



Software as a Service Subscription Agreement

Last Updated: August 1, 2020

Thank you for your interest in using our services!

This Software as a Service Subscription Agreement “*Agreement*” is incorporated by reference into each Order and Statement of Work that you may enter into with Circle Internet Services, Inc., dba, CircleCI, a Delaware corporation (“*CircleCI*”, “*we*”, “*us*”). “*You*” means your employer or the entity you represent and its Affiliates and Users, in accepting the terms of this Agreement or, if that does not apply, you individually. Each of you and us is a “*Party*” and collectively, are the “*Parties*”. Capitalized terms not defined herein shall have the meaning set forth in the applicable Order.

Any User of the Services must be eighteen (18) years old or older to use the Services.

If you are accepting this Agreement on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer or such entity to the terms of this Agreement; (ii) you have read and understand the terms of this Agreement; and (iii) you agree to the terms of this Agreement on behalf of the party that you represent.

If you don't have the legal authority to bind your employer or the applicable entity please do not click “I Agree/I Accept/Sign Up” (or similar button or checkbox) that is presented to you. If you do not have such authority, or if you do not agree with the terms of this Agreement, you may not use the Services.

PLEASE NOTE THAT IF YOU SIGN UP FOR THE SERVICES USING AN EMAIL ADDRESS FROM YOUR EMPLOYER OR ANOTHER ENTITY, THEN (A) YOU SHALL BE DEEMED TO REPRESENT SUCH PARTY, AND (B) YOUR CLICK TO ACCEPT WILL BIND YOUR EMPLOYER OR THAT ENTITY TO THIS AGREEMENT.

This Agreement is effective as of the earliest of (i) the date you first click “I Agree/I Accept/Sign Up” (or similar button or checkbox), (ii) or access the Services, or (iii) the effective date set forth on the initial Order (the “*Effective Date*”). This Agreement does not have to be signed in order to be binding. You indicate your acceptance of the terms of this Agreement by clicking “I Agree/I Accept/Sign Up” (or similar button or checkbox) at the time you register for the Services, create an Account, or place an Order. For Evaluation Services, you also indicate your acceptance of the terms of this Agreement by your accessing or using the applicable Evaluation Services.

Your right to access and use the Services, whether or not an Order has been signed between you and us, is expressly conditioned on your acceptance of this Agreement. By accessing or using the Services, you agree to be bound and abide by the terms of this Agreement.

1. Definitions Used in this Agreement.

- a. “*Affiliate*” means a company, corporation, individual, partnership or other legal entity that directly or indirectly controls, is controlled by, or is under common control with a Party to this Agreement. For purposes of this definition, “control” means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.
- b. “*AUP*” means CircleCI’s standard Acceptable Use Policy, currently available at <https://circleci.com/legal/acceptable-use/>.
- c. “*CircleCI Content*” means all software (including the Software), data, Documentation, reports, text, images, sounds, video, and content made available through the Services.
- d. “*Documentation*” means any manuals, instructions or other documents or materials that we provide or make available to you in any form or medium and which describe the functionality, components, features or requirements of the Services or CircleCI Content, including the Specifications and any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof, excluding any marketing or other publicly available materials.
- e. “*Feedback*” means any suggestion, idea, improvement, enhancement request, recommendation, correction or other feedback provided by you or any User relating to the operation of the Services.
- f. “*Intellectual Property Rights*” means rights under any copyright, patent, trademark, trade secret and other intellectual property laws worldwide.
- g. “*Malicious Code*” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.
- h. “*Non-CircleCI Applications*” means any Internet-based or offline software application that is provided by you or a third party and interoperates with the Services.
- i. “*Order*” means any order form, or other ordering document, including any Internet-based or email-based ordering mechanism or registration process (e.g., your account page in the Services) specifying the level of the Services to be provided hereunder and associated fees therefor that is entered into between you and us or any of our respective Affiliates, including any addenda and supplements thereto. By entering into an Order hereunder, any Affiliate of yours agrees to be bound by the terms of this Agreement as if it were you.

- j. "Pricing Page" means the publicly available web page(s) where CircleCI publishes its list prices for Services, currently available at <https://circleci.com/pricing/>.
- k. "Privacy Laws" means all laws and regulations regarding data privacy and transmission of personal data that apply to our provision of the Services to you (e.g., storing and processing Your Data), including, without limitation, Articles 25(1) and 26(1) of EU Directive 95/46/EC of 24 October 1995, General Data Protection Regulation 2016/679 (GDPR) and California Consumers Privacy Act of 2018 (CCPA).
- l. "Privacy Policy" means our Privacy Policy located at <https://circleci.com/privacy/> or any successor URL.
- m. "Services" means (i) the Site, (ii) our continuous integration services and related technologies, and (iii) all CircleCI Content, collectively.
- n. "Site" means the web site located at <https://circleci.com/> or any successor URL.
- o. "Software" means any software that may be made available by us in connection with the Services.
- p. "Specifications" means the description of, minimum standards required, and the mode, means and mechanisms of action or functionality for the Services set forth in the Documentation.
- q. "Supplemental Terms" means additional terms that apply to certain Services, including any product-specific terms that may be agreed by the Parties.
- r. "Support" means the free, community-based online help forums sponsored by us and fee-based individualized help with the Services that may be available to you by email, meetings or other communication modes available now or on the future, at CircleCI's sole option, as further defined in Section 8.
- s. "Term" means the Initial Term plus any and all Renewal Terms, collectively, as further defined in Section 11.
- t. "Third-Party Content" means information and data obtained by us from publicly available sources or our third-party content providers and made available to you and your Users through the Services, Evaluation Services or pursuant to an Order.
- u. "Usage Data" means: (i) data generated by aggregating Your Data with other data so that the results are non-personally identifiable with respect to You or Your Users; and (ii) learnings, logs, and data regarding use of the Services.
- v. "User" means an individual who is authorized by you to use the Services, for whom you (or us at your request) has supplied a user identification and password either manually or using a Non-CircleCI Application (e.g., GitHub via OAuth). Users may include, for example, your employees, consultants, contractors, representatives and/or agents.
- w. "Your Data" means any data, software, information, text, audio files, graphic files, content or other material received by the Services from you or any Users in the course of your accessing or using the Services, excluding CircleCI Content, Third-Party Content and Non-CircleCI Applications.

2. Your Acceptance of the Terms of this Agreement and any Changes to It. We provide the Services to you through the Site, pursuant to this Agreement. By entering into an Order or otherwise downloading, accessing or using the Services, you unconditionally accept and agree to all of the terms of this Agreement. This Agreement shall apply to all usage by you and each User of the Services. We may modify this Agreement at any time by posting a revised version at <https://circleci.com/terms-of-service/>, which modifications will become effective as of the first day of the calendar month following the month in which the modifications were first posted; provided, however, that if an Order specifies a fixed term of twelve (12) months or longer, the modifications will instead be effective immediately upon the start of the next Renewal Term, if applicable. In either case, if any change to this Agreement is not acceptable to you, as your sole and exclusive remedy, you may choose not to renew, including canceling any terms set to auto-renew, in accordance with the terms set forth in Section 11. For the avoidance of doubt, any Order is subject to the version of the Agreement in effect at the time of the Order.

3. Agreement Structure and Order of Precedence. If there are any conflicts between this Agreement and any Order, the Order takes precedence and prevails over this Agreement, solely with respect to the subject matter of the applicable Order.

4. Free Evaluations. From time to time, we may invite you and/or your Users to try certain features or products at no charge for a free trial or evaluation period (collectively, "Evaluation Services"). Evaluation Services may be designated or identified as beta, pilot, evaluation, trial or the like. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, EVALUATION SERVICES ARE LICENSED FOR YOUR INTERNAL EVALUATION PURPOSES ONLY (AND NOT FOR PRODUCTION USE), ARE PROVIDED BY US ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OR INDEMNITY OF ANY KIND AND WE SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO ANY EVALUATION SERVICES OR ANY FREE TRIAL, UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW, IN WHICH CASE OUR LIABILITY WITH RESPECT TO THE SERVICES PROVIDED DURING ANY FREE TRIAL SHALL NOT EXCEED ONE HUNDRED DOLLARS (\$100.00). WITHOUT LIMITING THE FOREGOING, WE AND OUR AFFILIATES AND OUR LICENSORS DO NOT REPRESENT OR WARRANT TO YOU OR ANY USER THAT: (A) YOUR USE OF THE SERVICES DURING ANY FREE TRIAL PERIOD WILL MEET YOUR REQUIREMENTS, AND (B) YOUR USE OF THE SERVICE DURING ANY FREE TRIAL PERIOD WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE "LIMITATION OF LIABILITY" SECTION BELOW, YOU SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO US AND OUR AFFILIATES FOR ANY DAMAGES ARISING OUT OF YOUR USE OF THE SERVICE DURING ANY FREE TRIAL PERIOD, ANY BREACH BY YOUR OR ANY OF YOUR USERS OF THIS AGREEMENT AND ANY OF YOUR INDEMNIFICATION OBLIGATIONS HEREUNDER. YOU SHALL REVIEW THE APPLICABLE DOCUMENTATION DURING ANY TRIAL PERIOD TO BECOME FAMILIAR WITH THE FEATURES AND FUNCTIONS OF THE SERVICES BEFORE MAKING ANY PURCHASE. Unless otherwise stated in an Order, any Evaluation Services trial period shall expire thirty (30) days from the free trial start date. Notwithstanding the foregoing, we may discontinue Evaluation Services at any time at our sole discretion and may never make any Evaluation Services generally available. We shall have no liability for any harm or damage arising out of or in connection with any Evaluation Services.

5. Ownership.

a. **We Own the Services.** The Services are the property of us and our licensors, and are protected by copyright, patent, trademark, trade secret and/or other intellectual property laws. Subject to the limited rights we expressly grant to you in this Agreement, we and our licensors reserve all of our and our licensors' right, title and interest in and to the Services, respectively, including all of our and our licensors' related Intellectual Property Rights. We grant no rights to you or any User pursuant to this Agreement other than as expressly written.

b. **You Own Your Data.** As between you and us, (a) Your Data is your property, and (b) you retain any and all rights, title and interest in and to Your Data. Our use of Your Data shall be limited to our providing the Services to you and your Users or as otherwise permitted under this Agreement.

c. **We Need a Limited License to Your Data to Provide the Services.** You hereby grant us, and our Affiliates and applicable contractors a worldwide, non-exclusive, royalty-free, fully paid, sublicensable, non-transferable [except as specified in Section 17(b)], license to receive, host, store, analyze, process, enhance, copy, transmit, create derivative works of, maintain and display Your Data that you or any User posts to the Services (either directly or via a Non-CircleCI Application) (i) to provide the Services in accordance with this Agreement, and (ii) to generate Usage Data which we may use for any business purpose during or after the Term of this Agreement (including without limitation to develop and improve our products and services). For the avoidance of doubt, we shall own all right, title and interest in and to the Usage Data including without limitation all Intellectual Property Rights therein. If you choose to use a Non-CircleCI Application with the Services, you grant us permission to allow the Non-CircleCI Application and its provider to access Your Data and information about your and your Users' usage of the Non-CircleCI Application, as appropriate for the interoperability of that Non-CircleCI Application with the Services. Subject to the limited licenses granted herein, we acquire no right, title or interest from you or your licensors under this Agreement in or to Your Data.

6. Feedback. You hereby grant to us a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services and otherwise utilize Feedback in the design of our and our Affiliate's products and to design, debug, display, perform, copy, make, have made, use, sell, and otherwise dispose of and support our and our Affiliate's products and services embodying such Feedback in any manner and via any media we may choose. The Parties agree that all Feedback, if any, is and shall be given entirely voluntarily.

7. Our License to You and How You and Your Users May Use the Services.

a. **Our License to You.** The Services, Software and Documentation each contains proprietary and confidential information that is protected by applicable intellectual property and other laws. Subject to the terms of this Agreement, each Order and your payment of all Fees described in each Order, we grant to you and each of your Users a non-sublicensable, non-exclusive, non-transferable license to access and use the Services during the applicable Service Term.

b. **Some Restrictions on Your Use of the Services and CircleCI Content.** Subject to the terms of this Agreement and the AUP, you and your Users may access and use the Services and CircleCI Content only for lawful purposes. All rights, title and interest in and to the Services and its components, CircleCI Content and all related Intellectual Property Rights shall remain with and belong exclusively to us. You must not remove any copyright notice or any other notices that appear on the Services or on any copies and any media, and you may only use the CircleCI Content in a manner permitted by Our Trademark Usage Guidelines located at <https://www.circleci.com/legal/trademark-guidelines/>. Neither you nor any User shall (or permit any third party to) (i) modify, reverse engineer or attempt to hack or otherwise discover any source code or underlying ideas or algorithms of the Services (except to the extent that applicable law prohibits reverse engineering restrictions); (ii) sell, resell, license, sublicense, provide, lease, lend, use for timesharing or service bureau purposes or otherwise use or allow others to use the Services for the benefit of any third party; (iii) use the Services, or allow the transfer, transmission, export, or re-export of the Services or CircleCI Content or portion thereof, in violation of any export control laws or regulations administered by the U.S. Commerce Department, OFAC, or any other government agency; (iv) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy or Intellectual Property Rights; (v) use the Services to store or transmit Malicious Code; (vi) interfere with or disrupt the integrity or performance of the Services or its components; (vii) attempt to gain unauthorized access to the Services or its related systems or networks; (viii) permit direct or indirect access to or use of the Services in a way that circumvents any contractual usage limit; (ix) copy the Services or any part, feature, function or user interface thereof, or otherwise access the Services, in order to build a competitive product or service; or (x) use the Services for any purpose other than as expressly licensed herein.

c. **Some Obligations with Regard to Use of the Services.** You shall (i) be responsible for your Users' compliance with this Agreement; (ii) be responsible for the quality and legality of Your Data and the means by which you acquired Your Data; (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify us promptly of any such unauthorized access or use that you become aware of; (iv) use the Services only in accordance with the Documentation and applicable laws and government regulations; (v) provide all necessary disclosures to Users and obtain all necessary consents from Users, in each case to the extent necessary to share such Users' personal information with CircleCI and for CircleCI and its Affiliates, licensors and service providers to use such personal information to provide the Services; (vi) comply with terms of service of the Non-CircleCI Applications that you use with the Services; and (vii) comply with the terms of our AUP. You and your Users are responsible for maintaining the security of your accounts and passwords. We cannot and shall not be liable for any loss or damage from your or any of your User's failure to comply with this security obligation. You and your Users may not access the Services if you are our direct competitor except with our prior written consent. In addition, you and your Users may

not access the Services for purposes of benchmarking or competitive purposes such as monitoring the Services' availability, performance or functionality.

d. Consequences if You Don't Use the Services as Agreed. You shall, and shall ensure that all your Users, comply with the terms and conditions of this Agreement, including, without limitation, with your obligations set forth in this Section 7. You shall promptly notify us of any suspected or alleged violation of this Agreement and shall cooperate with us with respect to: (i) investigation by us of any suspected or alleged violation of this Agreement and (ii) any action by us to enforce this Agreement. We may, in our sole discretion, suspend or terminate your or any User's access to the Services with or without written notice (including, but not limited to e-mail) to you in the event that we reasonably determine that you or a User has violated this Agreement. Additionally, we may remove Your Data from the Services (or disable access to it) in accordance with our Copyright Infringement Notice and Takedown Policy located at <https://circleci.com/legal/copyright-infringement-policy/>. You shall be liable for any violation of this Agreement by any of your Users.

e. Removal of Third-Party Content and Non-CircleCI Applications. If we send you a notice that any Third-Party Content or a Non-CircleCI Application must be removed from the Services, modified and/or disabled to avoid violating applicable law, third-party rights, or the terms of this Agreement, you shall promptly do so. If you do not take the required action, or if, in our judgment, continued violation is likely to reoccur, we may disable or remove the Third-Party Content and/or the Non-CircleCI Application from the Services. If we request it, you shall confirm such deletion and discontinuance of use in writing and you hereby authorize us to provide a copy of such confirmation to any such third-party claimant or governmental authority, as applicable. In addition, if we are required by any third-party rights holder to remove Third-Party Content, or we receive information that Third-Party Content provided to you via the Services may violate applicable law or third-party rights, we may discontinue your access to such Third-Party Content through the Services.

8. How We Provide and Support the Services.

a. As part of the registration process for the Services, each User shall generate a username and password for its CircleCI account ("Account"), either manually or through a Non-CircleCI Application (e.g., GitHub via OAuth). Each User is responsible for maintaining the confidentiality of their username, password and Account and for all activities that occur under any such username or the Account. We reserve the right to access your and any User's Account in order to respond to your and any Users' requests for technical support. We have the right, but not the obligation, to monitor the Services, and Your Data.

b. We shall (i) make the Services available to you and your Users pursuant to this Agreement and the applicable Order; (ii) provide community-based support for the Services to you and your Users at no additional charge via our Discuss site located at <https://discuss.circleci.com> (or successor URL), and/or upgraded support if purchased by you as described in the applicable Order ("Support"); and (iii) use commercially reasonable efforts to make the Services available 24 hours per day, 7 days per week, except for: (x) planned downtime (of which we shall give at least eight (8) hours electronic notice and which we shall schedule to the extent practicable during the weekend hours between 6:00 p.m. Friday and 3:00 a.m. Monday Pacific time), and (y) any unavailability caused by any Force Majeure event, any Internet service provider failure or delay, any Non-CircleCI Application, or any denial of service attack, for which we may or may not provide notice.

c. The operation of the Services, including Your Data, may be unencrypted and involve (i) transmissions over various networks; (ii) changes to conform and adapt to technical requirements of connecting networks or devices and (iii) transmission to our third-party vendors and hosting partners solely to provide the necessary hardware, software, networking, storage, and related technology required to operate and maintain the Services. Accordingly, you bear sole responsibility for adequate backup of Your Data. Because you are in the best position to mitigate any loss of or damage to Your Data, we shall have no liability to you for any unauthorized access or use of any of Your Data, or any corruption, deletion, destruction or loss of any of Your Data. That said, we will maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, as more fully addressed in Section 16.

d. You and your Users may enable or log in to the Services via various Non-CircleCI Applications, such as GitHub. By logging in or directly integrating these Non-CircleCI Applications into the Services, we make your and your Users' online experiences richer and more personalized. To take advantage of these features and capabilities, we may ask you and your Users to authenticate, register for or log into Non-CircleCI Applications on the websites of their respective providers. As part of such integration, the Non-CircleCI Applications shall provide us with access to certain information that you and your Users have provided to such Non-CircleCI Applications, and we shall use, store and disclose such information in accordance with our Privacy Policy. The manner in which Non-CircleCI Applications use, store and disclose your and your Users' information is governed solely by the policies of the third parties operating the Non-CircleCI Applications, and we shall have no liability or responsibility for the privacy practices or other actions of any third-party site or service that may be enabled within the Services. In addition, we are not responsible for the accuracy, availability or reliability of any information, content, goods, data, opinions, advice or statements made available in connection with Non-CircleCI Applications. As such, we shall not be liable for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Non-CircleCI Applications. We enable these features merely as a convenience and the integration or inclusion of such features does not imply an endorsement or recommendation by us.

e. You shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, hardware, servers, software, operating systems, networking, web servers, and internet and telecommunications service(s) (collectively, "Equipment"). You shall be responsible for ensuring

that such Equipment is compatible with the Services (and, to the extent applicable, the Software) and complies with all configurations and Specifications set forth in the Documentation. You shall also be responsible for maintaining the security of the Equipment, your and each of your Users' Accounts, all usernames and passwords (including but not limited to administrative and User passwords) and files, and for all uses of your and any User's Account or the Equipment with or without your knowledge or consent.

9. If You License the Services Through a Reseller. Notwithstanding anything to the contrary in this Agreement, if you purchase a license to the Services through an authorized partner or reseller of ours ("*Reseller*"):

- a. You agree to be bound by the terms of this Agreement.
- b. Instead of paying us, you will pay the applicable amounts to the Reseller, as agreed between you and the Reseller. We may suspend or terminate your rights to use the Services, if we do not receive the corresponding payment from the Reseller.
- c. Your order details (e.g., the Services you are entitled to use, the number of your Users, the Service Term, etc.) will be as stated in the Order that the Reseller places with us on your behalf, and the Reseller is responsible for the accuracy of any such Order as communicated to us. We will only provision the Services for you after we receive and accept the Order from the Reseller.
- d. If you are entitled to a refund under this Agreement, then unless we otherwise specify, we will refund any applicable fees to the Reseller and the Reseller will be solely responsible for refunding the appropriate amounts to you.
- e. Resellers are not authorized to modify this Agreement or make any promises or commitments on our behalf, and we are not bound by any obligations to you other than as set forth in this Agreement, unless agreed in writing by us and provided to you.

10. Fees and Payment.

- a. You shall pay us the fees set forth in each Order by and between you and us, in accordance with the terms set forth therein and this Agreement ("*Fees*"). Except as otherwise provided in an Order: (a) prices for Services are set forth on the Pricing Page; (b) Fees are charged monthly in advance, except for Fees for overages, which are charged in arrears; and (c) Fees must be paid in U.S. dollars. All amounts paid or payable are non-refundable, non-cancelable and non-creditable. Unless otherwise stated in an Order, you shall be responsible for and shall pay all Taxes imposed on or with respect to the Services that are the subject of this Agreement. "Taxes" mean all applicable federal, state and local taxes, fees, charges, or other similar exactions, including, without limitation, sales and use taxes, excise taxes, VAT, GST, and other license or business and occupations taxes. For purposes of this Section 10(a), Taxes do not include any Taxes that are imposed on or measured by our net income, property tax, or payroll taxes. If you are paying any Fees by credit card, you shall provide us complete and accurate information regarding the applicable credit card. You represent and warrant that all such information is correct and that you are authorized to use such credit card. You shall promptly update your account information with any changes (for example, a change in billing address or credit card information) that may occur. You hereby authorize us to bill such credit card (a) in advance on a periodic basis, in accordance with the terms of this Agreement and an Order; and (b) in arrears for any applicable overages, in accordance with the terms of this Agreement and an Order, and you further agree to pay any and all charges so incurred. You shall maintain, and we shall be entitled, to audit any records relevant to your or any of your Users' use of the Services hereunder. We may audit such records on reasonable notice at our cost (or if the audits reveal material non-compliance with this Agreement, at your cost).
- b. We reserve the right to modify the Fees for the Services under one or more Orders, effective upon commencement of the next Renewal Service Term of the relevant Order(s), by notifying you in writing of the change in Fees before the end of the then-current Service Term.
- c. For any upgrade in a subscription level with a month-to-month Service Term, we shall automatically charge you the new subscription Fee (or a pro-rated portion of new subscription Fee if the service upgrade is requested prior to the end of the then-current Service Term), effective as of the date the service upgrade is requested and for each subsequent one-month recurring cycle pursuant to the billing method applicable to you. If we are providing you the Services pursuant to a yearly Service Term, we shall immediately charge you any increase in subscription level plan cost pursuant to the billing method applicable to you, prorated for the remaining Service Term of your yearly billing cycle; provided, however, any decrease in a subscription level plan cost shall only take effect upon the commencement of the subsequent Renewal Service Term. Any downgrade of your subscription level may cause the loss of features or capacity of your and your Users' Accounts. We do not accept any liability for such loss.
- d. If any amount owing by you under this Agreement for the Services is ten (10) or more days overdue, we may, in our sole discretion and without limiting our other rights and remedies, suspend your and any of your User's access to the Services and/or otherwise limit the functionality of the Services until such amounts are paid in full, or terminate the Account in accordance with Section 11(f) below. If we suspend, limit, or terminate the Services pursuant to this Section 10(d), then we will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that you may incur in connection with any such actions. Additionally, any payments more than ten (10) days overdue shall bear a late payment fee of one and one-half percent (1.5%) per month, or, if lower, the maximum rate allowed by law.

e. You agree that your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by us regarding any future functionality or features.

11. Term and Termination.

a. Term of Agreement. This Agreement shall begin on the Effective Date and continue in effect until all Orders expire or are terminated in accordance with Section 11(f).

b. Termination of Agreement; No Termination for Convenience. Neither Party shall have the right to terminate this Agreement without legally valid cause (a/k/a "for convenience"). Each Party may terminate this Agreement only by terminating it in accordance with Section 11(f) for all Orders then in effect.

c. Effect of Expiration or Termination of Agreement. Sections 3 (Agreement Structure and Order of Precedence), 5 (Ownership), 11 (Term and Termination), 12 (Your Indemnification of Us), 13 (Disclaimer of Warranties), 14 (Limitation of Liability), 15 (Confidentiality), 16 (Security, Privacy and Continuity), and 17 (Miscellaneous) of this Agreement shall survive any expiration or termination of this Agreement. The applicable Orders may identify additional terms that shall survive any expiration or termination of this Agreement. Regardless of the basis for expiration or termination of this Agreement, (i) upon expiration or termination of an Order or this Agreement, you shall immediately be unable access and use the Services and (ii) we shall not be obligated to retain Your Data for longer than thirty (30) days after any such expiration or termination, and thereafter we may, in our sole discretion, delete all of Your Data from the Services and such information cannot be recovered once your Account or any User Account is terminated. You shall return or destroy all copies of all CircleCI Content and all portions thereof in your possession and certify such destruction to us, if such certification is requested by us.

d. Term of Orders. The term of a particular Order shall be set forth therein, starting on the effective date of the Order as specified therein and continuing for the initial term specified therein ("*Initial Service Term*").

e. Automatic Renewal. PLEASE CAREFULLY REVIEW THESE AUTOMATIC RENEWAL TERMS. Unless otherwise set forth in the applicable Order, or unless the Order is terminated in accordance with Section 11(f), upon expiration of the Initial Service Term, the relevant Order shall automatically renew for a subsequent renewal term of equal length to the then-current Service Term (each a "*Renewal Service Term*"), unless either Party notifies the other Party in writing, (i) for a twelve month Service Term, at least thirty (30) days prior to the end of the then-current Service Term; or (ii) for a month-to-month Service Term, prior to the end of the then-current Service Term, that such Party chooses not to renew. The Initial Service Term and all Renewal Service Terms (if any) are referred to in this Agreement collectively as the "*Service Term*."

f. Termination of Orders. Either Party may terminate any Order in accordance with its terms. If not specified in the applicable Order, then either Party may terminate any Order for cause upon written notice if the other Party fails to cure any material breach thereof within thirty (30) days after receiving a reasonably detailed written notice from the other Party alleging the breach; and we may terminate any Order for cause upon written notice (i) within ten (10) days in the case of non-payment; and (ii) immediately in the case of your or any of your User's breach of Section 7(b). Upon any termination of this Agreement due to CircleCI's uncured material breach of this Agreement, CircleCI will provide a refund to you for any prepaid and unused fees paid under this Agreement on a prorated basis. Termination is not an exclusive remedy and all other remedies shall be available whether or not termination occurs.

g. Termination of Free Accounts for Non-Use. In the case of a free trial or our otherwise providing the Services at no cost to you, we shall have, upon your or any of your Users failing to use the Services for more than six (6) consecutive months, the right, in our sole discretion, to (i) terminate all of your Accounts and your User Accounts and terminate your and all your Users' access to and use of the Services; and (ii) permanently delete all of Your Data from the Services without notice.

12. Your Indemnification of Us. You shall defend, indemnify and hold harmless us and our Affiliates, and each of their officers, directors, employees and agents (the "*CircleCI Indemnitees*") from all damages, settlements, attorneys' fees and expenses related to any third-party claim, suit or demand (i) arising from your or any User's use of the Services in breach of this Agreement or in violation of applicable law, or (ii) alleging that Your Data infringes or misappropriates such third party's Intellectual Property Rights or violates applicable law; provided you are promptly notified of any and all threats, suits, claims and proceedings related thereto and given reasonable assistance by the applicable CircleCI Indemnitees (at your cost). Each applicable CircleCI Indemnitee reserves the right to assume the exclusive defense and control of any matter that is subject to indemnification under this Section 12. In such case, you and your Users agree to cooperate with any reasonable requests in assisting each applicable CircleCI Indemnitee's defense of such matter.

13. DISCLAIMER OF WARRANTIES. THE SERVICES MAY BE TEMPORARILY UNAVAILABLE FOR SCHEDULED MAINTENANCE OR FOR UNSCHEDULED EMERGENCY MAINTENANCE, EITHER BY US OR BY THIRD-PARTY PROVIDERS, OR FOR CAUSES BEYOND OUR REASONABLE CONTROL, AND WE SHALL USE REASONABLE EFFORTS TO PROVIDE ADVANCE NOTICE IN WRITING OR BY EMAIL OF ANY SCHEDULED SERVICE DISRUPTION. HOWEVER, THE SERVICES, INCLUDING THE SITE, SOFTWARE AND CIRCLECI CONTENT, AND ALL SERVER AND NETWORK COMPONENTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. YOU AND YOUR USERS ACKNOWLEDGE THAT WE DO NOT WARRANT THAT THE SERVICES

SHALL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR VIRUS-FREE, NOR DO WE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES; AND NO INFORMATION, ADVICE OR SERVICES OBTAINED BY YOU OR YOUR USERS FROM US OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

14. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL WE BE LIABLE TO YOU, ANY USER OR ANY THIRD-PARTY FOR (A) ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA, GOODWILL, OR OTHER INTANGIBLE LOSSES; OR (B) ANY DIRECT DAMAGES, COST, LOSSES OR LIABILITIES IN EXCESS OF THE FEES ACTUALLY PAID BY YOU IN THE SIX (6) MONTHS PRECEDING THE EVENT GIVING RISE TO YOUR OR YOUR USER'S CLAIM OR, IF NO FEES APPLY, ONE HUNDRED DOLLARS (US\$100.00). THE PROVISIONS OF THIS SECTION 14 ALLOCATE THE RISK UNDER THIS AGREEMENT BETWEEN THE PARTIES AND PARTIES HAVE RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO ENTER INTO THIS AGREEMENT. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHICH MEANS THAT SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU OR SOME USERS. IN SUCH STATES, OUR LIABILITY SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

15. Confidentiality. Any technical, financial, business or other information provided by one Party (the "*Disclosing Party*") to the other Party (the "*Receiving Party*") and designated as confidential or proprietary or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure ("*Confidential Information*") shall be held in confidence and not disclosed and shall not be used except to the extent necessary to carry out the Receiving Party's obligations or express rights hereunder, except as otherwise authorized by the Disclosing Party in writing. The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care). These obligations shall not apply to information that (i) was previously known by the Receiving Party, as demonstrated by documents or files in existence at the time of disclosure; (ii) is generally and freely publicly available through no fault of the Receiving Party; (iii) the Receiving Party otherwise rightfully obtains from third parties without restriction; or (iv) is independently developed by the Receiving Party without reference to or reliance on the Disclosing Party's Confidential Information, as demonstrated by documents or files in existence at the time of disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled to do so by law, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party shall reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information. In the event that such protective order or other remedy is not obtained, the Receiving Party shall furnish only that portion of the Confidential Information that is legally required and use commercially reasonable efforts to obtain assurance that confidential treatment shall be accorded the Confidential Information.

16. Privacy, Security and Continuity.

a. **Privacy.** We shall use Your Data only as permitted by Privacy Laws, our Privacy Policy and this Agreement. You acknowledge that you have read our Privacy Policy and understand that it sets forth how we will collect, store, use and disclose Your Data including personal data. If you do not agree with our Privacy Policy, then you must stop using the Services immediately. We encourage you to periodically review our Privacy Policy as it may change from time to time.

b. **California Consumer Privacy Act.** CircleCI represents and warrants to you that (i) it is acting as a service provider in connection with this Agreement with respect to the California User Data, and (ii) it receives the California User Data from you pursuant to a business purpose. You represent and warrant to CircleCI that you (i) are acting as a business in connection with this Agreement with respect to the California User Data, and (ii) are sharing and making available to CircleCI the California User Data pursuant to a business purpose and in accordance with the CCPA. CircleCI shall not (i) sell California User Data or (ii) retain, use or disclose California User Data (X) for any purpose other than for the specific purpose of performing the Services or for a commercial purpose other than providing the Services, or (Y) outside of the direct business relationship between CircleCI and you. CircleCI certifies that it understands and will comply with the restrictions in the previous sentence. "*California User Data*" means the personal information of consumers provided or made available by you to CircleCI. "*CCPA*" means the California Consumer Privacy Act of 2018 and any regulations promulgated thereunder, in each case, as amended from time to time. The terms "*business*", "*business purpose*", "*consumer*", "*personal information*", "*sell*" and "*service provider*" as used in this paragraph have the meaning set forth in the CCPA.

c. **Security of the Services; Protection of Your Data.** We shall maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Your Data (other than by you or your Users). Additional information about our security policies and procedures is available at: <https://circleci.com/security/>. We shall not be responsible or liable for any deletion, correction, damage, destruction or loss of Your Data that does not arise from a breach by us of our obligations under this Section 16(c).

d. Business Continuity & Disaster Recovery. Throughout the Service Term, we shall implement and maintain commercially reasonable business continuity and disaster recovery plans to help ensure availability of the Your Data following any significant interruption or failure of critical business processes or systems affecting the Services.

17. Miscellaneous.

a. Governing Law; Venue; Attorney's Fees. This Agreement shall be governed by and construed pursuant to California law and controlling United States federal law, without regard to the conflicts of law provisions of any jurisdiction. The Parties (i) hereby generally, irrevocably and unconditionally submit to the exclusive jurisdiction of the federal and state courts in the county of San Francisco, California for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement; (ii) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in such state and such courts; and (iii) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court. This choice of jurisdiction does not prevent either Party from seeking injunctive relief in any appropriate jurisdiction with respect to a violation of Intellectual Property Rights. The Services are a service, not goods, and are not subject to the Uniform Commercial Code, or the United Nations Convention on the International Sale of Goods. If any action is necessary to enforce the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, costs and expenses, in addition to any other relief that such prevailing Party may be entitled.

b. Assignment. Neither Party may assign or otherwise transfer (by operation of law or otherwise) this Agreement, or any of a Party's rights or obligations under this Agreement, to any third party without the other Party's prior written consent, which consent must not be unreasonably withheld, delayed or conditioned; provided, however, that either Party may assign or otherwise transfer this Agreement, including all associated Orders (and all its rights and obligations thereunder), (i) to a successor-in-interest in connection with a merger, acquisition, reorganization, a sale of all or substantially all of its assets, or other change of control, or (ii) to any of its Affiliates. In the event of such a permitted transfer by you, the rights granted under this Agreement shall continue to be subject to the same usage limitations that applied under applicable Order prior to the transfer (e.g., any transaction volume terms and limitations to particular your legal entities, business units, projects, brands, products and/or services set forth therein). Any purported assignment or other transfer in violation of this Section is void. Subject to the terms of this Section, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and transferees. There are no third-party beneficiaries under this Agreement.

c. Force Majeure. Except for the payment obligations hereunder, if either Party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond its reasonable control, e.g., war, riots, labor unrest, fire, earthquake, flood, hurricane, other natural disasters and acts of God, Internet service failures or delays, and denial of service attacks (collectively, "*Force Majeure*"), the affected Party's performance shall be excused for the resulting period of delay or inability to perform. The affected Party must, however, (a) give the other Party prompt written notice of the nature and expected duration of such Force Majeure, (b) use commercially reasonable efforts to mitigate the period of delay or inability to perform, (c) periodically notify the other Party of significant changes in the status of the Force Majeure, and (d) notify the other Party promptly when the Force Majeure ends.

d. Independent Contractors. The Parties are independent contracting parties. Neither Party has, or shall hold itself out as having, any right or authority to incur any obligation on behalf of the other Party. The Parties' relationship in connection with this Agreement shall not be construed as a joint venture, partnership, franchise, employment, fiduciary, or agency relationship, or as imposing any liability upon either Party that otherwise might result from such a relationship. Each Party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

e. Notices. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing via U.S. mail; (iii) upon delivery confirmation by nationally recognized overnight delivery service; (iv) the second business day after sending by confirmed facsimile; or (v) the first business day after sending by email (provided email shall not be sufficient for notices of material breach, termination or an indemnifiable claim). Billing-related notices to you shall be addressed to the relevant billing contact designated by you on the applicable Order. All other notices to you shall be addressed to the relevant contact designated by you on the applicable Order. All notices to us shall be sent to us to our contact at the address set forth on the applicable Order.

f. Anti-Corruption. You acknowledge that you have not received or been offered any illegal or otherwise improper bribe, kickback, payment, gift or other thing of value by any of our employees, representatives or agents in connection with this Agreement. You shall use reasonable efforts to promptly [notify us](#) if you become aware of any circumstances that are contrary to this acknowledgment.

g. Government Users. If you are a U.S. government entity, or this Agreement otherwise becomes subject to the Federal Acquisition Regulations (FAR), you acknowledge that the Services constitute "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212, DFARS 252.227-7014 and DFARS 227.7202. In accordance with FAR 12.211-12.212 and DFARS 227.7102-4 and 227.7202-4, as applicable, the rights of the U.S. Government to use, modify, reproduce, release, perform, display, or disclose commercial computer software, commercial computer software

documentation, and technical data furnished in connection with the Services shall be as provided in this Agreement, except that, for U.S. Department of Defense Users, technical data customarily provided to the public is furnished in accordance with DFARS 252.227-7015. If a government agency needs additional rights, it must negotiate a mutually acceptable written addendum to this Agreement specifically granting those rights.

h. Execution. This Agreement and any Order may be signed electronically and in counterparts, in which case each signed copy shall be deemed an original as though both signatures appeared on the same document.

i. Severability. If any provision of this Agreement or any Order shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement and any applicable Order shall otherwise remain in full force and effect and enforceable.

j. Waiver. A Party's failure or delay in exercising any right hereunder shall not operate as a waiver thereof, nor shall any partial exercise of any right or power hereunder preclude further exercise.

k. Entire Agreement. This Agreement, together with all applicable Orders, the AUP, and if applicable, any Supplemental Terms (including any other terms referenced in any of those documents), comprises the entire agreement between the Parties regarding the subject matter of this Agreement, and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the Parties regarding such subject matter.