

Amendment to GitHub Terms of Service Applicable to U.S. Federal Government Users

{{#tip}}

This Amendment to GitHub's [Terms of Service](#) applies only to users that are using GitHub on behalf of the United States federal government. If you are not using GitHub on behalf of the U.S. federal government, the standard [GitHub Terms of Service](#) apply to you.

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This Amendment is an agreement between GitHub, Inc. ("GitHub" or "Company") and U.S. federal government users of the GitHub.com web site (the "Service") and applies solely to any U.S. federal government agency and its users who use or access the Service on behalf of the U.S. federal government (the "Government").

You, as a United States government entity, are required, when entering into agreements with other parties, to follow applicable federal laws and regulations, including those related to ethics; privacy and security; accessibility; records retention; limitations on indemnification; fiscal law constraints; advertising and endorsements; freedom of information; and governing law and dispute resolution forum.

GitHub and You (together, the "Parties") agree that modifications to the [GitHub Terms of Service](#) (the "ToS") are appropriate to accommodate Your legal status, Your public (in contrast to private) mission, and other special circumstances. Accordingly, the ToS are hereby modified by this Amendment as they pertain to the Government's use of the Company web site and services:

A. Public purpose

1. *Government entity* - "You" within the ToS shall mean the Government itself and shall not bind, in their individual capacity, the individual(s) who utilize the Company site or services on the Government's behalf. Company will look solely to the Government to enforce any violation or breach of the ToS by such individuals, subject to federal law.
2. *Advertisements* - Company hereby agrees not to serve or display any third-party commercial advertisements or solicitations on any pages within the Company site displaying content created by or under the control of the Government. This exclusion shall not extend to house ads, which Company may serve on such pages in a non-intrusive manner. The foregoing obligations are contingent upon the email address designated on Your account details page ending in .gov, .mil, or .fed.us.

B. Your content on GitHub

1. *Access and use* - Company acknowledges that the Government's use of the Service may energize significant citizen engagement. Language in the ToS allowing Company to terminate service, refuse or remove any Content, or close the Government's account, at

any time, for any reason, is modified to reflect the Parties' agreement that Company may unilaterally modify or discontinue service, temporarily or permanently, refuse or remove any Content, and/or terminate the Government's account only for breach of the Government's obligations under the ToS or its material failure to comply with the instructions and guidelines posted on the Service, or if Company ceases to operate the Service generally. Company will provide the Government with a reasonable opportunity to cure any breach or failure on the Government's part.

2. *No endorsement* - Company agrees that Your seals, trademarks, logos, service marks, trade names, and the fact that You have a presence on the Company site and use its services, shall not be used by Company in such a manner as to state or imply that Company's products or services are endorsed, sponsored or recommended by You or by any other element of the federal government, or are considered by these entities to be superior to any other products or services. Except for pages whose design and content is under the control of the Government, or for links to or promotion of such pages, Company agrees not to display any government seals or logos on the Company's homepage or elsewhere on the Company Site, unless permission to do so has been granted by the Government or by other relevant federal government authority. Company may list the Government's name in a publicly available customer list so long as the name is not displayed in a more prominent fashion than that of any other third-party name.
3. *Provision of data* - In case of termination of service, within 30 days of such termination, upon request, Company will provide you with all user-generated content that is publicly visible through the Sites You created at Company. Data will be provided in a commonly used file or database format as Company deems appropriate. Company will not provide data if doing so would violate its privacy policy, available at <https://help.github.com/privacy/>.

C. Unpaid and paid plans

1. *No cost agreement* - Nothing in this Amendment or ToS obligates You to expend appropriations or incur financial obligations. The Parties acknowledge and agree that none of the obligations arising from this Amendment or ToS are contingent upon the payment of fees by one party to the other. At the Company's discretion, GitHub may offer a free account under a free usage plan, such as a Free for Open Source Plan, and in that case this Amendment will apply to the Government's usage under the free account/plan. This Amendment also applies when the Government uses one of GitHub's paid usage plans.
2. *Government responsibilities under paid usage plans* - You acknowledge that while Company will provide You with service under a free plan, Company reserves the right to begin charging for that service at some point in the future. Company will provide You with at least 30 days advance notice of a change involving the charging of fees for a free service. You also understand that Company offers paid plans for a fee. The Parties understand that fee-based services are categorically different than free products, and are subject to federal procurement rules and processes. Before the Government decides to enter into a business or enterprise subscription, or any other

fee-based service that this Company or alternative providers may offer now or in the future, You agree: to determine the Government has a need for those additional services for a fee; to consider the subscription's value in comparison with comparable services available elsewhere; to determine that Government funds are available for payment; to properly use the Government Purchase Card if that Card is used as the payment method; to review any then-applicable ToS for conformance to federal procurement law; and in all other respects to follow applicable federal acquisition laws, regulations and agency guidelines (including those related to payments) when initiating that separate action.

3. *No business relationship created* - The Parties are independent entities and nothing in this Amendment or ToS creates an agency, partnership, joint venture, or employer/employee relationship.

D. Federal Regulations

1. *Security* - Company will, in good faith, exercise due diligence using generally accepted commercial business practices for IT security, to ensure that systems are operated and maintained in a secure manner, and that management, operational and technical controls will be employed to ensure security of systems and data. Recognizing the changing nature of the Web, Company will continuously work with users to ensure that its products and services are operated and maintained in a secure manner. Company agrees to discuss implementing additional security controls as deemed necessary by the Government to conform to the Federal Information Security Management Act (FISMA), 44 U.S.C. 3541 et seq.
2. *Federal Records* - Government acknowledges that use of Company's site and services may require management of Federal records. Government and user-generated content may meet the definition of Federal records as determined by the agency. If the Company holds Federal records, the Government and the Company must manage Federal records in accordance with all applicable records management laws and regulations, including but not limited to the Federal Records Act (44 U.S.C. chs. 21, 29, 31, 33), and regulations of the National Archives and Records Administration (NARA) at 36 CFR Chapter XII Subchapter B). Managing the records includes, but is not limited to, secure storage, retrievability, and proper disposition of all Federal records including transfer of permanently valuable records to NARA in a format and manner acceptable to NARA at the time of transfer. The Government is responsible for ensuring that the Company is compliant with applicable records management laws and regulations through the life and termination of the Agreement.

E. General Conditions

1. *Indemnification* - Any provisions in the ToS related to indemnification, damages, attorney's fees, and settlement are hereby waived. Liability of the Government for any breach of the ToS or this Agreement, or any claim, demand, suit or proceeding arising from the ToS or this Agreement, shall be determined under the Federal Tort Claims Act, or other governing authority. Liability of Company for any breach of the ToS or

this Agreement, or any claim, demand, suit or proceeding arising from the ToS or this Agreement, shall be determined by applicable federal or state law.

2. *Limitation of liability* - The Parties agree that nothing in the Limitation of Liability clause or elsewhere in the ToS in any way grants Company a waiver from, release of, or limitation of liability pertaining to, any past, current or future violation of federal law.
3. *Governing law and Forum* - The dispute resolution provision in the ToS is hereby deleted. The ToS and this Amendment shall be governed, interpreted and enforced in accordance with applicable federal laws of the United States of America and exclusive jurisdiction shall be in the appropriate U.S. federal courts. To the extent permitted by federal law, the laws of the State of California will apply in the absence of federal law.
4. *Assignment* - Neither party may assign its obligations under this Amendment or ToS to any third-party without prior written consent of the other; however, GitHub may, without the Government's consent, assign its obligations to an Government using the service under a free usage plan under this Amendment or ToS to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger, acquisition, corporate reorganization or consolidation, or the sale of all or substantially all of GitHub's assets.

F. Changes to this agreement

1. *Precedence; Further Amendment; Termination* - This Amendment constitutes an amendment to the ToS; language in the ToS indicating it may not be modified or that it alone is the entire agreement between the Parties is waived. If there is any conflict between this Amendment and the ToS, or between this Amendment and other rules or policies on the Company site or services, this Amendment shall prevail. This Amendment may be further amended only upon written agreement executed by both Parties. The Government may close its account and terminate this agreement at any time. Company may close Government's account and terminate this agreement on 30 days written notice, but the Government shall not be entitled to a refund of any fees paid.
2. *Posting and availability of this Amendment* - The parties agree this Amendment contains no confidential or proprietary information, and either party may release it to the public at large.