

# JETBRAINS IDE SERVICES (CLOUD) TERMS AND CONDITIONS

Version 1.0, effective as of October 21, 2024

Welcome to JetBrains IDE Services!

These JetBrains IDE Services (Cloud) Terms and Conditions constitute a legally binding document, and it is important that you read them carefully.

## 1. INTRODUCTION

These JetBrains IDE Services (Cloud) Terms and Conditions (“**Agreement**”) describe how the Customer can access, purchase, and use JetBrains IDE Services. Accepting this Agreement (by clicking the “I agree” or a similar button or by accessing or using JetBrains IDE Services) creates a legal agreement between JetBrains s.r.o., a company registered in the Commercial Register of the Prague Municipal Court, Section C, File 86211, ID No. 265 02 275 with its registered office at Na Hřebenech II 1718/8, Prague, 14000, Czech Republic (“**JetBrains**”), and the legal entity accepting this Agreement (“**Customer**”). JetBrains and the Customer may each also be referred to individually as a “**Party**” or jointly as the “**Parties**”.

## 2. DEFINITIONS

There are certain words or phrases in this Agreement that have a particular defined meaning. When the word or phrase is used for the first time, it is defined and capitalized. This Agreement also uses the following definitions:

“**Affiliate**” means, with respect to any Party, any entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under the common control of such Party. For the purposes hereof, “control” means the possession, direct or indirect, of the power to direct or affect the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise.

“**Billing Period**” means the period for which JetBrains will invoice the Customer for usage of JetBrains IDE Services. Unless otherwise agreed between the Parties in writing, the Billing Period will be a calendar quarter.

“**Core Admin Console**” means the hosted feature of JetBrains IDE Services that enables the Customer to activate and manage various IDE Services under the Customer’s JetBrains Account.

“**Data**” means any of Customer’s data that is transferred to, stored in, processed by, or otherwise used in JetBrains IDE Services by Customer.

“**Documentation**” means the latest versions of all online technical documentation relating to JetBrains IDE Services, which is available at <https://www.jetbrains.com/help/ide-services>, and any other relevant JetBrains IDE Services policies available on the JetBrains Website.

“**Fee**” means the applicable fee for JetBrains IDE Services determined according to the Special Terms.

“**IDE Service**” means an individual software product that can be activated by the Customer through the Core Admin Console.

“**JetBrains Account**” means an account at <https://account.jetbrains.com> created by the Customer, having a unique name and password and enabling the Customer to activate JetBrains IDE Services.

“**JetBrains IDEs**” means generally available JetBrains software products intended for mass distribution that may be designated by JetBrains as part of JetBrains Toolbox (such as IntelliJ IDEA Ultimate, PhpStorm, PyCharm Professional, and ReSharper) and that are used by the Customer on the basis of a separate agreement with JetBrains. The list of JetBrains IDEs and other software products in connection with which JetBrains IDE Services can be used is provided in the Documentation.

“**JetBrains IDE Services**” means the software product known as JetBrains IDE Services, which is offered as self-hosted software that includes the Core Admin Console, individual IDE Services, updates to JetBrains IDE Services, and incorporated Third-Party Software.

“**JetBrains Website**” means any website that is the property of JetBrains, including any websites hosted under the domains listed at <https://www.jetbrains.com/legal/websites/>.

“**Special Terms**” means the IDE Services (Cloud) Special Terms that are applicable in addition to this Agreement for the respective activated IDE Service and that are available at [https://www.jetbrains.com/legal/docs/ides\\_cloud/license-special/](https://www.jetbrains.com/legal/docs/ides_cloud/license-special/).

“**Subscription**” means the Customer’s right to use JetBrains IDE Services according to the prepaid billing model for a specific period of time based on a prepaid Subscription Fee.

“**Third-Party Software**” means any third-party software program that is owned or licensed by someone other than JetBrains and is described on the JetBrains Website.

“**User**” means any individual person who is authorized by the Customer or any of its Affiliates to use JetBrains IDE Services, for example, while performing duties within the scope of their employment or assignment with the Customer or its Affiliate, including employees, independent contractors, or temporary workers.

### 3. USE OF JETBRAINS IDE SERVICES

3.1. General. Subject to the terms of this Agreement, JetBrains grants the Customer the right to use JetBrains IDE Services and the Customer agrees to pay either post-paid Fees based on the actual usage of JetBrains IDE Services, or prepaid Fees for Subscriptions as further agreed between the Parties.

3.2. Core Admin Console. IDE Services are accessible through the Core Admin Console. The Customer is responsible for the setup of the Core Admin Console in accordance with the Documentation. The Core Admin Console can be activated only with a JetBrains Account.

3.3. Management of IDE Services. The Core Admin Console allows the Customer to enable individual IDE Services and manage which Users will be included in them. Unless it is agreed by the Parties that the Customer will purchase IDE Services in accordance with a prepaid Subscription model, the Customer can enable or disable any IDE Service at any time.

3.4. Special Terms. By the mere enabling of an individual IDE Service, the Customer agrees with the Special Terms applicable for that respective individual IDE Service, including but not limited to the Customer’s obligation to pay the applicable Fee.

3.5. No Obligation to Use. Unless otherwise agreed between the Parties, the Customer is not obliged to activate any IDE Service or use IDE Services with any specific number of users. The Customer may solely decide which IDE Services will be activated and used by the Customer and when.

3.6. Trial. The Customer may be allowed to use JetBrains IDE Services for evaluation purposes, without charge, for a limited period as may be specified in the Documentation or agreed between the Parties (“Trial”). The Customer’s use of individual IDE Services during the Trial shall be subject to the terms of this Agreement and limited to internal evaluation and testing of the respective IDE Service for the sole purpose of determining whether such IDE Service meets the Customer’s requirements and whether the Customer wishes to use the paid version. The Customer may end the Trial at any time by disabling the IDE Service. If the IDE Service is not disabled during the Trial period, JetBrains will charge the Customer for the use of the IDE Service after the end of the Trial period and the Customer agrees to pay the Fees as stated in Section 7 (Payment Provisions) of this Agreement.

3.7. Early Access Releases. JetBrains may make available from time to time EAP versions of IDE Services or their features, labeled as “EAP”. Use of these EAP versions is subject to the JetBrains EAP User Agreement available at [https://www.jetbrains.com/legal/docs/toolbox/user\\_eap/](https://www.jetbrains.com/legal/docs/toolbox/user_eap/) as opposed to this Agreement, and by using the EAP version, the Customer agrees with and consents to the JetBrains EAP User Agreement.

3.8. Changes to JetBrains IDE Services. From time to time, JetBrains may release a new IDE Service or an update of JetBrains IDE Services or remove or replace an existing IDE Service. JetBrains will notify the Customer about any replacements or removals of IDE Services at least twelve (12) months before the effective date of the change.

## 4. RIGHTS AND RESPONSIBILITIES

4.1. Right to Use JetBrains IDE Services. Subject to the Customer's compliance with this Agreement and Special Terms, JetBrains grants the Customer and its Affiliates authorized by the Customer a non-exclusive, non-transferable, worldwide, royalty-free right to use JetBrains IDE Services in connection with JetBrains IDEs under the Customer's JetBrains Account (or other products described in the Documentation). If the Parties have agreed that IDE Services will be purchased in accordance with a prepaid Subscription model, the right to use an individual IDE Service is limited by the applicable Subscription term.

4.2. Customer's Responsibilities.

(a) The Customer must have a JetBrains Account in order to activate JetBrains IDE Services and for billing purposes.

(b) The Customer is solely responsible for selecting Users that will have access to JetBrains IDE Services, their access rights, and any acts and omissions of the selected Users. The Customer undertakes to ensure that all Users comply with this Agreement and the Special Terms while using JetBrains IDE Services and that they will use JetBrains IDE Service in accordance with the JetBrains Cloud-Based Product Acceptable Use Policy, which is available at <https://www.jetbrains.com/legal/docs/terms/teamware-acceptable-use/>.

(c) The Customer is solely responsible for keeping its usernames, passwords, and access tokens confidential and secure, and making sure that Users do the same.

(d) The Customer is solely responsible for ensuring that it is equipped with any hardware and software (e.g. operating software or other system libraries) required to use JetBrains IDE Services. The Customer is solely responsible for the security, availability, and backing up of such hardware and software used by the Customer when using JetBrains IDE Services.

(e) The Customer is responsible for all Data that the Customer or its Users submit, store, or use in JetBrains IDE Services, including ensuring that it is legal for the Customer and its Users to do so. The Customer is also responsible for all legal consequences, such as claims, damages, losses, liabilities, costs, and expenses, that result from Data. If the Customer becomes aware that any Data breaches this Agreement or another person's ('third-party') rights, the Customer must notify JetBrains and remove this Data from JetBrains IDE Services.

(f) The Customer is responsible for maintaining the default settings JetBrains provided or the settings recommended in the Documentation.

(g) The Customer is responsible for ensuring that the Customer and its Users use JetBrains IDE Services according to all applicable laws and governmental regulations.

(h) When the Customer activates an individual IDE Service, the Customer is responsible for compliance with the additional obligations set out for such an IDE Service in the applicable Special Terms.

4.3. Restrictions. The Customer must not:

(a) reverse-engineer, disassemble, translate, or decompile all or part of JetBrains IDE Services, or attempt to derive the source code of JetBrains IDE Services;

(b) modify all or part of JetBrains IDE Services' binaries, or modify, alter, tamper with, adapt, repair, or otherwise create derivative works of JetBrains IDE Services, unless given express prior written permission by JetBrains;

(c) use, or try to use, JetBrains IDE Services in a way that avoids incurring applicable Fees and/or remove or obscure any proprietary or other notices contained in JetBrains IDE Services;

(d) facilitate unauthorized access to JetBrains IDE Services, or grant the right to use JetBrains IDE Services or provide access to JetBrains IDE Services or to the Customer's JetBrains Account to any third party, unless expressly permitted by this Agreement or Special Terms;

(e) rent, distribute, lease, transfer, or resell JetBrains IDE Services unless given prior written permission by JetBrains; and

(f) utilize any procedures or tools to bypass JetBrains IDE Services security or allow JetBrains IDE Services to be utilized to hack, tunnel, or otherwise gain unauthorized access to any computer or system.

## 5. INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP

5.1. Intellectual Property. JetBrains IDE Services, including its structure, organization, and code, is the intellectual property of JetBrains or its licensors and is protected by copyright law. JetBrains IDE Services is not sold but is subject to a limited license. Title and copyright to JetBrains IDE Services, in whole and in part, and all copies, modifications, enhancements, derivatives, and other alterations thereto is and will remain the sole and exclusive property of JetBrains and its licensors.

5.2. Customer's Data. As between JetBrains and the Customer and to the extent permitted by applicable law, the Customer owns the Data and keeps all proprietary rights, including intellectual property rights to it. Every time the Customer submits the Data to JetBrains IDE Services, the Customer confirms that it has the right to do so and understand that it is doing so at its own risk, and that it is solely responsible for this Data and all consequences of its use in JetBrains IDE Services. The Customer will indemnify JetBrains from any liability relating to this Data (see the 'Indemnification' Section).

5.3. Third-Party Software. JetBrains IDE Services may include Third-Party Software. A list of Third-Party Software included in JetBrains IDE Services, if any, is available in its Documentation and/or at <https://www.jetbrains.com/legal/third-party-software>.

5.4. Feedback. JetBrains IDE Services often gives the Customer and its Users the option to provide feedback, such as suggestions, ideas, proposals, compliments, or problems encountered. JetBrains invites the Customer to provide such feedback, as well as to post comments on JetBrains' website, blogs, and discussion forums. The Customer has no obligation to provide JetBrains with feedback; however, if it does, JetBrains is granted a non-exclusive, irrevocable, worldwide, royalty-free license that is sub-licensable and transferable, to make, use, sell, have made, offer to sell, import, reproduce, publicly display, distribute, modify, or publicly perform the feedback in any manner without any obligation, fee, royalty, or restriction based on intellectual property rights or otherwise.

## 6. ACCESS AND DATA

6.1. Access control. If the Customer uses JetBrains IDE Services, the Data might be accessible to JetBrains and visible to Users, depending on the nature of the Data, and the specific features of an individual IDE that the Customer uses. It is the Customer's responsibility to select and set the appropriate level of access to the Data, as described in the Documentation. Regardless of the level of access the Customer sets, the Customer gives JetBrains the following permissions to access Data:

(a) to provide the Customer with the JetBrains IDE Services, JetBrains is authorized to host, store, copy, alter, utilize, parse, display, publish, and share Data in JetBrains IDE Services. This permission includes the right to do things such as copy it to JetBrains' database and make backup. It does not permit JetBrains to sell or otherwise transfer ownership of Data to a third party, nor does anything here give JetBrains permission to grant access to Your Data to any third party without Customer's permission (except for the Users or third parties engaged by JetBrains in the services under this Agreement).

(b) for security reasons, if JetBrains reasonably believes that such access is required to maintain the ongoing confidentiality, integrity, availability, performance, and resilience of JetBrains systems and JetBrains IDE Services; and

(c) if JetBrains reasonably believes that the Data breaches the law or this Agreement or if JetBrains is required to access Data based on the requirements of applicable law or a binding decision or request of a state's authority.

## 7. PAYMENT PROVISIONS

7.1. Payment Models. The Customer will be billed either after the respective Billing Period based on its actual usage of IDE Services (post-paid Fees), or the Customer can purchase a Subscription to individual IDE Services, in which case the Fees must be paid up front (prepaid Fees).

7.2. Post-Paid Fees. Unless JetBrains and the Customer agree that JetBrains IDE Services will be purchased in accordance with a prepaid Subscription model, the Customer agrees to pay, after the end of every Billing Period, Fees for each IDE Service it uses. The Fee for each IDE Service will be calculated by JetBrains in the manner described

in the Special Terms and based on the pricing information published on the JetBrains Website as applicable to IDE Services in the respective calendar month of its usage. If an individual IDE Service was activated by the Customer later than the first day of a calendar month, Fees for that IDE Service will be charged on a pro-rata basis based on the number of remaining days in that calendar month. The Customer acknowledges that deactivation of any IDE Service during a calendar month will not have any effect on the Fees payable for that calendar month.

7.3. Prepaid Subscriptions. Parties may agree that the Customer will order JetBrains IDE Services in accordance with a prepaid Subscription model.

7.4. Payment Terms. At the end of every Billing Period, JetBrains will invoice the Customer for the full amount of Fees payable for all IDE Services used during the respective Billing Period. The Customer undertakes to pay such Fees for IDE Services subject to Net 30 payment terms (thirty (30) calendar days from the issuance date of JetBrains' invoice). Invoices will only be provided electronically. Payments must be made in full in the currency indicated in the invoice and via electronic funds transfer.

7.5. Payment Cards. JetBrains accepts major debit and credit cards ("Payment Cards") for payment via third-party payment gateway providers, including Adyen and PayPal. Any and all Payment Card payments shall be deemed as payments made by the Customer regardless of the name of the card holder making the payment.

7.6. Recurring Payments. The Customer authorizes JetBrains to charge its Payment Card automatically at the interval and in the amount selected by the Customer based on the available options during the online check-out process or in its JetBrains IDE Services settings. The Customer agrees that the Payment Card specified for recurring payments is, and will continue to be, an account that the Customer owns or is otherwise legally authorized to use, and that the Customer will maintain sufficient funds within its credit card limit, or in the case of an account linked to the Customer's debit card, a sufficient available balance, to make recurring payments of Fees. The Customer can cancel recurring payments at any time via the Customer's JetBrains Account. For the avoidance of any doubt, cancellation of recurring payments does not authorize the Customer to receive any portion of the Fees already paid to JetBrains.

7.7. Responsibility for Payment. JetBrains is not responsible for any:

- (a) payment failure resulting from inaccurate payment details provided by the Customer;
- (b) restrictions made by the Customer's bank or payment service provider or processor;
- (c) payment gateway failure;
- (d) transaction, conversion, or other payment fees; or
- (e) misuse, abuse, unauthorized use, or fraudulent use of Payment Cards.

7.8. Billing Agent. In some countries and territories, the Customer may choose to appoint a Billing Agent to pay Fees on the Customer's behalf provided, however, that the Customer understands and agrees that it remains JetBrains' sole contractual counterparty.

7.9. Support Fee. Basic support as per Section 10 (Support) is provided at no additional charge. Any additional support ordered by the Customer will be subject to a support fee agreed between the Parties.

7.10. Invoicing Entity. JetBrains' invoices may be submitted to the Customer by itself, or by **JetBrains Distributions s.r.o.**, with its registered office at Na Hřebenech II 1718/8, Prague, 14000, Czech Republic, registered with Commercial Register kept by the Municipal Court of Prague, Section C, file 295970, ID. Nr.: 071 74 811; **JetBrains Americas, Inc.**, a Delaware corporation, with its registered office at 10 Lake Center Drive, Suite 203, Marlton, NJ, 08053, USA; **JetBrains Shanghai**, a company incorporated under the laws of the People's Republic of China and having its principal place of business at A51. 35/F, PingAn Riverfront Financial Center, 757 Mengzi Road, Huangpu District, Shanghai 200023, China with the corporate identification number 91310000MA1FPJY588; or another entity appointed by JetBrains (including **Taxamo Checkout Limited Ltd.**). Notwithstanding the foregoing, JetBrains s.r.o. remains the licensor of JetBrains IDE Services and no other provisions of this Agreement shall be affected.

7.11. Late Payment Remedies. If the Customer is in default with its payment obligations to JetBrains, JetBrains may, at its sole discretion and until all Fees due, including default interests, are paid:

- (a) suspend its performance under this Agreement;
- (b) charge default interest on the amount due at the rate of 1.5% per month;

(c) recover all costs of enforcement of the Fees due, including, without limitation, reasonable legal costs; and/or

(d) combine any of the above rights and remedies as may be permitted by applicable law. The above remedies are in addition to all other remedies available at law or in equity.

7.12. **Suspension Effect.** The Customer agrees that JetBrains is entitled to charge Fees for the entire duration of this Agreement, regardless of suspension of JetBrains IDE Services.

7.13. **No Set-Off.** The Customer may not deduct, withhold, or set off any amount from Fees due to JetBrains.

7.14. **Deterioration of Customer's Financial Situation.** If after the conclusion of this Agreement circumstances become known to JetBrains that give reason to assume a material deterioration in the financial situation of the Customer so that JetBrains' payment claims appear jeopardized, JetBrains may demand at its choice either provision of security within a reasonable period or payment concurrent with the delivery of JetBrains IDE Services.

## 8. TAXES

Fees do not include any national, state, federal, or local sales tax, use tax, value added tax (VAT), goods and sales tax (GST), digital services tax (DST), or other tax ("**Local Tax**"). If Fees are subject to any Local Tax, it can be added to the invoice. The Customer bears the sole responsibility for any withholding tax liabilities and no deductions shall be made by the Customer from the amount payable to JetBrains, provided, however, that the Parties agree that amounts payable under this Agreement are not subject to withholding tax in the Customer's country based on Article 7 of the treaty between the Czech Republic and the Customer's country for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital ("**Double Taxation Treaty**") and that Article 12 of such Double Taxation Treaty is not applicable to this Agreement.

## 9. PURCHASING INDIRECTLY

If the Customer orders a Subscription through an authorized JetBrains reseller or distributor, the terms of this Agreement shall apply except for Section 7 (Payment Provisions) and Section 8 (Taxes). Resellers and distributors are authorized neither to act on JetBrains' behalf nor to make any promises or commitments on JetBrains' behalf. The Customer understands and agrees that JetBrains is only bound by the terms of this Agreement and the applicable Special Terms.

## 10. SUPPORT

10.1. **Basic Support.** Subject to the Customer's compliance with this Agreement, JetBrains will provide reasonable support services regarding operational questions related to IDE Services during JetBrains' normal business hours (10:00 am to 6:00 pm (GMT+1) on business days (excluding weekends and public holidays)). These support services shall be provided in response to requests sent via email to [ideservices-support@jetbrains.com](mailto:ideservices-support@jetbrains.com) or via the online support request form available on JetBrains Website.

## 11. WARRANTY

11.1. **WARRANTY DISCLAIMER.** JETBRAINS IDE SERVICES IS PROVIDED TO THE CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS AND USE OF JETBRAINS IDE SERVICES IS AT THE CUSTOMER'S OWN RISK. JETBRAINS MAKES NO WARRANTY REGARDING JETBRAINS IDE SERVICES' USE OR PERFORMANCE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, JETBRAINS (AND ITS AFFILIATES, SHAREHOLDERS, AGENTS, DIRECTORS, AND PERSONNEL) AND ITS LICENSORS, SUPPLIERS (INCLUDING PROVIDERS OF THIRD-PARTY SOFTWARE), AND DISTRIBUTORS/RESELLERS (COLLECTIVELY "JETBRAINS PARTIES") DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO IDE SERVICES AND RELATED SUPPORT NOT SPECIFICALLY INCLUDED IN THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

11.2. CUSTOMER'S RESPONSIBILITY. ANY CONTENT OR DATA DOWNLOADED OR OTHERWISE OBTAINED IN RELATION TO THE USE OF JETBRAINS IDE SERVICES IS DOWNLOADED AT THE CUSTOMER'S OWN RISK; THE CUSTOMER AGREES IT IS SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS PROPERTY AND/OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOADS.

## 12. INDEMNIFICATION

12.1. Customer's Indemnification Obligations. The Customer will defend, indemnify, and hold harmless JetBrains from any losses, damages, third-party costs, or expenses (including reasonable attorney's fees) suffered or incurred in connection with any action brought against JetBrains related to any of the following:

- (a) All activities related to the Customer's JetBrains Account and any actions taken by the Customer's Users in relation to JetBrains IDE Services;
- (b) The Customer's or any of its Users' breach of this Agreement (including the Cloud-Based Product Acceptable Use Policy);
- (c) Claims that the Data or the combination of the Data with other data, infrastructure, or processes infringes third-party rights, or that the Customer has illegally or without permission claimed third-party rights.

12.2. JetBrains' Indemnification Obligations. JetBrains will defend, indemnify, and hold harmless, and defend the Customer from any losses, damages, third-party costs, or expenses (including reasonable attorney's fees) suffered or incurred directly in connection with any action brought against the Customer alleging that the use of JetBrains IDE Services in compliance with this Agreement, infringes any copyright.

12.3 Conditions for Indemnification. The obligations to defend, indemnify, and hold harmless the other party are subject to the conditions that:

- (a) The party seeking indemnification notifies the other party in writing of any claim or action brought against the former party without undue delay, but no later than thirty (30) days after the assertion of such claim or action;
- (b) The party seeking indemnification neither settles the claim nor makes any admission of liability, and gives the indemnifying party sole discretion for the defense or settlement of the action;
- (c) The party seeking indemnification provides the indemnifying party with all necessary assistance, information, and authority, to settle the claim or action;
- (d) When the Customer is the indemnified party, the Customer ceases using JetBrains IDE Services immediately if requested by JetBrains (for the avoidance of any doubt, JetBrains will not be responsible for damages incurred by the Customer after the Customer has received a request to cease all use of JetBrains IDE Services); and
- (e) With respect to damages, the damages are finally ordered to be paid by a court of competent jurisdiction.

12.4. Indemnity Exclusions. JetBrains will have no liability for any claims based on:

- (a) Code contained within JetBrains IDE Services not created by JetBrains, including, but not limited to, Third-Party Software;
- (b) Any action that arises or results from the Customer's modification of JetBrains IDE Services, unless such modification was made by or on behalf of JetBrains or in accordance with JetBrains' prior written instructions, or otherwise agreed with JetBrains in writing;
- (c) Use of a superseded or altered release of JetBrains IDE Services not made by JetBrains or under JetBrains' instructions;
- (d) Use of any data or other outputs generated by JetBrains IDE Services;
- (e) The combination, operation, or use of JetBrains IDE Services with hardware, software, or data not provided by JetBrains, if such infringement would have been avoided by using JetBrains IDE Services without such hardware, software, or data; and
- (f) The Customer's failure to apply JetBrains IDE Services updates provided by JetBrains that among other things replace the allegedly infringing part of JetBrains IDE Services to which a claim is related;

12.5. Remedies. In the event that JetBrains IDE Services is alleged (in JetBrains' reasonable opinion) or held by a court of competent jurisdiction to infringe a third party's intellectual property, or if the Customer's use of JetBrains IDE Services is threatened by an action by a third party for a breach of its intellectual property, JetBrains will have the option, at its expense and in its sole discretion, to:

- (a) Modify JetBrains IDE Services to become non-infringing;
- (b) Obtain a license for the Customer to continue using JetBrains IDE Services;
- (c) Substitute JetBrains IDE Services with another product; or
- (d) Terminate the Customer's use of the infringing part of JetBrains IDE Services and refund a pro-rata portion of the prepaid but unused Fees of the respective part of JetBrains IDE Services.

12.6 Exclusion of Indemnification. This Section 12 states JetBrains' entire liability for infringement of copyright and/or intellectual property rights of third parties and indemnification obligations.

### **13. LIABILITY**

13.1. EXCLUSIONS OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL JETBRAINS BE LIABLE TO THE CUSTOMER, THE CUSTOMER'S AFFILIATES, USERS, OR ANYONE ELSE UNDER ANY THEORY FOR:

(A) ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SIMILAR DAMAGES WHATSOEVER, INCLUDING LOSS OF USE, DATA, GOODWILL, OR PROFITS, WHETHER OR NOT FORESEEABLE; AND/OR

(B) ANY OTHER CLAIMS, INCLUDING THOSE (I) FOR BUSINESS INTERRUPTION, FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR REASONABLE CARE, (II) BASED ON ANY THEORY OF LIABILITY, INCLUDING BREACH OF CONTRACT (SAVE FOR MANDATORY LIABILITY, INTENT, OR GROSS NEGLIGENCE) OR WARRANTY, OR (III) ARISING OUT OF OR IN CONNECTION WITH THE CUSTOMER'S USE OF OR ACCESS TO JETBRAINS IDE SERVICES OR SUPPORT. THIS LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

13.2. LIMITATION OF LIABILITY. THE TOTAL LIABILITY OF JETBRAINS PARTIES IN ANY MATTER ARISING OUT OF OR IN RELATION TO THIS AGREEMENT IS LIMITED TO THE GREATER OF (A) ONE THOUSAND (1,000) US DOLLARS OR (B) THE AMOUNT OF FEES PAID OR PAYABLE BY THE CUSTOMER UNDER THIS AGREEMENT FOR USE OF JETBRAINS IDE SERVICES IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY ("CAP"). THESE LIMITATIONS WILL APPLY EVEN IF THE JETBRAINS PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF LIABILITY EXCEEDING THE CAP.

### **14. EXPORT CONTROL LAWS**

14.1. Export Control Compliance. Each Party must comply with all applicable laws and regulations with regard to economic sanctions, export controls, import regulations, restrictive measures, and trade embargoes, including those of the European Union and the United States ("Export Control Laws"). The Customer agrees that it will not download or otherwise export or re-export JetBrains IDE Services or any related technical data directly or indirectly to any person targeted by Export Control Laws. Nor will the Customer download or otherwise use JetBrains IDE Services for any end-use prohibited or restricted by Export Control Laws.

14.2. Reporting of Non-Compliance. The Customer must immediately report any concerns of non-compliance regarding Export Control Laws to [legal@jetbrains.com](mailto:legal@jetbrains.com) and cooperate with JetBrains in its efforts to verify and ensure compliance with Export Control Laws.

## 15. DATA PROTECTION

15.1. Data Processing Addendum. Any information directly or indirectly identifying an individual or other data protected under an applicable law as personal data (“**Personal Data**”) that JetBrains will process on behalf of the Customer in connection with this Agreement will be processed in accordance with the Data Processing Addendum at <https://www.jetbrains.com/legal/dpa/>, which is deemed to be an integral part of this Agreement.

15.2. Privacy Notice. JetBrains may also process as a data controller some Personal Data shared or made available by the Customer or its Users in connection with this Agreement. Such Personal Data will be processed by JetBrains in accordance with the JetBrains Privacy Notice at <https://www.jetbrains.com/legal/docs/privacy/privacy/>.

## 16. CONFIDENTIALITY

16.1. Confidential Information. Under this Agreement, “**Confidential Information**” means all information disclosed by a Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”) that is designated in writing as confidential. JetBrains’ Confidential Information shall include its source code, business and marketing plans, technology and technical information, plans and designs of JetBrains IDE Services, and business processes, even where these are not specifically designated as confidential. However, Confidential Information shall not include any information that is or becomes generally known to the public without breach of any obligation to the Disclosing Party, was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation to the Disclosing Party, is received from a third party without breach of any obligation to the Disclosing Party, or was independently developed by the Receiving Party.

16.2. Confidentiality Obligations. The Receiving Party agrees to exercise reasonable precautions to prevent unauthorized disclosure of Confidential Information to any third party, in whole or in part, and not to use the disclosed Confidential Information for any purpose other than the provision and use of JetBrains IDE Services. Each Party will treat the other Party’s Confidential Information with at least the same care it employs to protect its own confidential information (except neither Party shall be excused from its own negligence). This care includes, but is not limited to, only allowing access to such Confidential Information to persons who have a need to know in connection with the provision and use of JetBrains IDE Services. Each Party may release Confidential Information to its professional advisors or staff, provided that it assumes liability and responsibility for their compliance with this Agreement.

16.3. Compelled Disclosure. If the Receiving Party is compelled by law to disclose any Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s expense, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for any reasonable expenses incurred for the compiling of and provision of secure access to such Confidential Information.

16.4. Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of these protections, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the Parties that any other available remedies may be inadequate.

16.5. Return of Materials. Upon termination of this Agreement or any Individual Agreement, the Receiving Party will deliver to the Disclosing Party or destroy and certify destruction of (at the Disclosing Party’s election and in the manner designated by it) all of the Disclosing Party’s Confidential Information.

## 17. TERM AND TERMINATION

17.1. Term. This Agreement becomes effective when the Customer clicks the “I Accept” button or provides any other consent to be bound by this Agreement (“**Effective Date**”), and it will continue for an indefinite period of time until it is terminated by either Party.

17.2. Termination for Convenience by Customer. The Customer may terminate this Agreement for convenience at any time and with immediate effect by giving written notice to JetBrains; however, the Customer shall not receive a refund or credit for prepaid Fees.

17.3. Termination for Cause by Customer. The Customer may terminate this Agreement by giving written notice to JetBrains if JetBrains materially breaches this Agreement and fails to remedy the breach within thirty (30) calendar days of receipt of written notice specifying the breach. In case of the termination of this Agreement based on this provision, the Customer will be entitled to a refund of any unused portion of prepaid Subscription Fees.

17.4. Termination by JetBrains. JetBrains may immediately terminate this Agreement or, at its sole discretion, suspend the Customer's or any of its Users' right to use JetBrains IDE Services or any part thereof, if:

(a) the Customer's use of JetBrains IDE Services might adversely impact or pose a security, integrity, availability, privacy, or legal risk to JetBrains or any third party;

(b) the Customer materially breached this Agreement or the Special Terms (including, but not limited to, by failing to make timely payment of any Fee) and fails to remedy such breach within three (3) consecutive days of being so notified by JetBrains;

(c) the Customer has stopped operating in the usual course of business, has transferred or assigned all or substantially all of its assets for the benefit of creditors or made a similar arrangement, or is undergoing bankruptcy, reorganization, liquidation, dissolution, or a similar proceeding; or

(d) JetBrains is required, or decides, to no longer provide JetBrains IDE Services, for any business, economic, legal, or regulatory reason.

17.5. Notification and Refund. JetBrains will make reasonable efforts to notify the Customer via email as follows:

(a) Three (3) days prior to termination in the events specified in Section 17.4. (a) and (b), in which case the Customer will not be entitled to a refund of any unused portion of prepaid Fees, if applicable, and any Fees then due will become immediately payable.

(b) Thirty (30) days prior to termination in the events specified in Sections 17.4. (c) and (d), in which case the Customer will be entitled to a refund of any unused portion of prepaid Fees, if applicable.

17.6. Effect of Termination. Upon termination or expiration of this Agreement, JetBrains will invoice the Customer for any use of JetBrains IDE Services that has not been paid as of the effective date of termination or expiration and the Customer will no longer have the right to use JetBrains IDE Services; however Sections 5.4 (Feedback), 7 (Payment Provisions), 8 (Taxes), 11 (Warranty), 12 (Indemnification), 13 (Liability), 17.6 (Effect of Termination), and 18 (Miscellaneous) shall continue in full force and effect. In such a case, JetBrains will store the Customer's Data and make it available to the Customer for export ('download') in accordance with the Documentation. JetBrains will notify the Customer of the planned deletion of the Data in advance. JetBrains will exercise commercially reasonable efforts to keep a backup of the deleted Data for one (1) month from termination or expiration of this Agreement, unless the Customer instructs JetBrains to delete the Data and its backup. After this time, it will no longer be possible to restore the deleted Data.

## 18. MISCELLANEOUS

18.1. Entire Agreement. This Agreement and the Special Terms constitute (together with any mutually accepted order referencing this Agreement, if applicable) the entire agreement with respect to JetBrains IDE Services and replace any and all prior or contemporaneous oral, email, or written representations, communications, advertising, or understanding between the Parties with respect to its subject matter. In case of any discrepancy between the provisions of this Agreement and the Special Terms, the provisions of the Special Terms shall prevail. Except as expressly mentioned, this Agreement does not apply or give rights to any third-party beneficiaries.

18.2. Customer's Conditions Excluded. Any specific or general terms and conditions of the Customer are excluded, even if the Customer refers to such terms. No order, purchasing terms of the Customer, handwritten, emailed, or typewritten text, or other document that modifies this Agreement is applicable unless signed by the Customer and JetBrains. JetBrains' action or conduct does not constitute acceptance of any specific or general terms or conditions put forward by the Customer.

18.3. Changes to This Agreement and the Special Terms. This Agreement and the Special Terms can be updated from time to time by JetBrains to reflect changes in JetBrains IDE Services and how it is offered to the Customer. When JetBrains updates this Agreement or the Special Terms, any updated Agreement or Special Terms will become effective as of the date specified in the updated Agreement or Special Terms. By continuing to use JetBrains IDE Services for a period longer than thirty (30) calendar days counting from the effective date, the Customer agrees to be bound by the modified Agreement or Special Terms, as applicable. JetBrains respects that the Customer might not agree to the updated Agreement or Special Terms. If that is the case, the Customer may terminate the updated Agreement or Special Terms at any time up to thirty (30) days after the effective date of the updated Agreement or Special Terms. Termination according to this Section or the Special Terms entitles the Customer to a refund of any unused portion of prepaid Fees.

18.4. Notification of Changes. JetBrains will notify the Customer about the changes to this Agreement or Special Terms by:

- (a) displaying the updated Agreement or Special Terms to the Customer in JetBrains IDE Services;
- (b) displaying the updated Agreement or Special Terms to the Customer in the Customer's JetBrains Account; or
- (c) sending the updated Agreement or Special Terms to the email address used in the Customer's JetBrains Account.

18.5. Reservation of Rights. JetBrains reserves the right at any time to alter settings, features, specifications, capabilities, functionality, terms of use, release dates, list prices, general availability, and other characteristics of JetBrains IDE Services.

18.6. Severability. If a particular provision of this Agreement or Special Terms is not enforceable, or is held to be invalid, the unenforceability of that provision will not affect any other provisions of this Agreement or Special Terms and the remainder of this Agreement and Special Terms will continue in full force and effect.

18.7. Interpretation. Headings and titles are for convenience only and do not affect the interpretation of this Agreement and the Special Terms. References to time or periods of time are determined in reference to Central European Time.

18.8. Assignability. The Customer may assign this Agreement or any order referencing it only subject to the prior written approval of JetBrains. In case of a merger or sale of all or substantially all of the Customer's assets or stock to another entity, JetBrains will not unreasonably withhold its approval. Any attempted assignment of this Agreement or any of such rights or obligations without JetBrains' prior written approval shall be void and of no effect. The Customer agrees that JetBrains may assign this Agreement to its Affiliates subject to prior written notice.

18.9. No Waiver. No delay or omission by either Party in exercising any rights or remedy hereunder shall be considered a waiver of such right or remedy or of any other right or remedy under this Agreement or the Special Terms. A waiver of any right or remedy under this Agreement or the Special Terms shall not be construed as a bar to or waiver of any such right or remedy in the future.

18.10. Equitable Relief. Nothing in this Agreement or the Special Terms will prevent either Party from pursuing or seeking any equitable remedy under applicable law.

18.11. Notice by JetBrains. JetBrains may deliver any notice to the Customer via email to an email address provided by the Customer, via the Customer's JetBrains Account, or via registered mail, personal delivery, or reputable express courier (such as DHL, FedEx, or UPS) to the registered address. Any such notice will be deemed to be effective:

- (a) on the day the notice is sent to the Customer via email;
- (b) upon being uploaded to the Customer's JetBrains Account (irrespective of when the Customer actually receives it);
- (c) upon personal delivery;
- (d) one (1) day after deposit with an express courier; or
- (e) five (5) days after deposit in the mail, whichever occurs first.

18.12. Notice by Customer. The Customer may deliver any notice to JetBrains by sending an email to [legal@jetbrains.com](mailto:legal@jetbrains.com), by reputable express courier delivery marked "Attention Legal Department" at the address listed on the JetBrains Website, or by in-person delivery. Notice shall be deemed effective:

- (a) upon notification from JetBrains that the email was received;
- (b) upon personal delivery; or
- (c) one (1) day after deposit with an express courier.

18.13. Governing Law; Dispute Resolution. If the Customer is domiciled in the USA, this Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. If the Customer is domiciled outside of the USA, this Agreement shall be governed by the laws of England and Wales, without regard to its conflict of laws principles. In case of a dispute, the Parties will make their best commercial efforts to settle the dispute amicably. If they cannot resolve the issue in this manner, then any disputes or claims arising out of or in connection with this Agreement, including disputes relating to its validity, breach, termination, or nullity, shall be finally settled under the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber by one arbitrator appointed in accordance with said Rules. The arbitration proceedings shall be held in English.

18.14. Force Majeure. Neither Party shall be in breach of this Agreement, or otherwise liable to the other, by reason of any delay in performance, or non-performance, of any of its obligations under this Agreement (except payment obligations), arising directly from an act of God, fire, flood, natural disaster, an act of terrorism, strike, lock-out, labor dispute, public health emergency, civil commotion, riot, or act of war.

18.15. Authorization. The person accepting this Agreement represents and warrants that they are authorized to do so on behalf of their Party.

18.16. Relationship. The Customer and JetBrains are independent parties. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, employment, or similar type of legal relationship.