode Inference Service. Customer is solely responsible for procuring any and all rights necessary for it to access Third Party Services (including any Customer Data or other information relating thereto) and for complying with any applicable terms or conditions thereof. Any exchange of data or other interaction between Customer and a third party provider is solely between Customer and such third party provider and is governed by such third party's terms and conditions. OpenCode cannot and does not guarantee that the OpenCode Hosting Services or OpenCode Inference Service will incorporate (or continue to incorporate) any particular Third Party Services and does not make any representations or warranties with respect to Third Party Services. For Authorized Users located in China, Chinese-hosted models will be enabled by default; for Authorized Users located outside of China, Chinese-hosted models will not be enabled by default.

(c) Artificial Intelligence. The OpenCode Inference Service, and Third Party Services involve the use of artificial intelligence or machine learning, and as part of the OpenCode Inference Service, Customer may provide Customer Data to be processed by the OpenCode Inference Service ("**Inputs**") and receive outputs generated and returned by the OpenCode Inference Service based on the Inputs ("**Outputs**"). Customer acknowledges and agrees that (i) artificial intelligence and machine learning are rapidly evolving fields of study, and given the probabilistic nature of machine learning, use of the OpenCode Inference Service may in some situations result in incorrect or inaccurate Outputs, (ii) Customer must verify the accuracy and appropriateness of any Outputs before relying on any such Outputs, (iii) Outputs may bear resemblance to Outputs generated for other Customers who provide similar Inputs, and Customer's rights to the Outputs generated based on Inputs shall not be interpreted to limit the rights of other Customers; and (iv)

Customer has no rights to Outputs that are generated for other Customers, regardless of any level of similarity. As between the Parties, Customer owns all right, title and interest in and to all Outputs.

(d) Model Training. To the extent Customer Data is shared with OpenCode through the OpenCode Services, Customer Data is not used by OpenCode to train artificial intelligence models. Certain Third-Party Services may retain and use Inputs to improve such Third-Party Services models and services, as described in the Documentation. Customer may set preferences through the OpenCode Inference Service for model training, the applicable data-processing region, and selecting which Third-Party Services are enabled for its Authorized Users. Customer is solely responsible for evaluating and selecting Third-Party Services appropriate to the sensitivity of its Customer Data.

(e) Sharing of Customer Data; Usage Data. Certain features of the OpenCode Services allow Customer to share Customer Data (including Outputs or other session data) (collectively, the "**Content**") with OpenCode. When Content is authorized for sharing, OpenCode will clearly identify the Content that Customer is authorized to redistribute and the ways Customer may redistribute it, usually by providing a "share" button on or near the Content. If Customer shares Content with OpenCode through the OpenCode Services or with third parties through Third Party Services, Customer authorizes OpenCode to process such Content and, where applicable, share such Content with the relevant Third Party Services. Customer is responsible for reviewing the policies of any Third Party Services providers with which Customer shares Content, as such policies govern the Third Party Services provider's use of such Content. Customer assumes sole responsibility for any Content shared through Third Party Services. In addition, certain features may allow Customer to share, and OpenCode may collect and use, aggregated, de-identified, or anonymized usage data and operational telemetry derived from Customer's use of the OpenCode, provided such data cannot reasonably be used to identify Customer or any individual, for purposes of operating, maintaining, improving, and developing OpenCode Services and related technologies.

5. DATA SECURITY; DATA PRIVACY.

(a) Data Security. OpenCode will maintain commercially reasonable administrative, physical and technical safeguards for the OpenCode Services to protect against the accidental or unauthorized access, use, alteration or disclosure of Customer Data properly uploaded to, or ingested by, the OpenCode Services and processed or stored on a computer and/or computer network owned or controlled by OpenCode in connection with the OpenCode Services, including by maintaining security controls no less stringent, when considered as a whole, than those set forth at http://trust.opencode.ai/. OpenCode maintains a SOC 2 Type 2 examination covering the security, confidentiality and availability trust criteria and will make its most recent SOC 2 Type 2 report available to Customer upon reasonable written request. The OpenCode SOC 2 Type 2 report is OpenCode's Confidential Information.

(b) Data Privacy. To the extent required pursuant to applicable laws, the Parties will enter into a Data Processing Addendum (the "**DPA**") as set forth at https://opencode.ai/legal/dpa, which sets forth the specific terms and conditions under which OpenCode may receive and process personal data from and on behalf of Customer and is incorporated into this Agreement by reference and forms part of this Agreement.

6. CUSTOMER RESPONSIBILITIES. Customer is responsible and liable for all uses of the OpenCode Services and Documentation resulting from access provided by OpenCode, including all acts and omissions of Authorized Users. Customer shall make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized Users' use of the OpenCode Services, and shall cause Authorized Users to comply with such provisions.

7. FEES AND PAYMENT.

(a) Fees. Customer shall pay OpenCode the fees, including any usage fees or fees associated with Third-Party Services, ("**Fees**") as set forth in the Order without offset or deduction. Customer shall make all payments hereunder in US dollars on or before the due date set forth in the Order. If Customer fails to make any payment when due in accordance with the Order, without limiting OpenCode's other rights and remedies: (i) OpenCode may charge interest on past due amounts at a rate of 1.5% per month or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse OpenCode for all costs incurred by OpenCode in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for 10 days or more, OpenCode may suspend Customer's and its Authorized Users' access to any portion or all of the OpenCode Services until such amounts are paid in full. To the extent an Order specifies usage-based Fees (e.g., per-seat overages), OpenCode shall calculate such usage on a monthly basis and invoice or charge Customer in arrears for any overage Fees incurred during the applicable monthly period. All such usage-based Fees shall be due and payable in accordance with the payment terms set forth in this Section 7. All Fees paid are nonrefundable, except as stated in OpenCode's Refund Policy or as required by applicable law.

(b) Payment Method and Recurring Billing. The terms of Customer's payment will be based on its payment method and may be determined by agreements between Customer and the financial institution, credit card issuer or other provider of Customer's chosen payment method. If OpenCode, through the payment processor, does not receive payment from Customer, Customer agrees to pay all amounts due on the Customer account upon demand. Some Orders may consist of an initial period, for which there is a one-time charge, followed by recurring period charges as agreed to by Customer. By choosing a recurring payment plan, Customer acknowledges that such OpenCode Services have a recurring payment feature and Customer accepts responsibility for all recurring charges prior to cancellation. OPENCODE MAY SUBMIT PERIODIC CHARGES (E.G., MONTHLY OR WHEN USAGE REACHES A THRESHOLD AS SET FORTH ON THE ORDER) WITHOUT FURTHER AUTHORIZATION FROM CUSTOMER, UNTIL CUSTOMER PROVIDES PRIOR NOTICE (RECEIPT OF WHICH IS CONFIRMED BY OPENCODE)

THAT CUSTOMER HAS TERMINATED THIS AUTHORIZATION OR WISHES TO CHANGE ITS PAYMENT METHOD. SUCH NOTICE WILL NOT AFFECT CHARGES SUBMITTED BEFORE OPENCODE REASONABLY COULD ACT. TO TERMINATE A PAYMENT AUTHORIZATION OR CHANGE A PAYMENT METHOD, GO TO ACCOUNT SETTINGS. If a payment is disputed or reversed, OpenCode may suspend Customer's account and remove Credits corresponding to the disputed amount.

(c) Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on OpenCode's income.

(d) Prepaid Credits. OpenCode may offer the option to prepay for certain OpenCode Services by purchasing credits ("Credits"). Credits have no cash value and may be used only for the OpenCode Services in the account for which they were purchased. All purchases of Credits are final and non-refundable, except as stated in OpenCode's Refund Policy or as required by applicable law. Credits may not be sold, transferred, or shared, and any attempt to do so is a breach of this Agreement.

8. CONFIDENTIAL INFORMATION; FEEDBACK.

(a) Confidential Information. From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) publicly available; (b) rightfully known to the receiving Party on a non-confidential basis; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party without use of, or reference to, the Confidential Information of the disclosing Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any Person, except to the receiving Party's employees, consultants, agents or representatives who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder (such Persons, its "**Representatives**"). In addition, and except as permitted herein, the receiving Party shall not use the Confidential Information of the disclosing Party except as necessary to exercise its rights or perform its obligations hereunder. The receiving Party shall be responsible for any unauthorized access, use or disclosure of the disclosing Party's Confidential Information by the receiving Party's Representatives. Each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. All Confidential Information disclosed pursuant to the preceding sentence will remain subject to the confidentiality and non-use obligations contained herein for all purposes other than such permitted disclosure. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and, at the disclosing Party's request, certify in writing that such Confidential Information has been destroyed. Each Party's confidentiality obligations with regard to Confidential Information are effective as of the Effective Date and will survive expiration or termination of this Agreement.

(b) Feedback. Customer or any of its employees or contractors may send or transmit any communications or materials to OpenCode by mail, email, telephone, or otherwise, suggesting or recommending changes to the OpenCode Services, including new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"). In such case, Customer shall, and hereby does, grant to OpenCode a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid up license to use and exploit the Feedback for any purpose.

9. WARRANTIES AND DISCLAIMERS.

(a) Mutual. Each Party represents and warrants that (i) it is duly organized, validly existing, and in good standing under the laws of the state of its organization; (ii) it has the necessary organizational power and authority to enter into this Agreement, to carry out its obligations under this Agreement, and to grant the rights granted to the other Party herein; (iii) the execution of this Agreement by such Party, and the performance by such Party of its obligations and duties hereunder do not and will not violate any other agreement to which such Party is a party or by which it is otherwise bound; and (iv) it and its performance hereunder will comply with all applicable laws and regulations.

(b) OpenCode. OpenCode warrants that it will not knowingly include, in the OpenCode Services provided to Customer hereunder, any computer code or other computer instructions, devices or techniques, including those known as disabling devices, trojans, or time bombs, that intentionally disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or user data.

(c) Disclaimers. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS SECTION 9, THE OPENCODE SERVICES ARE PROVIDED "AS IS" AND OPENCODE HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. OPENCODE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 9, OPENCODE MAKES NO WARRANTY OF ANY KIND THAT THE OPENCODE SERVICES, OR ANY RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, ARE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR ARE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. FOR THE AVOIDANCE OF DOUBT, THE FOREGOING DISCLAIMERS DO NOT APPLY TO THE OPENCODE OSS OFFERING, WHERE SUCH DISCLAIMERS ARE GOVERNED BY THE MIT LICENSE.

10. INDEMNIFICATION.

(a) OpenCode Indemnification. OpenCode shall indemnify, defend, and hold harmless Customer from and against any and all out of pocket losses, damages, liabilities, and costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the OpenCode Services infringes or misappropriates such third party's U.S. patents, copyrights, trademarks or trade secrets; *provided,* that Customer promptly notifies OpenCode in writing of the claim, cooperates with OpenCode, and allows OpenCode sole authority to control the defense and settlement of such claim. If such a claim is made or appears possible, Customer agrees to permit OpenCode, at OpenCode's sole discretion, to (i) modify or replace the OpenCode Services, or component or part thereof, to make it non-infringing, or (ii) obtain the right for Customer to continue use of the OpenCode Services in the manner permitted in this Agreement. If OpenCode reasonably determines that neither alternative is reasonably available, OpenCode may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer and refund Customer all prepaid but unused fees for the remainder of the then-current Term. The first sentence of this Section 10(a) will not apply with respect to portions or components of the OpenCode Services (V) not created by OpenCode, including but not limited to Customer Data or Third Party Services; (W) that are modified by anyone other than OpenCode where the alleged infringement relates to such modification; (X) combined with other products, processes or materials where the alleged infringement relates to such combination; (Y) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement or (Z) where Customer's use thereof is not strictly in accordance with this Agreement and all Documentation.

(b) Customer Indemnification. Customer shall indemnify, hold harmless, and, at OpenCode's option, defend OpenCode from and against any Losses resulting from any Third-Party Claim excluded from indemnity obligation in Section 10(a) above or otherwise from Customer's or any Authorized User's negligence or willful misconduct or use of the OpenCode Services in a manner not authorized by this Agreement. Customer may not settle any Third-Party Claim against OpenCode unless OpenCode consents to such settlement, and further provided that OpenCode will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

(c) Sole Remedy. THIS SECTION 10 SETS FORTH CUSTOMER'S SOLE REMEDIES AND OPENCODE'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE OPENCODE SERVICES INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

11. LIMITATIONS OF LIABILITY.

(a) Indirect Liabilities. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (I) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (II) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (III) LOSS OF GOODWILL OR REPUTATION; (IV) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (V) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER OPENCODE WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.

(b) Direct Liability. IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO OPENCODE UNDER THIS AGREEMENT IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

(c) Exclusions. THE FOREGOING LIMITATIONS IN THIS SECTION 11 SHALL NOT LIMIT (I) A PARTY'S INDEMNIFICATION OBLIGATION SET FORTH IN SECTION 10; (II) DAMAGES ARISING IN CONNECTION WITH A PARTY'S FRAUD, WILLFUL MISCONDUCT, OR GROSS NEGLIGENCE AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION; (III) DAMAGES ARISING IN CONNECTION WITH A PARTY'S MISAPPROPRIATION OR OTHER UNAUTHORIZED USE OF THE OTHER PARTY'S TECHNOLOGY (BUT EXCLUDING, FOR CLARITY, THE OPENCODE OSS OFFERING); OR (IV) DAMAGES ARISING FROM CUSTOMER'S BREACH OF THE USE RESTRICTIONS IN SECTION 2(c).

12. TERM AND TERMINATION.

(a) Term. The initial term of this Agreement (the "**Initial Term**") begins on the Effective Date and lasts for the duration of the initial term length set forth in the initial Order entered into hereunder. This Agreement and each Order entered into hereunder will automatically renew for successive periods set forth on the individual Order (each a "**Renewal Term**" and together with the Initial Term, the "**Term**") unless earlier terminated pursuant to this Agreement's express provisions or either Party provides notice of non-renewal as follows: (i) for self-serve or monthly subscriptions, Customer may cancel at any time through Customer's account settings or the OpenCode Services prior to the beginning of the next billing cycle; or (ii) for annual subscriptions purchased through self-serve channels, Customer may cancel at any time through Customer's account settings or the OpenCode Services prior to the beginning of the next Renewal Term, provided that no refunds will be issued for the then-current Term. OpenCode may increase the subscription prices for any Renewal Term by providing written notice to Customer at least thirty (30) days prior to the expiration of the then-current Initial Term or Renewal Term, as applicable.

(b) Termination. In addition to any other express termination right set forth in this Agreement: (i) either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure or (B) being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach and (ii) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (W) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (X) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (Y) makes or seeks to make a general assignment for the benefit of its creditors; or (Z) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business. In addition, OpenCode may terminate this Agreement, or Customer's access to all or part of the OpenCode Services, at any time, with or without notice, if OpenCode reasonably believes that Customer or any Authorized User has breached Section 2(c) or Section 7(d), or that Customer's account is associated with fraudulent or abusive activity.

(c) Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the OpenCode Services and, without limiting Customer's obligations under Section 8, Customer shall delete, destroy, or return all copies of the OpenCode Confidential Information and certify in writing to OpenCode that the OpenCode Confidential Information has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund. If OpenCode suspends or terminates Customer's access because Customer or any Authorized User breached this Agreement or engaged in fraudulent or abusive activity, OpenCode may cancel any remaining Credit balance, and Customer will not be entitled to a refund, except as required by applicable law. If OpenCode terminates this Agreement for any other reason, OpenCode will refund any unused Credit balance.

(d) Survival. This Section 12(d) and Sections 1, 2(d), 6, 7, 8, 9(c), 10, 11, and 13 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

13. MISCELLANEOUS.

(a) Entire Agreement. This Agreement, together with each Order entered into hereunder and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this Agreement; (ii) second, any Order entered into hereunder; and (iii) any other documents incorporated herein by reference; provided, however, that with respect to the processing of personal data, the DPA (if applicable) shall take precedence over this Agreement in the event of any inconsistency.

(b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email, or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(c) Force Majeure. In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo. Notwithstanding the foregoing, Customer shall not be excused from its payment obligations as a result of the occurrence or persistence of a force majeure event.

(d) Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i)

no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(e) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(f) Governing Law; Submission to Jurisdiction; Waiver of Jury Trial. This Agreement is governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of California. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of California in each case located in San Francisco, California, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. EACH PARTY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

(g) Construction. As used in this Agreement, all terms used in the singular shall be deemed to include the plural, and vice versa, as the context may require. The words "hereof," "herein" and "hereunder" and other words of similar import refer to this Agreement as a whole, as the same may from time to time be amended or supplemented in accordance herewith, and not to any subdivision contained in this Agreement. The word "including" when used herein is not intended to be exclusive and means "including, without limitation." Any reference to a Person shall include that Person's successors and assigns or to any Person succeeding to that Person's functions. All references in this Agreement to "Sections" and "Exhibits" refer to the sections and exhibits of this Agreement. Where a date or time period is specified, it will be deemed inclusive of the last day in such period or the date specified, as the case may be. Words, obligations, representations, restrictions, rights, remedies or other matters connected by the word "or" are not exclusive of one another, unless expressly stated otherwise.

(h) Relationship of the Parties. For all purposes under this Agreement, each Party will be and act as an independent contractor of the other and will not bind or attempt to bind the other to any contract, and nothing contained herein shall be deemed to constitute either Party as an employee, partner, joint venturer, or agent of the other Party. NOTWITHSTANDING ANY DUTY (INCLUDING ANY FIDUCIARY DUTY) THAT MAY OTHERWISE EXIST AT LAW OR IN EQUITY, TO THE FULLEST EXTENT PERMITTED BY LAW, (I) NO PARTY SHALL HAVE A FIDUCIARY DUTY TO ANY PERSON BOUND BY THIS AGREEMENT, AND (II) THE SOLE DUTIES, IF ANY, OF EACH PARTY TO THIS AGREEMENT AND ITS RESPECTIVE AFFILIATES TO ANY PERSON BOUND BY THIS AGREEMENT SHALL BE LIMITED TO THE CONTRACTUAL DUTIES IMPOSED BY THIS AGREEMENT.

(i) Assignment. Neither Party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed, except that either Party may assign this Agreement without consent of the other Party to its successor in interest pursuant to a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets to which this Agreement relate. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns. For clarity, the foregoing shall not restrict or otherwise limit OpenCode's ability to subcontract portions of the OpenCode Services to its vendors, including its cloud hosting provider.

(j) Export Regulation. The OpenCode Services utilize software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Customer shall not, directly or indirectly, export, re-export, or release the OpenCode Services or the underlying software or technology to, or make the OpenCode Services or the underlying software or technology accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the OpenCode Services or the underlying software or technology available outside the US.

(k) US Government Rights. Each of the Documentation and the software components that constitute the OpenCode Services is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the OpenCode Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.

(l) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 8 or, in the additional case for Customer, Sections 2(c) would cause the other Party irreparable harm for

which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

(m) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.