



CERTIK

Assessment Service Agreement

Prepared for: **Pokerfi**

Date: **2021-07-21**

SERVICES AGREEMENT

This Assessment Service Agreement (including the Terms of Service enclosed, the “**Agreement**”), dated as of July 21, 2021 (the “Effective Date”), is by and between **Certified Kernel Tech LLC (“CertiK”)**, and **Pokerfi**.

Description of Source Code Assessment

CertiK will examine Customer’s “source code” for syntactical, semantic, and logical errors with a methodology including "but not limited to":

- White box code review
- Static Analysis
- Expert Manual Review

The Services consist of:

- A primary "assess and review" of all source code in scope.
- Open communication channel between engineering teams for the purpose of feedback, clarification, and discussion on issues and suggested remediations.

CertiK will perform a secondary review after Customer has remediated and implemented suggested changes. The scope of this review will be limited to assessing that any improvements, errors or vulnerabilities previously identified have been properly remediated or that the suggested modifications have been implemented without opening up new issues.

If the Customer’s code does not pass CertiK’s assessment process, CertiK will provide Customer with issues identified and suggestions for addressing the issues. After which, the Customer will decide whether to update or revise their “source code”.

CertiK reserves the right to assess additional fees and adjusted timelines if the Client introduces a "new" or "previously unreviewed code" that is outside the scope of "remediated or implemented suggested changes" based on CertiK's original review.

Scope of Source Code Assessment

CertiK will assess the following files based on client's provided source code repository/commit hash:

The assessment process will utilize a mixture of expert manual review, static analysis, and techniques. This mechanism will utilize white-box testing in order to cover a majority of the application's logic.

The CertiK team will conduct multiple iterations on the following contracts:

Service Fees

Product / Service	Price	QTY	Subtotal
Smart Contract Assessment Static, dynamic and manual review	\$19,760.00	1	\$19,760.00

Total **\$19,760.00**

Methods of Payment*: USDT

*See Exhibit A for payment instructions.

Payment Schedule:

\$19,760 payable prior to work beginning.

Customer Contact Information

Full Name: Niao Qing

Title: Technical Director

Email Address: service@pokerfi.networ

Terms of Service

The terms and conditions set forth in the "Terms of Service" enclosed are incorporated herein and made part of the Agreement.

Signature

Customer hereby engages CertiK, and CertiK hereby accepts such engagement, to provide Customer with the Services on the terms and conditions set forth in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Pokerfi

Signature:

Name: Niao Qing
Title: Technical Director
Date: 2021-07-21

Certified Kernel Tech LLC

Signature:



Name: William Chen
Title: President of CertiK, China
Date: 2021-07-21

Exhibit A

Payment Instructions

Please Do Not send Certified Kernel Tech LLC ("CertiK") any form of cryptocurrency without First coordinating a tester transaction with your Certified Kernel Tech LLC representative.

Please note that only the payment instructions below are accepted as valid by CertiK.

1. Coordinate with CertiK to perform and confirm a "Tester Transaction"

- Confirm the CertiK Crypto address with your CertiK point of contact.
- Perform a small tester transaction. Send the TX Hash to CertiK and confirm receipt.

2. Once CertiK has confirmed receipt of the tester, the remaining balance can be transferred.

- Provide the TX HASH for the remaining balance with your CertiK point of contact.

**** Please Note ****

**Sending ETH to a USDC address or vice versa will result in permanent loss of funds.
Sending BCH to a BTC address or vice versa will result in permanent loss of funds.**

Payment Details

CertiK CTK and USDT Address: 0xf7237b736602c3d19d53ca1b11ccdaa6303f3f36

CertiK ETH address: 0xECd0D0656BDd7c537C946Adf6EbF1950d646B967

CertiK BTC address: 38Tav7yqfXWjndxmwrnL4qBHij3woETqLp

CertiK USDC address: 0x5617E47D81189eC211799032d3eee186963ECDA7

CertiK USDT address (TRC20): TXMgtcJ9pJ7HSeATLtgzBWYM7ZQnoKeYQo

For Wire Payments please use the following instructions

Information of the Bank Account	
A/C No.	267156716
A/C Name	Certified Kernel Tech LLC
Beneficiary Bank Name	Chase
SWIFT Code	CHASUS33
Beneficial Bank Address	270 Park Ave, New York, NY 10017
ABA Routing Transit Number	322271627

TERMS OF SERVICES

1. Definitions.

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or otherwise, whether at law, in equity, or otherwise.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

“**Agreement**” has the meaning set forth on page i of the Agreement.

“**CertiK**” has the meaning set forth on page i of the Agreement.

“**CertiK Indemnitee**” has the meaning set forth in Section 9.

“**Confidential Information**” has the meaning set forth in Section 6.1.

“**Customer**” has the meaning set forth on page i of the Agreement.

“**Customer Materials**” means all materials and information, including documents, data, specifications, source code (either private or open-sourced), content and technology that are provided to CertiK by or on behalf of Customer in connection with the Agreement.

“**Derivatives**” has the meaning set forth in Section 4.1.

“**Disclosing Party**” has the meaning set forth in Section 6.1.

“**Effective Date**” has the meaning set forth on page i of the Agreement.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

“**Losses**” means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees, fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

“**Receiving Party**” has the meaning set forth in Section 6.1.

“**Reimbursable Expenses**” has the meaning set forth in Section 3.2.

“**Representatives**” means, with respect to a party, that party’s employees, officers, directors and other authorized persons.

“**Services**” has the meaning set forth on page i of the Agreement.

“**Subcontractor**” has the meaning set forth in Section 3.7.

“**Term**” has the meaning set forth in Section 7.1.

“**Third-Party Materials**” means materials and information, in any form or medium, including any software (including open source software), documents, data, content, specifications, products, equipment, or components of or relating to the Services that are not proprietary to CertiK.

“**Work Product**” means the reports, scores, ledgers, documentation, specifications and other documents, work product, deliverables and materials related thereto that CertiK is required to or otherwise does create or provide to Customer or its designee in connection with the Services. Except as otherwise expressly set forth in the Agreement, Work Product does not include any Derivatives.

2. Customer Obligations.

2.1 Customer Resources and Cooperation. Customer shall provide all codes and other materials as well as cooperation and assistance CertiK reasonably requests to enable CertiK to exercise its rights or perform its obligations under the Agreement.

2.2 Effect of Customer Failure or Delay. CertiK is not responsible or liable for any late delivery or delay or failure of performance caused in whole or in part by Customer’s delay in performing, or failure to perform, any of its obligations under the Agreement. In the event of any such delay or failure, CertiK may, by written notice to Customer, extend all or any subsequent due dates as CertiK deems reasonably necessary. The foregoing is in addition to, and not in lieu of, all other remedies CertiK may have for any such failure or delay by Customer.

2.3 Non-Solicitation. During the Term and for one year after, Customer shall not, and shall not assist any other Person to, directly or indirectly, recruit or solicit (other than by general advertisement not directed specifically to any Person or Persons) for employment or engagement as an independent contractor any Person then or within the prior six months employed or engaged by CertiK or any Subcontractor and involved in any respect with the Services or the performance of the Agreement. In the event of a violation of this Section 2.3, CertiK will be entitled to liquidated damages equal to the compensation paid by CertiK to the applicable employee or contractor during the prior six months.

2.4. No Breach. As a condition to CertiK's performance of its obligations hereinunder, Customer shall comply with the terms and conditions of this Agreement in all respects, including, without limitation, the requirement that it shall furnish promptly all anti-money laundering documentation under Section 8.2(b) below.

3. Fees and Payment; Sub-Contractors.

3.1 Fees. Customer are responsible for payment of the Fees. Other than as provided in Section 7.3(d) below, all Fees are non-refundable upon payment.

3.2 Reimbursable Expenses. Customer shall reimburse CertiK for out-of-pocket expenses incurred by CertiK in connection with performing the Services ("**Reimbursable Expenses**").

3.3 Taxes. All Fees and other amounts payable by Customer under the 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 CertiK's income.

3.4 Payment. Customer shall pay all Fees (which are non-refundable except as provided in Section 7.3(d) below) in full upon execution of the agreement and pay all Reimbursable Expenses within 15 days after the date of the invoice therefor. Customer shall make all payments hereunder in US dollars or cryptocurrency as agreed to between Customer and CertiK. Customer shall make payments to the address or account specified by CertiK in writing from time to time.

3.5 Late Payment. If Customer fails to make any payment when due then, in addition to all other remedies that may be available:

(a) CertiK may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law;

(b) Customer shall reimburse CertiK for all reasonable costs incurred by CertiK in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees; and

(c) if such failure continues for five days following written notice thereof, CertiK may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer or any other Person by reason of such suspension.

3.6 No Deduction or Setoff. Customer shall pay all amounts due under the Agreement without setoff, deduction, recoupment or withholding of any kind for amounts owed or payable by CertiK whether under the Agreement, applicable Law or otherwise and whether relating to CertiK's breach, bankruptcy or otherwise.

3.7 Subcontractors. CertiK may from time to time in its discretion engage third parties to perform Services (each, a "**Subcontractor**").

4. Intellectual Property Rights.

4.1 Work Product. Except as set forth in Section 4.2, all right, title and interest in and to (a) the Work Product and (b) all works, inventions and other subject matter incorporating, based on or derived from any Work Product, including all customizations, enhancements, improvements and other modifications thereof (collectively, "**Derivatives**"), in each case (subclause (a) and subclause (b)) by whomsoever made and including all Intellectual Property Rights therein, are and will remain, as appropriate, with CertiK and the respective rights holders in the Third-Party Materials. Customer has no right or license with respect to any Work Product or Derivatives except as expressly licensed under Section 5.1 or the applicable third-party software license, in each case subject to Section 5.2. All other rights in and to the Work Product and Derivatives are expressly reserved by CertiK and the respective Third-Party Licensors.

4.2 Customer Materials. As between the parties, Customer is and will remain, the sole and exclusive owner of all right, title and interest in and to the Customer Materials, including all Intellectual Property Rights therein, subject only to the license granted under Section 5.3. All other rights in and to the Customer Materials are expressly reserved by Customer.

5. Licenses.

5.1 CertiK License. Subject to and conditioned upon Customer's payment of the Fees and compliance with and performance in accordance with all other terms and conditions of the Agreement, CertiK hereby grants to Customer a fully paid-up and royalty-free, non-transferable, non-sublicensable license: (a) to use and publish the CertiK labels provided to Customer and the Assessment Report, solely for Customer's business operations and in accordance with any additional terms and conditions set forth in the Assessment Report; and (b) to use the Work Product solely in connection therewith.

5.2 License Restrictions. Customer shall not, and shall not permit any other Person to, access or use any Work Product except as expressly permitted by the Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as the Agreement expressly permits or except as otherwise agreed to by CertiK in writing:

(a) copy, modify, or create derivative works or improvements of the Work Product;

(b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Work Product to any other Person, including through or in connection with any time-sharing, service bureau, software as a service, cloud or other technology or service;

- (c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the labels or any part thereof;
- (d) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Work Product, including any copy thereof;
- (e) use any Work Product in a manner or for any purpose that infringes, misappropriates, or otherwise violates any Law or Intellectual Property Right;
- (f) use the Work Product for purposes of competitive analysis of the Assessment, the development of a competing Assessment service, or any other purpose that is to CertiK's commercial disadvantage;
- (g) use any Work Product in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems or applications; or
- (h) otherwise use the Work Product beyond the scope of the license granted under Section 5.1.

5.3 Customer Materials License. Customer hereby grants to CertiK a fully paid-up and royalty-free, non-exclusive right and license to use, reproduce, perform, display, distribute, modify and create derivative works and improvements of the Customer Materials solely to develop the Work Product and otherwise as necessary to perform the Services for the benefit of Customer and for CertiK's general development and commercialization of the Work Product and Derivatives. The term of such license will commence upon Customer's first delivery of Customer Materials to CertiK and continue in effect until the termination or expiration of the Agreement.

6. Confidentiality.

6.1 Confidential Information. In connection with the Agreement, each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). Subject to Section 6.2, "**Confidential Information**" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's codes, technology, trade secrets, know-how, business operations and plans and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated, or otherwise identified as "confidential". Without limiting the foregoing, the financial terms and existence of the Agreement are the Confidential Information of CertiK.

6.2 Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with the Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with the Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its

confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

6.3 Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall for a period of two years from the date of the Effective Date:

- (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with the Agreement;
- (b) except as may be permitted by and subject to its compliance with Section 6.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with the Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 6.3; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 6.3.
- (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and
- (d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' any breach of or non-compliance with, the terms of this Section 6.

6.4 Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) to the extent permitted by applicable law, promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy, or waive its rights under Section 6.3; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 6.4, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

7. Term and Termination.

7.1 Term. The term of the Agreement commences as of the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect until the parties have performed their obligations under the Agreement ("**Term**").

7.2 Termination. In addition to any other express termination right set forth elsewhere in the Agreement:

(a) CertiK may terminate the Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder; or (ii) breaches any of its obligations under Section 5.2 or Section 6.

(b) Either party may terminate the Agreement, effective on written notice to the other party, if the other party materially breaches the Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured [30] days after the non-breaching party provides the breaching party with written notice of such breach.

(c) Either party may terminate the Agreement, effective immediately, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) 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; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) 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.

7.3 Effect of Expiration or Termination. Upon any expiration or termination of the Agreement:

(a) All licenses granted by either party to the other will also expire or terminate, except to the extent that any license has an express term that continues for a longer period or is perpetual.

(b) Customer shall (i) return to CertiK all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on CertiK's Confidential Information; and (ii) permanently erase CertiK's Confidential Information from its computer systems, except to the extent that such Confidential Information is included in the Work Product licensed to Customer pursuant to Section 5.1.

(c) If either party terminates the Agreement, then, upon Customer's payment of all Fees and Reimbursable Expenses due for Work Product created prior to the effective date of such termination, Customer is hereby granted a non-exclusive, non-transferable and non-assignable right and license to use such Work Product on the terms and conditions set forth in Section 5.1 and Section 5.2(a), provided that such Work Product is provided "as is" without warranty of any kind and CertiK has no continuing obligations or liability to Customer or any other Person with respect thereto.

(d) If Customer terminates the Agreement pursuant to Section 7.2(b), Customer will be relieved of any obligation to pay any Fees hereunder and CertiK will refund to Customer Fees paid in advance for Services that CertiK has not performed as of the effective date of termination.

(e) If CertiK terminates the Agreement pursuant to Section 7.2(a) or Section 7.2(b), all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees and Reimbursable Expenses, on receipt of CertiK's invoice therefor.

(f) If CertiK terminates the Agreement pursuant to Section 7.2(a)(ii), all licenses granted to Customer in the Work Product will also terminate and Customer shall immediately cease all use of the Work Product.

7.4 Surviving Terms. The provisions set forth in the following Sections, and any other right or obligation of the parties in the Agreement that, by its nature, should survive termination or expiration of the Agreement, will survive any expiration or termination of the Agreement: Section 1, Section 4, Section 5.2, Section 6, this Section 7.4, Section 8.3, Section 9, Section 10, and Section 11.

8. Representations and Warranties.

8.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that:

- (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;
- (b) it has the full right, power and authority to enter into, and to perform its obligations and grant the rights and licenses it grants or is required to grant under, the Agreement;
- (c) the execution of the Agreement by its representative whose signature is set forth at the end of the Agreement has been duly authorized by all necessary corporate or organizational action of such party; and
- (d) when executed and delivered by both parties, the Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

8.2 Additional Customer Representations, Warranties and Covenants. Customer represents, warrants and covenants to CertiK that:

- (a) Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Materials so that, as received by CertiK and used in accordance with the Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights of any third party or violate any applicable Law; and
- (b) Customer is, and will throughout the term of this Agreement be, in compliance with the regulations administered by the U.S. Department of the Treasury (“Treasury”) Office of Foreign Assets Control, (ii) Customer, its parents, subsidiaries, affiliated companies, officers, directors and partners, and to such Referrer’s knowledge, its stockholders, owners, employees, and agents, are not on the List of Specially Designated Nationals and Blocked Persons maintained by Treasury and have not been designated by Treasury as a financial institution of primary money laundering concern subject to special measures under Section 311 of the USA PATRIOT Act, Pub. L. 107-56, (iii) Customer’s funds were obtained or used in any manner in contravention of all applicable anti-money laundering laws and regulations; (iv) Customer is, and will throughout the terms of this Agreement be, in compliance in all material respects with applicable anti money laundering laws and regulations, and (v) Customer shall promptly

provide all documents requested by CertiK for the purpose of complying with all applicable anti-money laundering laws and regulations.

8.3 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 8.1, ALL LABELS, ASSESSMENT SERVICES, AND WORK PRODUCT ARE PROVIDED “AS IS” AND CERTIK HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND CERTIK 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. WITHOUT LIMITING THE FOREGOING, CERTIK MAKES NO WARRANTY OF ANY KIND THAT THE LABELS, THE ASSESSMENT REPORT OR WORK PRODUCT, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE.

9. Indemnification. Customer shall indemnify, defend and hold harmless CertiK and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, a “**CertiK Indemnitee**”) from and against any and all Losses incurred by any CertiK Indemnitee in connection with any Action by a third party (other than an Affiliate of a CertiK Indemnitee) arising out of or relating to the Services, including, without limitation:

- (a) Customer Materials or CertiK’s use thereof in accordance with the Agreement;
- (b) CertiK’s compliance with any specifications or directions provided by or on behalf of Customer to the extent prepared without any contribution by CertiK; or
- (c) any allegation of facts that, if true, would constitute Customer’s breach of any of its representations, warranties, covenants or obligations under the Agreement.

10. Limitations of Liability.

10.1 EXCLUSION OF DAMAGES. IN NO EVENT WILL CERTIK OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THE AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE OR (b) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE

OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

10.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF CERTIK AND ITS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS UNDER OR IN CONNECTION WITH THE AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE FEES RECEIVED BY CERTIK HEREUNDER.

11. Miscellaneous.

11.1 Further Assurances. On a party's reasonable request, the other party shall, at such other party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to the Agreement.

11.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

11.3 Public Announcements. Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to the Agreement or, unless expressly permitted under the Agreement, otherwise use the other party's trademarks, services marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other party, which shall not be unreasonably withheld or delayed, provided, however, that CertiK may, without requiring Customer's consent, publish the Assessment Report on CertiK's website and include Customer's name and/or other indicia in its lists of CertiK's current or former customers in promotional and marketing materials. CertiK shall remove the published Assessment Report from its website upon written request from Customer.

11.4 Notices. Except as otherwise expressly set forth in the Agreement, all notices, requests, consents, claims, demands, waivers, and other communications under the Agreement have binding legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this Section 16.4).

If to CertiK: Certified Kernel Tech LLC

1001 6th Ave, Suite 1801, New York, NY 10018

Attention: CertiK – Legal

Email: legal@certik.io

If to Customer:

Notices sent in accordance with this Section shall be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or email, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the tenth day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

11.5 Interpretation. For purposes of the Agreement, (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to the Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in the Agreement: (x) to sections, exhibits, attachments and appendices mean the sections of, and exhibits, attachments and appendices attached to, the Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend the Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, attachments, and appendices referred to herein are an integral part of the Agreement to the same extent as if they were set forth verbatim herein.

11.6 Headings. The headings in the Agreement are for reference only and do not affect the interpretation of the Agreement.

11.7 Entire Agreement. The Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of the Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

11.8 Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under the Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without CertiK's prior written consent, which consent CertiK may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Customer (regardless of whether Customer is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under the Agreement for which CertiK's prior written consent is required. No delegation or other transfer will relieve Customer of any of its obligations or performance under the Agreement. Any purported assignment, delegation or transfer in violation of this Section 11.8 is void. The Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

11.9 No Third-Party Beneficiaries. The Agreement is for the sole benefit of the parties hereto and their respective [permitted] successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of the Agreement.

11.10 Amendment and Modification; Waiver. No amendment to or modification of or rescission, termination or discharge of the Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of the Agreement and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from the Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

11.11 Severability. If any provision of the Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of the 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 hereto shall negotiate in good faith to modify the Agreement so as to effect the original intent of the parties 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.

11.12 Governing Law. The Agreement is governed by and construed in accordance with the internal laws of the State of New York 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 New York.

11.13 Arbitration.

☐ **International Dispute:** Any dispute, controversy or claim arising out of or relating to this Agreement or the licenses granted hereunder, shall be determined by arbitration in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution, American Arbitration Association. If the parties to any such controversy are unable to agree upon an arbitrator or arbitrators, then three arbitrators shall be appointed in accordance with such rules. The parties consent to the jurisdiction of the Supreme Court of the State of New York, and of the United States District Court for the Southern District of New York, for all purposes in connection with any such arbitration. The parties agree that any process or notice of motion or other application to either of such courts, and any paper in connection with any such arbitration, may be served by certified mail, return receipt requested, or by personal service or in such other manner as may be permissible under the rules of the applicable court or arbitration tribunal; provided, that a reasonable time for appearance is allowed.

11.14 Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 6 or, in the case of Customer, Section 5.2 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.

11.15 Limitation of Action. Customer shall bring any claims related to the Services or the Agreement no later than two years after (i) the completion of the Services, or (ii) if the Agreement is terminated prior to completion of the Services, the date on which the Agreement is terminated pursuant to Section 7.2 hereof.

11.16 Force Majeure. CertiK shall not be liable or responsible to Customer, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond CertiK's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) changes in law; and (e) action by any governmental authority.

11.17 Counterparts. The 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.

11.18 Other Language. The Agreement has been negotiated and executed by the Parties in English, and any interpretation or construction of the Agreement shall be based thereon. In the event any translation of the Agreement or any document or notice relating to it is prepared for convenience or any other purpose, the provisions of the English version shall prevail.