DoD ESI Master License Agreement

DEPARTMENT OF DEFENSE MASTER LICENSE AGREEMENT FOR GITLAB PRODUCTS AND SERVICES

This document sets forth the Department of the Defense (DoD) License Requirements ("DoD ESI Master License Agreement"). Licensor's Software License Agreement is attached hereto as Exhibit A and made a material part hereof by this reference. This DoD ESI Master License Agreement ("MLA"), including the Software License Agreement attached as Exhibit A: GitLab Federal LLC's Subscription Agreement and Exhibit B: GitLab Federal, LLC Support Provisions constitutes the agreement between the GitLab Federal, LLC (Licensor) and the DoD (the "Agreement"). The terms and conditions set out below, supplement, to the extent a conflict exists, supersede, and take precedence over the terms and conditions of Exhibit A and Exhibit B. For clarification in this Agreement, Publisher and Licensor are synonymous.

With regard to any conflict in license terms between the DoD ESI MLA and any GSA / NASA SEWP negotiated license agreement , the Order of Precedence is in the following order: 1) the DoD ESI MLA and 2) any GSA / NASA SEWP negotiated license agreement.

1. **Enterprise Language:** The parties agree that more than one agency of the DoD may license products under this Agreement, provided that any use of products by any agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each applicable agency seeking to use the licensed product. The parties agree that, if the licensee is a "DoD Department or Agency" as defined by the 48 Code of Federal Regulations, section 202.101, and to include the Intelligence Community and the US Coast Guard, the terms and conditions of this Agreement apply to any purchase of products made by the DoD, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution. The parties agree the terms of this Agreement supersede and take precedence over the terms included in any purchase order, terms of any shrink-wrap agreement included with the licensed software, terms of any click through agreement included with the licensed software, or any other terms purported to apply to the licensed software, including any Licensor's published policy or program documentation or customer ordering documents. It is also understood by both parties, other than as set forth specifically in Exhibit A and Exhibit B or here: http://gitlab-org.gitlab.io/omnibus-gitlab/licenses.html with respect to open source software, that any Licensor policies, URLs referencing other terms, conditions or policies or educational documents will not be considered part of this license agreement.

1A. **Unacceptability of General License Terms:** The following terms in the table below, when they appear in the Licensor's Software License Agreement in Exhibit A, have been determined unacceptable to the Government as a result of a conflict with Federal law or as a result of incompatibility with the Government's needs. Any such terms in the Licensor's License Agreement in Exhibit A or Exhibit B will have no force or effect in any resulting contract.

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Attorney fees and costs; equitable relief; arbitration	The Government does not agree to any clauses relating to the award of attorney's fees and costs or equitable relief because they may violate the Anti-Deficiency Act, 31 U.S.C. § 1341 (a)(1)(B). Equitable relief and the award of attorney's fees, costs, or interest are only allowed to the extent permitted by statute (e.g., the Prompt Payment Act or Equal Access to Justice Act). Disputes will be resolved according to the disputes clause. Binding arbitration will not be used.
Taxes	The Government does not agree to any clauses purporting to make the Government responsible for all taxes. Any taxes the Licensor believes to be payable by the Government must be submitted individually to the Contracting Officer for adjudication or included in the firm-fixed price.
Arbitration	The Government does not agree to any provisions relating to mandatory arbitration. Disputes must be resolved in accordance with applicable federal statutes (e.g., Contract Disputes Act) and regulations.
Equitable remedies, injunctions	The Government does not agree to any clauses consenting to or entitling the Licensor to equitable relief or injunctions. Equitable relief for copyright, trademark, or patent infringement by the Government is only available to the extent permitted by federal statutes.
Unilateral termination by Contractor for breach	The Government does not agree to any clauses permitting unilateral termination of the contract or license agreement by the Licensor. Any terms in Licensor commercial license that call for immediate termination (including remote disabling of services by Licensor), or termination in the event a Government corrective action is not taken within a time frame that is less than 90 days, shall be revoked in favor of a 90-day time for the Government to take corrective action Recourse against the United States for any alleged breach of this agreement must be made under the terms of the contract disputes clause (Contract Disputes Act). While a dispute is pending, the Licensor shall proceed diligently with performance

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	of this License Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and must comply with any decision of the DoD ESI Contracting Officer.
Assignment by licensor	The Government does not agree to any license terms providing for assignment by the licensor. Assignment of government contracts to include the DoD ESI MLA without the government's prior approval is prohibited by statute, except for assignment of payment to a financial institution, which must comply with the Assignment of Claims Act (31 U.S.C. § 3727, 41 U.S.C. § 15) and Federal Acquisition Regulation Subpart 32.8.
Confidentiality	The Government does not agree to any clauses asserting that unit prices or license agreement terms are confidential or proprietary information. Neither the license agreement nor the price list shall be deemed "confidential" or "proprietary" information notwithstanding any marking to that effect. The Freedom of Information Act (FOIA) governs what information must be disclosed and what information may be withheld by the Government.
Licensor Beta Products and/or Services	The Government will not accept any Licensor products and/or services with terms that include free trial periods that convert to pricing terms after the specified period.
Acceptance of Third Party Terms	End user "Click through", "Use means acceptance", "If you Do Not Accept Stop Using" and similar licensing terms that purport to bind the Government due to access/use by an end user are disavowed. Such terms shall have no effect.
General Data Protection Regulation (GDPR)	The Government does not waive its sovereign immunity and does not consent to suit arising under GDPR. The Government represents that it is not subject to the terms of GDPR. To the extent the Government is exempt from complying with the GDPR, any terms in the License Agreement, which purport to impose upon the Government any obligations under the GDPR, do not apply.

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Vague and Overbroad Usage Restrictions	The Government cannot agree not to use the Licensor's Products and Services "in a way prohibited by law, regulation, governmental order or decree". Similarly, the Government, as represented by the Department of Defense, cannot agree "not to use the [Licensor's] services in any manner which could cause serious bodily injury to any person, or that was cause severe physical or environmental damage". Such license terms are vague and overbroad. However, the Government can certainly agree to use the Licensor's Product and Services in a manner that does not violate U.S. Federal law, and in a manner consistent with the terms and conditions of the License Agreement.
Anti-Competitive License Terms	The Government cannot agree to license terms that require the Government to take actions that could inhibit future competitive procurements. Such terms violate the Competition in Contracting Act (CICA) and shall have no effect with respect to the Government.
Throttling	Licensor may not throttle Government cloud services based on a perceived contract or Licensor license breach. All perceived contract/ license breaches that cannot be amicably resolved by the parties must be resolved in accordance with the Contract Disputes Act.
Remote Disabling	Licensor may not disable Government cloud services based on a perceived contract or license breach. All perceived contract/ license breaches that cannot be amicably resolved by the Parties must be resolved in accordance with the Contract Disputes Act.

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Forms of Intellectual Property	The Government can only take license to forms of intellectual property that are described in United States federal law or procurement regulation. The Government cannot take license to any moral rights, or any know-how or trade secrets (unless recorded and delivered with a corresponding data rights posture). Further, the Government cannot to agree to license terms regarding forward looking/inchoate intellectual that does not exist at the Agreement/Order execution. The Government is not agreeing to licensing trademarks, service marks or trade names, however Government agrees to respect, retain and leave undisturbed all trademarks, service marks and trade names that are placed in the licensed materials by Licensor or its resellers as applicable.
Monitoring	Licensor may monitor Government usage of its services. Licensor may not access (unless otherwise requested by the Government for Licensor to perform the servies under the MLA), download, copy or monitor Government cloud content in any way shape or form.

2. **Choice of Law/Venue**: This Agreement shall be governed by and construed in accordance with the substantive laws of the US Code of Federal Regulations, Federal Acquisition Regulations and Defense Federal Acquisition Regulations (DFARS), without regard to principles of conflict of laws.

3. **Indemnification**: The DoD does not have the authority to and shall not indemnify any entity. The DoD agrees to pay for any loss, liability or expense, which arises out of or relates to the DoD's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the DoD is established by a court of law or where settlement has been agreed to by the DoD agency and the Department of Justice. This provision shall not be construed to limit the DoD's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of the DoD.

4. **Patent, Copyright, Trademark, and Trade Secret Protection:**

   a.   The Licensor shall, at its expense, indemnify and hold the DoD harmless from any suit or proceeding which may be brought by a third party against the DoD, its departments, officers or employees for the alleged infringement of any United States patents, copyrights, or trademarks, or for a misappropriation of a United States trade secret arising out of performance of this Agreement (the "Claim"), including all licensed products provided by the Licensor. Notwithstanding anything to the contrary in the foregoing, Licensor's obligation under this Section 4a will not apply to Free Software (as defined in Exhibit A). For the purposes of this Agreement, "indemnify and hold

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harmless" shall mean the Licensor's specific, exclusive, and limited obligation to (a) pay any judgments, fines, and penalties finally awarded by a court or competent jurisdiction, governmental/administrative body or any settlements reached pursuant to Claim and (b) reimburse the DoD for its reasonable administrative costs or expenses, including without limitation reasonable attorney's fees, it necessarily incurs in handling the Claim. The DoD agrees to give Licensor prompt notice of any such claim of which it learns. The DoD has the sole authority to represent itself, at its own expense, in actions brought against the DoD. Licensor shall not, without the DoD's consent, which shall not be unreasonably withheld, conditioned, or delayed, enter into any settlement agreement which (a) states or implies that the DoD has engaged in any wrongful or improper activity other than the innocent use of the material which is the subject of the Claim, (b) requires the DoD to perform or cease to perform any act or relinquish any right, other than to cease use of the material which is the subject of the Claim, or (c) requires the DoD to make a payment which Licensor is not obligated by this Agreement to pay on behalf of the DoD. The parties to this Agreement recognize that, per the authority under 28 U.S.C. § 516, the U.S. Department of Justice (DOJ) retains the authority to represent the U.S. Government or control the defense and any settlements of Claims brought against the U.S. Government. The DOJ may, in its sole discretion, delegate to Licensor its right of defense of a Claim and the authority to control any potential settlements thereof. If the DOJ does not delegate the right of defense of a Claim and the authority to control any potential settlements thereof, Licensee agrees that any settlement or compromise of any Claim: (i) shall not bind Licensor; (ii) shall not impair Licensor's own rights, defenses, or claims against the third party claimant; (iii) shall not have settled any Claim, make any admissions, or waive any defenses on behalf of Licensor. Licensee shall in good faith reasonably cooperate and consult with Licensor during the course of settlement negotiations and prosecution of the Claim, and shall afford Licensor reasonable access to all relevant communications and documentation with all parties, witnesses, and judicial or administrative bodies associated with such Claim, in Licensee's possession or control upon Licensor's request (in the event such relevant communications or documentation is classified or subject to other U.S. Government restrictions, Licensor agrees to comply with all rules, regulations or laws surrounding the viewing of such communications or documentation). If the DOJ delegates any such rights to the Licensor, the U.S. Government will cooperate with all reasonable requests of Licensor made in the defense and/or settlement of a Claim. In instances where such delegation occurs, the U.S. Government shall have the right to participate in any such suit or proceeding through counsel of its own choosing at its own expense and without derogation of Licensor's authority to control the defense and settlement of a Claim.

b.   The Licensor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Licensor certifies that, in all respects applicable to this Agreement, it has exercised and will continue to exercise reasonable due diligence to ensure that all licensed products provided under this Agreement do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties.

c.   If, in the Licensor's opinion, the licensed products furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the

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Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense, substitute functional equivalents for the alleged infringing licensed products, or, at the Licensor's option and expense, obtain the rights for the DoD to continue the use of such licensed products.

d. If any of the licensed products provided by the Licensor are in such suit or proceeding held to constitute infringement and the use thereof is enjoined, the Licensor shall, at its own expense and at its option, either procure the right to continue use of such infringing products, replace them with non-infringing items, or modify them so that they are no longer infringing.

e. If use of the licensed products is enjoined and the Licensor is unable to do any of the preceding set forth in item (d) above, the Licensor agrees to, upon return of the licensed products, refund to the DoD the license fee paid for the infringing licensed products, pro-rated over a sixty (60) month period from the date of delivery plus any unused prepaid maintenance fees.

f. The obligations of the Licensor under this Section continue without time limit and survive the termination of this Agreement.

g. Notwithstanding the above, the Licensor shall have no obligation under this Section 4 for:

(1) Modification of any licensed products provided by the DoD or a third party acting under the direction of the DoD;

(2) any material provided by the DoD to the Licensor and incorporated into, or used to prepare the product;

(3) use of the Software after Licensor recommends discontinuation because of possible or actual infringement and has provided one of the remedy's under (d) or (e) above;

(4) use of the licensed products in other than its specified operating environment;

(5) the combination, operation, or use of the licensed products with other products, services, or deliverables not provided by the Licensor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Licensor did not provide;

(6) infringement of a non-Licensor product alone;

(7) the DoD's use of the licensed product beyond the scope contemplated by the Agreement; or

(8) the DoD's failure to use corrections or enhancements made available to the DoD by the Licensor at no charge.

h. The obligation to indemnify the DoD, under the terms of this Section, shall be the Licensor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

5. **Virus, Malicious, Mischievous or Destructive Programming:**

Licensor warrants that the licensed product as delivered by Licensor does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of the licensed products (each a "Virus"). However, the

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licensed products may contain a key limiting use to the scope and quantity of the license(s) granted, and license keys issued by Licensor for temporary use are time-sensitive.

The DoD's exclusive remedy, and Licensor's sole obligation, for any breach of the foregoing warranty shall be for Licensor to (a) replace the licensed products with a copy that does not contain Virus, and (b) if the DoD, has suffered an interruption in the availability of its computer system caused by Virus contained in the licensed product either as originally provided to the DoD in associated orders or when Licensor release updates, Licensor shall reimburse the DoD for the actual reasonable cost to remove the Virus and restore the DoD's most recent back up copy of data provided that:

a)   the licensed products have been installed and used by the DoD in accordance with the Documentation;

b)   the licensed products have not been modified by any party other than Licensor;

c)   The DoD has installed and tested, in a test environment which is a mirror image of the production environment, all new releases of the licensed products and has used a generally accepted antivirus software to screen the licensed products prior to installation in its production environment.

Under no circumstances shall Licensor be liable for damages to the DoD for loss of the DoD's data arising from the failure of the licensed products to conform to the warranty stated above.

6.   **Delivery:** Publisher's delivery of the Products to DoD shall be by electronic download or as otherwise specified in Delivery Orders, FOB Destination.

7.   **Program Warranty:** Licensor warrants that for the term of the subscription, as specified in a Government's order, that (i) the Software will perform as a single application, DevOps source code repository enabling features such as multi-project pipelines, high availability, disaster recovery and project planning features; and (ii) Licensor will provide support in a professional, workmanlike manner in accordance with the requirements in Exhibit B. If at any time Licensor fails to comply with the warranties above, DoD may promptly notify Licensor in writing of any such noncompliance. Licensor will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide DoD with a plan for correcting the noncompliance. If the noncompliance is not corrected or if a reasonably acceptable plan for correcting the non-compliance is not established during such period, DoD may terminate the order and receive a prorated refund for the unused portion of the subscription term as its sole and exclusive remedy for such noncompliance.

a)   Discontinuance of Support: Licensor supports the current major version plus the two prior major versions (example 14.x is the current major version, installations running versions in the 14.x, 13.x and 12.x series are eligible for support). Licensor issues a new major versions on an annual basis. Licensor will give DoD one hundred eighty (180) days advance written notice before Licensor or its authorized Resellers discontinue support of any Product.

8.   **Limitation of Liability:** The Licensor's liability to the DoD under this Agreement shall be limited to the greater of (a) three times (3x) the fees paid in the one (1) year period preceding the first

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incident out of which the liability arose; or (b) Seven Million United States Dollars ($7,000,000.00USD). This limitation does not apply to damages for:

a)   Bodily injury;
b)   death;
c)   intentional injury; or
d)   damage to real property or tangible personal property for which the Licensor is legally liable; or
e)   gross negligence or willful misconduct; or
f)   Licensor's indemnity of the DoD for US patent, copyright, trade secret, or trademark protection under Section 4a.

In no event will the Licensor be liable for consequential, indirect, or incidental damages unless otherwise specified in the Agreement. Licensor will not be liable for damages due to lost records or data. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

9.   **Termination:** Licensor may not terminate this Agreement for non-payment from DoD. The DoD may terminate this Agreement without cause by giving Licensor thirty (30) calendar day's prior written notice (Notice of Termination) whenever the DoD shall determine that such termination is in the best interest of the DoD (Termination for Convenience). Termination for convenience under this Section 9 shall not result in the refund of any pre-paid fees.

a. Force Majeure**:** Subject to FAR 52.212 -4 (f) Excusable delays, unilateral termination by the Licensor does not apply to a DoD order and all clauses in the Licensor's EULA referencing unilateral termination rights of the Licensor are hereby deemed to be deleted.

10.   **Background Checks:** This term will be applicable if required by local command policy and prior to the commencement of on-site professional services by Licensee employee who is proposed for assignment to perform services at your site or via remote access in or from the United States and only if the Licensor employee does NOT possess a Department of Defense ("DoD") performed National Agency Check with Inquiries ("NACI") or a DoD security clearance of SECRET or higher, Licensor, or its agent, will complete a criminal background check, or confirm that such a background check has been completed, on such employee. The criminal background check shall consist of a check of public records, to the extent available at the county level, where the employee has established credit in the United States as determined by a social security trace. The check is for felony and misdemeanor convictions within the seven (7) years preceding the date of the check. To the extent not prohibited by law, Licensor shall not assign any employee to perform such services for whom a criminal background check, at the time of its completion, uncovered conviction of a felony or conviction of a misdemeanor. In the event that DoD requires on-site support outside the United States, Licensor will make reasonable efforts to work with DoD in order to address its security concerns.

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11.   **Confidentiality:** Each party shall treat the other party's confidential information in the same manner as its own confidential information. The parties must identify in writing what is considered confidential information.

12.   **Publicity/Advertisement:** The Licensor must obtain DoD approval prior to mentioning the DoD or a DoD agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.

13.   **Territory:** Any Department of Defense (DoD) civilian or military installation or work site in the Continental United States (CONUS) or outside the Continental United States (OCONUS), regardless of where software was acquired.

14.   **Backup for User Documentation:** Licensor grants DoD to make a reasonable number of copies for DoD's internal business purposes. DoD is responsible for ensuring that all copyright notices, trademarks and other restrictive legends are maintained on such copies. DoD is also responsible for reporting to Licensor if DoD learns of the misuse or mishandling of User Documentation provided under the contract to DoD personnel, contractors or Government employees.

15.   **Transfers and Assignments:** Licensee is authorized to transfer or assign the Software or Licensee's rights in the Software, and such authorization would include sublicensing, assignment or transfer among or between DoD agencies, outsourcers, contractors or Licensee, (in support of the DoD mission) or authorize any portion of the Software to be copied onto or accessed from another individual's or entity's computer, except as may be explicitly provided in this Agreement.

a)   Transfers: within the DoD and in the event that an Authorized User has a valid license under this Agreement and that Authorized User is reorganized or restructured such that its responsibilities and operations are transferred to another Authorized User agency, the agency shall have the right to assign the affected program licenses to a successor.

b)   Assignments: Licensee is authorized to assign ownership of licenses when Licensee intends to designate an outsourcer, contractor (in support of the DoD mission), DoD Agency or other, as determined and for the sole benefit of the DoD, to assume ownership of the license along Licensor written concurrence.   All activities by such Assignee shall be subject to the Licensor's Software License Agreement as modified herein. Any deviation shall be subject to a separate agreement between Licensor and such Assignee, specifying conditions for the management and maintenance of the Software, which agreement shall not impose any more restrictive covenants than are provided to Licensee in the Licensor's Software License Agreement, as modified herein. The assignment of licenses will be without cost to any party involved in the assignment of licenses. It is further understood that Assignee will be responsible for all future software maintenance costs of any assigned licenses.

c)   Licensee shall complete any required Licensor documentation required to facilitate the transfer or assignment of license and continuation of support for the transferee or assignee. All license transfers or assignments will be without cost to the Licensee, provided that the licenses are current with regard to Licensor annual maintenance, and

the Licensee does not re-market or otherwise intend to resell the licenses to be transferred.

It is inherently understood Licensee and the successor transferee or assignee agree to be bound to this Master License Agreement.

16. **Functionality Replacement and Extended Support.** Solely with respect to the licensor product itself, and indepedent of any third party features and/or capabilities. If Licensor removes any or all of the direct material features or functionality to which DoD is being granted access hereunder from the Software without introducing replacement or substitute functionality such that the Software no longer performs its core operations as when initially released and Licensor subsequently offers those features or functionality in a new or different product (whether directly or indirectly or through a third party), then upon request by DoD the License will be deemed to include (i) the portion of those new or different products that contain the original features, or (ii) if those features cannot be separated out, the entire product, or (iii) another reasonable substitute as determined by DoD, will be provided to DoD under the terms of this Agreement at no additional charge to DoD. If the Software provided to DoD is updated as replacement, renamed or re-branded applications or products for any reason, then DoD shall be entitled to the same license to use the replacement, renamed or re-branded product as DoD had with respect to the Software that DoD had immediately prior to such replacement, renaming or re-branding, at no additional charge to DoD so long as (a) the new applications or products are functionally equivalent, at a minimum, and the same conditions of use apply as to the Software and (b) Licensor ceased or has advised DoD that Licensor intends to cease supporting the initial Software while DoD was still purchasing Maintenance and Support for such Software. If the form, fit, or functionality contained in any licensed products acquired hereunder is substantially reduced or if the product is replaced, and/or the Licensor provides the same or substantially similar functionality as a separate or renamed product, then the DoD is entitled to license such software without any additional license requirements or additional maintenance fees. However, throughout the term of this agreement, the Licensor will provide support services for at least a period of one year after the publisher declares an "end-of life" to the software.

17. **Rights of Survivorship of the Agreement.** This Agreement shall survive unto Licensor, its Successor, rights and assigns. The software and agreement terms and conditions as covered under this agreement shall survive this agreement, notwithstanding the acquisition or merger of Licensor by or with another entity. Any software name changes, re-packing or merger of products that carry forward the same or similar function of the software shall be supported with updates, upgrades and new releases under this agreement at no additional cost.

18. **Audit Responsibilities:** This Section sets out the sole audit right under this agreement.

a) DoD will maintain, and promptly provide to Publisher upon its request, but no more frequently than once in a twelve (12) month period, accurate records regarding use of the software by or for DoD. If DoD becomes aware of any unlicensed use of the software, DoD will notify Contractor and Publisher within 15 calendar days, providing reasonable details. The limit of DoD's responsibility for any unlicensed use of the software by any Users employed by or performing services for DoD is the requirement

that DoD purchase additional licenses for the product through Contractor without any penalty or promptly stop using the software and delete any unauthorized copies.

b)   DoD will perform a self-audit, upon the request of the Publisher, but no more frequently than once in a twelve (12) month period, and report any change in software program use (hereinafter "True up number"). The Publisher may make such a request of an individual agency of the DoD and will notify the DoD in the event of such a request. If the Publisher requests a self-audit from a DoD agency, it will not make another request of that agency for at least 12 months. Any self–audit, which shall be certified by a DoD employee authorized to do so, shall include, but not be limited to, the number of copies of the programs installed and/or in use by the DoD, the designated system(s) on which the programs are installed and/or running, and if applicable, the number of users of the programs. DoD shall notify Authorized Partner and Publisher of the True up number no later than 90 calendar days after completion of the self-audit.

c)   If the self-audit described in (a) or (b) above shows unlicensed use by the DoD, the limit of DoD's responsibility for any unlicensed use is the requirement that DoD (1) promptly stop using the software and delete any unauthorized copies, or (2) purchase additional licenses of the product through Reseller in accordance with any current ESI pricing. The procurement of additional licenses, if required, will transpire no later than 60 days after DoD's aforementioned notification. There will be no penalties involved in the procurement of the additional licenses. (Any prior unlicensed use may be claimed under the Contract Disputes Act.)

19.   **Reserved.**

20.   **Reserved.**

21.   **Section 508 of the Rehabilitation Act Compliance:** All products and services provided under this agreement must meet the applicable accessibility standards at 36 CFR Part 1194 as required by FAR Case 1999-607. General information regarding the Section 508 Act can be found at the web site **www.section508.gov**. The Licensor's Section 508 compliance information in the form a Voluntary Product Accessibility Template (VPAT) must be readily available at the Publisher's website or provided to Licensee upon request.

22.   **Orders**: Orders will be placed by Licensee directly with the Licensor's reseller. Any term or condition in an order to be placed that will expressly supersede a term or condition of this agreement must be approved in writing via email by the designated DoD PCO for this ESI BPA, a copy of which shall be attached to such order. Any term or condition in an order that has been placed that expressly supersedes a term or condition of this agreement is ineffective unless subsequently agreed to in writing via an email by the designated DoD PCO for this agreement attached to the order with an Administrative Modification.

23.   **Temporary Use of Software During Times of Conflict and/or Natural Disaster:** As part of Temporary Expeditionary Deployments (TEDs), during the term of this Agreement, DoD may temporarily deploy and install or use on, or access from qualified desktops or servers, a reasonable number of Licensor software products in addition to those previously licensed

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pursuant to this Agreement at no additional cost ("TED Licenses"). TEDs are limited to deployments away from in-garrison locations (any military post or government office where troops or civilian government personnel are at a permanent location), war games, exercises, real world contingencies, and emergency situations similar to the initiated domestic terrorist attacks of 19 April 1995 (i.e., the Timothy McVeigh Terry Nichols perpetrated 'Oklahoma City Bombing' involving the Alfred P. Murrah Federal Building'); the initiated international terrorist attacks, perpetrated on American soil, on 9/11/2001; and finally, the national inclement weather natural disasters perpetrated by Hurricane(s) Katrina and Rita during the August and September months of Calendar Year 2005, where temporary duty stations (TED's) and continuity of operations (COOP) alternative venues or sites were needed, for a substantial period of time, due to the destruction of federal or U.S. Government facilities, infrastructure, offices and work spaces. For licenses connected to a DoD network server, on a semi-annual basis, Licensor shall provide an additional temporary license pool equal to the quantity of network versions purchased, which may be accessed during a TED event. For computers not connected to a DoD network server, the Licensor shall provide, on a quarterly basis, a pre-activated temporary (ninety) 90 day single seat network license which can be copied for use on any number of computers. After the TED, or six (6) calendar months, whichever is shorter ("Temporary Use Period"), unless a different time period is agreed to in writing by the Licensor, the DoD will provide a written certification that the TED Licenses have either been removed from service, or payment has been made under this Agreement to purchase additional licenses equal to the number of TED Licenses not removed from service. DoD agrees to use the TED Licenses in accordance with the terms contained in this Agreement and the applicable version of the Master License Agreement.

24. **Software Asset Management & ISO-IEC 19770:2015 Series:** This paragraph relates to Software Identification Tagging (NIST IR 8060) embedded in the source code; it does not require an ISO certification. The Licensor shall comply with ISO 19770:2015 Series Standards for all installable or distributable software products governed by this agreement. If any part of the ISO-IEC 19770:2015 standard is not approved by the ISO International Standards Committee at the time of contract execution, the Licensor shall make commercially reasonable efforts to comply with the standard upon approval by ISO.

25. **Authorized Users:** An Authorized User includes, but is not limited to DoD government employees (military, civilian, reserves, national guard), contractors, non-human devices, detailed individuals that are included and accounted for in the DoD in support of DoD missions and those individuals or non-human devices who have access to, use or are tracked by Licensor's programs.

26. **Data Recovery** This license provides the DoD all rights concerning data sharing, data access, data transfer and data manipulation in all types of digital environments, including on premise, cloud, hybrid cloud or multi-tenant environments. Additional licenses will not be required for any type of data recovery servers, excluding mirrored or concurrent environments, as long as the number of data recovery servers equals the number of primary servers.

27. **Data Sharing:** The parties agree that as long as one party has a valid license, the sharing of data extracted from the software is unrestricted. This license also provides for the ability of users to access data from any US-owned datacenter with data owner granted permission and any appropriately licensed non-US owned datacenters. Additionally, the DoD may disclose, within the

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U.S. Government, the results of any benchmark or performance tests of Licensor programs; and, if applicable, disclose within the U.S. Government, the results of any security testing of a services environment or associated infrastructure, including any of the following: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing.

28. **Virtualization:** For virtualized servers, both parties agree that only the primary server must be licensed. No additional licenses will be required to accommodate virtualization using commercially accepted methods or practices.

29. **Shelf Ware:** If licenses are perpetual, it is recognized, that in some instances, DoD may have excess Licensor software licenses that are not currently being used or needed by DoD. These licenses are commonly called Shelf Ware. At DoD's sole discretion, the DoD may transfer any these licenses as described in Section 15 of this document or DoD may terminate the license grant, as it deems necessary. The Licensee acknowledges and agrees that Licensor does not license its Software on a perpetual basis, as such the terms of this Section 29 are not applicable

30. **Third Party Software:** Notwithstanding anything to the contrary, the Government shall not be subject to third party terms and conditions that are contrary to Federal law.

31. **Additional Functionality:** Any additional functionality provided on Licensor Products shall not impose additional license terms and/or fees on the Government.

32. **RESERVED.**

33. **RESERVED.**

34. **License copies for training, evaluation, research and development (including Research Labs) and back-up.**
The Licensor will support reasonable training and evaluation copies of any software that the Licensor makes available to license.

35. **RESERVED.**

36. **RESERVED.**

37. **Software Titles Incorporated by this Agreement:** All software titles sold by Licensor after the Agreement is executed by the Parties will be incorporated into this Agreement and any and all other software or software title which may be added through Licensor's in-house development or corporate acquisition. It is the DoD's anticipation this agreement will cover any and all software companies Licensor may purchase in the future.

38. **Use of this Agreement by the Federal Government:** The parties agree that, if a federal agency implements another contracting vehicle for Licensor's products, and if the licensee is an agency of the Federal Government, then, the terms and conditions of this Agreement can apply to any purchase of software products by that agency, and that the terms and conditions of this Agreement become part of the purchase document without need for further execution.

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Additionally, should a Federal Government Agency desire to use this Agreement, it will be without remuneration to any party.

39. **DoD Enterprise License:** The parties agree, that in the spirit of cooperation, there may be an instance, during the course of this agreement, where DoD desires an enterprise agreement with the publisher. The parties agree that all will work towards the implementation of a DoD Enterprise Agreement, that all terms contained in this agreement may become part of the Enterprise Agreement and the DoD and Publisher will work cooperatively on issues that may hamper such an agreement (legacy licenses and the accompanying support, Right-sizing the enterprise and so on).

40. **Deployment and Use of Subscription or Term Licenses in a Cloud Computing Environment:** DoD can deploy and use term Publisher licenses for the amount of Authorized Users for which it has paid in any cloud computing environment (private or public) and with any third-party cloud service provider. The use of DoD licenses is limited to the mission and business of the DoD. The DoD retains all ownership responsibilities of the licenses. The DoD will maintain records of license deployment.

DoD can transfer its term Publisher licenses between on-premises data centers and third party cloud service providers or to other third party cloud service providers without charge, or change in functionality provided the number of Authorized Users is not exceeded unless specifically set forth otherwise in this Agreement. The DoD shall have the right to determine the version level for transfers.

For licensed programs used in Cloud Environments and for which software support or maintenance is current, DoD may upgrade or downgrade the version level without charge.

41. **Ineffective Provisions**: If any document incorporated by reference into this agreement, and/or referenced therein, contains a provision (a) allowing for the automatic termination of your license rights or technical support services; (b) allowing for the automatic renewal of services and/or fees; (c) requiring the governing law to be anything other than Federal law, and/or (d) that otherwise violates applicable Federal law, then, such terms shall not apply and shall have no effect. If any document incorporated by reference into this agreement, including additional terms and conditions included and/or referenced therein, contains an indemnification provision, such provision shall not apply as to the United States indemnifying the Publisher or any other party.

42. **RESERVED.**

43. **Data Ownership in a Cloud Environment:** When the term of services end, Licensee generally no longer has rights to access or use the services, including the associated Publisher programs and services environments. For a period of 180 days after the end of the services, Publisher will make available Licensee's content and applications then in the services environment for the purpose of retrieval by Licensee. At the end of the 180-day period, and except as may be required by law, regulation, or federal, DoD, or agency policy or directives, Publisher may delete or otherwise render inaccessible any of content and applications that remain in the services environment.

44. **Professional Services:** Licensor may subcontract all or part of the Services to be performed to a qualified third party only with the explicit written acceptance of the Licensee. Any subcontracting of services must be noted on the Order Form and acknowledged in the Licensee's delivery order. This allows the contracting officer ordering the services to screen the proposed subcontractor for exclusions from SAM (System for Award Management) and FAR 52.209-11 Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law (Feb 2016).

45. **Professional Services Warranty*:* Licensor warrants that the Professional Services (consulting, training, implementation, etc.) will be performed in a professional manner in accordance with applicable industry standards. This warranty will be in effect for a period of ninety (90) days from the DoD's completion acceptance of the Professional Services set forth in the applicable Order Form or statement of work (the "Services Warranty Period"). If during the Services Warranty Period, Licensor receives written notice (submitting a ticket to Licensor's support portal or via email will suffice) from the DoD of non-conformity with the performance of the Professional Services, Licensor shall promptly re-perform any Professional Services that fail to meet this limited warranty at Licensor's expense. Licensor will work to remedy any situation within thirty (30) days. If Licensor cannot re-perform the Professional Services and not remedy or work to resolve the non-conformity, Licensor shall refund to all fees paid for the non-conforming Professional Services.

46. **Parallel Operations:** For no additional cost, the DoD agency shall have the ability to run Publisher's software on parallel systems for up to 180 days, or a longer mutually agreed upon timeframe, for system migrations, testing, and/or hardware refreshes. The DoD will ensure the duplicate instances required during the Parallel Operation period are uninstalled and deleted once the parallel operation is no longer required. The DoD will only request the ability to run the same number of license Instances that are currently owned by the DoD. If additional licenses are required than the quantity owned by the DoD agency, the DoD will acquire the necessary licenses.

47. **Personal and Technical Information Collection**: DOD recognizes as part of the software's normal functionality and/or in connection with support and maintenance of the Software, the Licensor will collect information on DOD employees, including Personal Identifiable Information (PII) or about DOD systems. FAR 52.224 applies to all DOD employees' PII.

The Licensor may collect such information only for purposes of the performance of this Agreement and Licensor will not transfer such information to any third party, sell, lease or trade any data collected. Any data collected may not be transferred OCONUS.
Licensor will take commercially acceptable measures, including physical, administrative and technical safeguards, to protect personal and technical data from unauthorized access, use, alteration, destruction and disclosure.
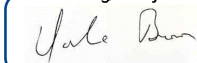
Licensor may only store the data collected for the term of the period necessary to fulfill the purposes for which it was collected. When personal or technical data is no longer necessary for the performance of the agreement, Licensor will take steps to have it deleted, destroyed, erased, aggregated or made anonymous.

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48. Safeguarding Covered Defense Information and Cyber Security Incidence Reporting: This section is only applicable to once Licensor received DoD PA for it's cloud products. Licensor acknowledges DFARS Clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting applies, and Licensor's computer systems meet NIST SP 800-171 Protecting CUI in Nonfederal Information Systems and Organizations.

49. **RESERVED.**

50. **Finality of Terms:** This agreement and any attachments to this agreement will be the sole document governing the granting of licenses between DoD and Licensor. There shall be no changes to this license agreement unless agreed to by both parties in writing.

In witness whereof, the Parties hereto have executed this Agreement, including all Exhibits, as of the date of the last signature below by their duly authorized representatives.

Agreed to by: GitLab Federal, LLC
DocuSigned by:

By: _____
0941CC5D3AF2489...
Name: Dale Brown
Title: Principal Accounting Officer
Date: January 28, 2022

APPROVED
By JB - GitLab Legal at 5:27 pm, Jan 27, 2022

Agreed to by: Department of Defense

By: _____
Name: _____
Title: _____
Date: _____

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Exhibit A – GitLab Federal, LLC's Subscription Agreement

1.   **DEFINITIONS**

"**Acceptance**" of an Order Form shall occur at the earliest of the following: (a) execution of an Order Form, (b) reference to an Order Form Quote No. within a purchase order or similar document, or (c) the use of Software.

"**Add-On User(s)**" are additional Users in excess of those that have been purchased under a Subscription via an executed Order Form or web-portal purchase.

"**Affiliate**" means any entity(ies) controlling, controlled by, and/or under common control with a party hereto, where "control" means the ownership of more than 50% of the voting securities in such entity.

"**Appendix**" are inclusions in this Agreement that state the terms by which Software is offered to Customer. The Appendices shall be considered part of the Agreement.

"**Authorized Partner**" is a reseller or distributor that is enabled and authorized to sell Software.

"**Community Edition Software**" means the publicly available, community-developed open-source software and components which may be provided with the Software. Community Edition Software is provided as Free Software (as defined herein).

"**Contractors**" are defined as third parties that Customer has engaged to manage, or otherwise use the Software, solely on behalf of Customer.

"**Controlled Subject Matter**" is the Software or any software or anything related thereto or any direct product thereof, collectively.

"**Customer Content**" is all software, information, content and data provided by or on behalf of Customer or made available or otherwise distributed through the use of the Software.

"**Customer Records**" collectively means books, records, contracts and accounts relating to the payments due GitLab under this Agreement.

"**Customer Success Services**" means adoption services which are provided as part of the Subscription, as set forth in Exhibit B. Customer Success Services include the collection of Operational Data (as further stated in Exhibit B). Customer Success Services are only available to Customers who are purchasing Software, and are not available for Free Software.

"**Customer Support**" means technical support of the Software provided by GitLab.

"**Designated National**" is any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders.

"**Embargoed Countries**" refers collectively to countries to which the United States maintains an embargo.

"**Enterprise**" means the organization, company, corporation and/or other type of entity which procures the Software to be used on its behalf pursuant to the terms of this Agreement.

"**Fees**" are those fees set forth within the Order Form, or, fees due immediately when purchasing via the web-portal.

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"**Free Software**" means a feature-limited version of Software provided to a Customer, User, end user, partner, or any other third party at no (or a greatly reduced cost) including but not limited to, the lowest tier offering of Software as made available by Gitlab.

"**Individual**" means a person who uses the Software on their own behalf, and not an Enterprise. An Individual must be over the age of thirteen (13) years old.

"**Order Form**" is a transactional document agreed to between the parties which states the Software and/or Supplemental Services being purchased, term of use, price, and other applicable transaction details. For the avoidance of doubt, the parties acknowledge and agree the terms and conditions stated within this Agreement and an executed Order Form shall govern with respect to all matters contemplated herein.

"**Purchase Order**" is a Customer's processing document, or similar record, which is used by Customer to demonstrate internal approval and /or record of a purchase. Any terms stated within a Purchase Order shall be null and void and are expressly rejected by the parties.

"**Software**" means software, and other branded offerings made available by GitLab or its Affiliate(s), including but not limited to, GitLab's "DevOps Lifecycle Application Platform."

"**Subscription**" refers to the applicable services, support and function(s) of the Software as provided. Subscriptions are provided in tiers / levels as described in Exhibit B and are based on the number of Users.

"**Subscription Start Date**" is the earlier of, unless otherwise agreed to in writing: (i) if purchasing directly from GitLab the date, (a) stated on an Order Form, (b) transacted via the Website, or (c) Customer is given access to the Software, or (ii) if purchasing through an Authorized Partner, the date in which agreed to between Customer and said Authorized Partner.

"**Subscription Term**" shall begin on the Subscription Start Date and continue for twelve (12) months, unless otherwise agreed to in an Order Form or web-portal purchase.

"**Supplemental Services**" means additional capacity, functionality, storage and/or other elements that Customer may procure in addition to the Software. Such Supplemental Services may be purchased by Order Form or web-portal. Supplemental Services purchased will be: (i) provided as a separate line item in an Order Form or web-portal purchase, and (ii) co-termed to the underlying Subscription Term if not purchased on the Subscription Start Date. For the avoidance of doubt, Supplemental Services are not part of the Software, but rather, are provided in addition to the Software and Supplemental Services shall be subject to the terms and conditions of this Agreement.

"**United States Government Agency**" means any state or federal organization and/or department, of the United States of America, which is using the Software pursuant to the terms set forth within this Agreement.

"**Users**" is defined as the unique and single Individual, or employee, Contractor, or other third party individual authorized by Customer (in accordance with this Agreement) who are able to access the Software purchased under a Subscription, regardless of whether the User actually accesses or the frequency with which they access the Software. A User must be over the age of thirteen (13) years old.

"**Website**" means GitLab's website located at www.gitlab.com and all subdomains, and all content, services, documentation provided on the Website.

2.   **SCOPE OF AGREEMENT**
2.1   This Agreement establishes a framework that will enable GitLab to provide Customer with the

DoD ESI Master License Agreement

Software. Software is provided as part of a Subscription, as described in Exhibit B. In the event Licensor's Software provided as a hosted solution, or *Software-as-a-Service* ("**SaaS Software**"), receives FedRAMP authorization and a DoD Provisional Authorization, Licensor will submit cloud terms for consideration to include as an addendum to the DoD ESI MLA.

3. **FREE SOFTWARE**

3.1. **RESERVED**

3.2. **RESERVED**

3.3   GitLab and Customer acknowledge and agree that Free Software may be: (i) modified and/or updated, without notice, and (ii) limited in functionality, features, maintenance, support and contain other limitations not present in Software purchased. NOTWITHSTANDING THE "WARRANTY" AND "INDEMNIFICATION" SECTIONS BELOW, FREE SOFTWARE AND SOFTWARE OFFERED ON A TRIAL BASIS (AS STATED IN AN ORDER FORM OR WEB-PORTAL PURCHASE) ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND GITLAB SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO SUCH FREE SOFTWARE UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW, IN WHICH CASE GITLAB'S LIABILITY WITH RESPECT TO SUCH FREE SOFTWARE SHALL NOT EXCEED $1,000.00USD.

4. **TERM AND TERMINATION**

4.1. **RESERVED.**

5. **RESTRICTIONS AND RESPONSIBILITIES**
5.1   Customer will not, and will not permit any third party other than Users, to:
(i) use the Software for any purpose other than as specifically authorized in this Agreement;
(ii) use the Software in such a manner that would enable any third party to access the Software;
(iii) use the Software for time sharing or service bureau purposes (including without limitation, sublicensing, distributing, selling, reselling any Software);
(iv) for any purpose other than its and its Affiliates' own internal use;
(v) use the Software other than in compliance with all applicable laws and regulations;
(vi) use the Software in any manner that: (a) is harmful, fraudulent, deceptive, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, or libelous (including without limitation, accessing any computer, computer system, network, software, or data without authorization, breaching the security of another user or system, and/or attempting to circumvent any User authentication or security process); (b) impersonates any person or entity, including without limitation any employee or representative of GitLab; (c) includes content, with respect to the use of SaaS Software, which is illegal or violates the GitLab Community Code of Conduct found here https://about.gitlab.com/community/contribute/code-of-conduct/, or (d) contains a virus, trojan horse, worm, time bomb, unsolicited bulk, commercial, or "spam" message, or other harmful computer code, file, or program (including without limitation, password guessing programs, decoders, password gatherers, keystroke loggers, cracking tools, packet sniffers, and/or encryption circumvention programs); and
(vii) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile the Software or access it to: (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Software, (3) copy any ideas, features, functions or graphics of the Software, or (4) determine whether the Software are within the scope of any patent.

5.2   Nothing in this Agreement shall prohibit Customer from using the Software for benchmark testing or comparative analysis. Customer will comply with all applicable data privacy and security laws and shall have appropriate technological, administrative, and physical controls in place to ensure such compliance.

5.3   **RESERVED.**

5.4   Customer will be responsible for the following:

(i) maintaining the security of Customer's account, passwords (including, but not limited to, administrative and User passwords) and files, and for all uses of Customer account with or without Customer's knowledge or consent; and
(ii) any acts or omissions carried out by Contractors on Customer's behalf. Customer shall ensure that Contractors are subject to terms no less stringent than those stated herein.

5.5   Subject to this Agreement and the applicable Order Form, GitLab will provide Customer Support to Customer for the Subscriptions, during the Subscription Term, at no additional cost. Details regarding Customer Support can be found in Exhibit B, as well as at https://about.gitlab.com/support, as updated from time to time.

5.6   In addition to the obligations set forth in Section 5.3, and subject to the rights set forth in Section

5.7   Customer shall ensure the collection of data as required in order to use the Software ("**Subscription Data**") shall remain unchanged. An overview of the Subscription Data can be found at:

https://gitlab-org.gitlab.io/growth/product-intelligence/metric dictionary/?data_category=subscription.

5.8.   Portions of the Software are governed by underlying open source licenses as described at https://docs.gitlab.com/ee/development/licensing.html. This Agreement and applicable Appendix(eces) establish the rights and obligations associated with Subscriptions and Software and are not intended to limit Customer's right to software code under the terms of an open source license.

5.9   Customer acknowledges and agrees that:
(i) Account names are administered by GitLab on a "first come, first serve" basis;
(ii) Intentional name squatting, or purchasing, soliciting, or selling of an account name is prohibited; and
(iii) GitLab reserves the right to remove, rename, or close inactive accounts at its discretion.

5.9   Customer represents and warrants that it has, and shall retain, all right, title and interest (including, without limitation, sole ownership of) relating to Customer Content, and the intellectual property rights related thereto.

6.   **PAYMENT OF FEES**
6.1.   **RESERVED.**

7.   **CONFIDENTIALITY**
7.1.   **RESERVED.**

8.   **INTELLECTUAL PROPERTY RIGHTS**
8.1   Subject to the terms and conditions set forth elsewhere in this Agreement, GitLab hereby grants to Customer and its Affiliates a limited, non-exclusive, non-transferable (except as otherwise set forth elsewhere in the Agreement), non-sublicensable license for Customer's and its Affiliates' Users to use, reproduce, modify, prepare derivative works based upon, and display the code of Software at the tier level selected by Customer, or as set forth in an Order Form, solely for: (i) its internal use in connection with the development of Customer's and/or its Affiliates' own software; and (ii) the number of Users for which Customer has paid GitLab. Notwithstanding anything to the contrary,

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Customer agrees that GitLab and/or its licensors (as applicable) retain all right, title and interest in and to all Software incorporated in such modifications and/or patches, and all such Software may only be used, copied, modified, displayed, distributed, or otherwise exploited in full compliance with this Agreement, and with a valid Subscription for the correct number of Users.

8.2 Except as expressly set forth herein, GitLab (and its licensors, where applicable) will retain all intellectual property rights relating to the Software and any suggestions, ideas, enhancement requests, feedback, or other recommendations provided by Customer, its Affiliates, Users or any third party relating to the Software (herein referred to as "**Feedback Materials**"), which are hereby assigned to GitLab. For the avoidance of doubt, Feedback Materials shall not include Customer Confidential Information or intellectual property owned by Customer. This Agreement does not constitute a sale of the Software and does not convey to Customer any rights of ownership in or related to the Software or any other intellectual property rights.

8.3 Customer shall not remove, alter or obscure any of GitLab's (or its licensors') copyright notices, proprietary legends, trademark or service mark attributions, patent markings or other indicia of GitLab's (or its licensors') ownership or contribution from the Software.

9. **WARRANTY**

9.1. **RESERVED**

9.2 If at any time GitLab fails to comply with the warranties in this Agreement, Customer may promptly notify GitLab in writing of any such noncompliance. GitLab will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance. If the noncompliance is not corrected or if a reasonably acceptable plan for correcting the non-compliance is not established during such period, Customer may terminate this Agreement and receive a prorated refund for the unused portion of the Subscription Term as its sole and exclusive remedy for such noncompliance.

9.3 EXCEPT AS SPECIFICALLY SET FORTH IN THE DOD ESI MLA AGREEMENT, THE SOFTWARE, SUPPLEMENTAL SERVICES AND CONFIDENTIAL INFORMATION AND ANYTHING P ROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND. GITLAB AND ITS LICENSORS HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

10. **INDEMNIFICATION**
10.1 **RESERVED.**

11. **LIMITATION OF LIABILITY**

11.1 **RESERVED.**

12. **U.S. GOVERNMENT MATTERS**

12.1 Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of Controlled Subject Matter, in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.

12.2 Without limiting the foregoing, Customer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to Embargoed Countries, or to or by a national or resident thereof, or to or by Designated Nationals. The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Software is representation and warranty that the Customer, Customer personnel, or Contractors are not located in, under the control of, or a national or resident of an Embargoed Country or a Designated National.

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12.3   The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations.

12.4   As defined in FAR section 2.101, any software and documentation provided by GitLab are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

13.   **FORCE MAJEURE**

13.1   **RESERVED.**

14.   **SECURITY / DATA PROTECTION**

14.1   Without limiting GitLab's obligations as stated in Section 11 of the MLA (Confidentiality) and subject to the Customer licensing any SaaS-based Software, GitLab shall be responsible for establishing and maintaining a commercially reasonable information security program that is designed to: (i) ensure the security and confidentiality of the Customer Content; (ii) protect against any anticipated threats or hazards to the security or integrity of the Customer Content; (iii) protect against unauthorized access to, or use of, the Customer Content; and (iv) ensure that all subcontractors of GitLab, if any, comply with all of the foregoing. In no case shall the safeguards of GitLab's information security program be less stringent than the information security safeguards used by GitLab to protect its own commercially sensitive data. Customer shall use commercially reasonable security and anti-virus measures when accessing and using the Software and to prevent unauthorized access to, or use of the Software, and notify GitLab promptly of any such unauthorized access or use of which it becomes aware.

14.2   **RESERVED.**

14.3   The parties acknowledge and agree that, (i) the Software is not designed for the purpose(s) of storing, processing, compiling or transmitting Sensitive Data (as defined herein), and (ii) Customer shall not use the Software, or otherwise provide to GitLab without prior written consent, Sensitive Data under this Agreement. "**Sensitive Data**" means: (i) special categories of data enumerated in European Union Regulation 2016/679, Article 9(1) or any successor legislation; (ii) patient, medical, or other protected health information regulated by the Health Insurance Portability and Accountability Act (as amended and supplemented) ("**HIPAA**"); (iii) credit, debit, or other payment card data or financial account information, including bank account numbers or other personally identifiable financial information; (iv) social security numbers, driver's license numbers, or other government identification numbers; (v) other information subject to regulation or protection under specific laws such as the Children's Online Privacy Protection Act or Gramm-Leach-Bliley Act ("**GLBA**") (or related rules or regulations); or (vi) any data similar to the above protected under foreign or domestic laws. Customer further acknowledges that the Software and related features are not intended to meet any legal obligations for these uses, including HIPAA and GLBA requirements, and that GitLab is not a Business Associate as defined under HIPAA. Therefore, notwithstanding anything else in this Agreement, GitLab has no liability for Sensitive Data processed in connection with Customer's use of the Software.

14.4.   The Software and its documentation are "Commercial items," "Commercial computer software" and "Computer software documentation" as defined by the Federal Acquisition Regulations ("FAR") and Defense Federal Acquisition Regulations Supplement ("DFARS"). Pursuant to FAR 12.211, FAR 12.212, DFARS, 227.7202-1 through 227.7202-4, and their successors, Customer acquires the Software and its documentation subject to the terms of this Agreement.

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15.   **MISCELLANEOUS**

15.1   If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

15.2   This Agreement is not assignable, transferable or sublicensable by either party without the other party's prior written consent, not to be unreasonably withheld or delayed; provided that either party may transfer and/or assign this Agreement to a successor in the event of a sale of all, or substantially all, of its business or assets to which this Agreement relates.

15.3   This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. All waivers and modifications must be in a writing signed or otherwise agreed to by each party, except as otherwise provided herein.

15.4   No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect whatsoever.

15.5   All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid.

15.7   **RESERVED**.

APPENDIX 1
Software as a Service (SaaS) offering

RESERVED

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Exhibit B – GitLab Federal, LLC Support Provisions

Fees for the Subscriptions are based upon the number of Users and the applicable level of support and/or functionality of the Software, as set forth in the table below. Users within this context do not include "Internal Users" that are created programmatically throughout the GitLab codebase when necessary, and do not count towards a license limit. GitLab uses Internal Users (sometimes referred to as "bots") to perform actions or functions that cannot be attributed to a regular User. These Internal Users are created programmatically throughout the codebase itself when necessary, and do not count towards a license limit. They are used when a traditional User account would not be applicable, for example when generating alerts or automatic review feedback. Technically, an Internal User is a type of User, but they have reduced access and a very specific purpose. They cannot be used for regular user actions, such as authentication or API requests. Other examples of Internal Users are Alert Bot, Ghost User, Support Bot and Visual Review Bot. Details on Internal Users can be found at https://docs.gitlab.com/ee/development/internal_users.html.

In the event Customer does not reasonably comply with written specifications or instructions from GitLab's service engineers, regarding any support issue or request (including without limitation, failure to make backups of Customer Content or versions of Software) (each, a "Support Issue"), GitLab may cease its support obligations to Customer with respect to such Support Issue upon fifteen (15) days written notice and Customer's inability to cure such noncompliance within the notice period.

SUBSCRIPTIONS AND LEVELS OF SUPPORT

Subscription*	Level of Support (First Response Time)	Support Details
Free (Formerly Core or Free)	GitLab Community Forum	Visit: https://forum.gitlab.com
Starter (F.K.A Basic) or Bronze	GitLab Standard Support	24 x 5 Support Next business day response (24 hour SLA) Submit Tickets at : https://support.gitlab.com
Premium (Formerly Premium or Silver)	Priority Support (Based upon Support Impact**)	See Priority Support Overview https://support.gitlab.com
Ultimate (Formerly Gold or Ultimate)	Priority Support (Based upon Support Impact**)	See Priority Support Overview https://support.gitlab.com

*Note: Subscription names are subject to change, however, the applicable Subscription for that Tier shall remain the same during a Subscription Term.

**Support Impact categories are defined at: https://about.gitlab.com/support/#definitions-of-support-impact

PRIORITY SUPPORT OVERVIEW: https://about.gitlab.com/support/#priority-support

CUSTOMER SUCCESS SERVICES

Customer that purchase a minimum of $50,000USD/year worth of GitLab Software licenses may be assigned a shared Technical Account Manager ("TAM").

Customer Success Services provided by the assign TAM include additional assistance with respect to Customer's use of the GitLab Software. Customer Success Services are provided at no charge, an overview of the Customer Success Services can be found at https://about.gitlab.com/services/customer-success-services/. In order to receive Customer Success Service(s), Customer understands that additional data and information ("**Operational Data**") will be collected in accordance with Section 47 of the DoD ESI MLA.

DoD ESI Master License Agreement

Additional GitLab Resources
GitLab provides a wealth of additional resources available to public sector customers which include links to solutions, webinars, workshops, and lunch & learns among other events, often at no additional cost. Details can be found at https://about.gitlab.com/solutions/public-sector/