GitHub Customer Agreement

This Agreement consists of the General Terms, the applicable Product Specific Terms and any additional terms GitHub presents when an order is placed. The Agreement takes effect when Customer accepts the General Terms, and the individual who accepts these General Terms represents that it is authorized to enter into this Agreement on behalf of Customer.

GitHub General Terms

These General Terms apply to all of Customer's orders under this Agreement. Capitalized terms have the meanings given under Definitions.

1 License to use GitHub Products and Professional Services

1.1 **License grant.** Products are licensed and not sold. Subject to Customer's compliance with this Agreement, GitHub grants to Customer a nonexclusive and limited license to install and use the Products ordered as provided in the applicable Product Specific Terms and this Agreement. The licenses are only for Customer's internal business purposes, and are non-transferable except as expressly permitted under this Agreement or applicable law.

1.2 **Duration of licenses.** Licenses expire at the end of the applicable Subscription Term unless renewed.

1.3 **Accounts.** Customer may assign each Subscription License to one individual End User for use or access on any number of devices. Customer may not reassign a Subscription License to another End User within 90 days of the last assignment, except where End User's relationship with Customer ends or End User goes on leave. End User accounts may not be shared by individuals.

1.4 **End Users.** Customer controls access to and use of the Products by End Users. Customer is responsible for End Users' use.

1.5 **Product Specific Terms.** Product Specific Terms apply to Products, such as GitHub AE, GitHub Enterprise Cloud and GitHub Enterprise Server. If there is a conflict between the Product Specific Terms and the General Terms, the Product Specific Terms apply for that Product.

1.6 **Previews.** Previews are provided "AS-IS", "WITH ALL FAULTS" and "AS AVAILABLE". GitHub may change or discontinue Previews at any time without notice.

1.7 **Professional Services.** Customer may request Professional Services from GitHub. The parties will first agree on a SOW for such work.

When GitHub provides Professional Services to Customer, each party owns its Pre-Existing Work. GitHub has a right to use Customer's Pre-Existing Work solely to provide Professional Services under this Agreement.

Each party will exclusively own all Improvements to that party's Pre-Existing Work. Each party therefore assigns to the other party all rights, title, and interest to any Improvements it makes to the other party's Pre-Existing work. Each party grants the other party a worldwide, non-exclusive, fully paid-up license to use, reproduce, distribute and create derivative works of Improvements. However, Customer only grants this license to GitHub for Improvements that are generic solutions or services.

All Developments will be owned by GitHub. Customer assigns to GitHub all rights, title, and interest to any Developments it makes. GitHub grants Customer a worldwide, non-exclusive, fully paid-up license to use, reproduce, and create derivative works of Developments, but not distribute or transfer them to a third party. If GitHub releases Improvements or Developments to Customer as open source software, the open source terms will apply instead of this license grant.

1.8 **Product changes.** GitHub has the right to make changes to the Products if such changes do not materially lessen the Product's functionality. GitHub may provide additional terms that apply to Customer's use of updates, new features or related software.

1.9 **Affiliates.** Customer's Affiliates may use the Products under this Agreement. Customer is responsible for its Affiliates' use, and Customer has the sole right to enforce this Agreement.

1.10 **Compliance with laws.** Customer's use of the Products must not violate any applicable laws, including copyright or trademark laws, export control laws and regulations, including laws and regulations in its jurisdiction.

1.11 **Reservation of rights.** Products are protected by copyright and other intellectual property laws and international treaties. GitHub reserves all rights not expressly granted in this Agreement, and no rights are granted or implied by waiver or estoppel.

1.12 **Feedback.** Feedback by Customer is voluntary and may be used by GitHub for any purpose without obligation of any kind.

1.13 **Restrictions.** Unless expressly permitted in this Agreement or by law, Customer may not:

(a) reverse engineer, decompile, or disassemble any Product, or try to do so;

(b) run, upgrade or downgrade, or transfer parts of a Product separately at different times or on different devices;

(c) install, use, or distribute other software or technology in any way that makes

GitHub's intellectual property or technology subject to any other license terms;

(d) work around technical limitations in a Product or restrictions in Product documentation;

(e) sell, rent, lease, sublicense, distribute or lend any Products to others, in whole or in part, or host Products for use by others.

2 Support

Support. GitHub will Support a generally available release of a Product for one year from the original release date or 6 months from the last generally available update of such release, whichever is longer. GitHub is not responsible for Support if (a) someone other than a GitHub Representative modifies the Products or (b) Customer uses the Products in a manner unauthorized by the Agreement or Product documentation.

3 Data Protection

Personal Data. Customer and GitHub will comply with applicable data protection laws.

4 Confidentiality

4.1 **Existing NDA.** If the parties have entered into a Non-Disclosure Agreement, those terms apply instead of this confidentiality section.

4.2 **Confidential Information.** "Confidential Information" is non-public information in any form that is marked as "confidential" or that a reasonable person should understand is confidential. This includes, but is not limited to, Customer Content, the terms of this Agreement and Customer's account authentication credentials.

Confidential Information does not include information that:

(a) becomes publicly available without a breach of a confidentiality obligation;

(b) was received lawfully from another source without a confidentiality obligation;

(c) is independently developed; or

(d) is Feedback.

4.3 **Protection of Confidential Information.** Each party will take reasonable steps to protect the other's Confidential Information. A party will only use the other party's Confidential Information as part of the parties' business relationship. Neither party will disclose Confidential Information to third parties. A party may only share Confidential Information with a party's Representatives on a need-to-know basis, under nondisclosure obligations at least as protective as this Agreement. Each party remains responsible for the use of Confidential Information by its Representatives. A party must promptly notify the other party if it discovers any unauthorized use or disclosure.

4.4 **Disclosure required by law.** A party may disclose the other's Confidential Information if required by law, but only after it notifies the other party (if legally permissible) so that the other party can seek a protective order.

4.5 **Residual information.** Neither party is required to restrict its Representatives in other work assignments if they have had access to Confidential Information. Each party agrees that the use of information retained in Representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under this Agreement or trade secret law.

4.6   **Duration of confidentiality obligation.** These confidentiality obligations apply (1) for Customer Content, until it is deleted from the Online Services; and (2) for all other Confidential Information, for a period of five years after a party receives the Confidential Information.

5   Warranties

5.1   **Limited warranties and remedies.**

(e)   **Online Services.** GitHub warrants that the Online Services will perform in accordance with the applicable SLA during Customer's use. Customer's remedies for breach of this warranty are described in the SLA.

(f)   **Software.** GitHub warrants that the Software will perform substantially as described in the applicable Product documentation for one year from the date Customer acquires a license for that version. If it does not and Customer notifies GitHub within the warranty term, GitHub will at its option (a) return the price Customer paid for the Software license or (b) repair or replace the Software.

(g)   **Professional Services.** GitHub warrants that it will perform Professional Services with professional care and skill. If it does not, and Customer notifies GitHub within 90 days of the date the Professional Services were performed, GitHub will at its option and expense either: (1) re-perform the Professional Services or (2) except for dedicated resources (such as, but not limited to, Premium Services and Services Account Engineers), return the price Customer paid for the faulty deliverables part of the Professional Services. Each party also represents and warrants that it will secure the permission of the other party prior to providing any source code in a manner that would subject the other party's technology or intellectual property to any other license terms or require the other party to distribute source code to any of its technologies.

(h)   **Support.** GitHub warrants that it will perform Support in accordance with the applicable Support program. Customer's remedies for breach of this warranty are described in the Support programs.

The remedies above are Customer's sole remedies for breach of the warranties. Customer waives any warranty claims not made during the warranty period.

5.2   **Exclusions.** The warranties in this Agreement do not apply to problems caused by accident, abuse, or use inconsistent with this Agreement, including failure to meet minimum system requirements. These warranties do not apply to Previews.

5.3   **Disclaimer.** Except for the limited warranties above and subject to applicable law, GitHub provides no other warranties. It disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.

6   Third party claims

6.1   The parties will defend each other against third party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defense and any settlement of it.

6.2   The party being defended must provide the defending party with all requested assistance, information, and authority. The defending party will then reimburse the other party for reasonable out-of-pocket expenses it incurs in providing such assistance.

6.3   This section describes the parties' sole remedies and entire liability for such claims.

(a)   **By GitHub.** GitHub will defend Customer against any third-party claim that a Product or Professional Services made available by GitHub for a fee and used within the scope of this Agreement (unmodified as provided by GitHub and not combined with anything else), misappropriated a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party. If GitHub is unable to resolve a claim of misappropriation or infringement, it may, at its option, either (1) modify or replace the Product or Professional Services with a functional equivalent or (2) terminate Customer's license and refund any license fees, including amounts paid in advance for any usage period after the termination date. GitHub will not be liable for any claims or damages due to Customer's continued use of a Product or Professional Services after being notified to stop due to a third-party claim.

(b)   **By Customer.** To the extent permitted by applicable law, Customer will defend GitHub and its

Affiliates against any third-party claim that: (1) any Customer Content misappropriated a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; or (2) Customer's use of any Product, alone or in combination with anything else, violates the law or harms a third party.

7 Limitation of liability

7.1 Each party's maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the following:

(a) **Products.** For Products ordered on a subscription basis, GitHub's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Product during the 12 months before the incident.

(b) **Previews.** For Previews, GitHub's maximum liability is limited to US $5,000.

(c) **Professional Services.** For Professional Services, GitHub's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Professional Services during the 12 months before the incident.

(d) **Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, or loss of use, loss of profits, or interruption of business; however caused or on any theory of liability.

(e) **Exceptions.** No limitation or exclusions will apply to liability arising out of either party's (1) confidentiality obligations (except for liability related to Customer Content, which is subject to the above limitation for Products); (2) defense obligations above; or (3) violation of the other party's intellectual property rights.

8 Pricing and payment

8.1 **Fees.** Customer agrees to pay annual fees in full and up front within thirty (30) days of the invoice date. Amounts payable are non-refundable, except as stated in this Agreement regarding Product warranty and third-party claims. If billed based on usage, GitHub will invoice according to the billing model described in the Product documentation.

8.2 **Late Payment.** If Customer fails to pay fees on time, GitHub has the right to charge 2% monthly interest on past due amounts as allowed by law. GitHub also has the right to charge Customer for all expenses of recovery, to terminate the applicable order or SOW and to take any other action at law.

8.3 **Taxes.** Customer is solely responsible for all taxes, fees, duties and governmental assessments (except for taxes based on GitHub's net income) that are imposed or become due in connection with this Agreement. If any taxes are required to be withheld on payments invoiced by GitHub, Customer may deduct such taxes from the amount owed and pay them to the appropriate taxing authority, but only if Customer promptly provides GitHub an official receipt for those withholdings and other documents reasonably requested to allow GitHub to claim a foreign tax credit or refund. Customer will ensure that any taxes withheld are minimized to the extent possible under applicable law.

9 Term and termination

9.1 **Term.** This Agreement is effective until terminated by a party, as described below.

9.2 **Termination without cause.** Either party may terminate this Agreement without cause on 30 days' notice. Customer terminates the Agreement in its account settings. Licenses granted on a subscription basis will continue for the duration of the Subscription Term, subject to the terms of this Agreement.

9.3 **Termination for cause.** Without limiting other remedies, either party may terminate this Agreement for material breach immediately if the other party fails a curable breach within a 30-day notice period. Upon such termination:

(a) All licenses granted under this Agreement will terminate immediately.

(b) All amounts due under any unpaid invoices will become due and payable immediately.

(c) If GitHub is in breach, Customer will be reimbursed for any prepaid unused fees.

9.4 **Migration.** Customer may migrate or request migration of the data in its repositories for up to ninety

(90) days after termination of this Agreement. Customer may not use the Products on a production basis during that time.

9.5 **Termination for regulatory reasons.** GitHub may modify, discontinue, or terminate a Product in any country or jurisdiction where there is any current or future government regulation, obligation, or other requirement, that (1) is not generally applicable to businesses operating there; (2) presents a hardship for GitHub to continue offering the Product without modification; or (3) causes GitHub to believe these terms or the Product may conflict with any such regulation, obligation, or requirement. If GitHub terminates a subscription for regulatory reasons, Customer will receive, as its sole remedy, a reimbursement for any prepaid, unused subscription fees.

10   Miscellaneous

10.1 **Independent contractors.** The parties are independent contractors. Customer and GitHub may develop products independently without using the other's Confidential Information.

10.2 **Amendments.** GitHub may require Customer to accept revised or additional terms before processing a new order. Any additional or conflicting terms and conditions presented by Customer are expressly rejected and will not apply.

10.3 **Order of precedence.** Conflicting terms in the Product Specific Terms take precedence over these General Terms as to the applicable Products. Other than that, these General Terms will take precedence over any conflicting terms in other documents.

10.4 **Assignment.** Either party may assign this Agreement to an Affiliate but it must notify the other party in writing of the assignment. GitHub may also assign its rights to receive payment and enforce Customer's payment obligations. Any other assignment of this Agreement must be approved by the other party in writing. Any attempted assignment without required approval will be void.

10.5 **Compliance with Trade Laws.** The parties acknowledge that the Products may be subject to U.S. and other countries' export jurisdictions. Each party will comply with all laws and regulations applicable to the import or export of the Items, including, but not limited to, the U.S. Export Administration Regulations, International Traffic in Arms Regulations, and sanctions regulations administered by the U.S. Office of Foreign Assets Control ("OFAC") ("trade laws"). Customer will not take any action that causes GitHub to violate U.S. or other applicable trade laws. If Customer learns of a potential violation of trade laws relating to the performance of this Agreement, or a potential violation of the terms in this subsection, it will alert GitHub as soon as possible, but in no event more than 14 days after acquiring this knowledge. GitHub may suspend or terminate this Agreement to the extent that it reasonably concludes that performance would cause it to violate U.S. or other applicable trade laws, including those described above, or put it at risk of becoming the subject of economic sanctions under such trade laws.

10.6 **Severability.** If any part of this Agreement is held to be unenforceable, the rest of the Agreement will remain in full force and effect.

10.7 **Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.

10.8 **No third-party beneficiaries.** This Agreement does not create any third-party beneficiary rights except as expressly provided by its terms.

10.9 **Survival.** All provisions survive termination of this Agreement except those requiring performance only during the term of the Agreement.

10.10 **Notices.** Notices to GitHub may be submitted via email to legal@support.github.com. If Customer wishes to formally service notice on GitHub, it must be made through GitHub's registered agent:

> GitHub, Inc.
> c/o Corporation Service Company
> 2710 Gateway Oaks Drive, Suite 150N
> Sacramento, CA 95833-3505

Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier confirmation of delivery. Notices to Customer will be sent to the individual at the address Customer identifies on its account as its contact for notices. GitHub may send notices and other information to Customer by email or other electronic form.

10.11 **Applicable law and venue.** This Agreement will be governed by and construed in accordance with the laws of the State of California and federal laws of the United States. Any legal action or proceeding will be brought exclusively in the federal or state courts located in the Northern District of California. The parties consent to personal jurisdiction and venue there.

If Customer's principal office is outside the Americas, however, this Agreement will be governed by the laws of Ireland. Any legal action or proceeding will be brought exclusively in the courts located in Dublin. The parties consent to personal jurisdiction and venue there.

The above choices of venue do not prevent either party from seeking injunctive relief in any jurisdiction with respect to a violation of intellectual property rights or confidentiality obligations.

The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement.

10.12 **GitHub Affiliates and contractors.** GitHub may perform its obligations under this Agreement through its Affiliates and use contractors to provide certain services. GitHub remains responsible for their performance.

10.13 **U.S. Public Sector Amendment.** The U.S. Public Sector Amendment applies to Customers using the Products in a U.S. government capacity.

10.14 **Government procurement rules.** By accepting this agreement, Customer represents and warrants that (i) it has complied and will comply with all applicable government procurement laws and regulations; (ii) it is authorized to enter into this Agreement; and (iii) this Agreement satisfies all applicable procurement requirements.

11 Definitions

"Affiliate" means any legal entity that controls, is controlled by, or is under common control with a party. In this context control means ownership of more than a 50% interest in an entity.

"Confidential Information" is defined in the "Confidentiality" section.

"Customer" means the entity identified in this Agreement.

"Customer Content" means text, data, software, images and any other materials that Customer provided to GitHub or its Affiliates by, or on behalf of, Customer and its Affiliates through use of the Online Services.

"Developments" means new technology, written materials, or proofs of concept under this Agreement that do not include any Pre-Existing Work or Improvements.

"End User" means any person Customer permits to use a Product or access Customer Content.

"Feedback" means a comment or suggestion volunteered by a party about the other party's business, products or services.

"GitHub" means GitHub, Inc.

"U.S. Public Sector Amendment" means the amendment for U.S. government and public agencies available at github.com/enterprise-legal.

"Improvements" means all modifications and derivative works created under this Agreement to a party's Pre-Existing Work.

"Online Service" means the GitHub-hosted service to which Customer may subscribe under this Agreement.

"Pre-Existing Work" means all rights, title and interest to a Party's pre-existing technology and Confidential Information, including all intellectual property rights.

"Previews" means Products provided for preview, evaluation, demonstration or trial purposes, or pre-release versions of the Products.

"Product" means all Software, Online Services and Additional products that GitHub offers, including Previews, updates, patches, bug fixes and support provided by GitHub.

"Product Specific Terms" means the additional product terms that apply to Products available under this Agreement. The Product Specific Terms are provided at github.com/enterprise-legal.

"Professional Services" means training, consulting, or implementation services. Professional Services do not include support.

"Representatives" means a party's employees, Affiliates, contractors, advisors and consultants.

"SLA" means GitHub Online Services SLA, available at github.com/enterprise-legal, which specifies the minimum service level for the Online Services.

"Software" means licensed copies of the on-premises software GitHub Enterprise Server identified in the Product Specific Terms, including any generally available updates of the Software.

"SOW" means a statement of work describing the Professional Services that GitHub will perform, fees and other obligations.

"Support" means GitHub's support programs described on github.com/ support-enterprise.

"Subscription License" means the license assigned to an End User.

"Subscription Term" means the license period agreed between the parties when the Products are ordered.