

# AWS Terms of Service

Last updated on 20/02/2023.

PLEASE READ CAREFULLY THESE TERMS OF SERVICE (“**AGREEMENT**”), WHICH CONTAIN THE EXCLUSIVE TERMS AND CONDITIONS BETWEEN GITGUARDIAN SAS (“**GITGUARDIAN**”, “**US**”, “**OUR**” OR “**WE**”), AND YOU, THE CUSTOMER, REGARDING YOUR ACCESS AND USE OF OUR SAAS SOFTWARE THROUGH THE AWS MARKETPLACE (“**SERVICES**”). YOU REPRESENT AND WARRANT THAT YOU HAVE FULL LEGAL AUTHORITY TO ENTER INTO THIS AGREEMENT UNDER ALL APPLICABLE LAWS.

BY SELECTING THE “ACCEPT” BUTTON OR BY ACCESSING OR USING THE SERVICES, YOU WILL CREATE A LEGALLY ENFORCEABLE CONTRACT WHERE YOU AGREE TO BE BOUND BY ALL TERMS AND CONDITIONS OF THIS AGREEMENT WITHOUT MODIFICATION. IF YOU CANNOT OR DO NOT AGREE TO ALL TERMS AND CONDITIONS IN THIS AGREEMENT, YOU SHOULD NOT SELECT THE “ACCEPT” BUTTON, AND YOU SHOULD NOT ACCESS OR USE THE SERVICES.

## **1. Changes to this Agreement.**

We reserve the right, at our sole discretion, to modify or replace this Agreement at any time. We will try to bring to your attention all material or legal changes by sending you an email. By continuing to access or use the Services after any revisions become effective, You agree to be bound by the revised terms. If You do not agree to the new terms, You should no longer use the Services. The process for changes to fees and payment plans is set out separately in Article 10 hereunder.

## **2. User account.**

If you register for an account to access and use our Services, you are responsible for any access or use of our Services with your account details, and for protecting your

account details from unauthorised use. You are also responsible for the security of any computer from which you sign in to your account.

### **3. Rights we grant you.**

We grant you a non-exclusive, non-transferable, revocable, worldwide, limited-term right to access and use the Services, as well as all information and data made available to you in connection with the Services ("**Service Data**"), solely for your internal business operations and in accordance with this Agreement. This license shall remain in effect until and unless this Agreement is terminated by you or us in accordance with the termination terms contained herein.

You agree that you will only use the Services and Service Data within the scope of this license and limits, terms and conditions set out in this Agreement, and that you will not redistribute or transfer the Services or Service Data, or any part of them. You acknowledge that all intellectual property rights in the Services and the Service Data belong to us or our licensors and that you have no rights in or to the Services or Service Data other than the right to use each of them in accordance with the terms of this Agreement.

### **4. Feedback.**

You may from time to time provide suggestions, comments, ideas, or other feedback ("**Feedback**") to us with respect to the Services or Service Data,. To the extent that you provide such Feedback, you grant us an unlimited right and license to use, disclose, reproduce, license, or otherwise distribute and exploit the Feedback as we see fit, entirely without obligation or payment to you or restriction of any kind.

### **5. Changes to the Services.**

From time to time, we may introduce new services, features, or functionalities to the Services. This Agreement will apply to such new services, features, or functionalities, unless they come with separate or additional terms, in which case you will be required to agree to such separate or additional terms before being permitted to use the new services, features, or functionalities. If You do not agree to the new services, features, or functionalities of the Services, You should no longer use the Services.

### **6. Warranties.**

We undertake that the Services will be performed substantially in accordance with this Agreement. This undertaking shall not apply to the extent of any non-conformance which is caused by your use of the Services contrary to our instructions or this

Agreement, or any alteration or modification made to the Services used in the provision of the Services by a third party who is not authorized by us.

We represent and warrant that the Services do not contain any malicious code, including any viruses, malware, disabling code, time bombs, or Trojan horses.

EXCEPT AS PROVIDED IN THIS AGREEMENT THE SERVICES ARE FURNISHED AS IS EXCLUSIVE OF ANY WARRANTY, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ANY OTHER WARRANTY OR INDEMNITY, WHETHER EXPRESS OR IMPLIED, EXCEPT AS PROVIDED IN THIS AGREEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, PROVIDED BY US OR ANYWHERE ELSE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT.

## **7. Affiliates and Contractors.**

With respect to Affiliates and Contractors that you allow to use the Services: (a) you remain responsible for all obligations hereunder arising in connection with such Affiliate's or Contractor's use of the Services; and (b) you agree to be directly liable for any act or omission by such Affiliate or Contractor to the same degree as if the act or omission were performed by you, such that a breach by an Affiliate or a Contractor of the provisions of this Agreement will be deemed to be your breach. The performance of any act or omission under this Agreement by an Affiliate or a Contractor for, by, or through you will be deemed your act or omission. For the purposes of this Agreement, "**Affiliates**" means, with respect to a party, any entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with such party, and "**Contractor**" means your third party contractor or other third party performing services for you, including outsourcing suppliers.

## **8. Accessing the Services.**

We will provide you all license keys, access credentials, and passwords necessary for access and use of the Services in accordance with your subscription plan.

You acknowledge that the extent of your access and use of the Services will depend on your subscription plan, and you further agree to only use the Services within the limits of such subscription plan. If at any time, we reasonably believe or have reason to believe that you are exceeding the limit of your subscription plan or accessing our Services without permission, we have the right to request in writing an audit of your access and use of the Services. If at any time whilst using the Services, you exceed the limit of your

subscription plan, we will charge you, and you will pay, the relevant fees which apply to such excess use as set out above. You are solely responsible for monitoring your use of the Services within the permitted limits. We reserve the right to suspend your access to or use of the Services without notice in the event you breach this Agreement or if we reasonably suspect that you have breached this Agreement.

## **9. Restricted use of the Services.**

You must not use the Services for any commercial use (other than for internal use within your business), and you must not redistribute or transfer the Services or Service Data to any third party or make any part of the Services or Service Data available to be accessed, in whole or in part, by any third party.

The license granted to you to install and use the Services and Service Data, does not permit you to do, and you shall not do nor permit any third party to do, any of the following: (a) Embed our Services or Service Data into any product of yours or any third party; (b) Make available through automated or manual means any part of the Services or the Service Data, by way of crawling, scraping, spidering or otherwise; (c) Copy or access all or any part of the Services or the Service Data other than via the interface(s) provided to you by us; (d) Use web-crawlers, bots, or scripts to copy or access any part of the Services or the Service Data; (e) Circumvent or attempt to override any security features we have installed around the Services or the Service Data; or (f) Copy in part or in whole, our database of vulnerabilities.

You further agree that you will not intentionally use the Services to: (a) Store, download or transmit infringing or illegal content, or any viruses, “Trojan horses” or other harmful code; (b) Engage in phishing, spamming, denial-of-service attacks or fraudulent or criminal activity; (c) Interfere with or disrupt the integrity or performance of the Software or data contained therein or on Licensor’s system or network; or (d) Perform penetration testing, vulnerability testing or other security testing on our or our licensor’s systems or networks or otherwise attempt to gain unauthorized access to ours or our licensor’s systems or networks.

## **10. Payment of Services**

If you choose to subscribe to our Services through one of the subscription plans indicated in the AWS Platform, you agree to pay us the corresponding fees. Depending on the subscription plan chosen by you, our third-party payment processor will (and you hereby authorize it to) bill you for the applicable fee in advance on or shortly after the

date you subscribe for a subscription plan and each anniversary thereafter, until terminated by you or us.

The fees are non-refundable, except as expressly stated otherwise in this Agreement.

We reserve the right not to provide you with or suspend temporarily the Services until the relevant fee has been received in full and cleared funds.

We also reserve the right to change our fees or payment plans at any time. If you do not agree to such change, you must ask us to delete your account via email to [sales@gitguardian.com](mailto:sales@gitguardian.com) and stop using the Services within 30 days of the date the new fee or payment plan becomes effective, at which point this Agreement will be deemed to have been terminated by you. We will only charge you in respect of the period before termination and based on the old fee or payment plan. If you do agree to such change (which will be deemed from your continued use of the Services after the date the new fee or payment plan becomes effective), your next bill will include the new fees on a pro-rata basis. You will pay fees without any set-off, counterclaim, deduction, or withholding of any kind, except as may be required by law.

The fees paid to us for the subscription plans do not include sales tax or other applicable duties as may be required by law. Any sales tax and duties required by law will be charged to you in addition to these fees, at the rates in force on the invoicing date. If any withholding or deduction is required by law, you will, when making the payment to which the withholding or deduction relates, pay to us such additional amount as it will ensure that we receive the same total amount that it would have received if no such withholding or deduction had been required.

## **11. Confidentiality.**

For the purposes of this Agreement, "**Confidential Information**" means all technical and non-technical information disclosed by one party to the other, including but not limited to product information, plans, pricing information, financials, marketing plans, business strategies, customer information, data, research and development, software and hardware, APIs, specifications, designs, proprietary formulae, and algorithms.

Neither party will use the other party's Confidential Information, except as permitted under this Agreement. Each party agrees to maintain in confidence and protect the other party's Confidential Information using at least the same degree of care as it uses for its own information of a similar nature but in all events at least a reasonable degree of care. Each party agrees to take all reasonable precautions to prevent any

unauthorized disclosure of the other party's Confidential Information, including, without limitation, disclosing Confidential Information only to its employees, independent contractors, consultants, and legal and financial advisors (collectively, "**Representatives**") (i) with a need to know such information, (ii) who are parties to appropriate agreements sufficient to comply with this Article, and (iii) who are informed of the non-disclosure obligations imposed by this Article. Each party is responsible for all acts and omissions of its Representatives.

The foregoing obligations will not restrict either party from disclosing Confidential Information of the other party pursuant to the order or requirement of a court, administrative agency, or other governmental body provided that the party required to make such a disclosure gives reasonable notice to the other party to enable them to contest such order or requirement. The restrictions set forth in this clause will survive the termination or expiration of this Article.

The restrictions set forth in this Article will not apply with respect to any Confidential Information that: (i) was or becomes publicly known through no fault of the receiving party; (ii) was rightfully known or becomes rightfully known to the receiving party without confidential or proprietary restriction from a source other than the disclosing party who has a right to disclose it; (iii) is approved by the disclosing party for disclosure without restriction in a written document which is signed by a duly authorized officer of such disclosing party; or (iv) the receiving party independently develops without access to or use of the other party's Confidential Information.

## **12. Your Data.**

You are and will continue to be the sole and exclusive owner of all your data that you use with the Services ("**Customer Data**"), including all proprietary rights therein. Nothing in this Agreement will be construed or interpreted as granting to us any rights of ownership or any other proprietary rights in or to Customer Data that you own.

You will obtain all necessary consents, authorizations, and rights and provide all necessary notifications in order to provide or use your Customer Data in the performance of your obligations in accordance with the terms and conditions of this Agreement, including any access or transmission to third parties with whom you share or permit access to your Customer Data.

You hereby grant us a nonexclusive, non transferable, revocable license, under all proprietary rights, to reproduce and use your Customer Data solely for the purpose of, and to the extent necessary for, performing our obligations under this Agreement. In no

event will we access, use or disclose to any third party any of your Customer Data for any purpose whatsoever other than as necessary for the purpose of providing the Services to you and performing our obligations under this Agreement.

### **13. Limitation of Liability.**

IN NO EVENT SHALL EITHER PARTY OR AN AFFILIATE BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL LOSS OR DAMAGES ARISING FROM OR CONNECTED WITH THIS AGREEMENT WHETHER OR NOT THAT PARTY OR AFFILIATE HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. Except with respect to our indemnification obligations, our breach of its confidentiality obligations set forth herein, and except for bodily injury or death (for which there is no limit), neither party shall be liable or obligated under any breach of this Agreement (i) for any amounts in excess in the aggregate of the fees paid to GitGuardian hereunder by Client in the twelve months prior to the occurrence of the breach or (ii) for any matter beyond its control. Because Client assumes responsibility and liability for Client's Affiliates, no Client Affiliate shall have any liability or obligation to GitGuardian for any breach of this Agreement. Notwithstanding anything in this Agreement to the contrary, GitGuardian may not seek damages for any claim from both Client and any Client Affiliate.

### **14. Indemnity.**

You shall defend, indemnify and hold us harmless against claims, actions, proceedings, losses, damages, expenses, and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with your use of the Services or Service Data in breach of this Agreement.

### **15. Termination.**

If either party fails to fulfill any of its obligations under this Agreement, the injured party may, fifteen (15) calendar days after having given the other party formal notice to perform its obligations by registered letter with acknowledgment of receipt which has remained unanswered, terminate all or part of the Agreement, without prejudice to any damages and interest

### **16. Assignment.**

You may not assign or otherwise transfer any or all of your rights under this Agreement without our prior written consent.

### **17. Waiver.**

A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.

#### **18. Severability.**

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any such modification to or deletion of a provision or part-provision shall not affect the validity and enforceability of the rest of this Agreement.

#### **19. Parties' relationship.**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties or constitute any party the agent of another party.

#### **20. Third Party Rights.**

No one other than a party to this Agreement, their successors, and permitted assignees, shall have any right to enforce any of its terms.

#### **21. Entire Agreement.**

This Agreement, and all documents referred to in them, constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.

#### **22. Jurisdiction and Governing Law.**

If you are domiciled in the United States, Canada, Mexico, or a country in Central or South America or the Caribbean (the "Americas"), this Agreement will be governed by and construed in accordance with the laws of the State of New York, as if performed wholly within the state and without giving effect to the principles of conflict of law. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the State of New York and the parties hereby consent to personal jurisdiction and venue therein.

If your principal office is located outside the Americas, this Agreement will be governed by the laws of France, any legal action or proceeding arising under this Agreement will be brought exclusively in the courts located in Paris, and the parties hereby consent to personal jurisdiction and venue therein.

**23. Compliance with laws.**

Each party hereby represents and warrants to the other party that it will fully comply with any and all applicable federal, state, and local laws, rules, and regulations.

**24. References.**

Each party shall refrain from making any reference to and from using the corporate names, trademarks, and logos of the other party without that party's express prior and written consent.

**25. Contact us.**

To contact us, or if you are experiencing problems with the Services, please email [support@gitguardian.com](mailto:support@gitguardian.com).