

GitHub Corporate Terms of Service

THANK YOU FOR CHOOSING GITHUB FOR YOUR COMPANY'S BUSINESS NEEDS. PLEASE READ THIS AGREEMENT CAREFULLY AS IT GOVERNS USE OF THE PRODUCTS (AS DEFINED BELOW), UNLESS GITHUB HAS EXECUTED A SEPARATE WRITTEN AGREEMENT WITH CUSTOMER FOR THAT PURPOSE. BY CLICKING ON THE "I AGREE" OR SIMILAR BUTTON OR BY ACCESSING THE PRODUCTS, CUSTOMER ACCEPTS ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF CUSTOMER IS ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, CUSTOMER REPRESENTS THAT IT HAS THE LEGAL AUTHORITY TO BIND THE COMPANY OR OTHER LEGAL ENTITY TO THIS AGREEMENT.

GitHub Corporate Terms of Service

Version Effective Date: April 2, 2020

This Agreement applies to the following GitHub offerings, as further defined below (collectively, the **"Products"**): - The Service; - Any Beta Previews; - Any related Support; and - Any related Professional Services.

A. Definitions

"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.

"Agreement" means, collectively, all the terms, conditions, notices contained or referenced in this document and all other operating rules, policies and procedures that GitHub may publish from time to time on the Service. GitHub's site policies are available at help.github.com/categories/site-policy.

"All Users" means, collectively, Customer's Users and External Users who use the Service.

"Americas" means the United States, Canada, Mexico, or a country in Central or South America or the Caribbean.

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

"Confidential Information" means all non-public information disclosed by either Party to the others, whether in writing, orally or by other means, designated as confidential or that the receiving Party knows or reasonably should know, under the circumstances surrounding the disclosure and the nature of the information, is confidential to the disclosing Party. For the avoidance of doubt, no Content posted on the Service will be considered Confidential Information except for Customer Content stored solely in Customer's Private Repositories. Confidential Information does not include any

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; (iv) the receiving Party independently develops without access to or use of the other Party's Confidential Information; or (v) is or has been stored or posted on the Service and outside of Customer's Private Repositories.

"Content" means, without limitation, code, text, data, articles, images, packages, photographs, graphics, software, applications, designs, features, and other materials that are featured, displayed, or otherwise made available through the Service.

"Corporate Account" means an account created by a User on behalf of an entity.

"Customer" means the company or organization that has entered into this Agreement with GitHub by clicking on the "I AGREE" or similar button or by accessing the Products.

"Customer Content" means Content that Customer creates, owns, or to which Customer holds the rights.

"Documentation" means any manuals, documentation and other supporting materials relating to the Products that GitHub provides or makes available to Customer.

"Effective Date" is the earlier of the date on which Customer (i) clicks "I agree" to the terms and conditions of this Agreement, or (ii) first places an order for the Products.

"External User" means an individual, not including Customer's Users, who visit or use the Service.

"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 (i) use the Products during the applicable Term or (ii) receive Professional Services, as such fees are reflected on an Order Form or SOW.

"Fork" means to copy the Content of one repository into another repository.

"GitHub" means GitHub, Inc., its Affiliates, and its Representatives.

"GitHub Content" means Content that GitHub creates, owns, or to which it holds the rights.

"Machine Account" means an account registered by an individual human who accepts the applicable terms of service on behalf of the Machine Account, provides a valid email address, and is responsible for its actions. A Machine Account is used exclusively for performing automated tasks. Multiple Users may direct the actions of a Machine Account, but the owner of the account is ultimately responsible for the machine's actions.

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

“Organization” means a shared workspace that may be associated with a single entity or with one or more Users where multiple Users can collaborate across many projects at once. A User can be a member of more than one Organization.

“Private Repository” means a repository which allows a User to control access to Content.

“Professional Services” means training, consulting, or implementation services that GitHub provides to Customer pursuant to a mutually executed SOW. Professional Services do not include Support.

“Professional Services Credits” means the upfront payment method for purchasing Professional Services (exclusive of travel and lodging expenses) that Customer may use over a period of twelve (12) months (unless otherwise stated in an Order Form) for Professional Services. 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.

“Public Repository” means a repository whose Content is visible to All Users.

“Representatives” means a Party’s employees, officers, agents, independent contractors, consultants, and legal and financial advisors.

“Scraping” means extracting data from the Service via an automated process, such as a bot or webcrawler, and does not include the collection of information through GitHub’s API.

“Service” means GitHub’s hosted service and any applicable Documentation.

“SOW” means a mutually executed statement of work detailing the Professional Services GitHub will perform, any related Fees, and each party’s related obligations.

“Subscription License” means the license assigned to each User to install, operate, access, and use the Service on Customer’s behalf. Customer may only assign one Subscription License per User across its Organizations. For clarity, once Customer assigns a Subscription License to a User, Customer is prohibited from bifurcating the Subscription License so that one User can use a Subscription License on one Organization while another User uses the same Subscription License on another Organization.

“Support” means technical support for the Service that GitHub may provide.

“User” means an individual or Machine Account who (a) accesses or uses the Service, (b) accesses or uses any part of Customer’s account; or (c) directs the use of Customer’s account in the performance of functions, in each case on Customer’s behalf. The number of Users should not exceed the number of Subscription Licenses that Customer has purchased.

“User-Generated Content” means Content created or owned by a third party or External User.

B. Account Terms

1. Account Controls.

- *Users.* Customer acknowledges that Users retain ultimate administrative control over their individual accounts and the Content within them. [GitHub's Standard Terms of Service](#) govern Users' use of the Service, except with respect to Users' activities under this Section B.
- *Organizations.* Customer retains ultimate administrative control over any Organization created on Customer's behalf and User-Generated Content posted to the repositories within its Organization(s), subject to this Section B. This Section B will govern the use of Customer's Organization(s).

2. Account Requirements

In order to create an account, Customer must adhere to the following:

- Customer must not create an account for use of any person under the age of 13. If GitHub learns of any User under the age of 13, it will terminate that User's account immediately. If Customer or its User(s) are located in a country outside the United States, that country's minimum age may be older; in such a case, Customer is responsible for complying with that country's laws.
- A User's login may not be shared by multiple people.
- Customer must not use the Products (a) in violation of export control or sanctions laws of the United States or any other applicable jurisdiction; (b) if it is located in or ordinarily resident in a country or territory subject to comprehensive to comprehensive sanctions administered by the U.S. Office of Foreign Assets Control (OFAC); or (c) if it is or is working on behalf of a [Specially Designated National \(SDN\)](#) or a person subject to similar blocking or denied party prohibitions. For more information, please see our [Export Controls policy](#).

3. Account Security

Customer is responsible for: (i) all Content posted and activity that occurs under its Corporate Account; (ii) maintaining the security of its account login credentials; and (iii) [promptly notifying GitHub](#) upon becoming aware of any unauthorized use of, or access to, the Service through its account. GitHub will not be liable for any loss or damage from Customer's failure to comply with this Section B.

4. Third Party Terms

In some situations, third parties' terms may apply to Customer's use of GitHub. For example, Customer may be a member of an Organization with its own terms or license agreements; Customer may download an application that integrates with the Service; or Customer may use the Service to authenticate to another service. While this Agreement is GitHub's full agreement with Customer, other parties' terms govern their relationships with Customer.

5. U.S. Federal Government Terms

If Customer is a U.S. government entity or otherwise accessing or using the Service in a government capacity, the [U.S. Federal Government Amendment](#) applies, and Customer agrees to its provisions.

6. Enterprise Cloud Terms

If Customer signed up for GitHub Enterprise Cloud, the [Enterprise Cloud Addendum](#) applies, and Customer agrees to its provisions.

C. Compliance with Laws; Acceptable Use; Privacy

1. Compliance with Laws and Regulations

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

2. Acceptable Use

Customer's use of the Service must comply with [GitHub's Acceptable Use Policies](#) and [GitHub's Community Guidelines](#). Customer must not use the Service in any jurisdiction for unlawful, obscene, offensive or fraudulent Content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive, or deceptive messages, viruses or harmful code, or violating third party rights.

3. Privacy

The [GitHub Privacy Statement](#) provides detailed notice of GitHub's privacy and data use practices. Any person, entity, or service collecting data from the Service must comply with the GitHub Privacy Statement, particularly in regards to the collection of Users' Personal Information (as defined in the GitHub Privacy Statement). If Customer collects any User Personal Information from GitHub, Customer will only use it for the purpose for which the External User has authorized it. Customer will reasonably secure any such Personal Information, and Customer will respond promptly to complaints, removal requests, and "do not contact" requests from GitHub or External Users.

D. Content Responsibility; Ownership; License Rights

1. Responsibility for User-Generated Content

Customer may create or upload User-Generated Content while using the Service. Customer is solely responsible for any User-Generated Content that it posts, uploads, links to or otherwise make available via the Service, regardless of the form of that User-Generated Content. GitHub is not responsible for any public display or misuse of User-Generated Content.

2. Ownership of Content, Right to Post, and License Grants

Customer retains ownership of Customer Content that Customer creates or owns. Customer acknowledges that it: (a) is responsible for Customer Content, (b) will only submit Customer Content that Customer has the right to post (including third party or User-Generated Content), and (c) Customer will fully comply with any third-party licenses relating to Customer Content that Customer posts. Customer grants the rights set forth in Sections D.3 through D.6, free of charge and for the purposes identified in those sections until such time as Customer removes Customer Content from GitHub servers, except for Content Customer has posted publicly and that External Users have Forked, in which case the license is perpetual until such time as all Forks of Customer Content have been removed from GitHub servers. If Customer uploads Customer Content that already comes with a license granting GitHub the permissions it needs to run the Service, no additional license is required.

3. License Grant to Us

Customer grants to GitHub the right to store, parse, and display Customer Content, and make incidental copies only as necessary to provide the Service. This includes the right to copy Customer Content to GitHub's database and make backups; display Customer Content to Customer and those to whom Customer chooses to show it; parse Customer Content into a search index or otherwise analyze it on GitHub's servers; share Customer Content with External Users with whom Customer chooses to share it; and perform Customer Content, in case it is something like music or video. These rights apply to both public and Private Repositories. This license does not grant GitHub the right to sell Customer Content or otherwise distribute or use it outside of the Service. Customer grants to GitHub the rights it needs to use Customer Content without attribution and to make reasonable adaptations of Customer Content as necessary to provide the Service.

4. License Grant to External Users

Any Content that Customer posts publicly, including issues, comments, and contributions to External Users' repositories, may be viewed by others. By setting its repositories to be viewed publicly, Customer agrees to allow External Users to view and Fork Customer's repositories. If Customer sets its pages and repositories to be viewed publicly, Customer grants to External Users a nonexclusive, worldwide license to use, display, and perform Customer Content through the Service and to reproduce Customer Content solely on the Service as permitted through functionality provided by GitHub (for example, through Forking). Customer may grant further rights to Customer Content if Customer adopts a license. If Customer is uploading Customer Content that it did not create or own, Customer is responsible for ensuring that the Customer Content it uploads is licensed under terms that grant these permissions to External Users

5. Contributions Under Repository License

Whenever Customer makes a contribution to a repository containing notice of a license, it licenses such contributions under the same terms and agrees that it has the right to license such contributions under those terms. If Customer has a separate agreement to license its

contributions under different terms, such as a contributor license agreement, that agreement will supersede.

6. Moral Rights

Customer retains all moral rights to Customer Content that it uploads, publishes, or submits to any part of the Service, including the rights of integrity and attribution. However, Customer waives these rights and agrees not to assert them against GitHub, solely to enable GitHub to reasonably exercise the rights granted in Section D, but not otherwise.

E. Private Repositories

1. Control

Customer is responsible for managing access to its Private Repositories, including invitations, administrative control of Organizations and teams, and of access.

2. Confidentiality

GitHub considers Customer Content in Customer's Private Repositories to be Customer's Confidential Information. GitHub will protect and keep strictly confidential the Customer Content of Private Repositories in accordance with Section P.

3. Access

GitHub personnel may only access Customer's Private Repositories (i) with Customer's consent and knowledge, for support reasons or (ii) when access is required for security reasons. Customer may choose to enable additional access to its Private Repositories. For example, Customer may enable various GitHub services or features that require additional rights to Customer Content in Private Repositories. These rights may vary depending on the service or feature, but GitHub will continue to treat Customer Content in Customer's Private Repositories as Customer's Confidential Information. If those services or features require rights in addition to those it needs to provide the Service, GitHub will provide an explanation of those rights.

4. Exclusions

If GitHub has reason to believe the Content of a Private Repository is in violation of the law or of this Agreement, GitHub has the right to access, review, and remove that Content. Additionally, GitHub may be [compelled by law](#) to disclose the Content of Customer's Private Repositories. Unless otherwise bound by requirements under law or if in response to a security threat or other risk to security, GitHub will provide notice of such actions.

F. Intellectual Property Notice

1. GitHub's Rights to Content

The look and feel of the Service is copyright © GitHub, Inc. All rights reserved. Customer may not duplicate, copy, or reuse any portion of the HTML/CSS, Javascript, or visual design elements or concepts without express written permission from GitHub.

2. GitHub Trademarks and Logos

If Customer would like to use GitHub's trademarks, Customer must follow all of GitHub's trademark guidelines, including those on GitHub's [logos page](#).

3. License to GitHub Policies

This Agreement is licensed under the [Creative Commons Zero license](#). For details, see our [site-policy repository](#).

4. Copyright Infringement and DMCA Policy

If Customer is a copyright owner and believes that Content on the Service violates Customer's copyright, Customer may notify GitHub in accordance with GitHub's [Digital Millennium Copyright Act Policy](#) via the [DMCA form](#) or by emailing copyright@github.com.

5. Intellectual Property Rights Reserved

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.

G. GitHub Additional Product Terms

Some Service features may be subject to additional terms as set forth in the [GitHub Additional Product Terms](#). By accessing or using these features, Customer agrees to the GitHub Additional Product Terms.

H. 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 and Customer's Organizations.

I. Affiliates

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

J. Payment

1. Pricing; Fees

Payment Terms Our pricing is available at github.com/pricing (unless otherwise negotiated by the parties and stated in an Order Form). 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 otherwise provided in this Agreement. 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.

Usage-Based Billing Some Service features are billed based on your usage. A limited quantity of these Service features may be included in your plan for a limited term without additional charge. If you choose to purchase paid Service features beyond the quantity included in your plan, you pay for those Service features based on your actual usage in the preceding month. Monthly payment for these purchases will be charged on a periodic basis in arrears, provided that for invoiced customers, paid Service features are billed in advance. See [GitHub Additional Product Terms for details](#).

2. Purchasing Additional Subscription Licenses

Customer may obtain additional Subscription Licenses under this Agreement by submitting a request through the Service or via its sales team. 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.

3. 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.

4. Authorization

Customer authorizes GitHub to charge the on-file credit card, PayPal account, or other approved methods of payment for Fees.

K. Term; Termination; Suspension

1. Term

This Agreement starts on the Effective Date and will continue in effect until terminated by a Party in accordance with this Section K.

2. Termination for Convenience; Account Cancellation

Either Party may terminate an Order Form (if applicable) or this Agreement, without cause, upon at least thirty (30) days' prior written notice. If Customer elects to terminate an Order Form or Agreement, it is Customer's responsibility to properly cancel its account with GitHub by going into Settings in the global navigation bar at the top of the screen. GitHub cannot cancel accounts in response to an email or phone request.

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. GitHub may terminate this Agreement if Customer's Account has been suspended for more than 90 days.

4. Effect of Termination

- *Order Forms.* Upon termination of this Agreement, Customer may not execute additional Order Forms (if applicable); however, this Agreement will remain in effect for the remainder of any active Order Forms. When an Order Form terminates or expires, as to that Order Form: (i) the Term will immediately end; (ii) any Subscription Licenses in the Order Form will automatically terminate, and Customer will no longer have the right to use the Service; (iii) if any Fees were owed prior to termination, Customer must pay those Fees immediately; (iv) each Party will promptly return (or, if the other party requests it, destroy) all Confidential Information belonging to the other to the extent permitted by the Service. Notwithstanding the foregoing, GitHub will make a reasonable effort to provide Customer with a copy of its lawful, non-infringing account Contents upon request; provided that Customer makes this request within 90 days of termination, suspension, or downgrade.
- GitHub will retain and use Customer's information as necessary to comply with our legal obligations, resolve disputes, and enforce GitHub's agreements, but barring legal requirements, GitHub will delete Customer's full profile and the Content of its

repositories within 90 days of termination or expiration (though some information may remain in encrypted backups). This information cannot be recovered once Customer's account is cancelled.

- GitHub will not delete Content that Customer has contributed to External Users' repositories or that External Users have forked.

5. Suspension

GitHub has the right to suspend access to all or any part of the Service, including removing Content, at any time for violation of this Agreement or to protect the integrity, operability, and security of the Service, effective immediately, with or without notice. Unless prohibited by law or legal process or to prevent imminent harm to the Service or any third party, GitHub typically provides notice in the form of a banner or email on or before such suspension. GitHub will, in its discretion and using good faith, tailor any suspension as needed to preserve the integrity, operability, and security of the Service.

6. Survival

All provisions of this Agreement which by their nature should survive termination will survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity, and limitations of liability.

L. Communications with GitHub

1. Electronic Communication Required

For contractual purposes, Customer (1) consents to receive communications in an electronic form via the email address it submitted or via the Service; and (2) agrees that all Terms of Service, agreements, notices, disclosures, and other communications that GitHub provides electronically satisfies any legal requirement that those communications would satisfy if they were on paper. This section does not affect Customer's non-waivable rights.

2. Legal Notice to GitHub Must Be in Writing

Communications made through email or GitHub Support's messaging system will not constitute legal notice to GitHub in any situation where notice to GitHub is required by contract or any law or regulation. Legal notice to GitHub must be in writing and [served on GitHub's legal agent](#).

M. Limited Warranty; Disclaimer

General Warranty. Each Party represents and warrants to the other that it has the legal power and authority to enter into this Agreement, and that this Agreement and each Order Form and SOW 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.

Professional Services Warranty. Unless otherwise set forth in an SOW, GitHub warrants 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 warranty or (ii) if the breach cannot be cured, terminate the SOW and refund the unused prepaid Fees.

Service Disclaimer. GitHub provides the Service "**AS IS**" and "**AS AVAILABLE**" without warranty of any kind. Without limiting this, GitHub expressly disclaims all warranties, whether express, implied or statutory, regarding the Service including without limitation any warranty of merchantability, fitness for a particular purpose, title, security, accuracy and non-infringement. GitHub does not warrant that the Service will meet Customer's requirements; that the Service will be uninterrupted, timely, secure, or error-free; that the information provided through the Service is accurate, reliable or correct; that any defects or errors will be corrected; that the Service will be available at any particular time or location; or that the Service is free of viruses or other harmful components. GitHub will not be responsible for any risk of loss resulting from Customer's downloading and/or use of files, information, Content or other material obtained from the Service.

Beta Previews Disclaimer. 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 Service. Beta Previews are not subject to the same security measures and auditing to which the Service has been and is subject. GitHub will have no liability arising out of or in connection with Beta Previews. **Customer uses Beta Previews at its own risk.**

N. Limitations of Liability

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.

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 12 months preceding the claim giving rise to such liability. For products and services (including use of the Products) 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.

Exclusions. The exclusions and limitations set forth in this Section N will not apply to liability arising out of (1) a Party's breach of its confidentiality obligations in Section P (except for all liability related to Content (excluding GitHub Content), which will

remain subject to the limitations and exclusions above) or (2) a Party's defense obligations in Section O.

O. Defense of Claims; Release

The Parties will defend each other against third-party claims, as and to the extent set forth in this Section O 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 O describes the Parties' sole remedies and entire liability for such claims.

1. By 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 Service 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 Service (as applicable); or (b) terminate Customer's subscription and refund any prepaid, unused subscription fees. GitHub will have no obligation under this Section O.1 for any such claim arising from: i) the modification of the Service, or the combination, operation, or use of the Service 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 Service after receiving notice to do so; (iii) Customer's obligations under Section O.2; (iv) products or services (including use of the Service) 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 O.1, the Service includes open source components incorporated by GitHub therein.

2. By Customer

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

3. Disputes with Other Users

If Customer has a dispute with one or more Users, Customer releases GitHub from all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes.

P. Confidentiality

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 any event 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 such Confidential Information only to its Representatives who (i) have a need to know such information, (ii) are parties to appropriate agreements sufficient to comply with this Section P, and (iii) are informed of the restrictions on use and disclosure set forth in this Section P. 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 such Party to contest such order or requirement, unless such notice is prohibited by law. The restrictions set forth in this Section P will survive the termination or expiration of this Agreement.

Q. 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 Service.

R. Changes to the Service or Terms

GitHub reserves the right, at its sole discretion, to amend this Agreement at any time and will update this Agreement in the event of any such amendments. GitHub will notify Customer of material changes to this Agreement, such as price changes, at least 30 days prior to the change taking effect by posting a notice on the Service. For non-material modifications, Customer's continued use of the Service constitutes agreement to our revisions of this Agreement. Customer can view all changes to this Agreement in our [Site Policy](#) repository.

GitHub changes the Service via Updates and addition of new features. Notwithstanding the foregoing, GitHub reserves the right at any time to modify or discontinue, temporarily or permanently, the Service (or any part of it) with or without notice.

S. Support

GitHub will provide standard technical Support for the Service 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 [GitHub Premium Support for Enterprise Cloud](#) terms) or dedicated technical Support for the Service at the Support level, Fees, and Subscription Term specified in an Order Form or SOW.

T. Miscellaneous

1. Governing Law

If Customer's principal office is in the Americas, this Agreement will be governed by and construed in accordance with the laws of the State of California, without giving effect to the principles of conflict of law, any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Northern District of California, and the Parties hereby consent to personal jurisdiction and venue therein. If Customer's principal office is 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 anything to the contrary in the foregoing, GitHub may bring a claim for equitable relief in any court with proper jurisdiction.

2. Feedback

Customer may provide Feedback to GitHub regarding the Products. Feedback is voluntary and is not Customer Confidential Information, even if designated as such. GitHub may fully exercise and exploit such Feedback for the purpose of (i) improving the operation, functionality and use of GitHub's existing and future product offerings and commercializing such offerings; and (ii) publishing aggregated statistics about the quality of the Products, provided that no data in any such publication will be used to specifically identify Customer, its employees or Customer's proprietary software code.

3. Non-Assignability

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.

4. Waiver

A Party's obligations under this Agreement may only be waived in writing signed by an authorized representative of the other Party. 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.

5. Severability

If any provision of this Agreement is deemed by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the Parties 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.

6. Amendments; Complete Agreement; Order of Precedence

This Agreement may only be modified by a written amendment signed by an authorized representative of GitHub, or by GitHub posting a revised version in accordance with Section T. This Agreement represents the complete and exclusive agreement between the Parties. This Agreement supersedes any proposal or prior agreement oral or written, and any other communications between the Parties relating to the subject matter of these terms, including any confidentiality or nondisclosure agreements. In the event of any conflict between the terms of this Agreement and any Order Form or SOW, the terms of the Order Form or SOW will control with respect to that Order Form or SOW only.

7. Publicity

If Customer publicly displays the name of its company or organization on its account or otherwise publicly display its trademarks or logos on its profile page, Customer allows GitHub to use its company's or organization's name to identify Customer as a GitHub customer in promotional materials. Customer may revoke this permission by hiding its company or organization name from public display and notifying GitHub in writing to stop using its organization's name in promotional materials. However, GitHub will have no obligation to remove or recall any prior use or distribution of the promotional materials.

8. 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.

9. Independent Contractors

Each Party is an independent contractor 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.

10. Questions

Questions about the Terms of Service? [Contact us](#).