JetBrains Space Cloud Enterprise Agreement

Version 1.0, effective as of December 9, 2020

Welcome to JetBrains Space for Enterprise customers!

This is a legal document and it is important that You read it carefully.

You understand that by accepting this document (You do that by clicking the "I agree" or a similar button, or by accessing or using JetBrains Space) You agree to certain legal consequences for Yourself or for Your organization. Should You require a signed document, You can contact Us at legal@jetbrains.com and We can arrange to provide You with an electronically signed version.

Short version

JetBrains will provide each Enterprise Customer monthly Uptime and offers premium Enterprise Support. If JetBrains falls short of its commitments, You as an Enterprise Customer will be entitled to compensation in the form of General Credits. JetBrains also includes additional perks ('legal protections') in this document that are available exclusively to Enterprise Customers and include Enterprise Warranty, IP Indemnification, and other benefits.

The Uptime and Enterprise Support might be impacted by Downtimes and other limitations ('exclusions'). As We agree on these exclusions upfront, We will not be responsible for them. We will do Our ('commercially reasonable') best to prevent hiccups from happening.

1. Introduction

This JetBrains Enterprise Agreement ("**Enterprise Terms**") describes specific terms applicable to (i) JetBrains s.r.o. – Our registered office is at Na hřebenech II 1718/10, Prague, 14000, Czech Republic and We are a company registered in the Commercial Register of the Prague Municipal Court, Section C, File 86211, ID No. 265 02 275, ("**JetBrains**", "**Us**", or "**We**") – and (ii) Yourself, a company or an organization who subscribed to the JetBrains Enterprise Subscription Plan with at least ten (10) Members ("**Enterprise Customer**", or "**You**").

You confirm ('represent and warrant') that the person agreeing to these Enterprise Terms on Your behalf is authorized to do so in Your name. If these Enterprise Terms are accepted using an email address provided by an Enterprise Customer, We assume ('deem') that such a person is authorised to do so.

These Enterprise Terms form part of the JetBrains Terms of Service (Space Cloud) ("**Agreement**"). Any Capitalized terms used but not defined in this document shall be understood as per the meaning defined for them in the Agreement.

2. Definitions

Term	Definition
Downtime	a period of time during which Space is unavailable.

Excluded Downtime	general Space performance issues where Uptime cannot be reasonably guaranteed and which include (‘including, but not limited to’) • scheduled Downtime; • failures of Your network, including failures or delays contributed to by an internet service provider; • issues that are caused by Third-Party Software; • applications or Space features identified as early access, alpha, beta, test, or similar; • failures attributable to Your equipment, services, technology, or Content; or • any Space unavailability caused by circumstances beyond JetBrains’ reasonable control (‘Force Majeure’).
Enterprise Support	the Support Subscription Plan applicable to Enterprise Customers as guaranteed by the Enterprise Terms.
FRT	First Response Time, the time it takes Us to respond to a query submitted by You.
NRT	Next Reply Time, the time it takes Us to provide You with a next reply following FRT.
Scheduled Downtime	the time when Space is offline and/or unavailable, where We gave You at least forty eight (48) hours prior notice.
SLA	Support Level Agreement, JetBrains’ commitment to respond to issues in Space reported by Enterprise Customer as detailed below.
Uptime	the percentage of total time when Space was made available to You in line with the Enterprise Terms and the Agreement in the then-current Subscription Period.

3. Service Levels

Subject to Your compliance with the Agreement, We will do Our ‘commercially reasonable’ best to make Space available to You at an Uptime of 99.9% or higher.

The Uptime is determined solely by JetBrains and its monitoring systems and is calculated without Excluded Downtime.

4. Enterprise Support

Your Subscription includes Enterprise Support with the SLA parameters listed below in descending order of Priority. Do not hesitate to contact Us via JetBrains Website if You need any help. JetBrains also provides a dedicated **success manager and account manager** as part of Enterprise Support to assist You and provide direct phone support.

We provide Enterprise Support non-stop (24/7/365).

SLA Priority	Description	Standard Target FRT/NRT

Urgent	A business-critical component of Space is inoperable or unavailable or Space is down. Requires an immediate workaround or solution. Examples: Space hangs or crashes; cloud instance is down; significant performance degradation; essential functionality is not available.	2/4 hours
High	Issues are negatively impacting production operations, but the production system is not down; Space is operational but its functionality is seriously restricted. Examples: A small number of Members are blocked from working in Space; a large number of Members are affected but not blocked; some functionality is not available; Content loss or Content corruption.	2/4 hours
Normal	A non-production issue wherein the majority of functions are still usable. This is a limited condition that can be readily circumvented. Examples: A small number of Members are affected; some functionality doesn't work or works partially; noticeable performance degradation.	4/6 hours
Low	Issue or question that does not affect product functionality, and can be readily circumvented. Examples: "How to" questions; the text of a message or page of documentation is worded poorly or misspelled; general feedback; feature requests.	6/8 hours

Enterprise Support may also be impacted by Excluded Downtime, and JetBrains reserves the right to determine SLA Priority.

5. SLA and Support Failures

Remedies. Should We fall short of Our commitments under these Enterprise Terms, We will compensate You with General Credits. General Credits will be allocated as follows:

- **Uptime commitment** – for each Member impacted by the Downtime, You will be entitled to receive General Credits calculated as a 1x multiple of the pro-rata fees the Member account paid during the Downtime. Excluded Downtime is not taken into consideration for General Credits remedy calculation; or
- **Enterprise Support SLA** – for every ten (10) SLA breaches, You will be entitled to receive General Credits in the amount equivalent to 0.1% of the fees You paid in the respective Subscription Period.

Allocation. General Credits are automatically assigned to Your Organization Account and there is no need to apply or claim these General Credits. For more details regarding General Credits, please see the Agreement.

You understand that the General Credits outlined in this paragraph are the only ('sole and exclusive') compensation for Our failure to meet Our Uptime and Enterprise Support SLA commitments in these Enterprise Terms.

6. Enterprise warranty

General Warranty. Each Party represents and warrants that it has the legal power and authority to enter into these Enterprise Terms.

Limited Enterprise Warranty. JetBrains warrants that: (i) Space will perform in material aspects in accordance with the Documentation; and (ii) We will not substantially decrease the functionality or overall security of Space during the applicable Subscription Period. JetBrains shall also make ('commercially') reasonable efforts to: (i) keep Space free from malicious hidden files; and (ii) provide Enterprise Support in a professional manner by adequately trained staff.

The entire liability of JetBrains, its suppliers, and its service partners, and Enterprise Customer's exclusive remedy under the Limited Enterprise Warranty, will be, at JetBrains' discretion, to provide General Credits up to a maximum of the pro-rata fees paid. The warranties in this Section are void if the respective JetBrains' failure resulted from accident, abuse, or misapplication.

EXCEPT FOR THE FOREGOING LIMITED ENTERPRISE WARRANTY, SPACE IS PROVIDED TO ENTERPRISE CUSTOMER "AS IS" AND "AS AVAILABLE." JETBRAINS MAKES NO WARRANTY AS TO ITS USE OR PERFORMANCE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, JETBRAINS AND ITS SUPPLIERS AND SERVICE PARTNERS DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, WITH REGARD TO THE SOFTWARE AND THE PROVISION OF OR FAILURE TO PROVIDE ENTERPRISE SUPPORT.

7. Enterprise Limitation of Liability

For an Enterprise Customer, We will extend Our **MAXIMUM LIABILITY** (Section 14 of the Agreement) up to the amount You actually paid for Space in the **12 months** before You claimed that We were liable.

8. Third-Party IP Indemnification

a) JetBrains's IP Indemnification.

JetBrains will indemnify, hold harmless, and defend You from any third party losses, damages, costs (including reasonable attorney's fees), or expenses (all "Damages") directly related to any court action brought against You alleging that Your use of Space infringes any copyright or patent, provided that You:

(i) notify JetBrains in writing of any such action brought against You within 30 days of a claim being filed;

(ii) make no admission of liability and give JetBrains sole discretion and authority for the defense or settlement of the action;

(iii) provide JetBrains with the timely assistance, information, and sole and complete authority necessary to perform the above;

(iv) cease using Space immediately, if requested in writing by JetBrains; You agree that JetBrains will not be responsible for Damages incurred after You have received a request to cease all use of the Service;

(v) were obliged to pay Damages by a court of competent jurisdiction and the claim that has been finally resolved; and

(vi) use Space within the scope of these Enterprise Terms and the Agreement.

b) Indemnity Limitations.

JetBrains will have no liability for any claim of infringement based on:

(i) code contained within Space that was not created by JetBrains including, but not limited to, third party software;

(ii) any action that arises or results directly or indirectly from Enterprise Customer's modification, misuse, or abuse of Space;

(iii) use of a superseded or altered release of the Product, if such infringement would have been avoided by the use of the current, unaltered release of Space;

c) Injunction.

In the event that Space is alleged (in JetBrains' reasonable opinion) or held by a court of competent jurisdiction to infringe a third party's intellectual property, or Enterprise Customer's use of the Service is enjoined, or threatened by, an action by a third party for a breach of its intellectual property, JetBrains will have the option, at its expense, to:

(i) modify Space to cause it to become non-infringing;

(ii) obtain for JetBrains a license to continue offering the Service to Enterprise Customer;

(iii) substitute Space with another product or service; or

(iv) terminate the Subscription and refund any subscription fees paid for Space, less subscription fees relating to the period prior to such claim being made.

d) Exclusion.

This Section states JetBrains' entire liability for Third-Party IP Indemnification.

9. Miscellaneous

Should You be located in **North or South America**, then the Agreement shall be governed by and construed under the laws of the **State of New York**, without reference to conflict of laws principles, and specifically excluding the United Nations Convention on Contracts for the International Sale of Goods. The parties also hereby submit to the exclusive personal jurisdiction and venue of the federal courts situated in New York City, New York with respect to any dispute arising hereunder or in connection with such rights and obligations. The parties expressly waive their right to trial by jury.

Unless expressly stated otherwise, if at any point in time and for any reason You cease to be an Enterprise Customer, You will lose the rights to use any of the other promotional products which were made available to You as part of the Enterprise Subscription Plan.

For Enterprise Customers from any **other location**, the parties agree that the Agreement shall follow the laws of **England and Wales**, without regard to its conflict of laws principles, and that any potential dispute shall be excluded from the jurisdiction of general courts and submitted for final award to arbitration proceedings at the Arbitration Court of the International Chamber of Commerce (hereinafter the "Arbitration Court") under the rules thereof by one arbitrator appointed pursuant to the rules. Vienna, Austria shall be the venue of the arbitration proceedings and the arbitration shall be held in the English language.

Enterprise Customer can choose to Downgrade to another type of Paid Subscription or to a Free Subscription. Should You choose to do so, the Enterprise Terms will cease to apply to You. The effectiveness of the Agreement is not impacted by Your Downgrade.

Unless expressly stated otherwise, the terms and conditions of the Agreement shall apply (notably see Termination, Downgrading Subscriptions, Auto-Renewals, etc.).

Our business needs and service models may evolve, thus **We may update or terminate the Enterprise Terms** in the same manner as the Agreement. The latest versions can be reviewed online at JetBrains' web pages or in Your Account.

You understand that We can decide ('in Our sole discretion') to implement a publicly available patch, upgrade, or release in the future, or choose to **modify certain features, functionality or settings of Space**.

If You have any questions about these Terms, please contact Us at sales@jetbrains.com.