

END USER LICENSE AGREEMENT

PLEASE REVIEW THESE TERMS OF SERVICE (THIS “**AGREEMENT**”) CAREFULLY AS THEY CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU (“**CUSTOMER**”) AND CODENVY S.A. (“**CODENVY**”) WITH RESPECT TO CUSTOMER’S USE OF THE SERVICES (AS DEFINED BELOW). BY USING THE SERVICES, YOU AGREE TO BE BOUND BY EACH OF THE TERMS AND CONDITIONS SET FORTH HEREIN. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS SET FORTH HEREIN, YOU MAY NOT ACCESS, REGISTER FOR, OR USE THE SERVICES. Codenvy and Customer may be referred to herein individually as a “**Party**,” and together as the “**Parties**.”

1. **DEFINITIONS.**

- 1.1. “**Services**” means the combination of Software and Support Services as defined below.
- 1.2. “**Software**” means the Codenvy proprietary software in any form and related documentation delivered to or downloaded by Customer. The term “**Software**” also includes any updates, upgrades or other new features, functionality or enhancements to the Software provided to Customer by Codenvy or its resellers or agents as part of a new purchase, through Support Services or otherwise. All references to the “**purchase**” or “**sale**” of Software mean the granting of a license to use such Software under the terms of this Agreement.
- 1.3. “**Support Services**” may include, depending on Customer’s purchase selections, any or all of the following: product installation support and/or customary technical support and maintenance services.

2. **GENERAL.**

- 2.1. **Scope of Agreement.** This Agreement applies to Customer’s purchase and use of all Services, whether directly from Codenvy or from an authorized reseller of the Services (“**Reseller**”).
- 2.2. **Authority.** Each Party represents and warrants to the other Party that: (a) its performance under this Agreement will not violate any applicable law; (b) it is duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation; (c) it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder; and (d) this Agreement has been duly executed by its authorized representative and is legally binding upon it and enforceable in accordance with its terms.

3. **LICENSE.** Subject to the terms and conditions set forth in this Agreement, Codenvy grants Customer a nonexclusive, nontransferable, non-sublicensable and revocable right and license to: (a) install and use an object code version of the Software in accordance with the related documentation solely for its own internal business operations; (b) reproduce and distribute internally a reasonable number of copies of the documentation with respect to the Software provided by Codenvy (the “**Documentation**”), provided that Customer must include on all copies of such Documentation all Codenvy trademarks, trade names, logos and notices present thereon as originally provided by Codenvy; and (c) make a reasonable number of copies of the Software solely for backup and/or archival purposes. Codenvy reserves all rights in the Software not expressly granted to Customer under this Agreement.

4. **LIMITATIONS ON USE.**

- 4.1. **Authorized Users Only.** Customer agrees that only up to that number of individuals for whom it has purchased the requisite licenses in accordance with this Agreement, as set forth on the applicable Order (as defined below) and as controlled by Customer’s license key, may access and use the Software (each such individual, an “**Authorized User**”). Customer hereby agrees it is liable for the actions of all Authorized

Users and is responsible for ensuring each Authorized User complies with the terms and conditions set forth in this Agreement.

- 4.2. No Right to Source Code. Customer acknowledges that the source code and underlying structure and algorithms of the Software are the property and proprietary trade secrets of Codenvy or its licensors. Except as provided by the open source licenses described in Section 23 below: (a) no license is granted to use source code of the Software and all such use is expressly prohibited; and (b) Customer agrees not to: (i) modify, reverse engineer, decompile, translate, or disassemble the Software, (ii) obtain or attempt to create, derive, or obtain the source code of the Software, (iii) create a source code equivalent of or derivative of the Software, or (iv) cause or permit any third party to do any of the foregoing.
 - 4.3. No Right to Transfer, Resell, or Provide Services. Customer is expressly prohibited from: (a) assigning, distributing, licensing, sublicensing, selling, renting, leasing, granting a security interest in, or otherwise transferring any rights in or to the Software; and (b) reselling the Software, using the Software to provide any type of paid or unpaid services to third parties (including, without limitation, incorporating any part of the Software into a product or service Customer provides to a third party), or otherwise making the Software available to third parties, whether on a time-sharing, service provider, hosting, or other basis.
 - 4.4. Use of Coded Instructions. Customer acknowledges and agrees that the Software may contain coded instructions which will: (a) limit the number of users who can access the Software; (b) disable some or all of the features of the Software and any related electronic documentation upon the termination of the licenses granted hereunder; and (c) contain such other permissions or restrictions as may be specifically included in this Agreement. Customer agrees not to interfere with any license key mechanism in the Software, or otherwise attempt to circumvent, disable or disrupt any mechanism in the Software intended to audit or limit use of the Software.
 - 4.5. Other Restrictions. Customer agrees not to: (a) remove, alter or cover any copyright notices, trademark notices or other proprietary rights notices placed or embedded on or in the Software or cause or permit any third party to do any of the foregoing; (b) use the licenses and rights granted under this Agreement to design, develop or distribute a commercial product or service that competes with the Software; (c) make available to any third party any analysis of the results of operation of the Software, including benchmarking results, or otherwise publicly disseminate information regarding the performance of the Software; or (d) use or distribute the Software in violation of any applicable laws, regulations or export restrictions.
 - 4.6. European Union Exception. If Customer uses the Software in any country within the European Union, the prohibitions set forth herein will not affect Customer's rights under any legislation implementing the E.C. Council Directive on the Legal Protection of Computer Programs.
5. **PROPRIETARY RIGHTS.** As between Codenvy and Customer, Codenvy is and will remain the sole and exclusive owner of the Software and all intellectual property rights associated therewith. Customer will not take any actions inconsistent with Codenvy's ownership of each of Codenvy's rights in and to the Software and the intellectual property associated therewith.
 6. **SUPPORT SERVICES.** Codenvy will use commercially reasonable efforts to provide the Support Services purchased by Customer in accordance with the support policy published at: <https://codenvy.com/legal/support-policy.pdf>. Customer understands Codenvy's ability to provide the Support Services are conditioned upon Customer's timely response to Codenvy's requests for information and other inputs from Customer (of any nature to the extent related to the Support Services). Customer hereby acknowledges and agrees Codenvy will not be in breach of this Agreement or of any Order for performance delays caused primarily by Customer's failure to provide such timely response. Further, such delays will not affect Customer's payment obligations hereunder.

7. TERM AND TERMINATION.

- 7.1. The term of this Agreement commences on the date set forth in the initial Order (the “**Effective Date**”) and, unless earlier terminated as provided herein, continues for the period set forth on the Order or, if no such period is set forth thereon, a period of twelve (12) months (the “**Initial Term**”). Contemporaneous with the expiration of such Initial Term and each successive Renewal Term (as defined herein), this Agreement automatically will renew for a period of twelve (12) months (each, a “**Renewal Term**”), unless and until terminated in accordance with the terms and conditions set forth herein (the Initial Term, together with each Renewal Term collectively, the “**Term**”). The term of each Service provided hereunder will be set forth in the applicable Order.
- 7.2. Either Party may terminate this Agreement as of the end of the Initial Term or the then current Renewal Term, as the case may be, by providing the non-terminating Party with thirty (30) days’ prior written notice of its intention not to renew this Agreement no later than thirty (30) days prior to the end of the Initial Term or the then current Renewal Term, as the case may be. A Party may terminate this Agreement immediately in the event that: (a) the other Party fails to cure a material breach of any term, condition, representation or warranty set forth herein within fifteen (15) days after such other Party’s receipt of written notice thereof; or (b) in the event the other Party files a petition in bankruptcy or for reorganization or a third party files a petition in bankruptcy or for reorganization against such other Party, which is not dismissed within sixty (60) days, or in the event of an assignment by such other Party for the benefit of its creditors, or the appointment of a receiver, trustee, liquidator or custodian for all or a substantial part of such other Party’s assets. Upon any termination or expiration of this Agreement: (i) the licenses and rights granted under this Agreement terminate effective immediately as of the date of such termination or expiration; (ii) Customer agrees it will delete all Software contained on Customer’s systems and provide Codenvy with written certification thereof at Codenvy’s request; and (iii) Customer will remain obligated to pay Reseller or Codenvy, as the case may be in accordance with Section 8 below, all fees and expenses which were incurred prior to (and on) the effective date of such termination or expiration.
- 7.3. Any provision of this Agreement which by its terms imposes continuing obligations on the Parties, including, but not limited to, Sections 4, 5, 7.2, 7.3, 7.4, 8.2, 10, 11, 13-19, 22, 23, and 24 hereof, shall survive any expiration or termination of this Agreement.
- 7.4. Customer hereby understands and agrees that if Reseller’s agreement with Codenvy terminates during the Term, Codenvy will provide Customer with written notice thereof; and immediately thereupon, Customer’s payment obligation to Reseller with respect to the Services, if any, automatically becomes Customer’s payment obligation to Codenvy in accordance with the terms and conditions set forth herein, without Customer’s further action or consent (the “**Automatic Assignment**”).

8. ORDERS AND PAYMENT.

- 8.1. Quotes and Orders. Customer will issue to Reseller or Codenvy, as the case may be, a written purchase order or other form of written or electronic communication committing to a purchase of the Services. Each such purchase order must include Customer’s name, address, contact information, the Services purchased by, or licensed to, Customer thereunder, the commercial terms and specific usage rights with respect to the Services (if any), the term of the Services, and such other terms as the Parties may mutually agree. No purchase order is binding on Codenvy unless and until it is accepted by an authorized representative of Codenvy, including Reseller (if and as applicable) (each such accepted purchase order, an “**Order**”). Except as expressly agreed in writing by Codenvy’s authorized representative or otherwise provided herein, any terms or conditions in any purchase order or other communication from Customer that conflict, modify, or add to the terms and conditions hereof are hereby rejected and are null, void, and of no legal effect, and any failure to object thereto is not an acceptance thereof, nor will it constitute a waiver of the terms and conditions hereof. Notwithstanding the foregoing, if Customer issues a purchase

order based on a written quote from Codenvy or Reseller, as the case may be, specifying pricing terms, form of payment, timing of payment, and/or quantity, configuration, or other description of the Services (each a “Quote”), Customer will be deemed to have accepted such terms, including, without limitation, any such terms that conflict with, modify, or add to the terms of this Agreement, and this Agreement is explicitly made subject to such terms of such Quote.

- 8.2. **Payment Terms.** In consideration of the rights granted to Customer under this Agreement, Customer will pay to Reseller (if Customer purchases the Services through Reseller) or Codenvy, as applicable, the fees set forth in each Order in accordance with the terms of this Section 8.2. All fees and expenses are due and payable in U.S. Dollars: (a) if payable to Codenvy, net thirty (30) days from the date of invoice, unless otherwise stated by Codenvy in writing; and (b) if payable to Reseller, in accordance with the payment terms set forth in Customer’s agreement with Reseller. Any amounts not paid to Codenvy when due will accrue interest at the rate of one and one half percent (1.5%) per month, or the maximum amount allowed by law, if lower. In the event that any payment is more than thirty (30) days past due, Codenvy may suspend the Services (including access to the Software) without incurring any liability to Customer. Despite any such suspension, Customer acknowledges and agrees it will be required to pay all fees and expenses due and payable until this Agreement is terminated in accordance with the termination provisions set forth herein. In the event that any payment is more than sixty (60) days past due, Customer is responsible for, and agrees to pay, Codenvy’s reasonable costs and expenses of collection, including, but not limited to, court and attorneys’ fees and expenses.
9. **ACCEPTANCE.** Unless otherwise agreed in writing, all Services will automatically be deemed accepted upon delivery. Customer shall have no right to return any Services acquired.
10. **DISCLAIMER OF WARRANTY.** EXCEPT TO THE EXTENT EXPRESSLY SET FORTH HEREIN, THE SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE” AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND. EXCEPT TO THE EXTENT EXPRESSLY SET FORTH HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CODENVY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, TITLE, OR NON-INFRINGEMENT. CODENVY DOES NOT WARRANT THE SERVICES WILL MEET CUSTOMER’S REQUIREMENTS NOR DOES IT GIVE ANY WARRANTY ABOUT THE RESULTS THAT MAY BE OBTAINED BY USING THE SERVICES. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THE SERVICES MAY RELY UPON THIRD-PARTY SOFTWARE FOR CERTAIN FUNCTIONS AND, EXCEPT AS SET FORTH EXPRESSLY HEREIN, CODENVY MAKES NO REPRESENTATION, WARRANTY, PROMISE OR GUARANTEE TO CUSTOMER THAT SUCH SOFTWARE WILL BE ERROR FREE, ACCOMPLISH A SPECIFIED PURPOSE OR PERFORM IN ACCORDANCE WITH ANY PARTICULAR STANDARD, LEVEL OR METRIC AND CODENVY WILL NOT BE LIABLE TO CUSTOMER FOR ANY FAILURE THEREOF. CUSTOMER ACKNOWLEDGES AND AGREES THE SERVICES ARE NOT INTENDED TO REPLACE CUSTOMER’S PROFESSIONAL SKILLS OR JUDGEMENT. CUSTOMER’S USE OF THE SERVICES IS AT CUSTOMER’S OWN RISK, AND CUSTOMER ASSUMES ALL LIABILITY FOR OUTCOMES BASED THEREON.
11. **LIMITATION OF LIABILITY.** IN NO EVENT WILL CODENVY BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, LOST PROFITS, OR PUNITIVE DAMAGES ARISING FROM OR RELATED TO THE SERVICES OR THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DATA, LOSS OF USE, OR LOSS OF PROFITS, EVEN IF CODENVY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. FURTHER, IN NO EVENT WILL

CODENVY'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER OR ANY OTHER PARTY FOR CLAIMS, LOSSES, OR DAMAGES OF ANY KIND, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, INDEMNITY OR OTHERWISE, ARISING OUT OF OR RELATED IN ANY WAY TO THIS AGREEMENT OR THE SERVICES EXCEED THE FEES PAID HEREUNDER DURING THE SIX (6)-MONTH PERIOD ENDING ON THE DATE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM, LOSS OR DAMAGE. No claim may be asserted by Customer against Codenvy more than twelve (12) months after the date this Agreement terminates or expires. In the event of any failure, or Codenvy's non-provision, of the Services, Customer's sole and exclusive remedy is for Codenvy to use commercially reasonable efforts to repair or provide the Services."

CUSTOMER ACKNOWLEDGES CODENVY DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. ACCORDINGLY, CODENVY WILL NOT BE RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. CUSTOMER UNDERSTANDS AND AGREES ITS USE OF THE SERVICES IS AT ITS OWN RISK AND DISCRETION.

THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT EACH PARTY HAS ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY SPECIFIED HEREIN, WHICH ALLOCATE RISK BETWEEN CODENVY AND CUSTOMER AND FORM A BASIS OF BARGAIN BETWEEN THE PARTIES. SOLELY IF AND TO THE EXTENT REQUIRED IN ORDER TO MAKE THIS LIMITATION OF LIABILITY ENFORCEABLE, NOTHING SET FORTH IN THIS AGREEMENT WILL EXCLUDE OR LIMIT LIABILITY TO A GREATER EXTENT THAN IS PERMITTED BY APPLICABLE LAW OR WILL EXCLUDE OR LIMIT LIABILITY FOR FRAUD, FRAUDULENT MISREPRESENTATION OR FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE.

12. **TRADEMARKS.** Codenvy uses certain trademarks and trade names in connection with the Services. Customer is not authorized to use any such trademarks for any purpose; provided, however, Codenvy hereby grants Customer a limited, non-exclusive, non-transferable, non-sublicensable and revocable right and license to reproduce Codenvy's trademarks provided on the Documentation solely for the purpose described in Section 3(b) above.
13. **CONFIDENTIALITY.** Except to the extent expressly governed by a separate nondisclosure and confidentiality agreement between the Parties (the "NDA"), this Section 13 governs the use and protection of Confidential Information (as defined herein) disclosed by the Parties on and after the Effective Date. Each Receiving Party (as defined herein) hereby agrees to hold in strict confidence, not to use except as otherwise authorized herein, and to protect from disclosure to unauthorized third parties the Confidential Information of the Disclosing Party (as defined below). For purposes hereof, "**Confidential Information**" means any information disclosed by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**") that relates to such Disclosing Party and that reasonably should be known by the Receiving Party to be confidential or proprietary to the Disclosing Party under the circumstances of disclosure or in light of the nature of the information disclosed. Confidential Information does not include information that: (a) was publicly available, or that subsequently becomes publicly available, except by wrongful disclosure hereunder by the Receiving Party; (b) was in the Receiving Party's possession prior to receipt of the same hereunder, as evidenced by the Receiving Party's prior written records; (c) was received from a third party who was not known by the Receiving Party to be under any obligation of confidentiality with respect to such information or to have violated any applicable law; or (d) was independently developed by the Receiving Party as must be evidenced

by written records created by such Receiving Party contemporaneously with such independent development. In the event that the Receiving Party becomes required by law, rule, regulation, judicial or administrative process to disclose any of the Disclosing Party's Confidential Information, prior to making such disclosure, such Receiving Party will provide the Disclosing Party with prompt written notice thereof, to the extent not prohibited by applicable law or regulation, so that the Disclosing Party may seek a protective order or other appropriate remedy. All of a Disclosing Party's Confidential Information will be returned or destroyed, as instructed by such Disclosing Party, upon the termination or expiration of this Agreement.

14. **SPECIFIC ENFORCEMENT.** Customer hereby acknowledges and agrees that the terms, conditions and restrictions set forth in Section 4, Section 5, and Section 13 above are reasonably necessary for the protection of Codenvy's business and goodwill, and that any breach or threatened breach by Customer of any of such terms, conditions or restrictions will cause Codenvy substantial and irreparable harm for which monetary damages alone will not be adequate; and accordingly, that in the event of such a breach or threatened breach, Codenvy has the right to seek immediate injunctive relief and/or specific performance, in addition to any other remedies available at law or in equity.

15. **INDEMNIFICATION.**

15.1. Subject to the indemnification obligations described in Section 15.2 below, at its sole cost and expense, Customer hereby agrees to defend and hold harmless Codenvy and its affiliates and subsidiaries, and its and their officers, directors, stockholders, employees, consultants, representatives, agents, successors and assigns (the "**Indemnitees**") in any third party action or claim, and to indemnify Codenvy and its Indemnitees from and against any and all claims, losses, liabilities, sums of money, damages, expenses, and costs (including, but not limited to, reasonable attorneys' fees) (collectively, "**Claims**") arising from such action or claim and related to: (a) Customer's breach of any term or condition, or of any of its representations or warranties, set forth in this Agreement; (b) Authorized Users' and/or Customer's customers' use of the Services; (c) Customer's violation of applicable law; (d) Customer's gross negligence or willful misconduct; and/or (e) Customer's infringement, violation or misappropriation of any intellectual property, privacy or other rights of any third party.

15.2. Subject to the indemnification obligations described in Section 15.1 above, at its sole cost and expense, Codenvy agrees to defend and hold harmless Customer and its Indemnitees in any third party action or claim, and to indemnify Customer and its Indemnitees from and against any and all Claims arising from such action or claim and related to: (a) the infringement or misappropriation of a third party's United States or European Union intellectual property right to the extent caused by Codenvy; and/or (b) Codenvy's breach of Section 13 above or of the terms of any license granted by Customer hereunder. If Customer's use of the Services is, or is likely to be, enjoined, or if necessary to avoid liability hereunder, as determined by Codenvy at its sole discretion, Codenvy may, at its sole discretion: (i) procure for Customer the right to continue using the affected Service; (ii) replace or modify the affected Service so that Customer's use becomes non-infringing; and/or (iii) terminate Customer's right to use the applicable Service and refund a pro rata portion of the fees prepaid by Customer. This Section 15.2 sets forth Codenvy's sole liability and Customer's sole remedy with respect to the infringement or misappropriation of a third party's intellectual property rights caused by Codenvy.

15.3. Notwithstanding the foregoing, the indemnifying Party under this Section 16 is not required to fulfill its indemnification obligation set forth in this Section 15 if the indemnified party fails to: (a) promptly notify such indemnifying Party of the action or claim, and such failure prejudices such indemnifying Party's ability to fulfill its obligations hereunder; (b) provide such indemnifying Party with reasonable assistance in its defense and settlement of such action or claim, at such indemnifying Party's sole cost and expense; and (c) provide such indemnifying Party with the exclusive right to control and direct the defense of such action or claim; provided, however, that such indemnifying Party may not settle an action or claim without

the indemnified party's prior written consent, unless such settlement: (i) includes an unconditional release of such indemnified party(ies) from all liability arising out of such action or claim; and (ii) is solely monetary in nature and does not include an admission of fault by such indemnified party(ies), any injunctive or equitable relief against such indemnified party(ies), or otherwise adversely affect such indemnified party(ies).

15.4. Notwithstanding anything to the contrary set forth in Section 15.2 above, Codenvy is not required to perform its indemnification obligations set forth in Section 15.2 above to the extent a Claim arises out of or is connected to: (a) Customer's misuse or unauthorized use of the Services; (b) Customer's combination of the Services with any products, services, information, materials, technologies, business methods or processes not furnished or authorized by Codenvy; (c) Customer's failure to use updates to the Services provided by Codenvy, at no cost to Customer, that would have avoided the alleged infringement; and/or (d) Customer's unauthorized manipulation, modification, or alteration to the Services.

16. **COMPLIANCE.**

16.1. Client acknowledges that the Services may be subject to U.S. or other countries' export control laws and regulations. Accordingly, Customer may not export, re-export or otherwise transfer any portion of the Services except in full compliance with all applicable laws and regulations, including but not limited to the Export Administration Regulations of the U.S. Department of Commerce, the International Traffic in Arms Regulations of the U.S. Department of State, and the regulations administered by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") or other similar laws.

16.2. Customer represents and warrants to Codenvy that: (a) neither it, nor any of its officers, directors, controlling owners or employees is located in any U.S. embargoed country, named as a "Specially Designated National" or "Blocked Person" as designated by OFAC, or is otherwise blacklisted by any instrumentality of the U.S.; (b) it will not use the Services to design or develop nuclear, chemical, or biological weapons or missile technology without the prior permission of the U.S. government; and (c) its use of the Services is and will at all times be: (i) in accordance with all applicable laws, rules and regulations; and (ii) without infringement or misappropriation of any intellectual property right or other rights of a third party.

17. **AUDIT.** Customer agrees to implement reasonable controls to ensure its use of the Services complies with the terms and conditions set forth in this Agreement. Customer acknowledges and agrees that Codenvy, at any time during normal business hours, and upon reasonable written notice, has the right to audit Customer's use of the Services and its books and records for the purpose of verifying compliance with the terms and conditions of this Agreement.

18. **GOVERNING LAW.** This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of California, as it is applied to agreements entered into and to be performed entirely within California, except for those conflicts of law rules thereof that would require or permit the application of the laws of another jurisdiction. Any dispute or controversy arising under, out of, or in connection with this Agreement will be resolved by binding arbitration under the then current Commercial Arbitration Rules of the American Arbitration Association (including the expedited procedures and optional rules for emergency measures of protection thereunder) before a single arbitrator; provided, however, that nothing set forth herein is construed to limit Codenvy's remedies described in Section 14 above. Any such arbitration will be conducted in San Francisco, California. Judgment upon any award may be entered in any court of competent jurisdiction. The arbitrator shall be designated by mutual agreement of the Parties hereto or, if the Parties cannot agree on an arbitrator within ten (10) days after a request for arbitration hereunder, each Party shall designate one (1) arbitrator and the arbitrators so designated shall designate a third arbitrator who shall conduct the arbitration. The decision of the arbitrator shall be binding and conclusive upon the Parties. Any arbitration award granted

hereunder shall be enforceable under the applicable terms and conditions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the New York Convention), as amended to date. The Parties expressly agree this Agreement is not governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. All rights and remedies hereunder are cumulative.

19. **ENTIRE AGREEMENT**. This Agreement and each Order, if and as applicable (and the NDA if applicable), constitute the entire agreement between Customer and Codenvy regarding the subject matter hereof and supersede any other communications with respect to the Services, and there are no promises, terms, conditions or obligations, oral or written, express or implied, between Customer and Codenvy relating to the subject matter hereof other than those contained herein. This Agreement may be modified by Codenvy from time to time, which modifications are effective once posted on www.codenvy.com (the “**Site**”). Customer acknowledges and agrees the rights to use the Services for which it is contracting hereunder is neither contingent on the delivery of any future functionality or features or the delivery of any other services nor is it dependent on any oral or written public comments made by or on behalf of Codenvy regarding future functionality or features. If purchased by Customer, professional services are provided by Codenvy separate and distinct from the Software and are not required for Customer’s use or enjoyment of the Software.
20. **SEVERABILITY; WAIVER**. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will continue in full force and effect. Failure by a Party to insist upon performance by the other Party of any of its obligations under this Agreement will not constitute a waiver of the right to enforce its rights with respect to the same or any other provision. No waiver of any right or remedy with respect to any occurrence or event shall be deemed a waiver of such right or remedy with respect to such occurrence or event in the future.
21. **ASSIGNMENT**. Except pursuant to a merger, acquisition or business combination and/or in the event of an Automatic Assignment, neither Party may assign this Agreement, by operation of law or otherwise, without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any prohibited assignment, sublicense or transfer will be null and void. This Agreement will be binding upon the respective successors and permitted assigns of the Parties.
22. **ATTORNEYS’ FEES**. In the event legal action is required to enforce or interpret any terms and conditions of this Agreement, the prevailing Party in such legal action will recover all reasonable costs and expenses, including attorneys’ fees, incurred in connection with such action.
23. **OPEN SOURCE LICENSING, THIRD PARTY MATERIALS, ADD-ON’S**.
 - 23.1. The Services may be provided with open source software. Codenvy lists (and updates from time to time) the open source software provided with the Services here: <https://install.codenvycorp.com/codenvy/codenvy-dependencies-latest.txt>. Customer’s use of such open source software must be in compliance with the terms of the applicable open source license. Except as otherwise set forth in the applicable open source license(s), the open source software provided with the Services is provided “as is,” and without representation or warranty of any kind.
 - 23.2. The Services may also include components licensed from third parties (“**Third Party Materials**”). Customer agrees: (a) to use the Third Party Materials solely with the Services and in the form provided by Codenvy; and (b) not to modify or attempt to gain direct access to the Third Party Materials. Customer acknowledges and agrees the owner(s) of the Third Party Materials retain all ownership and intellectual property rights therein.
 - 23.3. Codenvy may provide Customer with software development kits, application programming interfaces, and associated documentation (collectively, the “**Guides**”) in order to permit Customer to develop plugins,

extensions, add-ons, or other software products or services that interoperate or integrate with the Services (the “**Add-Ons**”). Subject to the limitations set forth herein and in the Guides, to the extent the Add-Ons: (a) do not incorporate any Software; and (b) are not developed by Codenvy as part of the Support Services or professional services; Customer shall be the sole and exclusive owner of all right, title and interest in and to the Add-Ons and the intellectual property rights associated therewith. Customer acknowledges and agrees Codenvy does not support, make any representations or warranties with respect to, agree to indemnify, or have any other obligation or liability with respect to Customer’s Add-Ons or their combination, interaction, or use with the Services. Customer agrees it will develop Add-Ons strictly in accordance with the terms and conditions set forth in the Guides. Customer represents and warrants to Codenvy that it will not combine, link, integrate, incorporate, or otherwise use any open source, copyleft, public or similar software (including, without limitation, any software licensed under the GPL or LGPL) in any manner that would: (i) require Codenvy to make or permit any disclosure of, or to make available, any source code for Codenvy’s proprietary software; or (ii) prohibit Codenvy from restricting further modification or distribution of its source code by third parties.

24. **FORCE MAJEURE.** The performance by either Party of its obligations hereunder (other than the payment of money) will be excused during any period of time in which the failure to perform results from acts of God, the elements, fire, flood, component shortages, force majeure, riot, insurrection, industrial dispute, accident, war, embargoes, legal restrictions or any other cause beyond the reasonable control of a Party.

25. **CONSENT TO USE OF ELECTRONIC SIGNATURES AND RECORDS.** Customer acknowledges and agrees that by clicking “I Agree” or “I Accept” anywhere on the Site or by otherwise agreeing to the terms and conditions set forth in any agreement posted on the Site: (a) Customer agrees to conduct electronically the particular transaction into which it is entering; (b) Customer read, understands and agrees to be bound by the electronic copy of electronic contracts, notices and records to which it is agreeing, including, without limitation, this Agreement; (c) Customer is capable of printing or storing a copy of electronic records of agreements to which it is agreeing including, without limitation, this Agreement; and (d) Customer agrees to receive electronically information about the agreements to which it is agreeing including, without limitation, this Agreement.