GITHUB ENTERPRISE SERVER LICENSE AGREEMENT

This GitHub Enterprise Server License Agreement (the "**Agreement**") is entered into and effective as of the last date of signature (the "**Agreement Effective Date**") by and between GitHub, Inc., a Delaware corporation having its principal place of business at 88 Colin P. Kelly Jr. Street, San Francisco, CA 94107 ("**GitHub**") and customer ("**Customer**").

This Agreement applies to the following GitHub products which are defined below (collectively, "**Products**"): (a) the Software, (b) any related Support, and (c) any related Professional Services.

If Customer has purchased the Products from a GitHub Partner, the following provisions of this Agreement will be superseded by the terms upon which Customer has agreed with the GitHub Partner: Section 7, Payment; Section 8, Delivery; Section 9, Verification; and Section 16, Termination.

1. Definitions. Capitalized words not listed here will be defined within the Agreement.

"**Agreement Effective Date**" is the earlier of the date that Customer either clicks "I Agree" to the terms and conditions of this Agreement, or that it first places an order for the Products.

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with a party where "control" means having more than fifty percent (50%) ownership or the right to direct the management of the entity.

"**Application**" or "**Learning Lab**" means the GitHub Learning Lab application and associated documentation.

"**Beta Previews**" means software, services, or features identified as alpha, beta, preview, early access, or evaluation, or words or phrases with similar meanings.

"**Customer Modifications**" means Software modifications. Customer may make solely for the purpose of developing bug fixes, customizations, or additional features to any libraries licensed under open source licenses that may be included with or linked to by the Software.

"**Documentation**" means any manuals, documentation and other supporting materials related to the Software that GitHub provides or makes available to Customer. Documentation is considered part of the Software.

"**Feedback**" means any ideas, know-how, algorithms, code contributions, suggestions, enhancement requests, recommendations, or any other feedback on GitHub products or services.

"**Fees**" means the fees Customer is required to pay GitHub to use the Products during the applicable License Term or Professional Services, as such fees are reflected on an Order Form or SOW.

"**GitHub Partner**" means a company authorized to resell GitHub Products under the terms and conditions of GitHub's Channel Partner Agreement.

"**License Key**" means the data file used by the Software's access control mechanism that allows Customer to install, operate, and use the Software is delivered via a secure, password-protected website.

"**License Term**" means the period of one (1) year from the License Effective Date unless an alternate period is specified in an Order Form. GitHub will provide Customer with a renewal notice at least sixty

(60) days before the expiration of License Term and will generate a new Order Form for renewal. GitHub will provide a new License Key for Customer to download that will allow continued use of the Software in accordance with the Order Form.

"**Order Form**" means written or electronic documentation (including a quote) that the Parties use to order the Products.

"**License Effective Date**" is the effective date of each Order Form as stated therein.

"**Parties**" means references to GitHub and Customer collectively. Each may be referred to individually as a "**Party**".

"**Professional Services**" means training, consulting, or implementation services that GitHub provides to Customer pursuant to a mutually executed Statement of Work. Professional Services do not include Support.

"**Professional Services Credits**" means the payment method for purchasing Professional Services (exclusive of travel and lodging expenses) upfront that Customer may use over a period of twelve (12) months (unless otherwise stated in an Order Form) for its Professional Services needs. Any Professional Services Credits that remain unused at the end of twelve (12) months from the date of purchase (or as otherwise stated in an Order Form) are automatically cancelled and are non-refundable.

"**Release**" means a Software release that GitHub makes generally available to its customers, along with any corresponding changes to Documentation, that contains enhancements, new features, or new functionality, generally indicated by a change in the digit to the right of the first decimal point (e.g., x.x.x to x.y.x) or to the left of the first decimal point (e.g., x.x.x to y.x.x).

"**Software**" means GitHub's proprietary Enterprise Server software. Software includes any applicable Documentation, as well as any Updates to the Software that GitHub provides to Customer or that Customer can access under this Agreement.

"**Statement of Work**" or "**SOW**" means a mutually executed statement of work detailing the Professional Services GitHub will perform, related Fees, and each Party's related obligations.

"**Subscription License**" means the license assigned to each User to install, operate, access, and use the Product or Service on Customer's behalf. Customer may only assign one Subscription License per User per GitHub Enterprise Server instance. For clarity, however, once Customer assigns a Subscription License to a User, Customer will not be authorized to bifurcate the Subscription License so that one User can use a Subscription License on one GitHub Enterprise Server instance while another User uses the same Subscription License on another instance of GitHub Enterprise Server.

"**Update**" means a Software release that GitHub makes generally available to its customers, along with any corresponding changes to Documentation that contains error corrections or bug fixes, generally indicated by a change in the digit to the right of the second decimal point (e.g., x.x.x to x.x.y).

"**User**" means a single person or machine account that initiates the execution of the Software or interacts with or directs the Software in the performance of its functions.

2. Software License Grant.

2.1   *Software License*. GitHub grants to Customer a non-exclusive, non-transferable, worldwide, royalty-free, limited-term license to install and use the Software for Customer's internal business purposes during the applicable Subscription Term, in accordance with the

Documentation, and only for the number of Subscription Licenses stated in Customer's Order Form. The Software includes components licensed to GitHub by third parties, including software whose licenses require GitHub to make the source code for those components available. The source code for such components will be provided upon request.

2.2   *Application Course Materials*. Anything provided to Customer by GitHub, including materials and any and all derivatives thereof shall be owned solely by GitHub, provided, however, that GitHub grants Customer a worldwide, non-exclusive, limited-term, non-transferable royalty-free license to copy, maintain, use and run (as applicable) such materials, solely for its internal business purposes, associated with its use of the Application. This license grant is subject to any open source licensing agreements that may be provided along with source code.

2.3   *Customer Created Course Materials*. Notwithstanding the foregoing, course material originated and created by Customer shall be owned solely by Customer.

3. License Restrictions.

Except as expressly permitted by this Agreement, by law, or by applicable third party license, Customer and its Affiliates must not and must not allow any third party to: (i) sublicense, sell, rent, lease, transfer, assign, or redistribute the Software; (ii) host the Software for the benefit of third parties; (iii) disclose or permit any third party to access the Software, except as expressly permitted in this Agreement; (iv) hack or modify the License Key, or avoid or change any license registration process; (v) modify or create derivative works of the Software, or merge the Software with other software; (vi) disassemble, decompile, bypass any code obfuscation, or otherwise reverse engineer the Software or attempt to derive any of its source code, in whole or in part; (vii) modify, obscure, or delete any proprietary rights notices included in or on the Software or Documentation; (viii) otherwise use or copy the Software or Documentation in a manner not expressly permitted by this Agreement; or (ix) use the Software beyond its applicable License Term.

4. Intellectual Property Rights.

As between the Parties, GitHub owns all right, title and interest, including all intellectual property rights, in and to the Products. GitHub reserves all rights in and to the Products not expressly granted to Customer under this Agreement. GitHub may use, modify, and incorporate into its Products, any Feedback, comments, or suggestions that Customer may provide or post in forums without any obligation to Customer.

5. Subscription Licenses.

Subscription Licenses are granted on a per User basis and multiple Users may not use the same Subscription License. Customer may reassign a Subscription License to a new User only after ninety (90) days from the last reassignment of that same Subscription License, unless the reassignment is due to (i) permanent hardware failure or loss, (ii) termination of the User's employment or contract, or (iii) temporary reallocation of Subscription Licenses to cover a User's absence. When Customer reassigns a Subscription License from one User to another, Customer must block the former User's access to the Subscription License.

6. Affiliates.

Customer's Affiliates are authorized to use the Software in accordance with this Agreement, so long as Customer remains fully responsible for their access and use of the Software.

7. Payment.

7.1   *Fees.* Customer agrees to pay the Fees in full, up front without deduction or setoff of any kind, in U.S. Dollars. Customer must pay the Fees within thirty (30) days of the GitHub invoice date. Amounts payable under this Agreement are non-refundable, except as provided in Sections 12 and 13.1. If Customer fails to pay any Fees on time, GitHub reserves the right, in addition to taking any other action at law or equity, to (i) charge interest on past due amounts at 1.0% per month or the highest interest rate allowed by law, whichever is less, and to charge all expenses of recovery, and (ii) terminate the applicable Order Form or SOW. 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.

7.2   *Professional Services Credits*. If Customer uses Professional Services Credits to pay for Professional Services, then upon Customer's receipt of an SOW, the applicable Professional Services Credits will be deducted from Customer's Professional Services Credits balance. Customer is responsible for ensuring that its purchase order issued to GitHub for the Professional Services reflects the pricing set forth in the SOW. If there is any difference in pricing listed in the SOW and the pricing listed in Customer's purchase order, the pricing in the SOW will control. The Parties agree that SOWs payable via Professional Services Credits do not have to be signed by either Party to be valid and enforceable. All Professional Services Credits must be used within the time set forth in the Order Form or will automatically be cancelled and are non-refundable. Customer may not apply Professional Services Credits to travel and lodging expenses, which must be invoiced separately.

7.3   *Purchasing Additional Subscription Licenses*. Customer may obtain additional Subscription Licenses under this Agreement by submitting a request through GitHub's website or via its sales team. A new Order Form will then be generated and if Customer purchases the additional Subscription Licenses, Customer must pay the then-currently applicable Fees for them, prorated for the balance of the applicable Subscription Term. Upon renewal of Customer's Subscription Licenses for another Subscription Term, GitHub will invoice all Subscription Licenses at once on an annual basis unless otherwise specified in an Order Form.

8. Delivery.

GitHub will make the License Key available for Customer to download on a secure, password-protected website. All deliveries under this Section 8 will be electronic. For the avoidance of doubt, Customer is responsible for installation of any Software and acknowledges that GitHub has no further delivery obligation with respect to the Software after delivery of the License Key. As Updates become available, GitHub will make those available for download on the same website. Customer must Update the Software on a commercially reasonable basis but no less than one (1) time per year. Customer is responsible for maintaining the confidentiality of Customer's usernames and passwords.

9. Verification.

At GitHub's request, Customer will promptly provide GitHub with a Software-generated report verifying that Customer is using the Software in accordance with this Agreement. GitHub will invoice Customer for any additional use, effective from the date its use first exceeded the terms of the Agreement.

10. Support.

10.1   *Support*. GitHub will provide standard technical Support for the Software at no additional charge twenty-four (24) hours per day, five (5) days per week, excluding weekends and national U.S. holidays. Standard Support is only offered via web-based ticketing through GitHub Support, and Support requests must be initiated from a User with which GitHub's Support team can interact. GitHub may provide premium Support (subject to the [Premium Support for Enterprise Server terms](#)) or dedicated technical Support for the Software at the Support level, Fees, and Subscription Term specified in an Order Form or SOW.

10.2   *Exclusions.* GitHub will use reasonable efforts to correct any material, reproducible errors in the Software of which Customer notifies GitHub. However, GitHub will not be responsible for providing Support where (i) someone (other than GitHub) modifies the Software; (ii) Customer changes its operating system or environment in a way that adversely affects the Software or its performance; (iii) Customer uses the Software in a manner other than as authorized under this Agreement or the Documentation; or (iv) there is negligence or misuse by Customer of the Software.

11. Professional Services.

Upon Customer's request for Professional Services, GitHub will provide an SOW detailing such Professional Services. GitHub will perform the Professional Services described in each SOW. GitHub will control the manner and means by which the Professional Services are performed and reserves the right to determine personnel assigned. GitHub may use third parties to perform the Professional Services, provided that GitHub remains responsible for their acts and omissions. Customer acknowledges and agrees that GitHub retains all right, title and interest in and to anything used or developed in connection with performing the Professional Services, including software, tools, specifications, ideas, concepts, inventions, processes, techniques, and know-how. To the extent GitHub delivers anything to Customer while performing the Professional Services, GitHub grants to Customer a non-exclusive, non-transferable, worldwide, royalty-free, limited-term license to use those deliverables during the term of this Agreement, solely in conjunction with Customer's use of the Software.

12. Limited Warranties.

12.1   *Limited Software Warranties*. GitHub represents and warrants that: (i) the unmodified Software, at the time it is made available to Customer for download, will not contain or transmit any malware, viruses, or worms (otherwise known as computer code or other technology specifically designed to disrupt, disable, or harm Customer's software, hardware, computer system, or network) and (ii) for ninety (90) days from the date it is made available for initial download, the unmodified Software will substantially conform to its Documentation. GitHub does not warrant that Customer's use of the Software will be uninterrupted, or that the operation of the Software will be error-free. These warranties will not apply if Customer modifies or uses the Software in any way that is not expressly permitted by this Agreement and the Documentation. GitHub's only obligation, and Customer's only remedy, for any breach of these limited warranties will be, at GitHub's option and expense, to either (i) repair the Software; (ii) replace the Software; or (iii)

terminate this Agreement with respect to the defective Software, and refund the unused, prepaid Fees for the defective Software during the then-current License Term.

12.2   *Professional Services Warranty.* GitHub warrants to Customer that any Professional Services performed under this Agreement will be performed in a professional and workmanlike manner by appropriately qualified personnel. GitHub's only obligation, and Customer's only remedy, for a breach of this warranty will be, at GitHub's option and expense, to either: (i) promptly re-perform any Professional Services that fail to meet this limited warranty or (ii) if the breach cannot be cured, terminate the SOW and refund the unused, prepaid Fees.

12.3   *General Warranty.* Each Party represents and warrants that it has the legal power and authority to enter into this Agreement, and that this Agreement and each Order Form is entered into by an employee or agent of such Party with all necessary authority to bind such Party to the terms and conditions of this Agreement.

12.4   *Beta Previews*. Customer may choose to use Beta Previews in its sole discretion. Beta Previews may not be supported and may be changed at any time without notice. Beta Previews may not be as reliable or available as the Software. Beta Previews are not subject to the same security measures to which the Software has been and is subject. GitHub will have no liability arising out of or in connection with Beta Previews. **CUSTOMER USERS BETA PREVIEWS AT ITS OWN RISK**.

12.5   *Warranty Disclaimer*. THE LIMITED WARRANTIES DESCRIBED ABOVE ARE THE ONLY WARRANTIES GITHUB MAKES WITH RESPECT TO THE SOFTWARE, PROFESSIONAL SERVICES AND SUPPORT. GITHUB DOES NOT MAKE ANY OTHER WARRANTIES AND REPRESENTATIONS OF ANY KIND, AND HEREBY SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ANY WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, PROVIDED BY GITHUB OR ANYWHERE ELSE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT.

13. Defense of Claims; Release.

The Parties will defend each other against third-party claims, as and to the extent set forth in this Section 13 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. The Party being defended must provide the defending Party with all requested assistance, information, and authority. The defending Party will reimburse the other Party for reasonable out-of-pocket expenses it incurs in providing assistance, and will not settle or make any admissions with respect to a third-party claim without the other Party's prior written consent, not to be unreasonably withheld or delayed. This Section 13 describes the Parties' sole remedies and entire liability for such claims.

13.1   *GitHub*. GitHub will defend Customer against any claim brought by an unaffiliated third party to the extent it alleges Customer's authorized use of the Software infringes a copyright, patent, or trademark or misappropriates a trade secret of an unaffiliated third party. If GitHub is unable to resolve any such claim under commercially reasonable terms, it may, at its option, either: (a) modify, repair, or replace the Software (as applicable); or (b) terminate Customer's subscription and refund any prepaid, unused subscription Fees. GitHub will have no obligation under this

Section 13.1 for any such claim arising from: (i) the modification of the Software, or the combination, operation, or use of the Software with equipment, devices, software, systems, or data, other than as expressly authorized by this Agreement (including the Documentation); (ii) Customer's failure to stop using the Software after receiving notice to do so; (iii) Customer's obligations under Section 13.2 (iv) products or services (including use of the Software) that are provided by GitHub free of charge; or (v) access or use of Beta Previews. For purposes of GitHub's obligation under this Section 13.1, the Software includes open source components incorporated by GitHub therein.

13.2   *Customer*. Customer will defend GitHub against any claim brought by an unaffiliated third party arising from: (i) Customer Content that Customer uploads to the Software; (ii) Customer's violation of this Agreement, including Customer's breach of confidentiality; (iii) Customer Modifications to the Software; or (iv) any third party-branded equipment, devices, software, systems, or data that Customer combines, operates, or uses with the Software.

14. LIMITATION OF LIABILITY.

14.1   *No Indirect Damages*. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING FOR LOSS OF PROFITS, REVENUE, OR DATA) OR FOR THE COST OF OBTAINING SUBSTITUTE PRODUCTS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14.2   *Limitation of Total Liability*. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY'S TOTAL CUMULATIVE LIABILITY UNDER THIS AGREEMENT FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY EXCEED THE FEES CUSTOMER HAS ACTUALLY PAID TO GITHUB DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM GIVING RISE TO SUCH LIABILITY. FOR PRODUCTS AND SERVICES THAT ARE PROVIDED FREE OF CHARGE, GITHUB'S LIABILITY IS LIMITED TO DIRECT DAMAGES UP TO $5,000.00 USD. FOR BETA PREVIEWS, GITHUB'S LIABILITY IS LIMITED TO DIRECT DAMAGES UP TO $500.00 USD.

14.3   *Exceptions*. The exclusions and limitations set forth in Section 14.2 will not apply to liability arising out of (1) Customer's non-compliance with the license grant or license restrictions in Sections 2 and 3; (2) a Party's breach of its defense obligations in Section 13; or (c) a Party's breach of its confidentiality obligations in Section 15.

15. Confidentiality.

15.1   *Definition of Confidential Information*. For the purposes of this Agreement, "Confidential Information" means any business or technical information that either Party discloses to the other, in writing, orally, or by any other means, including disclosures like computer programs, code, algorithms, data, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, financial, and product development plans, names and expertise of employees and consultants, and customer lists. For the purposes of this

Agreement, except as expressly set forth in Section 2.1, the source code of the Software will be deemed to be GitHub's Confidential Information, regardless of whether it is marked as such.

15.2 *Restrictions on Use and Disclosure.* Neither Party will use the other Party's Confidential Information, except as permitted under this Agreement. Each Party agrees to maintain in confidence and protect the other Party's Confidential Information using at least the same degree of care as it uses for its own information of a similar nature, but in all events at least a reasonable degree of care. Each Party agrees to take all reasonable precautions to prevent any unauthorized disclosure of the other Party's Confidential Information, including, without limitation, disclosing Confidential Information only to its employees, independent contractors, consultants, and legal and financial advisors (collectively, "Representatives") (i) with a need to know such information, (ii) who are parties to appropriate agreements sufficient to comply with this Section 16, and (iii) who are informed of the non-disclosure obligations imposed by this Section 16. Each Party is responsible for all acts and omissions of its Representatives. The foregoing obligations will not restrict either Party from disclosing Confidential Information of the other Party pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the Party required to make such a disclosure gives reasonable notice to the other Party to enable them to contest such order or requirement. The restrictions set forth in this Section 16 will survive the termination or expiration of this Agreement.

15.3 *Exclusions*. The restrictions set forth in Section 15.2 will not apply with respect to any Confidential Information that: (i) was or becomes publicly known through no fault of the receiving party; (ii) was rightfully known or becomes rightfully known to the receiving party without confidential or proprietary restriction from a source other than the disclosing party who has a right to disclose it; (iii) is approved by the disclosing party for disclosure without restriction in a written document which is signed by a duly authorized officer of such disclosing party; or (iv) the receiving party independently develops without access to or use of the other Party's Confidential Information.

16. Term and Termination.

16.1 *Agreement Term*. This Agreement starts on the Agreement Effective Date and will continue in effect until this Agreement is terminated by a Party in accordance with this Section 16. If this Agreement is terminated before the expiration or termination of a Subscription Term, then any active Order Forms will remain in force pursuant to the terms of this Agreement.

16.2 *Termination for Convenience*. Either Party may terminate an Order Form, with or without cause, upon at least thirty (30) days written notice before the end of the then-current Subscription Term.

16.3 *Termination for Material Breach*. Either Party may terminate this Agreement immediately upon notice if the other Party breaches a material obligation under this Agreement and fails to cure the breach within thirty (30) days from the date it receives notification. Either Party reserves the right to terminate this Agreement immediately upon written notice, but without giving the other Party a cure period, if Customer breaches any of the terms of this Agreement relating to GitHub's intellectual property (including Customer's compliance with the license grant and any license restrictions) or either Party's Confidential Information.

16.4   *Effect of Termination; Survival.* When this Agreement terminates or expires, Customer may not execute additional Order Forms; however, the Agreement will remain in full force and effect for the remainder of any active Order Forms. When an Order Form terminates or expires, as to that Order Form: (i) the Subscription Term for any Software will immediately end; (ii) Customer will no longer have the right to use the Software, and any Subscription Licenses granted in the Order Form will automatically cease to exist as of the date of termination or expiration; (iii) if any Fees were owed prior to termination, Customer must pay those Fees immediately; (iv) Customer must destroy all copies of the Software in its possession or control, and certify in writing to GitHub that it has done so; and (v) each Party will promptly return to the other (or, if the other party requests it, destroy) all Confidential Information belonging to the other. Notwithstanding the foregoing, Customer may continue to access the Software to migrate its data for ninety (90) days after termination or expiration of this Agreement or an Order Form; however, Customer must not use the Software on a production basis during that time. Any terms or sections which by their nature should reasonably survive will survive the termination or expiration of this Agreement or an Order Form.

17. General Provisions.

17.1   *Governing Law; Venue.* For Customers domiciled in the United States, Canada, Mexico, or a country in Central or South America or the Caribbean (the "Americas"), this Agreement will be governed by and construed in accordance with the laws of the State of California, as if performed wholly within the state and without giving effect to the principles of conflict of law. For such Customers, any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Northern District of California and the parties hereby consent to personal jurisdiction and venue therein. For Customers domiciled outside the Americas, this Agreement will be governed by the laws of Ireland any legal action or proceeding arising under this Agreement will be brought exclusively in the courts located in Dublin, and the Parties hereby consent to personal jurisdiction and venue therein. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply to this Agreement. Notwithstanding the foregoing, GitHub may bring a claim for equitable relief in any court with proper jurisdiction.

17.2   *Government Users.* The Products and Documentation were developed solely with private funds and are considered "Commercial Computer Software" and "Commercial Computer Software Documentation" as described in Federal Acquisition Regulations 12.212 and 27.405-3, and Defense Federal Acquisition Regulation Supplement 227.7202-3. The Products are licensed to the United States Government end user as restricted computer software and limited rights data. No technical data or computer software is developed under this Agreement. Any use, disclosure, modification, distribution, or reproduction of the Products or Documentation by the United States Government or its contractors is subject to the restrictions set forth in this Agreement. All other use is prohibited.

17.3   *Export and Sanctions.* The Products are subject to export and sanctions restrictions administered by the U.S. Government and import restrictions by certain foreign governments, and Customer will comply with all applicable export and import laws and regulations in Customer's use of the Products. Customer must not, and must not allow any third party to, remove or export from the United States or allow the export or re-export of any part of the Products or any direct product thereof: (i) into (or to a national or resident of) any embargoed or terrorist-supporting country

or territory; (ii) to anyone on the U.S. Commerce Department's Entity List or Table of Denial Orders, anyone blocked pursuant to rules administered by the U.S. Office of Foreign Assets Control, including anyone on the List of Specially Designated Nationals or sanctioned country "Government" entities, or anyone subject to other applicable prohibited or sanctioned persons lists; (iii) to any country or territory to which such export or re-export is restricted or prohibited, or as to which the U.S. government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export, sanctions, or import restrictions, laws or regulations of any United States or foreign agency or authority. Customer represents and warrants that Customer is not located in under the control of, or a national or resident of any such prohibited country or territory or on any such prohibited party list. GitHub Enterprise Server is a self-hosted virtual appliance that can be run within Customer's own datacenter or virtual private cloud. As such, GitHub Enterprise Server can be used to store ITAR or other export-controlled information. However, Customer is responsible for ensuring such compliance. Customer acknowledges and agrees that the Products are restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology without the prior required permission of the U.S. government.

17.4   *No Publicity without Permission.* GitHub may identify Customer as a customer to current and prospective clients. However, GitHub may not use Customer's name or logo in any advertising or marketing materials without permission.

17.5   *Assignment*. Neither Party may assign or otherwise transfer this Agreement, in whole or in part, without the other Party's prior written consent, such consent not to be unreasonably withheld, and any attempt to do so will be null and void, except that GitHub may assign this Agreement in its entirety, upon notice to the other party but without the other Party's consent, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of the assigning party's business or assets.

17.6   *Notices*. Unless otherwise stated herein, any notice, request, demand or other communication under this Agreement must be in writing (e-mail is acceptable), must reference this Agreement, and will be deemed to be properly given: (i) upon receipt, if delivered personally; (ii) one (1) business day following confirmation of receipt by the intended recipient, if by e-mail; (iii) five (5) business days after it is sent by registered or certified mail, with written confirmation of receipt and email; or (iv) three (3) business days after deposit with an internationally recognized express courier and email, with written confirmation of receipt. Notices can be sent to the address(es) set forth in this Agreement, unless a Party notifies the other that those addresses have changed.

17.7   *Force Majeure*. GitHub will be excused from liability to the extent that it is unable to perform any obligation under this Agreement due to extraordinary causes beyond its reasonable control, including acts of God, natural disasters, strikes, lockouts, riots, acts of war, epidemics, or power, telecommunication or network failures.

17.8   *Independent Contractors*. The Parties are each independent contractors with respect to the subject matter of this Agreement. Nothing contained in this Agreement will be deemed or construed in any manner to create a legal association, partnership, joint venture, employment, agency, fiduciary, or other similar relationship between the Parties, and neither Party can bind the other contractually.

17.9   *Waiver*. A Party's obligations under this Agreement must only be waived in a writing signed by an authorized representative of the other Party, which waiver will be effective only with respect to the specific obligation described. No failure or delay by a Party to this Agreement in exercising any right hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right hereunder at law or equity.

17.10   *Entire Agreement*. This Agreement, including each Order Form and SOW, constitutes the entire agreement and understanding of the Parties with respect to its subject matter, and supersedes all prior or contemporaneous understandings and agreements, whether oral or written, between the Parties with respect to its subject matter. The terms of any purchase order, written terms or conditions, or other document that Customer submits to GitHub that contains terms that are different from, in conflict with, or in addition to the terms of this Agreement, SOW or any Order Form will be void and of no effect.

17.11   *Amendments. Order of Precedence*. GitHub reserves the right to amend this Agreement at any time and will update the terms and conditions of this Agreement in the event of any such amendments. Changes to this Agreement will become effective upon the anniversary of Customer's then-current Subscription Term. In the event of a conflict between this Agreement and an Order Form, an Order Form will govern with respect to that order only. This Agreement and any addenda, including an Order Form, must control and no modification, change, or amendment of this Agreement will be binding upon the Parties or supersede the terms of this Agreement unless it is in writing, and is duly signed by each Party's authorized representative.

17.12   *Severability*. If any provision of this Agreement is deemed by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the court will modify or reform this Agreement to give as much effect as possible to that provision. Any provision that cannot be modified or reformed in this way will be deemed deleted and the remaining provisions of this Agreement will continue in full force and effect.

In Witness Whereof, the parties cause this Agreement to be signed by their duly authorized representatives.

GITHUB, INC.   **CUSTOMER:** _____

Sign: _____   Sign: _____

Name: _____   Name: _____

Title: _____   Title: _____

Date: _____   Date:_____