



## GitHub Professional Services Subcontractor Terms

This Agreement is entered into between GitHub, Inc. (“GitHub”) and the legal entity providing subcontracting services for GitHub by providing Professional Services to End Customers on GitHub’s behalf (“Subcontractor”). The Agreement consists of these GitHub Professional Services Subcontractor Terms, the GitHub Channel Partner Data Protection Addendum (“DPA”), the Subcontractor’s Channel Enrollment and Rate Card, and any SOWs placed hereunder (“Agreement”).

### Program Description

The Agreement stipulates the rights and obligations of the Subcontractor when providing Professional Services.

### 1 Services

**1.1 Work.** Subcontractor will perform the Professional Services as specified in a SOW and will cooperate on any particular requirements or change order requests made by GitHub or End Customer. If the parties wish to make changes to a SOW, both parties will agree in writing to adjustments to the other terms of the SOW.

#### 1.2 Delivery and acceptance.

- (i) Subcontractor will deliver the Work to GitHub or End Customers as described in the applicable SOW. If the Work does not conform to the SOW, GitHub may submit a written rejection to Subcontractor within ninety 90 days of the End Customer’s receipt of the Work, or any longer time if specified in the SOW.
- (ii) Subcontractor will correct rejected Work within 15 days of GitHub sending Subcontractor notice of rejection, or longer as may be agreed in writing between the parties (the “Correction Period”). If Subcontractor fails to correct the rejected Work by the end of the Correction Period, GitHub may terminate the SOW and will have no obligation to pay Subcontractor for Work that has not been accepted by GitHub by that date.
- (iii) GitHub will be the primary customer contact for End Customers. Subcontractor will not contact End Customers regarding the Work unless approved by GitHub in writing.

### 2 Payment

GitHub will pay Subcontractor all undisputed amounts as set forth in the Subcontractor’s Rate Card, within sixty (60) days (or longer if set forth in a SOW) of GitHub’s receipt of an invoice that includes a detailed description of services. GitHub may withhold payment of any disputed amounts. The Subcontractor’s Rate Card in effect at execution of this Agreement will remain in effect until the Rate Card’s expiration. Subcontractor is responsible for all expenses incurred in connection with its



performance under a SOW unless GitHub pre-approves the payment of reasonable expenses in the SOW. In the event any taxes, duties, tariffs, levies or other government-imposed charges are required to be withheld on payments made to Subcontractor, GitHub will deduct such charges from amounts owed to Subcontractor, pay them to the appropriate government authority, and provide Subcontractor with proof of payment.

### **3 Confidentiality**

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

**3.2 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.

**3.3 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.

**3.4 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.

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

### **4 Ownership and assignment of rights**

**4.1 Commissioned work.** The Work has been specially commissioned by GitHub. All copyrights and any other intellectual property rights in the Work shall be exclusively owned by GitHub. Subcontractor will promptly disclose to GitHub, in writing, any and all inventions, works of authorship, improvements, developments, or discoveries conceived, authored, made or reduced to practice by Subcontractor (including its employees and subcontractors, if any), either solely or in collaboration with others, including Subcontractor’s personnel and subcontractors (if any), in the course of and in connection with performing under a SOW, or otherwise based upon confidential information of GitHub or End Customers.



**4.2 Assignment.** To the extent permitted by applicable law, Subcontractor hereby irrevocably assigns to GitHub, its successors and assigns, all rights, title and interest (now known or hereafter created or recognized) in and to the Work including, without limitation, the following:

- (i) any copyrights, moral rights or any other proprietary rights (whether or not registerable and including any application for the registration of any such rights) that Subcontractor may possess or acquire in the Work throughout the world, and any renewals or extensions of such rights, regardless of whether or not legal protection for the Work is sought;
- (ii) all rights in and to any inventions, ideas, designs, concepts, techniques, discoveries, or improvements, whether or not patentable, embodied in the Work or developed in the course of Subcontractor's creation of the Work, including but not limited to all trade secrets, utility and design patent rights and equivalent rights in and to such inventions and designs throughout the world, and any renewals or extensions of such rights, regardless of whether or not legal protection for the Work is sought; and
- (iii) any documents, magnetically or optically encoded media, or other materials created by Subcontractor under a SOW.

If moral rights in the Work cannot be assigned, Subcontractor agrees to assert moral rights or procure the assertion of such rights by the authors of the Work at GitHub's sole direction. Subcontractor waives any moral rights of Subcontractor in and to the Work and agrees to obtain from each person that contributes to the Work an irrevocable, perpetual and worldwide waiver in writing stated to be in favor of GitHub and its successors, assigns and licensees of all present and future moral rights it may have in or to the Work. The waiver referred to in the preceding sentence shall be in a form acceptable to GitHub and shall be delivered by Subcontractor to GitHub upon request.

Subcontractor grants a non-exclusive, perpetual (without regard to any termination), irrevocable, worldwide, fully paid-up, assignable and transferable license under any current and future patents owned or licensable by Subcontractor, including any renewals or extensions thereof, to the extent necessary for GitHub or its third party licensees to make, use, modify, license, sell, sublicense, distribute, or market the Work, or otherwise realize the benefits contemplated hereunder, including the right to further sublicense such rights to third parties.

**4.3 Subcontractor retained work.** Any portion of the Work developed by or for Subcontractor independently of a SOW shall be subject to Sections 4.1 ("Commissioned work") and 4.2 ("Assignment") above unless the parties agree in the SOW that Subcontractor shall retain ownership of such portions of the Work ("Subcontractor Retained Work"). All Subcontractor Retained Work must be identified in detail in the applicable SOW. Except as otherwise expressly provided in the applicable SOW, Subcontractor hereby grants GitHub a non-exclusive, perpetual (without regard to any termination), irrevocable, world-wide, fully paid-up, assignable, and transferable license as to the Subcontractor Retained Work, including the right to use, reproduce, modify, and distribute (directly or indirectly) and to sublicense any or all of the foregoing rights, including the right to further sublicense such rights to further third parties. As a point of



clarification, Subcontractor Retained Work will be considered Work for purposes of other sections of this Agreement.

**4.4 Further assistance.** At GitHub's expense, Subcontractor will execute and deliver such instruments and take such other action as may be requested by GitHub to perfect or protect GitHub's rights in the Work and to carry out the assignments set forth in this Section 4 ("Ownership and assignment of rights").

**4.5 License of GitHub materials.** During the term of the applicable SOW, GitHub grants to Subcontractor a temporary, limited, non-exclusive license to use, reproduce and modify its code or materials in the form provided to Subcontractor during the term of an applicable SOW, provided such use, reproduction and modification is solely for purposes of performing of the Work.

## **5 Subcontractor representations and warranties**

**5.1** Subcontractor represents and warrants that:

- (i) this Agreement will not violate any agreement or obligation between Subcontractor and a third party;
- (ii) any Work delivered does not infringe any copyright, patent, trade secret, or other proprietary right held by, or which is the subject of a pending application filed by, any third party;
- (iii) the Work provided by Subcontractor will (a) be performed in a professional manner, (b) performed in accordance with the applicable SOW, (c) be free and clear of any liens, encumbrances or claims;
- (iv) Subcontractor will not use undocumented application programming interfaces ("APIs") to perform any Work, unless GitHub has given written consent;
- (v) Subcontractor and its Representatives will comply with, and cause its employees, subcontractors and agents to comply with, all applicable laws and regulations applicable to its performance hereunder, including, without limiting the specificity of any provisions herein, and without limitation, the employment, workman's compensation, anti-corruption, privacy and data protection, immigration, tax and export control laws of any jurisdiction in which Work is performed;
- (vi) the Work will either be originally created by Subcontractor, or Subcontractor will obtain all necessary rights to the Work to transfer ownership and license rights to GitHub as required by Section 4 above ("Ownership and Assignment of Rights"); and
- (vii) Subcontractor will not give GitHub access to or otherwise incorporate, contribute or combine the Work with any software or other materials that requires as a condition of use, modification, and/or distribution that the Work (either in whole or in part) be generally (a) disclosed or distributed in source code or object code form; (b) licensed for the purpose of making derivative works; or (c) redistributable; and

**5.2** Subcontractor further represents and warrants that it will comply with the Policies as described in this Agreement:



- (i) Subcontractor will comply with the most current GitHub Anti-Bribery Statement located at: <http://help.github.com/en/articles/github-anti-bribery-statement> and with the most current GitHub Statement Against Modern Slavery and Child Labor located at: <https://help.github.com/en/articles/github-statement-against-modern-slavery-and-child-labor>;
- (ii) Subcontractor may only use GitHub Marks for services and deliverables in compliance with the guidelines available at <http://www.github.com/logos>.
- (iii) Subcontractor will comply, and will contractually obligate its employees, subcontractors and agents to comply, with all physical, privacy and data protection and information security Policies made available to Subcontractor by GitHub, including without limitation, the GitHub Data Protection Addendum accessible at <https://partner.github.com/legal> and the GitHub Privacy Statement, available at: <https://help.github.com/en/articles/github-privacy-statement>,
- (iv) Subcontractor will comply, and will contractually obligate its employees, subcontractors and agents to comply, with all other Policies or training requirements provided by GitHub during the Term.
- (v) GitHub may change or promulgate new Policies. Changes and new Policies will be effective 30 days after GitHub makes them available to Subcontractor, unless otherwise agreed in writing. If new or changes to Policies causes a material impact to the delivery schedule, fees or other costs for services, or Subcontractor's ability to meet the quality or performance standards of service level agreements, Subcontractor will promptly notify GitHub. The parties will discuss how to mitigate the impact to enable Subcontractor to comply.

## 6 Disclaimer of warranties and no liability for certain damages

WITH THE EXCEPTION OF THOSE EXPRESS WARRANTIES OF SUBCONTRACTOR PROVIDED IN SECTION 5 ABOVE (“SUBCONTRACTOR REPRESENTATIONS AND WARRANTIES”) OR OTHERWISE PROVIDED BY SUBCONTRACTOR IN A SOW, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICES, WORK, OR ANY OTHER MATERIALS PROVIDED BY ONE PARTY TO THE OTHER.

EXCEPT AS SPECIFICALLY PROVIDED IN THE FOLLOWING SENTENCE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, NEITHER PARTY NOR THEIR SUBCONTRACTORS OR END CUSTOMER WILL BE LIABLE FOR ANY INDIRECT, OR CONSEQUENTIAL LOSS OR DAMAGES, DAMAGES FOR BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION, SPECIAL, OR INCIDENTAL DAMAGES OR DAMAGES FOR LOSS OF PROFITS OR REVENUES ARISING IN CONNECTION WITH THIS AGREEMENT, ANY SOW, SERVICES, WORK, OR ANY OTHER MATERIALS OR INFORMATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES



OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. THIS EXCLUSION OF LIABILITY DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR BREACHES OF WARRANTY, INDEMNIFICATION OBLIGATIONS, VIOLATION OF ITS CONFIDENTIALITY OBLIGATION, VIOLATIONS BY ONE PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR IF OTHERWISE STATED IN A SOW REGARDING SUBCONTRACTOR AS A RESULT OF GITHUB'S AGREEMENT WITH END CUSTOMER.

## 7 Third party claims

**7.1 Third party claims.** Subcontractor will defend GitHub against third party claims in connection with any claim (i) relating, directly or indirectly, to Subcontractor's performance of the Work; (ii) relating, directly or indirectly, to Subcontractor's breach or threatened breach of any of its obligations hereunder; or (iii) that would constitute a breach of any of Subcontractor's representations and warranties set forth herein.

**7.2 Notice and cooperation.** If a claim is brought against GitHub, GitHub will promptly notify Subcontractor in writing, specifying the nature of the action and the total monetary amount sought or other such relief as is sought therein. Subcontractor may, upon written notice to GitHub, assume the defense of any such action, including the employment of counsel that is reasonably satisfactory to GitHub. GitHub will have the right to employ separate counsel and participate in the defense. Subcontractor will reimburse GitHub upon demand for any payments made, damages or loss suffered based upon the judgment of any court of competent jurisdiction or pursuant to a bona fide compromise or settlement of claims, demands, or actions. Subcontractor will not settle any such claims, demands or actions without the prior written consent of GitHub.

**7.3 Injunction.** If the Work furnished hereunder is in any action held to constitute an infringement and its use is enjoined, Subcontractor will immediately and at its expense: (i) procure for GitHub and End Customer the right to continue to exercise the rights in the Work as set forth in Section 4 ("**Ownership and assignment of rights**") above; or (ii) replace or modify the Work with a version of the Work that is non-infringing and is reasonably acceptable to GitHub as a functional equivalent. If (i) or (ii) above are not available to Subcontractor, Subcontractor will immediately refund to GitHub all amounts paid to Subcontractor by GitHub.

## 8 Term and termination

**8.1 Term.** This Agreement is effective until terminated by a party; this Agreement and/or any SOW may be terminated:

- (i) by GitHub for any reason and at any time without incurring any additional liability to Subcontractor by giving Subcontractor five (5) calendar days prior written notice; or
- (ii) by either party for material breach immediately if the other party fails a curable breach within a 30-day notice period.

**8.2 Termination.** Terminating this Agreement will prohibit either party from entering into subsequent SOWs under this Agreement. Termination of this Agreement will not result in the termination of any SOW(s)



previously entered into under this Agreement, which will continue in effect until the SOW itself is terminated or expires.

**8.3 Consequences of termination.** Upon termination of this Agreement and/or any SOW, GitHub will have no further obligation to Subcontractor, except for payment due pursuant to an invoice Subcontractor accepted by GitHub, prior to the date of such termination. Upon termination, the Subcontractor will delete, destroy, or return all Confidential Information related to GitHub and/or the End Customers, and will provide GitHub with all Work in progress.

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

## 9 Insurance

**9.1 General coverage.** Subcontractor agrees to maintain the insurance coverage identified below. Upon request, Subcontractor shall provide GitHub with certificates of insurance evidencing that such coverages are in full force and effect.

- (i) Commercial General Liability covering bodily injury and property damage liability with a limit of not less than \$1,000,000 each occurrence,
- (ii) Workers' Compensation insurance (or maintenance of a legally permitted and governmentally approved program of self-insurance) covering Subcontractor's employees pursuant to applicable state workers' compensation laws for work related injuries suffered by employees of Subcontractor, and

(iii) Employers Liability insurance with limits of not less than \$500,000 each accident.

**9.2 Professional liability and errors & omissions coverage.** If the Work includes (i) any copyrightable material, or (ii) constitutes such professional services as system development, design, maintenance, or technical support, then Subcontractor shall maintain Professional Liability and Errors & Omissions Liability Insurance with policy limits of not less than Two Million Dollars (US\$2,000,000) each claim with a deductible of not more than Twenty-Five Thousand Dollars (US\$25,000). Such insurance shall include coverage for infringement of any proprietary right of any third party, including without limitation copyright and trademark infringement as related to Subcontractor's performance under this Agreement. The Professional Liability and Errors & Omissions Liability Insurance retroactive coverage date will be no later than the Effective Date of this Agreement. Subcontractor shall maintain an extended reporting period providing that claims first made and reported to the insurance company within one (1) year after GitHub's final payment for the Work will be deemed to have been made during the policy period.

**9.3 Additional coverage.** If the amount of liability coverage is not adequate, Subcontractor will increase the amount of insurance coverage as reasonably required by GitHub.

**9.4 Workers' compensation.** Subcontractor will at all times comply fully with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations, if any. Such workers' compensation and occupational disease requirements will include coverage for all





employees of Subcontractor suffering bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Agreement by Subcontractor. Except to the extent prohibited by law, Subcontractor's program(s) for compliance with workers' compensation and occupational disease laws, statutes, and regulations will provide for a full waiver of rights of subrogation against GitHub, its subsidiaries, officers, and employees. If Subcontractor, or any subcontractor retained by Subcontractor, fails to effect and maintain a program of compliance with applicable workers' compensation and occupational disease laws, statutes, and regulations, and GitHub incurs liability or fines or is required by law to provide benefits to such employees or to obtain coverage for such employees, Subcontractor will indemnify GitHub for such fines, payment of benefits to Subcontractor's or its subcontractors' employees or their heirs or legal representatives, and/or the cost of effecting coverage on behalf of such employees. Any amount owed to GitHub by Subcontractor pursuant to this indemnity may be deducted from any payments owed by GitHub to Subcontractor for performance of the Agreement.

## **10 Privacy and data protection**

Subcontractor will comply with their executed GitHub Channel Partner Data Protection Agreement ("DPA"), with a reference accessible at <https://partner.github.com/legal>.

## **11 Records, audits, inspections and refunds.**

**11.1** During the term of this Agreement and/or SOW, and for 4 years after, Subcontractor will maintain full and accurate records of the Work performed, payments and compensation received, expenses, and other accounting details ("Subcontractor Records") related to the Work, and GitHub or its audit-related agents will have access to such Subcontractor Records as permitted by law.

**11.2** GitHub will provide Subcontractor 10-days written notice of GitHub's intent to exercise its rights under this provision, except that GitHub may exercise its rights under this audit provision at any time if it in good faith believes Subcontractor or its representatives violates this Agreement's anti-corruption requirements. The Subcontractor Records and relevant employees will be made available to GitHub or its audit-related agents during normal business hours at the Subcontractor's place of business. If no such location is available, then the Subcontractor Records, and if requested, relevant employees, shall be made available at a time and location determined by GitHub.

**11.3** GitHub will bear the cost of audit expenses. If the auditor-related agents determine that Subcontractor was overpaid by GitHub, Subcontractor will be required to reimburse GitHub for any such overpayment. However, if the audit shows Subcontractor overcharged GitHub by five percent (5%) or more during the period of such audit, then in addition to reimbursing GitHub for the overcharge, Subcontractor will pay GitHub for all reasonable audit expenses and pay interest at 0.5% per month on the overcharge.

**11.4** If GitHub has a good faith reason to believe Subcontractor or its representatives are in violation of GitHub's Anti-Bribery Statement or applicable anti-corruption laws herein in connection with business or sales activity relating to this agreement, GitHub will provide Subcontractor with a high-level description of (i) the nature of the concern, (ii) the reason for its belief and (iii) the name of the GitHub and/or its third-party auditor that will investigate the suspected violations ("Anti-Corruption Audit").





**11.5** Prior to starting its investigation, GitHub and/or its third-party auditor shall enter with the parties into a non-disclosure agreement in a form and format reasonably acceptable to them preventing GitHub and/or such third-party auditor from disclosing the Anti-Corruption Audit findings to anyone but GitHub or Subcontractor, except for testimony/disclosure compelled or requested by competent enforcement authorities.

**11.6** The third-party auditor will report its Anti-Corruption Audit findings directly to GitHub. GitHub will provide a summary of the outcome of the Anti-Corruption Audit to Subcontractor and may decide, in its sole discretion, to make the Anti-Corruption Audit available in whole or in part to Subcontractor. Subcontractor agrees to fully participate and assist in any Anti-Corruption Audit and subject to first receiving from GitHub and/or its third-party auditor a written request that its legal department can review, to make all applicable books, records and employees available (within the limit of any applicable labor or privacy laws) to assist GitHub and/or the third-party auditor. Notwithstanding the forgoing, GitHub's rights under this clause shall not unreasonably interfere with Subcontractor's own internal investigation of the matter and Subcontractor shall be entitled to a reasonable amount of time to complete any such investigation prior to GitHub conducting its own investigation.

**11.7** GitHub may further exercise its rights under this provision for any other reason at any other time not to exceed once every twelve (12) month period. GitHub, in its sole discretion, may terminate the Agreement and/or any SOW, if Subcontractor fails to comply with the terms of this provision (except as excused by GitHub's own failure to comply with the terms of this provision). GitHub will not be liable for damages resulting from such termination.

**11.8** Nothing in this Section 11 limits GitHub's right to audit Subcontractor under the DPA.

## **12. Notices.**

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

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

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

## **13. Miscellaneous.**

**13.1 Assignment and subcontracts.** Subcontractor may not assign this Agreement or any SOW without the written consent of GitHub. Subcontractor will not subcontract services to third parties.



**13.2 Independent contractor.** Subcontractor is an independent contractor for GitHub, and nothing herein will be construed as creating an employer-employee relationship, a partnership or a joint venture between the parties.

**13.3 Taxes.** Subcontractor agrees to be responsible for all of Subcontractor's federal and state taxes, social security, unemployment, workers' compensation, and other withholding taxes, insurance, and other benefits. If any governmental agency determines that Subcontractor is a common law employee of GitHub and subject to taxes such as withholding and payroll taxes, Subcontractor will fully indemnify GitHub for all such withholding and payroll taxes, and associated interest and penalties, if any, assessed against GitHub in connection with such determination.

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

If Subcontractor's principal office is outside the Americas, however, this Agreement will be governed by the laws of the country specified in the GitHub Channel Enrollment, and any legal action or proceeding will be brought exclusively in the courts located in such country. The parties consent to personal jurisdiction and venue there.

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

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

**13.5 Compliance with laws and anti-corruption.** Subcontractor will comply with all applicable laws in the performance of Work, including but not limited to all applicable laws against bribery, corruption, inaccurate books and records, inadequate internal controls and money-laundering, including the U.S. Foreign Corrupt Practices Act ("Anti-Corruption Laws"). Subcontractor certifies that it has reviewed and will comply with the Anti-Bribery Statement located at <https://help.github.com/en/github-anti-bribery-statement>.

Subcontractor will either ensure that its employees participate annually in online Anti-Corruption training made available by GitHub or provide annual Anti-Corruption training to its employees, specifically on the compliance with Anti-Corruption Laws. Subcontractor hereby certifies its completion, understanding, and compliance with the Anti-Corruption Policy for GitHub Representatives. Subcontractor's record-keeping obligations, described in Section 11 ("Records, audits, inspections and refunds"), apply to Subcontractor's certifications in this section and its compliance with Anti-Corruption Laws. Subcontractor acknowledges that, unless it has been authorized and approved in writing by GitHub, Subcontractor is prohibited from paying expenses for travel, lodging, gifts, hospitality, or charitable contributions for government officials on GitHub's behalf. Subcontractor also acknowledges that, unless it has been authorized and approved in writing by GitHub, it is prohibited from using any funds provided by GitHub, or any proceeds resulting



from any GitHub business, to pay expenses for travel, lodging, gifts, hospitality, or charitable contributions for government officials.

**13.6 Entire agreement.** This Agreement consists of this Professional Services Subcontractor Terms, the GitHub Subcontractor Channel Enrollment and Rate Card, the DPA, and any SOWs incorporating this Agreement, which together constitute the entire agreement between GitHub and Contractor, and supersedes all prior and contemporaneous communications with respect to the subject matter hereof. If any part of this Agreement is held to be unenforceable, the rest of the Agreement will remain in full force and effect. 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.

**13.7 Amendments and order of precedence.** This Agreement will not be modified except by a subsequent written agreement signed by both parties. Any preceding agreement previously executed between the parties (each, a “Prior Agreement”) is terminated, except that any SOWs under the Prior Agreement that have not expired or been terminated will survive under the terms of the Prior Agreement as if the Prior Agreement were still in effect. In the event of a conflict of terms, the Agreement documents will take precedence in the following order: the DPA, the GitHub Subcontractor Channel Enrollment and Rate card, these Professional Services Subcontractor Terms, and any SOW.

**13.7 No publicity.** Subcontractor will not use GitHub’s or End Customer’s name or refer to GitHub or End Customer directly or indirectly in any advertisement, news release, professional or trade publication, or any other form of public communication that relates to Subcontractor’s relationship with GitHub, End Customer, or this Agreement, or denial or confirmation of the same without GitHub’s or End Customer’s respective prior written approval.

**13.8 Cumulative remedies.** GitHub’s rights and remedies herein will be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against Subcontractor, and temporary and permanent injunctive relief.

**13.9 Counterparts.** This Agreement, and any SOW(s) incorporating this Agreement, may be executed in any number of counterparts, each of which will be an original, and such counterparts together will constitute one and the same instrument. Execution may be effected by email delivery via DocuSign®.

## Definitions

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

“Documentation” means any supporting materials related to the professional services or GitHub deliverables provided by GitHub. Documentation is owned by GitHub.

“End Customers” means the final purchaser or licensee that: (i) has acquired Professional Services for its own Internal Use, and (ii) is identified as such purchaser or licensee by Channel Partner in the Order issued to GitHub.



“GitHub Training Content” means materials produced by GitHub provided for use by training personnel and learners, and licensed to Subcontractor.

“Rate Card” means the document setting forth the rates at which the Subcontractor will perform the services.

“Resale” means the transfer of a non-exclusive, non-transferable, revocable license conferring the right by Subcontractor to use and distribute GitHub Training Content to End Customers.

“Representatives” means a party’s employees, Affiliates, contractors, advisors and consultants.

“Policies” means policies, procedures, training requirements related to the Work, and guidelines described in this Agreement or made available to Subcontractor by GitHub.

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

“Representatives” means a party’s employees, Affiliates, contractors, advisors and consultants.

“Statement of Work” or “SOW” means a mutually executed statement of work describing the Professional Services that Subcontractor will perform, fees, and other obligations.

“Territory” means the region(s) in which Subcontractor is authorized to provide services and is designated in the GitHub Channel Enrollment.

“Work” means the services as set forth in a SOW.



## Exhibit A

### Limited License of GitHub Deliverables

The following terms and conditions will govern Subcontractor's rights to purchase and use GitHub Training Content in connection with providing services to End Customers on GitHub's behalf and otherwise in connection with End Customer's use of GitHub.

- 1. License of GitHub Training Content for Resale.** All GitHub Training Content and any other GitHub deliverables are owned solely by GitHub. GitHub grants Subcontractor a worldwide, non-exclusive, non-transferable, revocable right to use and copy GitHub Training Content during the term of this Agreement, and solely for the purpose of providing services to End Customers.
- 2. License Restrictions.** Except as otherwise expressly permitted herein and by the Agreement, Subcontractor must not, and must not allow any third party to, (i) sublicense, sell, transfer, assign, or redistribute the GitHub Training Content; (ii) host the GitHub Training Content for the benefit of third parties; (iii) disclose or permit any third party to access the GitHub Training Content; (iv) modify or create derivative works of the GitHub Training Content; (v) modify, obscure, or delete any proprietary rights notices included in or on the GitHub Training Content; or (vi) otherwise use or copy the GitHub Training Content in a manner not expressly permitted by this Exhibit A or the Agreement.
- 3. Trademark Usage.** Subcontractor'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 Products. All use of the Marks must be to GitHub's benefit.