



Amendment No. 4  
of  
NS1700000002  
for  
GitHub Software and Support  
between  
GitHub, Inc ("Contractor")  
and the  
City of Austin

1.0 The City hereby amends this Contract by modifying Section 3.1, Contract Amount.

1.1 Administrative increase of \$4,040.70.

2.0 The total Contract authorization is recapped below:

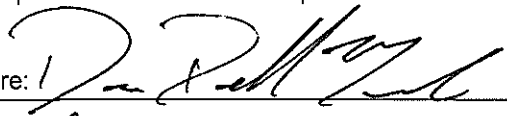
Term	Action Amount	Total Contract Amount
Original Term: 10/01/16 – 09/30/17	\$28,500.00	\$28,500.00
Amendment No. 1: Option 1 – Extension 10/01/2017 – 09/30/2018	\$33,341.10	\$61,841.10
Amendment No. 2: Option 2 – Extension 10/01/18 – 09/30/19	\$28,500	\$90,341.00
Amendment No. 3: Administrative increase for additional licenses	\$18,323.29	\$108,664.29
Amendment No. 4: Administrative increase for additional licenses.	\$4,040.70	\$112,704.99

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: 

Date: 5/23/19

Daniel Dellemonache  
Procurement Specialist III

City of Austin  
Purchasing Office  
124 W. 8<sup>th</sup> Street, Suite 310  
Austin, TX 78701



Amendment No. 3  
to  
Contract No. 5600 NS170000002  
for  
GitHub Software and Support  
between  
GitHub, Inc.  
and the  
City of Austin

- 1.0 The City hereby amends the Contract with an administrative increase of \$18,323.29.
- 2.0 The total contract amount is increased by \$18,323.29 by this amendment. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 10/01/2016 – 09/30/2017	\$28,500.00	\$28,500.00
Amendment No. 1: Option 1 – Extension 10/01/2017 – 09/30/2018	\$33,341.10	\$61,841.10
Amendment No. 2: Option 2 – Extension 10/01/2018 – 09/30/2019	\$28,500.00	\$90,341.00
Amendment No. 3: Administrative Increase	\$18,323.29	\$108,664.29

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

DocuSigned by:  
Sign/Date: Matthew Friske  
December 19, 2018 | 2:48 PM PST

Printed Name: Matthew Friske  
Authorized Representative

GitHub, Inc.  
88 Colin P Kelly jr Street  
San Francisco, CA 94107

Sign/Date: \_\_\_\_\_

Printed Name: Gil Zilkha  
Authorized Representative

Sign/Date: 12/21/18

Printed Name: Gil Zilkha

City of Austin  
Purchasing Office  
124 W. 8<sup>th</sup> Street, Ste. 310  
Austin, Texas 78701



Amendment No. 2  
to  
Contract No. 5600 NS170000002  
for  
GitHub Software and Support  
between  
GitHub, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be October 1, 2018 through September 30, 2019. No option will remain.
- 2.0 The total contract amount is increased by \$33,341.10 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 10/01/2016 – 09/30/2017	\$28,500.00	\$28,500.00
Amendment No. 1: Option 1 – Extension 10/01/2017 – 09/30/2018	\$33,341.10	\$61,841.10
Amendment No. 2: Option 2 – Extension 10/01/2018 – 09/30/2019	\$28,500.00	\$90,341.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date:

August 21, 2018  
Shannon Hines

Printed Name: \_\_\_\_\_  
Authorized Representative

GitHub, Inc.  
88 Colin P Kelly jr Street  
San Francisco, CA 94107

Sign/Date:

8/22/18

Printed Name: Bartley Tyler  
Authorized Representative

Sign/Date:

8/22/18

Printed Name: \_\_\_\_\_

City of Austin  
Purchasing Office  
124 W. 8<sup>th</sup> Street, Ste. 310  
Austin, Texas 78701



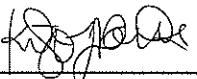
Amendment No. 1  
to  
Contract No. 5600 NS170000002  
for  
GitHub Software and Support  
between  
GitHub, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be October 2, 2017 through December 2, 2018. One option will remain.
- 2.0 The total contract amount is increased by \$33,341.10 by this extension period. The total contract authorization is recapped below:

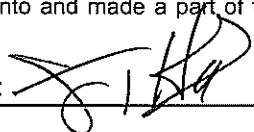
Action	Action Amount	Total Contract Amount
Initial Term: 10/01/2016 – 09/30/2017	\$28,500.00	\$28,500.00
Amendment No. 1: Option 1 – Extension 10/01/2017 – 09/30/2018	\$33,341.10	\$61,841.10

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date:  10/25/17  
Printed Name: Kirsten Pomerleau  
Authorized Representative

GitHub, Inc.  
88 Colin P Kelly jr Street  
San Francisco, CA 94107

Sign/Date:   
Printed Name: JAMES T. HOWARD  
Authorized Representative

City of Austin  
Purchasing Office  
124 W. 8<sup>th</sup> Street, Ste. 310  
Austin, Texas 78701

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
GitHub, Inc.  
For  
GitHub Software and Support**

This Contract is made by and between the City of Austin ("City", "you"), a home-rule municipality incorporated by the State of Texas, and GitHub, Inc. ("Licensor", "us", "we"), having offices at 88 Colin P. Kelly Jr. St., San Francisco, CA 94107.

**SECTION 1. DESIGNATION OF KEY PERSONNEL**

1.1 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Mary Wheeler, Phone: (415) 906-6907, Email Address: [sales@github.com](mailto:sales@github.com). The City's Contract Manager for the engagement shall be Monica Kaspar, Phone: (512) 974-1633, Email Address: [Monica.Kaspar@austintexas.go](mailto:Monica.Kaspar@austintexas.go). The City and the Contractor will use best efforts to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager.

**SECTION 2. COMPENSATION**

3.1 **Contract Amount.** In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not to exceed \$28,500.00 for the initial term, \$28,500.00 for the first extension, and \$28,500.00 for the second extension, for a total estimated contract amount not to exceed \$85,500.00 comprising the software maintenance and support fees.

**SECTION 3. TERM AND TERMINATION**


4.1 **Term of Contract.** The Contract shall be in effect from October 1, 2016 until September 30, 2017, and may be extended thereafter for up to 2 additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.1.1 Upon expiration of the initial term or period of extension, the Licensor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing), provided that the City pays the negotiated fees for the duration of the "hold over" period.

**SECTION 4. TERMS AND CONDITIONS:** See Exhibit B, Contract between the City of Austin and GitHub, Inc. signed September 30, 2015

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

GitHub, Inc.

By:   
Signature

Name: Kirsten Pomerleau  
Printed Name

Title: Sr. Accounting Manager

Date: 9/30/16

CITY OF AUSTIN

By:   
Signature

Name: Gil Zilkha  
Printed Name

Title: Contract Administrator

Date: 10/4/16

## List of Exhibits

Exhibit A	Pricing Agreement
Exhibit B	Contract between the City of Austin and GitHub, Inc. signed September 30, 2015
Exhibit C	Non Discrimination Certification

**EXHIBIT B**  
**Contract between the City of Austin and GitHub, Inc. signed September 30, 2015**



**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
GitHub, Inc.  
For  
GitHub Software and Support**

This Contract is made by and between the City of Austin ("City", "you"), a home-rule municipality incorporated by the State of Texas, and GitHub, Inc. ("Licensor", "us", "we"), having offices at 88 Colin P. Kelly Jr. St., San Francisco, CA 94107.

**SECTION 1. GRANT OF AUTHORITY, LICENSE, SERVICES AND DUTIES**

**1.1 Engagement of the Licensor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Licensor is engaged to provide the services set forth in Section 2, Scope of Work.

**1.2 Responsibilities of the Licensor.** The Licensor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Licensor to perform services beyond those stated in the Scope of Work, the Licensor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

**1.3 Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Licensor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Licensor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Licensor timely feedback on the acceptability of progress and task reports.

**1.4 Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Mary Wheeler, Phone: (415) 906-6907, Email Address: [sales@github.com](mailto:sales@github.com). The City's Contract Manager for the engagement shall be Brad McCarty, Phone: (512) 974-2739, Email Address: [Brad.McCarty@austintexas.go](mailto:Brad.McCarty@austintexas.go). The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

**1.5 License Grant.** Subject to your compliance with the terms of this Agreement (, Licensor hereby grants the City a non-exclusive, non-transferable, worldwide, royalty-free, limited-term license to install, execute, and use a single production instance of the Software for the City's internal business purposes during the applicable License Term, in accordance with the Documentation, and only for the number of Seats that the City has paid for. The City can make copies of the Software for non-production purposes only, provided that the City

reproduce all copyright and other proprietary notices that are on the original copy of the Software. The City's agents and contractors can use the Software too, so long as they're using it on the City's behalf, and provided that the City agree to be fully responsible for their behavior under this Agreement.

**1.6 Restrictions.** Licensor, licenses the Software to you – we don't sell it. As between us, Licensor owns all right, title and interest in and to the Software, and any intellectual property rights associated with it and with our company. Licensor reserves all rights in and to the Software that we don't expressly grant the City in this Agreement. The City agrees not to, nor permit nor authorize any third party to: (i) sublicense, sell, rent, lease, transfer, assign, or distribute the Software to third parties; (ii) host the Software for the benefit of third parties; (iii) disclose or permit any third party to access the Software, except as expressly permitted in Section 1.4, above; (iv) hack or modify the License Key, or try to avoid or change any license registration process we may implement; (v) modify or create derivative works of the Software, or merge the Software with other software; (vi) disassemble, decompile, bypass any code obfuscation, or otherwise reverse engineer the Software or attempt to derive any of its source code, in whole or in part, except to the extent such activities are expressly permitted by law or applicable license notwithstanding this prohibition; (vii) modify, obscure, or delete any proprietary rights notices included in or on the Software or Documentation; (viii) otherwise use or copy the Software in a manner not expressly permitted by this Agreement; or (ix) use any Software that we license to the City beyond its applicable License Term.

**1.7 Seats.** Remember, only one User can use a Seat at a time. Multiple Users aren't allowed to use the same Seat, and only one human being can be associated with a particular User account. If the City wants to swap out, delete, or suspend a User, you can do that, and then assign a new User to the open Seat. If you find that you need more Seats, that's great – Licensor is here to help! Just submit a new request through our website or via our sales team, and pay for the additional Seats (a new Order Form will be generated). If and when you add additional Seats to your subscription, you'll pay Fees for those seats at the then-current price, prorated for the balance of the applicable License Term. When the time comes to renew your Seats for another year-long License Term, we'll invoice you for all of your Seats at once, at the then-current price (we reserve the right to change our prices at any time, but the new prices won't affect you until it's time to renew your license for another year). The City agrees that any orders that you make (or that you authorize us to make on your behalf) for additional Seats during the term of this Agreement will be governed by this Agreement.

**1.8. Verification.** From time to time, Licensor may have reason to make sure that you're not using extra Seats without paying for them. The City agrees to cooperate with us to achieve that goal. To help us verify the number of Seats you're actually using, you'll promptly give us any usage files and reports that your instance of the Software generates, if and when we ask for them. We might also (or instead) ask one or your officers to certify the number of Seats that you're actually using. You agree to provide such a certification if we ask for it. If we determine that you're using more Seats than you've paid for, in addition to any other remedies we might have at law or in equity, you agree to pay us the then-current Fees for the additional Seats you're using, starting from the date you began using each Seat.

1.9. **Government Users.** No technical data or computer software is developed under this Agreement. The Software and Documentation have been developed solely with private funds, and are considered "Commercial Computer Software" and "Commercial Computer Software Documentation" as described in FAR 12.212, FAR 27.405-3, and DFARS 227.7202-3, and are licensed to the to the U.S. Government end user as restricted computer software and limited rights data. Any use, disclosure, modification, distribution, or reproduction of the Software or Documentation by the U.S. Government or its contractors is subject to the restrictions set forth in this Agreement.

## **SECTION 2. SCOPE OF WORK**

2.1 **Licensor's Obligations.** The Licensor shall fully and timely provide all deliverables described herein and in the Licensor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

## **SECTION 3. COMPENSATION**

3.1 **Contract Amount.** The Licensor will be paid as indicated herein upon the successful completion of the Scope of Work, as described herein. In consideration for the services to be performed under this Contract, the Licensor shall be paid an amount not to exceed \$28,500.00 comprising the software maintenance and support fees.

### **3.2 Invoices.**

**3.2.1 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Licensor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Licensor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Licensor's invoice. Invoices received without all required information cannot be processed and will be returned to the Licensor. Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management or (CTM)
Attn:	Accounts Payable
Address	PO Box 1088
City, State, Zip Code	Austin, TX 78767

3.2.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of

work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.2.3 Unless otherwise expressly authorized in the Contract, the Licensors shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

### 3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.3.3 Licensors

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Licensors agree that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Licensors. The City shall provide the Licensors written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 **Reimbursable Expenses.** Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Licensors within the Contract amount.

3.5.1 **Administrative.** The Licensors will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

**3.5.2 Travel Expenses.** All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Licensor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

### **3.6 Final Payment and Close-Out.**

3.6.1 The making and acceptance of final payment will constitute:

3.6.1.1 a waiver of all claims by the City against the Licensor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Licensor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Licensor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.1.2 a waiver of all claims by the Licensor against the City other than those previously asserted in writing and not yet settled.

## **SECTION 4. TERM AND TERMINATION**

**4.1 Term of Contract.** The Contract shall be in effect from October 1, 2015 until September 30, 2016.

4.1.1 Upon expiration of the initial term or period of extension, the Licensor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

**4.2 Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

**4.3 Default.** The Licensor shall be in default under the Contract if the Licensor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein,

(c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Licensor's Offer, or in any report or deliverable required to be submitted by Licensor to the City.

**4.4 Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Licensor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Licensor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

**4.5 Fraud.** Fraudulent statements by the Licensor on any Offer or in any report or deliverable required to be submitted by the Licensor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

## **SECTION 5. OTHER DELIVERABLES**

### **5.1 Equal Opportunity.**

**5.2.1 Equal Employment Opportunity.** No Licensor or Licensor's agent shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Licensor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Licensor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit B. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Licensor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

**5.1.2 Americans With Disabilities Act (ADA) Compliance.** No Licensor, or Licensor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

### **5.2 Delays.**

**5.4.1** The City may delay scheduled delivery or other due dates by written notice to the Licensor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Licensor shall negotiate an equitable adjustment for costs incurred by the Licensor in the Contract price and execute an amendment to the Contract. The Licensor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Licensor from delaying the delivery as notified.

5.2.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

## **SECTION 6. WARRANTIES**

### **6.1 Warranty – Price.**

#### **6.1.1 Intentionally Blank**

6.1.2 The Licensor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

### **6.2 Software and Services**

**6.2.1 Limited Warranties.** LICENSOR offers you the following limited warranties: (i) that the unmodified Software, at the time we make it available to you for download, will not contain or transmit any malware, viruses, or worms (otherwise known as computer code or other technology specifically designed to disrupt, disable, or harm your software, hardware, computer system, or network); (ii) that any Services we perform for you under this Agreement will be performed in a good and workmanlike manner, by appropriately qualified personnel (you just need to let us know about a problem within thirty (30) days of the date the Services were performed); and (iii) that, for ninety (90) days from the date the Software is made available for download, the unmodified Software will substantially conform to its Documentation. We don't warrant that your use of the Software will be uninterrupted, or that the operation of the Software will be error-free. These warranties won't apply if you modify the Software, or if you use the Software in any way that isn't expressly permitted by this Agreement and the Documentation. Our only obligation, and your only remedy, for any breach of these limited warranties will be, at our option and expense, to either (i) repair the Software; (ii) replace the Software; or (iii) terminate this Agreement with respect to the defective Software, and refund the Fees you've paid for the defective Software during the then-current License Term once you've returned it to us (or destroyed it).

**6.2.2 Disclaimer.** THE LIMITED WARRANTIES DESCRIBED ABOVE ARE THE ONLY WARRANTIES WE MAKE WITH RESPECT TO THE SOFTWARE, SERVICES, AND OUR TECHNICAL SUPPORT. WE DON'T MAKE ANY OTHER WARRANTIES, AND WE HEREBY SPECIFICALLY DISCLAIM ANY OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ANY WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, THAT YOU GET FROM US OR ANYWHERE ELSE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT.

### **6.3 LIMITATION OF LIABILITY.**

**6.3.1 *Waiver of Consequential Damages.*** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WE BE LIABLE TO YOU 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 WE'VE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**6.3.2 *Limitation of Total Liability.*** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OUR TOTAL CUMULATIVE LIABILITY TO YOU OR ANY THIRD PARTY UNDER THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THE TOTAL AMOUNT OF THIS CONTRACT.

## **SECTION 7 Confidentiality.**

**7.1 *Definition of Confidential Information.*** For the purposes of this Agreement, "Confidential Information" means any business or technical information that either one of us discloses to the other, in writing, orally, or by any other means, and including things like computer programs, code, algorithms, data, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, financial, and product development plans, names and expertise of employees and consultants, and customer lists. For the purposes of this Agreement, the Software and Documentation, and any copies of them, will be deemed to be Licensor's Confidential Information, regardless of whether they are marked as such.

**7.2 *Restrictions on Use and Disclosure.*** Neither of us will use the other party's Confidential Information, except as permitted under this Agreement. Each of us agrees to maintain in confidence and protect the other party's Confidential Information using at least the same degree of care as we use for its own information of a similar nature, but in all events at least a reasonable degree of care. Each of us agrees to take all reasonable precautions to prevent any unauthorized disclosure of the other's Confidential Information, including, without limitation, disclosing Confidential Information only to its employees, independent contractors, consultants, and legal and financial advisors (collectively, "Representatives") (i) with a need to know such information, and (ii) who are parties to appropriate agreements sufficient to comply with this Section 9. Each of us will be responsible for all acts and omissions of our Representatives. The foregoing obligations won't restrict either of us from disclosing Confidential Information of the other party pursuant to the order or requirement of a court, administrative agency, or other



governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to enable them to contest such order or requirement. The restrictions set forth in this Section 9 shall remain in effect during the term of this Agreement, and for five (5) years thereafter.

**7.3 Exclusions.** The restrictions set forth in Section 9.2 will not apply with respect to any Confidential Information that: (i) was or becomes publicly known through no fault of the receiving party; (ii) was rightfully known or becomes rightfully known to the receiving party without confidential or proprietary restriction from a source other than the disclosing party who has a right to disclose it; (iii) is approved by the disclosing party for disclosure without restriction in a written document which is signed by a duly authorized officer of such disclosing party; or (iv) the receiving party independently develops without access to or use of the other party's Confidential Information.

## **SECTION 8. Support.**

**8.1 Support Times.** *Provided that **the City has** paid all required fees, Licensor will provide technical support for the Software twenty-four (24) hours per day, five (5) days per week, excluding weekends and national U.S. holidays. We currently only offer support via email (write to us at [enterprise@github.com](mailto:enterprise@github.com)) or web-based ticketing (through [support.enterprise.github.com](https://support.enterprise.github.com)). You can contact our amazing support team to help answer your questions on installing and using the Software, identifying and verifying the causes of suspected errors in the Software, and helping you find workarounds for Software malfunctions. Though we'll do our best to respond to automated support requests, we typically need more information than an automated ticketing system can give us to solve your issue. Whenever possible, please initiate any support requests from a person or machine that our support team can interact with. We like the personal touch.*

**8.2 Updates.** Licensor will make Updates available to you on the same secure website where you downloaded the Software and the License Key.

**8.3 Exclusions.** Licensor might not be able to correct every problem we find, but we'll use our reasonable efforts to correct any material, reproducible errors in the Software that you make us aware of. Licensor might ask for the City's help in reproducing the error for us. Please - don't do things with our Software that would make it harder for us to help you. Licensor won't be responsible for supporting you in those circumstances, which include, among other things: (i) someone (other than Licensor) modifying the Software; (ii) changing your operating system or environment in a way that adversely affects the Software or its performance; (iii) using the Software in a manner for which it was not designed, or other than as authorized under this Agreement; or (iv) accident, negligence, or misuse of the Software. Licensor is only required to support a given version of the Software for a year from the date of its commercial release, or six months from the commercial release of the next Update, whichever is longer. If the City want support for earlier versions of the Software, we'll try to help you if we can, but you'll need to pay us for that help at our then-current rates.

## **SECTION 9. MISCELLANEOUS**

**9.1 Place and Condition of Work.** The City shall provide the Licensor access to the sites where the Licensor is to perform the services as required in order for the Licensor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Licensor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Licensor's obligations under the Contract. The Licensor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

### **9.2 Workforce.**

**9.2.1** The Licensor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

**9.2.2** The Licensor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

**9.2.2.1** use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

**7.2.2.2** use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

**9.2.3** If the City or the City's representative notifies the Licensor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Licensor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

**9.3 Compliance with Health, Safety, and Environmental Regulations.** The Licensor, its SubLicensors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and

by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Licensor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Licensor's obligations under this paragraph.

#### **9.4 Right To Audit.**

**9.4.1** If Services are provided the Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after completion of the Services on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

**9.5 Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Licensor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Licensor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Licensor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

#### **9.5 Indemnification.**

**9.5.1 *Licensor's Indemnification Obligation.*** Licensor will indemnify or will defend or settle, at our option and expense, any third-party claim brought against you to the extent that it's based on an allegation that your use or possession of the Software as permitted under this Agreement infringes a copyright or misappropriates a trade secret of any third party (each, a "Claim"), and, subject to Section 6.3, we'll pay all damages and costs (including reasonable legal fees) finally awarded by a court of final appeal attributable to such a Claim, provided that you notify us in writing of any such Claim as soon as reasonably practicable and allow us to control, and reasonably cooperate with us in the defense of, any such Claim and related settlement negotiations. The City shall provide final approval of any Claim or settlement.

**9.5.2 *Exclusions.*** You understand that we'll have no liability or obligation to indemnify you for any Claim that's based on (i) your breach of this Agreement; (ii) content that you upload to the Software; (iii) the modification of the Software, unless we were the ones who made the modifications; (iv) your use of the Software other than as authorized by this Agreement and the Documentation; (v) your failure to use updated or modified Software that we make available to you that would have helped avoid or mitigate the Claim; or (vi) your failure to stop using the

Software after receiving written notice to do so from us in order to avoid further infringement or misappropriation (subparts (i)-(vi) may be referred to collectively as "Indemnity Exclusions").

**9.5.3 Right to Ameliorate Damages.** If your use of the Software is, or in our reasonable opinion is likely to be, subject to a Claim under Section 9.5.1, we may, at our sole option and at no charge to you (and in addition to our indemnity obligation to you in Section 9.5.1): (i) procure for you the right to continue using the Software; (ii) replace or modify the Software so that it is non-infringing and substantially equivalent in function to the original Software; or (iii) if options (i) and (ii) above are not commercially practicable in our reasonable estimation, we can terminate this Agreement and all licenses granted hereunder (in which event, you will immediately stop using the Software) and refund the Fees that you paid us for the then-current License Term.

**9.5.4 Sole Remedy.** THIS SECTION 9.5 SETS FORTH OUR SOLE AND EXCLUSIVE OBLIGATIONS, AND YOUR SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

**9.6 Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Licensor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Contract Administrator

P O Box 1088

Austin, TX 78767

To the Licensor:

GitHub, Inc.

ATTN: Contract Manager

88 Colin P. Kelly Jr. St.

San Francisco, CA 94107

**9.6 Advertising.** The Licensor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

**9.7 No Contingent Fees.** The Licensor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Licensor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to

deduct from any amounts owed to the Licensor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**9.8 Gratuities.** The City may, by written notice to the Licensor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Licensor or any agent or representative of the Licensor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Licensor in providing such gratuities.

**9.9 Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Licensor shall render the Contract voidable by the City.

**9.10 Independent Licensor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Licensor's services shall be those of an independent Licensor. The Licensor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

**9.11 Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Licensor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Licensor without the prior written consent of the City. Any attempted assignment or delegation by the Licensor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

**9.12 Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Licensor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**9.13 Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Licensor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

**9.14 Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**9.15 Dispute Resolution.**

**9.15.1** If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

**9.15.2** If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Licensor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Licensor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

**9.16 Subcontractors.**

**9.16.1** If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of

Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

**9.16.2** Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

**9.16.2.1** require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

**9.16.2.2** prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

**9.16.2.3** require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

**9.16.2.4** require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

**9.16.2.5** require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

**9.16.3** The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

**9.17 Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

**9.18 Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

**9.19 Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

**9.20 Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.



**9.21 Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

**9.22 Incorporation of Documents. Section 0100, Standard Purchase Definitions,** is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:  
<http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf>.

**9.23 Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

**9.23.1** any exceptions to the Offer accepted in writing by the City;

**9.23.2** the Supplemental Purchase Terms and Conditions;

**9.23.3** the Standard Purchase Terms and Conditions;

**9.23.4** the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

GitHub, Inc.

By: \_\_\_\_\_

Signature

Name: Paul St. John

Printed Name

Title: VP Sales

Date: September 30, 2015

CITY OF AUSTIN

By: \_\_\_\_\_

Signature

Name: \_\_\_\_\_

Printed Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## List of Exhibits

Exhibit A	Pricing Agreement
Exhibit B	Non Discrimination Certification

**EXHIBIT B**  
**City of Austin, Texas**  
**EQUAL EMPLOYMENT/FAIR HOUSING OFFICE**  
**NON-DISCRIMINATION CERTIFICATION**

**City of Austin, Texas**  
**Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Licensors.

**Sec. 4-2 Discriminatory Employment Practices Prohibited.** As an Equal Employment Opportunity (EEO) employer, the Licensor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Licensor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Licensors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subLicensors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Licensors adopt the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination in Employment Policy:**

*As an Equal Employment Opportunity (EEO) employer, the Licensors will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.*

*The Licensors will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.*

*Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.*

*Licensors agree that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Licensors has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Licensors's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Licensors's policy, but will also supersede the Licensors's policy to the extent of any conflict.*

UPON CONTRACT AWARD, THE LICENSOR SHALL PROVIDE A COPY TO THE CITY OF THE LICENSOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE LICENSOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE LICENSOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

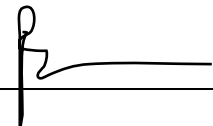
Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

**Term:**

The Licenser agrees that this Section 0800 Non-Discrimination Certificate or the Licenser's separate conforming policy, which the Licenser has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Licenser further agrees that, in consideration of the receipt of continued Contract payments, the Licenser's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 30th day of September, 2015

LICENSOR  
Authorized  
Signature

  
\_\_\_\_\_  
Paul St. John

Title

\_\_\_\_\_  
VP Sales

**EXHIBIT C**  
**City of Austin, Texas**  
**EQUAL EMPLOYMENT/FAIR HOUSING OFFICE**  
**NON-DISCRIMINATION CERTIFICATION**

**City of Austin, Texas**  
**Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

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**Sec. 4-2 Discriminatory Employment Practices Prohibited.** As an Equal Employment Opportunity (EEO) employer, the Licensor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Licensor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Licensors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subLicensors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Licensors adopt the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination in Employment Policy:**

*As an Equal Employment Opportunity (EEO) employer, the Licensors will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.*

*The Licensors will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.*

*Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.*

*Licensors agree that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Licensors has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Licensors's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Licensors's policy, but will also supersede the Licensors's policy to the extent of any conflict.*

UPON CONTRACT AWARD, THE LICENSOR SHALL PROVIDE A COPY TO THE CITY OF THE LICENSOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE LICENSOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE LICENSOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**




Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

**Term:**

The Licenser agrees that this Section 0800 Non-Discrimination Certificate or the Licenser's separate conforming policy, which the Licenser has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Licenser further agrees that, in consideration of the receipt of continued Contract payments, the Licenser's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

LICENSOR  
Authorized  
Signature



Kirsten Pomerleau

Title

Sr. Accounting Manager



## City of Austin FSD Purchasing Office

### Certificate of Exemption

DATE: 8/21/2015 DEPT: CTM  
TO: Purchasing Officer or Designee FROM: Divya Rathnala  
BUYER: PHONE: 512-974-2561

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)
  - ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
  - ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
  - ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
  - ☐ a procurement for personal, professional, or planning services
  - ☐ a procurement for work that is performed and paid for by the day as the work progresses
  - ☐ a purchase of land or right-of-way
  - ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
  - ☐ a purchase of rare books, papers, and other library materials for a public library
  - ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
  - ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- ☐ services performed by blind or severely disabled persons
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality
- ☐ electricity
- ☐ advertising, other than legal notices
- ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

The city of Austin currently holds 120 licenses of GitHub. CTM has been very satisfied with the vendor/customer relations with GitHub.

GitHub is the only industry provider of software version control with our needs.

This purchase will include a multi-year renewal to keep the licenses up to date

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with GitHub Enterprise which will cost approximately \$ 28,500.00 (Provide estimate and/or breakdown of cost).

Recommended  
Certification

Devi Rathnala  
Originator

08/21/15  
Date

Approved  
Certification

[Signature]  
Department Director or designee

8/21/15  
Date

Assistant City Manager / General Manager  
or designee (if applicable)

Purchasing Review  
(if applicable)

[Signature]  
Buyer

10/4/15  
Date

[Signature]  
Manager Initials

Exemption Authorized  
(if applicable)

\_\_\_\_\_  
Purchasing Officer or designee

\_\_\_\_\_  
Date

02/26/2013