GitHub Reseller and Distribution Terms

Program Description

This Agreement is entered into between GitHub, Inc. ("GitHub") and the legal entity acting as a reseller or distributor of GitHub's products or professional services ("Channel Partner"). The Agreement stipulates the rights and obligations to resell or distribute GitHub products and professional services.

The Agreement consists of these GitHub Reseller and Distribution Terms, the GitHub Channel Partner Data Processing Agreement ("DPA"), the Channel Partner's GitHub Channel Enrollment, and any Orders placed hereunder (together, the "Agreement").

1 Scope and Limitations

1.1 Products Resale or Distribution. GitHub grants Channel Partner a right to purchase licenses or access the Products for Resale or Distribution in the specified Territory.

1.2 Professional Services. Channel Partner may purchase Professional Services for Resale, either to End Customers or itself. GitHub and Channel Partner will first agree on a SOW for such work. GitHub will determine how, and which personnel, will perform the Professional Services. GitHub may use third parties to perform the Professional Services and will remain responsible for their acts and omissions. GitHub will retain all right, title and interest in and to anything GitHub uses or develops in connection with performing Professional Services for Channel Partner or End Customer. This includes, for example, software programs, tools, specifications, ideas, concepts, inventions, processes, techniques, and know-how. GitHub grants a non-exclusive, non-transferable, worldwide, royalty-free, limited-term license to deliverables provided during the performance of the Professional Services under this Agreement, solely for use with the Products.

1.3 Not For Resale Licenses. GitHub grants an annual license to Channel Partner for up to fifty (50) Subscription Licenses of GitHub Enterprise, solely for evaluation and demonstration purposes. The licenses are free of charge, and Channel Partner's use is subject to the applicable End Customer Agreement. Channel Partner may not: (i) resell the licenses; (ii) use the licenses in a production environment; or (iii) allow any third parties, including parent companies, subsidiaries, or affiliates to use the license.

1.4 Restrictions. Channel Partner may not: (i) Resell or Distribute any Products or Professional Services outside the Territory (unless authorized by GitHub in writing), (ii) purchase, Resell, or Distribute Non-Genuine or Unauthorized GitHub Products and Professional Services, and (iii) not resell Products, Services or the Service to the United States Federal Government.

2 Orders

Channel Partner will license Products or purchase Professional Services by a signed Order sent by its authorized representative, indicating the Products or Professional Services, Subscription License quantity, unit price, total purchase price, subscription term, Trade Agreement Act applicability or requirement, bill-to information, tax exempt certifications, if applicable, contract reference, and identity of the End Customer and if applicable, sell-to reseller for each subscription of GitHub Enterprise, GitHub Enterprise Server, GitHub Enterprise Cloud or Professional Services, respectively. No contingency contained on any Purchase Order will be binding upon GitHub. The terms of this Agreement will apply, regardless of any additional or conflicting terms of any Purchase Order or other correspondence or documentation

submitted by Channel Partner to GitHub, and any such additional or conflicting terms are deemed rejected by GitHub.

3 Pricing and Payment

3.1 Pricing. List Prices for Products and the Service are provided at github.com/pricing.

3.2 Fees. Channel Partner agrees to pay fees in full and upfront within thirty (30) days of the invoice date. Amounts paid are non-refundable, except as stated in this Agreement regarding Product warranty. If billed based on usage, GitHub will invoice according to the billing model described in the ocumentation.

3.3 Late Payment. If Channel Partner 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 Channel Partner for all expenses of recovery, to terminate the applicable order or SOW and to take any other action at law.

3.4 Taxes. Channel Partner 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.

4 Channel Partner Obligations

4.1 Channel Partner will:

(a) ensure prompt delivery of Products and Professional Services to resellers or End Customers;

(b) inform GitHub of any problems and assist GitHub to resolve such problems;

(c) ensure End Customer's acceptance of the applicable GitHub End Customer Agreement; and provide a copy of the accepted End Customer Agreement at GitHub's request;

(d) promptly notify GitHub of any breach or suspected breach of the applicable End Customer Agreement or third-party license and, at GitHub's request, assist GitHub in efforts to preserve GitHub's intellectual property rights including pursuing an action against any breaching third parties;

(e) comply with all requirements set forth in the Channel Partner's Channel Enrollment; and

(f) comply with all requirements applicable to Channel Partners as set forth at http://partner.github.com/service-channel-partners.

5 Proprietary Rights

5.1 **GitHub Enterprise Server.** GitHub grants to Channel Partner a non-exclusive and limited license to Resell or Distribute GitHub Enterprise Server and related Documentation directly to End Customers and/or resellers in the Territory during the term of this Agreement. Channel Partner may not sublicense any rights to distribute GitHub Enterprise or GitHub Enterprise Server.

5.2 **GitHub Enterprise Cloud.** GitHub grants to Channel Partner a non-exclusive and limited license to Resell or Distribute GitHub Enterprise Cloud and related Documentation directly to End Customers and/or resellers as applicable in the Territory during the term of this Agreement. If Channel Partner is granted administrator or any other rights to End Customer's account, in no event will Channel Partner claim or be granted

ownership rights to the data or Content in End Customer's account or in End Customer's GitHub repositories, and Channel Partner will immediately relinquish all access and control of the End Customer's account upon request by End Customer.

5.3   GitHub Enterprise. GitHub grants to Channel Partner a non-exclusive and limited license to Resell or Distribute GitHub Enterprise and related Documentation directly to End Customers and/or Resellers as applicable in the Territory during the term of this Agreement. If Channel Partner is granted administrator or any other rights to End Customer's account, in no event will Channel Partner claim or be granted ownership rights to the data or Content in End Customer's account or in End Customer's GitHub repositories, and Channel Partner will immediately relinquish all access and control of the End Customer's account upon request by End Customer.

6   Limited Warranty

Channel Partner will pass through to End Customers all limited warranties as provided in the applicable End Customer Agreement for the Products and Professional Services purchased by Channel Partner.

7   Trademark Use

Channel Partner's use of the name, logo, trademarks, service marks, trade names, and other marks of GitHub (collectively, the "Marks") will be in accordance with GitHub's policies available at https://github.com/logos. Channel Partner further agrees not to affix any Marks to products other than genuine GitHub-Branded Products. All use of the Marks must inure to GitHub's benefit.

8   Confidentiality

8.1   **Existing NDA.** If the parties have entered into a non-disclosure agreement, those terms apply instead of this confidentiality section.

8.2   **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, the terms of this Agreement.

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; or

    (c)   is independently developed.

8.3 **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.

8.4 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.

8.5 Duration of confidentiality obligation. These confidentiality obligations apply for a period of five (5) years after a party receives the Confidential Information.

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 thirty (30) days' written notice to the other party. Licenses granted on a subscription basis will continue for the duration of the Subscription Term, subject to the terms of the End User Agreement.

9.3 Termination for Breach. GitHub can terminate this Agreement immediately upon notice to Channel Partner if Channel Partner materially breaches any part of it.

9.4 Effect of Termination on Purchases for Resale. Upon termination of this Agreement, (a) GitHub will cease all further delivery of Products or Professional Services; (b) all outstanding invoices immediately become due and payable; and (c) all rights and licenses of Channel Partner under this Agreement will terminate, and Channel Partner will no longer hold itself out as a GitHub Channel Partner. If GitHub agrees to complete delivery of any further subscriptions to the Products or of Professional Services due against any existing Orders, then Channel Partner will pay for such subscriptions to the Products or such Professional Services in advance by certified or cashier's check. Upon termination of this Agreement, each party will immediately return to the other party all Confidential Information (including all copies thereof).

10 Records

Channel Partner will keep accurate records of each subscription to the Products or Professional Services licensed or purchased by serial number. Channel Partner will make these records available for audit upon seven (7) days' prior written notice. If GitHub requires information from an End Customer to which Channel Partner asserts it has Resold GitHub Products or Professional Services, Channel Partner will assist GitHub to obtain such information.

11 Export, Re-Export, Use and Transfer Controls

The Products and Professional Services are subject to export restrictions by the U.S. Government and import restrictions by certain foreign governments, and Channel Partner will comply with all applicable export and import laws and regulations in Channel Partner's use, delivery, or provisioning of the Products and Professional Services. Channel Partner 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; (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (iii) to any country 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 or import restrictions, laws or regulations of any United States or foreign agency or authority. Channel Partner represents and warrants that (a) neither Channel Partner nor End Customers are located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list and (b) none of Channel Partner's or End Customers' data is controlled under the U.S.

International Traffic in Arms Regulations. Channel Partner 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 permission of the U.S. Government.

12 Compliance with Laws

Channel Partner will:

(a) Comply with all country, federal, state and local laws, ordinances, codes, regulations, rules, policies and procedures, including, but not limited to, anti-corruption laws, such as the U.S. Foreign Corrupt Practices Act ("FCPA"), as well as the GitHub Anti-Bribery Statement (https://help.github.com/articles/github-anti-bribery-statement) and laws related to modern slavery, human trafficking, and child labor, as well as the GitHub Statement Against Modern Slavery and Child Labor (https://help.github.com/articles/github-statement-against-modern-slavery-and-child-labor/) ("Applicable Laws").

(b) Not take any action or permit the taking of any action by a supplier or third party, which may render GitHub liable for a violation of Applicable Laws, including, but not limited to the FCPA. In no event will GitHub be obligated under any supplier or third party agreement to take any action or omit to take any action that GitHub believes, in good faith, would cause it to be in violation of the FCPA or other Applicable Laws.

(c) Not use any money or other consideration paid by GitHub for any unlawful purposes, including any purposes violating the FCPA or other Applicable Laws, such as direct or indirect payments, for the purpose of assisting GitHub in obtaining or retaining business, to any of the following: (i) Government officials (including any person holding an executive, legislative, judicial or administrative office, whether elected or appointed, or of any public international organization, such as the United Nations or World Bank, or any person acting in any official capacity for or on behalf of such government, public enterprise or state-owned business); (ii) Political parties or party officials; (iii) Candidates for political office; (iv) Any person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly to any of the above-identified persons or organizations; or (v) otherwise in violation of Applicable Laws relating to bribery or corruption.

(d) Upon request, Channel Partner may be required to have its own subcontractors, consultants, agents or representatives execute a similar written anti-corruption compliance statement, and to confirm to GitHub that such action has been taken.

(e) The record-keeping, audit and other related terms and obligations, as set forth in Channel Partners' agreement(s) with GitHub, will equally apply to its compliance with this policy.

(f) GitHub retains the right to suspend or terminate any GitHub Channel Partner agreement immediately upon written notice if GitHub believes, in good faith, that Channel Partner has breached any elements of this policy, or if the Channel Partner makes a false or fraudulent statement, representation or warranty while carrying out its contractual obligations.

(g) Channel Partner will immediately report any concerns it may have regarding any GitHub employee or GitHub reseller by emailing legal@github.com.

13 Limitation of Liability

13.1 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.

13.2 LIMITATIONS OF TOTAL LIABILITY. EXCEPT WITH RESPECT TO EITHER PARTY'S (I) FRAUD OR FRAUDULENT MISREPRESENTATION, (II) BREACH OF CONFIDENTIALITY; OR WITH RESPECT TO CHANNEL PARTNER'S BREACH OF SECTION 7 (PROPRIETARY RIGHTS) OR ANY AMOUNTS DUE FROM CHANNEL PARTNER TO GITHUB UNDER THE AGREEMENT AND 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 CHANNEL PARTNER HAS ACTUALLY PAID TO GITHUB DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM GIVING RISE TO SUCH LIABILITY EXCEPT. FOR PRODUCTS AND PROFESSIONAL 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 General

14.1 **Governing Law.** If Channel Partner'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 Channel Partner's principal office is outside the Americas, this Agreement will be governed by the laws of the country specified in the Channel Partner's Channel Enrollment, and any legal action or proceeding arising under this Agreement will be brought exclusively in the courts located in the specified country, 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.

14.2 **No 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.

14.3 **Assignment**. Neither this Agreement nor any rights or obligations under this Agreement will be assigned by a party without the other's prior written consent, such consent not to be unreasonably withheld or delayed. Any attempted assignment will be void and of no effect. Notwithstanding the foregoing, the Parties may assign this Agreement and any right or obligation under it without the other's approval, to any affiliate. Notwithstanding any assignment by Channel Partner, Channel Partner will remain liable for the payment of all amounts due under this Agreement.

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

14.5 **Attorneys' Fees**. In any suit or proceeding relating to this Agreement, the prevailing party will have the right to recover from the other its costs, fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon

appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and will survive expiration or termination and will not be merged into any such judgment.

14.6 **No Agency.** This Agreement does not create any agency, partnership, joint venture, or franchise relationship. No employee of either party will be or become, or will be deemed to be or become, an employee of the other party by virtue of the existence or implementation of this Agreement. Each party hereto is an independent contractor. Neither party will assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

14.7 **Entire Agreement.** This Agreement consists of the DPA, the Channel Enrollment, these Reseller and Distribution Terms, and any Order placed hereunder, and constitutes the entire agreement between the Parties concerning the subject matter of this Agreement, and may be modified only by a written document.

14.8 **Order of Precedence.** In the event of a conflict of terms, the Agreement documents will take precedence in the following order: the terms of the DPA, the Channel Enrollment, these Reseller and Distribution Terms, and any Order.

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

14.10   **Counterparts.** This Agreement may be executed in two counterparts, each of which will be deemed an original and together which will constitute one and the same instrument. A validly executed counterpart that is delivered by one party to the other via electronic transmission (a "Counterpart Image") will be valid and binding to the same extent as one delivered physically, provided that the valid signature is clearly visible in the Counterpart Image. In the event that a party delivers a Counterpart Image in place of an originally executed counterpart, such party will retain the originally executed counterpart in its files for at least the duration of the Agreement term.

15 Notices

Notices to GitHub may be submitted via email to legal@support.github.com. If Channel Partner 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 Channel Partner will be sent to the individual at the address Channel Partner identifies on its account as its contact for notices. GitHub may send notices and other information to Channel Partner by email or other electronic form.

Definitions

"Channel Partner" means a reseller or distributor authorized by GitHub pursuant to the applicable partnership agreement executed between such reseller or distributor and GitHub to Resell GitHub Products or Professional Services.

"Channel Account Manager" means the Channel Partner's GitHub contact.

"Channel Enrollment" means the mutually executed document containing a specification for territory, resell discounting, jurisdiction, and venue.

"Distribute" or "Distribution" means any of the following sales or dispositions of Products or Professional Services: (i) transfer directly to an Channel Partner for the purpose of reselling to an End Customer a non-exclusive, non-transferable license conferring the right to use the GitHub Enterprise Server Product during the Subscription Term; or (ii) transfer directly to an Channel Partner for the purpose of reselling to an End Customer of a non-exclusive, non-transferable right to access and use the Service during the Subscription Term.

"Documentation" means any supporting materials related to the Software or Service provided by GitHub. Documentation is considered part of the Software and the Service.

"End Customer" means the final purchaser or licensee that: (i) has acquired Products or Professional Services for its own internal use and not for resale, including any of the activities defined as Resale below, and (ii) is identified as such purchaser or licensee by Channel Partner in the Order issued to GitHub.

"End Customer Agreement" or ECA means the applicable GitHub End Customer Agreement governing license or access to and use of the Products or Services Channel Partner is reselling to End Customers.

"GitHub Enterprise" means the solution comprised of the Software (also sometimes referred to as "GitHub Enterprise Server") and the Online Service (also sometimes referred to as "GitHub Enterprise Cloud") sold by GitHub.

"Non-Genuine Products" means any and all Products: (i) to which a Mark or other GitHub trademark or service mark has been affixed without GitHub's consent; (ii) are produced with the intent to counterfeit or imitate genuine GitHub Products; or (iii) whose form of copyright notice, trademark, logo, confidentiality notice, serial number or other product identifier has been removed, altered, or destroyed.

"Order" means a written mutually executable order form issued by Channel Partner to GitHub for Products or Services.

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

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

"Resale" or "Resell" means any of the following sales Products or Professional Services: (i) transfer directly to an End Customer or to an End Customer via a reseller End Customer's a non-exclusive, non-transferable license conferring the right to use the GitHub Enterprise Server Software during the Subscription Term; or (ii) transfer directly to an End Customer or to an End Customer via a reseller of End Customer's choice of a non-exclusive, non-transferable right to access and use the Online Services during Subscription Term; or (iii)

retention of a non-exclusive, non-transferable license conferring the right to use the Software by Channel Partner, but only where an instance of GitHub Enterprise Server is deployed to facilitate the provision by Channel Partner of hosting, outsourcing, managed or any other provisioned services for the use of End Customers who contract with Channel Partner for the provision of such services, provided that only one End Customer may be provisioned such services per each dedicated single license of the Software. In no event will the term Resale include use of the Software for the provision of such hosting, outsourcing, managed, or other provisioned services to the general public or in a multi-tenant hosting structure. In no event will Channel Partner host or attempt to host GitHub Enterprise Cloud for any purpose.

"Online Services" means the GitHub-hosted services to which End Customer may subscribe under this Agreement.

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

"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. "Add-On Software" means Advanced Security and other additional Software add-on products that GitHub may offer from time to time.

"Statement of Work or SOW" means a mutually executed statement of work detailing the Professional Services GitHub will perform for Channel Partner, their price, and Channel Partner's related obligations (if any).

"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.

"Territory" means the region(s) in which Channel Partner is authorized by GitHub to resell GitHub Products as designated in the Channel Enrollment and Rate Card.

"Unauthorized GitHub Product" means any genuine GitHub Products or GitHub Services that Channel Partner purchases or acquires from, either directly or indirectly, any party other than GitHub or sells to any party other than an End Customer. Unauthorized GitHub Products do not include Non-Genuine Products.

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