DATA PROCESSING AGREEMENT

PARTIES AND BACKGROUND

(A) Sourcegraph, Inc. ("**Sourcegraph**") offers a code search platform on a hosted basis ("**Service**") in accordance with the Enterprise Services Agreement. The customer ("**Customer**") agreeing to this Data Processing Agreement ("**DPA**") has entered into such Enterprise Service Agreement ("**Agreement**") with Sourcegraph (each a "**Party**" and collectively the "**Parties**").

(B) To the extent that Sourcegraph processes any Customer Personal Data (as defined below) on behalf of the Customer (or, where applicable, the Affiliate) in connection with the provision of the Services, the Parties have agreed that it shall do so on the terms of this DPA.

1. DEFINITIONS

1.1 "**Affiliate**" means an entity that, directly or indirectly, owns or controls, is owned or is controlled by, or is under common ownership or control with Customer;

1.2 "**CCPA**" means the California Consumer Privacy Act, Cal. Civ. Code §§ 1798.100 et seq., including any amendments and any implementing regulations thereto that become effective on or after the Effective Date of this DPA;

1.3 "**Customer Personal Data**" means the Personal Data processed by Sourcegraph on behalf of Customer or Affiliate in connection with the provision of the Services;

1.4 "**EEA**" means the European Economic Area including the European Union ("**EU**");

1.5 "**GDPR**" means Regulation (EU) 2016/679 (the "**EU GDPR**") or, where applicable, the "**UK GDPR**" as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the UK European Union (Withdrawal) Act 2018 or, where applicable, the equivalent provision under Swiss data protection law;

1.6 "**Member State**" means a member state of the EEA, being a member state of the European Union, Iceland, Norway, or Liechtenstein;

1.7 "**Personal Data**" includes "personal information", "personally identifiable information" and similar terms used in applicable data protection laws and means any information relating to an identified or identifiable individual or device as defined by these applicable data protection laws;

1.8 **"Public Authority"** means a government agency or law enforcement authority, including judicial authorities.

1.9 "**Security Incident**" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or unauthorized access to Customer Personal Data;

1.10 "**Standard Contractual Clauses**" or "**SCCs**" means Module Two (*controller to processor*) and/or Module Three (*processor to processor*) of the Standard Contractual Clauses annexed to Commission Implementing Decision (EU) 2021/914; and

1.11 "**Sub-processor**" means Sourcegraph affiliates and third-party processors engaged by Sourcegraph to process Customer Personal Data to support Sourcegraph in providing its Services to Customer.

1.12 The terms "**controller**", "**processor**", "**data subject**", "**process**", and "**supervisory authority**" shall have the same meaning as set out in the GDPR.

1.13 The terms "**sell**" and "**service provider**" shall have the same meaning as set out in the CCPA.

1.14 Capitalized terms used but not defined within this DPA shall have the meaning set forth in the Agreement.

2. INTERACTION WITH THE AGREEMENT

2.1 This DPA amends the Agreement and shall be effective and replace any previously applicable data processing and security terms as of the last day of signatures by the Parties ("**Effective Date**"). In case of contradictions, this DPA supersedes the Agreement with respect to any processing of Customer Personal Data.

2.2 Customer's Affiliates shall be beneficiaries under this DPA and – through Customer (see clauses 2.3 and 2.4) – be entitled to enforce all rights in relation to the Customer Personal Data provided by the respective Affiliate. Customer will ensure that all obligations under this DPA will be passed on to the respective Affiliate.

2.3 Customer warrants that it is duly mandated by any Affiliates on whose behalf Sourcegraph processes Customer Personal Data in accordance with this DPA to (a) enforce their rights under this DPA on behalf of the Affiliates, and to act on behalf of the Affiliates in the administration and conduct of any claims arising in connection with this DPA; and (b) receive and respond to any notices or communications under this DPA on behalf of Affiliates.

2.4 Customer shall be the only point of contact for all communication between the Affiliates and Sourcegraph.

3. ROLE OF THE PARTIES

The Parties acknowledge and agree that:

(a) for the purposes of GDPR, Sourcegraph acts as "processor" or "sub-processor". Sourcegraph's function as processor or sub-processor will be determined by the function of Customer:

  (i) Where Customer acts as a controller, Sourcegraph acts as a processor.

  (ii) Where Customer acts as a processor on behalf of Customer's customers, Sourcegraph acts as sub-processor; ; and

(b) for the purposes of the CCPA, Sourcegraph will act as a "service provider" in its performance of its obligations pursuant to the Agreement and this DPA.

4. DETAILS OF DATA PROCESSING

4.1 The details of the data processing (such as subject matter, nature and purpose of the processing, categories of Personal Data and data subjects) are described in the Agreement and in Schedule 1 to this DPA.

4.2 Customer Personal Data will only be processed on behalf of and under the instructions of Customer and in accordance with applicable law. The Agreement and this DPA shall generally constitute Customer's instructions for the processing of Customer Personal Data. Customer may issue further instructions in accordance with this DPA.

4.3 If Customer's instructions will cause Sourcegraph to process Customer Personal Data in violation of applicable law or outside the scope of the Agreement or the DPA, Sourcegraph shall promptly inform Customer thereof, unless prohibited by applicable law (without prejudice to clause 11).

4.4 Sourcegraph may (without prejudice to clause 11) store and process Customer Personal Data anywhere Sourcegraph or its Sub-processors maintain facilities, subject to clause 5 of this DPA.

5. SUB-PROCESSORS

5.1 Customer grants Sourcegraph the general authorisation to engage Sub-processors, subject to clause 5.2, as well as Sourcegraph's current Sub-processors listed on https://about.sourcegraph.com/subprocessors as of the Effective Date.

5.2 Sourcegraph shall (i) enter into a written agreement with each Sub-processor imposing data protection obligations that, in substance, are no less protective of Customer Personal Data than Sourcegraph's obligations under this DPA to the extent applicable to the nature of the services provided by such Sub-processor; and (ii) remain liable for each Sub-processor's compliance with the obligations under this DPA according to applicable data protection laws.

5.3 Sourcegraph shall provide Customer with notice by email or by update of the Sourcegraph website of any proposed changes to the Sub-processors it uses to process Customer Personal Data (including any addition or replacement of any Sub-processors). Customer may object to Sourcegraph's use of a new Sub-processor (including when exercising its right to object under clause 9(a) of the SCCs if applicable) by providing Sourcegraph with written notice of the objection to legal@sourcegraph.com within fifteen (15) days after Sourcegraph has provided notice to Customer of such proposed change (an "**Objection**"). In the event Customer objects to Sourcegraph's use of a new Sub-processor, Customer and Sourcegraph will work together in good faith to find a mutually acceptable resolution to address such Objection. If the Parties are unable to reach a mutually acceptable resolution within a reasonable timeframe, either Party may, as its sole and exclusive remedy, terminate the portion of the Agreement relating to the Service affected by such change by providing written notice to the other Party. During any such Objection period, Sourcegraph may suspend the affected portion of the Services. Customer may only request a pro-rata refund if Customer can prove that the Objection is based on justified reasons of incompliance with applicable data protection laws.

6. DATA SUBJECT RIGHTS REQUESTS

6.1 As between the Parties, Customer shall have sole discretion and responsibility in responding to the rights asserted by any individual in relation to Customer Personal Data ("**Data Subject Request**").

6.2 Sourcegraph will (taking into account the nature of the processing of Customer Personal Data) provide reasonable assistance as necessary for Customer to fulfil its obligation under applicable law to respond to Data Subject Requests, including if applicable, Customer's obligation to respond to requests for exercising the rights set out in the GDPR or CCPA. Sourcegraph may charge Customer, and Customer shall reimburse Sourcegraph, for any such assistance.

7. SECURITY AND AUDITS

7.1 Sourcegraph will implement and maintain appropriate technical and organizational data protection and security measures designed to ensure security of Customer Personal Data, including, without limitation, protection against unauthorized or unlawful processing (including, without limitation, unauthorized or unlawful disclosure of, access to and/or alteration of Customer Personal Data) and against accidental loss, destruction, or damage of or to Customer Personal Data.

7.2 Sourcegraph will implement and maintain as a minimum standard the measures set out in Schedule 2. Sourcegraph may update or modify the security measures set out in Schedule 2 from time to time, including (where applicable) following any review by Sourcegraph of such measures in accordance with clause 8.6 of the SCCs, provided that such updates and/or modifications will not reduce the overall level of protection afforded to the Customer Personal Data by Sourcegraph under this DPA.

7.3 With respect to any audits the Parties agree that:

(a) all such audits shall be conducted:

(i) on reasonable written notice to Sourcegraph;

(ii) no more than once per year, unless there are specific indications that require a more frequent audit or or to the extent further audits are required by applicable data protection laws;

(iii) only during Sourcegraph's normal business hours; and

(iv) in a manner that does not disrupt Sourcegraph's business;

(b) the Customer shall:

(i) enter into a confidentiality agreement with Sourcegraph prior to conducting the audit; and

(ii) ensure that its personnel comply with Sourcegraph's policies and procedures when attending Sourcegraph's premises, as notified to the Customer by Sourcegraph.

7.4 To conduct such audit, Customer may engage an independent third-party auditor, subject to such auditor complying with the requirements under Clause 7.3 and provided that such auditors is suitably qualified and independent.

7.5 Upon request, Sourcegraph shall provide to Customer documentation reasonably evidencing the implementation of the technical and organizational data security measures in accordance with industry standards.

7.6 Customer will promptly notify Sourcegraph of any non-compliance discovered during the audit.

7.7 Customer shall bear the costs for any audit initiated by Customer, unless the audit reveals material non-compliance with this DPA.

8. SECURITY INCIDENTS

Sourcegraph shall notify Customer in writing without undue delay after becoming aware of any Security Incident, and reasonably cooperate in any obligation of Customer under applicable law to make any notifications, such as to individuals or supervisory authorities. Sourcegraph shall take reasonable steps to contain, investigate, and mitigate any Security Incident. Sourcegraph's notification of or response to a Security Incident under this clause 8 does not constitute an acknowledgement by Sourcegraph of any fault or liability with respect to the Security Incident.

9. GOVERNMENT ACCESS REQUESTS

In its role as a processor, Sourcegraph shall maintain appropriate measures to protect Personal Data in accordance with the requirements of applicable law, including by implementing appropriate technical and organizational safeguards to protect Customer Personal Data against any interference that goes beyond what is necessary in a democratic society to safeguard national security, defense and public security. If Sourcegraph receives a legally binding request to access Customer Personal Data from a Public Authority, Sourcegraph shall, unless otherwise legally prohibited, promptly notify Customer including a summary of the nature of the request. To the extent Sourcegraph is prohibited by law from providing such notification, Sourcegraph shall use commercially reasonable efforts to obtain a waiver of the prohibition to enable Sourcegraph to communicate as much information as possible, as soon as possible. Further, Sourcegraph shall challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful. Sourcegraph shall pursue possibilities of appeal. When challenging a request, Sourcegraph shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the Customer Personal Data requested until required to do so under the applicable procedural rules. Sourcegraph agrees it will provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request. Sourcegraph shall promptly notify Customer if Sourcegraph becomes aware of any direct access by a Public Authority to Customer Personal Data and provide information available to Sourcegraph in this respect, to the extent permitted by law. For the avoidance of doubt, this DPA shall not require Sourcegraph to pursue action or inaction that could result in civil or criminal penalty for Sourcegraph such as contempt of court.

10. DELETION AND RETURN

Sourcegraph shall, within sixty (60) days of the date of termination or expiry of the Agreement, (a) if requested to do so by Customer within that period, return a copy of all Customer Personal Data or provide a self-service functionality allowing Customer to do the same; and (b) delete Customer Personal Data processed by Sourcegraph.

11. CONTRACT PERIOD

This DPA will commence on the Effective Date and, notwithstanding any termination of the Agreement, will remain in effect until, and automatically expire upon, Sourcegraph's deletion of all Customer Personal Data as described in this DPA.

12. STANDARD CONTRACTUAL CLAUSES

The Parties agree that the terms of the Standard Contractual Clauses, as further specified in Schedule 3 of this DPA, are hereby incorporated by reference and shall be deemed to have been executed by the Parties and apply to any transfers of Customer Personal Data falling within the scope of the GDPR from Customer (as data exporter) to Sourcegraph (as data importer).

13. SUPPORT FOR CROSS-BORDER DATA TRANSFERS

Sourcegraph will provide Customer reasonable support to enable Customer's compliance with the requirements imposed on the transfer of personal data to third countries with respect to data subjects located in the EEA, Switzerland, and UK. Sourcegraph will, upon Customer's request, provide information to Customer which is reasonably necessary for Customer to complete a transfer impact assessment ("**TIA**"). Sourcegraph may charge Customer, and Customer shall reimburse Sourcegraph, for any assistance provided by Sourcegraph with respect to any TIAs, data protection impact assessments or consultation with any supervisory authority of Customer.

14. CUSTOMER PERSONAL DATA SUBJECT TO THE UK AND SWISS DATA PROTECTION LAWS

14.1 To the extent that the processing of Customer Personal Data is subject to UK or Swiss data protection laws, the provisions set out in this Section 14.2 and applicable provisions in Schedule 1 and Schedule 3 shall apply.

14.2 In case of any transfers of Personal Data from the United Kingdom and/or transfers of Personal Data from Switzerland subject exclusively to the Data Protection Laws and Regulations of Switzerland ("**Swiss Data Protection Laws**"), (i) general and specific references in the Standard Contractual Clauses to GDPR or EU or Member State Law shall have the same meaning as the equivalent reference in the Data Protection Laws and Regulations of the United Kingdom ("**UK Data Protection Laws**") or Swiss Data Protection Laws, as applicable; and (ii) any other obligation in the Standard Contractual Clauses determined by the Member State in which the data exporter or Data Subject is established shall refer to an obligation under UK Data Protection Laws or Swiss Data Protection Laws, as applicable. In respect of data transfers governed by Swiss Data Protection Laws, the Standard Contractual Clauses also apply to the transfer of information relating to an identified or identifiable legal entity where such information is protected similarly as Personal Data under Swiss Data Protection Laws until such laws are amended to no longer apply to a legal entity.

15. CUSTOMER PERSONAL DATA SUBJECT TO THE CCPA

15.1 If Customer or Affiliates provide Sourcegraph any Customer Personal Data that is "personal information" under the CCPA, Sourcegraph will:

(a) act as a service provider with regard to such personal information;

(b) retain, use, and disclose such personal information solely for the purpose of performing the Services or as otherwise permitted under the CCPA;

(c) not sell Customer Personal Data to another business or third party. Notwithstanding the foregoing, disclosures to a third party in the context of a merger, acquisition, bankruptcy, or other corporate transaction shall be permitted in accordance with the terms of the Agreement; and

(d) provide reasonable assistance to Customer in responding to requests from consumers pursuant to the CCPA with regard to their personal information, and in accordance with clause 6 of this DPA.

15.2 Sourcegraph certifies that it understands the foregoing obligations and shall comply with them for the duration of the Agreement and for as long as Sourcegraph processes Customer Personal Data.

SCHEDULE 1

DETAILS OF PROCESSING

A. List of Parties

1. Data Exporter

Customer and/or the Affiliates operating in the countries which comprise the European Economic Area, UK and/or Switzerland and/or – to the extent agreed by the Parties - Customer and/or the Affiliates in any other country to the extent the GDPR applies.

Customer and Affiliate's contact person's name, position and contact details as well as (if appointed) the data protection officer's name and contact details and (if relevant) the representative's contact details will be notified to Sourcegraph prior to the processing of personal data via email to legal@sourcegraph.com

The activities relevant to the data transfer under these Clauses are defined by the Agreement and the data exporter who decides on the scope of the processing of personal data in connection with the Services further described in clause 5 of this Schedule 1 and in the Agreement.

2. Data Importer

Sourcegraph, Inc., 981 Mission St, San Francisco, CA 94103.

The data importer's contact person may be contacted at legal@sourcegraph.com.

The data importer's activities relevant to the data transfer under these Clauses are as follows: the data importer processes personal data provided by the data exporter on behalf of the data exporter in connection with providing the Services to the data exporter as further described in clause 5 of this Schedule 1 and in the Agreement.

B. Description of Transfer

1. Categories of data subjects

The categories of data subjects whose personal data are transferred: *Employees and independent contractors of Customer who use the Sourcegraph software or write or edit Customer's source code.*

2. Categories of personal data

The transferred categories of personal data are: *Usernames and email addresses.*

3. Special categories of personal data (if applicable)

The transferred personal data includes the following special categories of data: *N/A*

The applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures are: *N/A*

4. Frequency of the transfer

The transfer is performed on a continuous basis and is determined by Customer's configuration of the Services.

5. Subject matter, nature and purpose of the processing

Sourcegraph's hosted platform indexes Customer's software source code and related metadata to provide source code analysis to Customer. These Services help developers find, review, understand and debug source code. To index Customer's source code, Sourcegraph receives metadata contained in the source code, which may include usernames and email addresses of individuals who wrote or edited the source code.

6. Retention period

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period: *if data is not deleted upon request by the Customer during the term of the Agreement*, *the retention period corresponds to the duration of this DPA as defined in clause 10 of the DPA.*

7. Sub-processor (if applicable)

For transfers to sub-processors, specify subject matter, nature, and duration of the processing: *as stipulated in clause 5.2 of the DPA. The Sub-processors may have access to the Personal Data for the term of this DPA or until the service contract with the respective Sub-processor is terminated or the access by the Sub-processor has been excluded as agreed between Sourcegraph and Customer.*

C. Competent Supervisory Authority

Identify the competent supervisory authority/ies in accordance with clause 13 of the SCCs

Where the data exporter is established in an EU Member State*: The supervisory authority of the country in which the data exporter established is the competent authority.*

Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of the GDPR in accordance with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of the GDPR*: The competent supervisory authority is the one of the Member State in which the representative is established.*

Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of the GDPR in accordance with its Article 3(2) without, however, having to appoint a representative pursuant to Article 27(2) of the GDPR*: The competent supervisory authority is the supervisory authority in Ireland, namely the Data Protection Commission (https://www.dataprotection.ie/).*

Where the data exporter is established in the United Kingdom or falls within the territorial scope of application of UK Data Protection Law*: The Information Commissioner's Office shall act as competent supervisory authority.*

Where the data exporter is established in Switzerland or falls within the territorial scope of application of Swiss Data Protection Law: *The Swiss Federal Data Protection and Information Commissioner shall act as competent supervisory authority insofar as the relevant data transfer is governed by Swiss Data Protection Laws.*

SCHEDULE 2

TECHNICAL AND ORGANIZATIONAL MEASURES

Sourcegraph provides the following technical and organizational safeguards.

(a) Data Hosting:

(i) hosting of confidential and proprietary data through Google Cloud Platform, a SOC 2 Type 2 and ISO 27001 certified hosting provider

(b) Information Security:

(i) an ongoing program of security policies, procedures, and technical controls;

(ii) a security incident management program;

(iii) a security awareness program;

(iv) business continuity and disaster recovery plans, including regular testing;

(v) procedures to conduct periodic independent security evaluations

(c) Physical Access:

(i) physical protection mechanisms for all information assets and information technology to ensure such assets and technology are stored and protected in appropriate data centers;

(ii) appropriate facility entry controls to limit physical access to systems that store or process Customer Personal Data;

(iii) processes to ensure access to facilities is monitored and is restricted on a “need to know” basis; and

(iv) controls to physically secure all Customer Personal Data and to securely destroy such information when it is no longer needed in accordance with the Agreement.

(d) Logical Access:

(i) controls to enforce and maintain access restrictions for employees, and subcontractors, including encryption of data transmission and encrypted data during remote access sessions;

(ii) processes to ensure assignment of unique IDs to each person with computer access;

(iii) processes to ensure vendor-supplied defaults for passwords and security parameters are appropriately managed (e.g., changed periodically etc.);

(iv) mechanisms to track and log all access to Customer Personal Data by unique ID;

(v) mechanisms to encrypt or hash all passwords or otherwise ensure all passwords are not stored unsecured in clear text; and

(vi) processes to immediately revoke accesses of inactive accounts or terminated/transferred users.

(e) Security Architecture and Design:

(i) a security architecture that reasonably ensures delivery of Security Best Practices;

(ii) encryption of the Customer Personal Data in transit and at rest;

(iii) regular testing of security systems and security best practices;

(iv) a system of effective firewall(s) and intrusion detection technologies necessary to protect Customer Personal Data; and

(v) database and application layer design processes that ensure web applications are designed to protect the information data that is Processed through such systems.

(f) System and Network Management:

(i) mechanisms to keep security patches current;

(ii) monitor, analyze, and respond to security alerts;

(iii) appropriate network security design elements that provide for segregation of data from other third-party data;

(iv) use and regularly update anti-virus software; and

(v) the integrity, resilience and availability of any software or services utilized to process the Personal Customer Data.

Schedule 3

Specifications Regarding the Standard Contractual Clauses

For the purposes of the Standard Contractual Clauses:

1. Module Two respectively Module Three shall apply in the case of the processing under clause 3.1(a)(i) of the DPA and Module Three shall apply in the case of processing under clause 3.1(a)(ii) of the DPA.

2. Clause 7 of the Standard Contractual Clauses (Docking Clause) does not apply.

3. Clause 9(a) Option 2 (General written authorization) is selected, and the time period to be specified is determined in clause 5.3 of the DPA.

4. The option in Clause 11(a) of the Standard Contractual Clauses (Independent dispute resolution body) does not apply.

5. With regard to Clause 17 of the Standard Contractual Clauses (Governing law), the Parties agree that, Option 1 shall apply and the governing law shall be the law of the Republic of Ireland. Where the data exporter is established in the United Kingdom or falls within the territorial scope of application of UK Data Protection Laws, the governing law shall be the law of England and Wales. To the extent that any processing of personal data is exclusively subject to Swiss Data Protection Laws, the governing law shall be the law of Switzerland.

6. In Clause 18 of the Standard Contractual Clauses (Choice of forum and jurisdiction), the Parties submit themselves to the jurisdiction of the courts of the Republic of Ireland. Where the data exporter is established in the United Kingdom or falls within the territorial scope of application of UK Data Protection Laws, the parties submit themselves to the jurisdiction of the courts of England and Wales. To the extent that any processing of personal data is exclusively subject to Swiss Data Protection Laws, the parties submit themselves to the jurisdiction of the courts of Switzerland.

7. For the Purpose of Annex I of the Standard Contractual Clauses, Schedule 1 of the DPA contains the specifications regarding the parties, the description of transfer, and the competent supervisory authority

8. For the Purpose of Annex II of the Standard Contractual Clauses, Schedule 2 of the DPA contains the technical and organizational measures.

9. The specifications for Annex III of the Standard Contractual Clauses, are determined by clause 5.1 of the DPA. The Sub-processor's contact person's name, position and contact details will be provided by Sourcegraph upon request.