

JETBRAINS SPACE EAP TERMS OF SERVICE

Version 1.2, effective as of August 6, 2020

IMPORTANT! READ CAREFULLY:

THIS IS A LEGAL AGREEMENT. BY CLICKING THE “I AGREE” (OR SIMILAR) BUTTON THAT IS PRESENTED TO YOU AT THE TIME OF YOUR FIRST USE OF THE JETBRAINS SOFTWARE, SUPPORT OR PRODUCTS, YOU ARE BECOMING A PARTY TO THIS AGREEMENT, YOU DECLARE YOU HAVE THE LEGAL CAPACITY TO ENTER INTO SUCH AGREEMENT, AND YOU ARE CONSENTING TO BE BOUND BY ALL THE TERMS AND CONDITIONS SET FORTH BELOW.

THIS IS AN EARLY ACCESS VERSION OF THE PRODUCT. YOU EXPRESSLY ACKNOWLEDGE THAT THIS VERSION OF THE PRODUCT MAY NOT BE RELIABLE, MAY NOT WORK AS INTENDED, AND MAY CONTAIN ERRORS. ANY USE OF THE EAP PRODUCT IS AT YOUR OWN RISK.

JetBrains’ Early Access and Beta Program (“EAP”) allows you to try pre-release versions of our Products to evaluate features that will be added to the next release.

1. PARTIES

1.1. “JetBrains” or “We” means JetBrains s.r.o., having its principal place of business at Na hřebenech II 1718/10, Prague, 14000, Czech Republic, registered in the Commercial Register maintained by the Municipal Court of Prague, Section C, File 86211, ID. No.: 265 02 275.

1.2. “User” or “You” means the individual given the right to use a Product in accordance with this Agreement. For the avoidance of doubt, a User is a natural person and not a corporation, company, partnership, association, or other entity or organization.

1.3. “Product Holder” means the physical person, sole proprietor, or legal entity using the Products. For legal entities, the “Product Holder” includes any entity which controls, is controlled by, or is under common control from the Product Holder. For the purposes of this definition, “control” means (i) the power, directly or indirectly, to direct or manage such entity, whether by contract or otherwise, or (ii) ownership of fifty percent (50%) or more of the outstanding shares or beneficial ownership of such entity.

2. DEFINITIONS

2.1. “Agreement” means these JetBrains Space EAP Terms of Service covering the use of the Product by the individual Users.

2.2. “Bug Fix Update” for a particular Product Version means a software update or release that is specifically identified by JetBrains as an update or release for the purposes of fixing software bugs in that Product Version.

2.3 “Client” means a computer device used by the User for accessing the Product.

2.4 “Data” means all electronic data or information submitted by the User or You into the Product.

2.6 “Domain” means a domain name that you will create within the Service and will be associated with Your use of the Product and Services.

2.5. “EAP” means the Early Access and Beta Program as defined in the preamble of this Agreement.

2.6. “EAP Term” is a period during which the User can use the Product under this Agreement. The EAP Term is defined in the Product itself or on the website from which the Product is downloaded or accessed.

2.7. “Hosting System” means any server, real or virtual, network, Internet connection, infrastructure, hardware, and applications used by JetBrains to host the Product.

2.8. “JetBrains Website” means any website that is the property of JetBrains s.r.o. (“JetBrains”, “we”), including but not limited to everything hosted under the domains listed at <https://www.jetbrains.com/legal/websites/>.

2.9. "Product" means the software program JetBrains Space and the associated Service. For the avoidance of doubt, a) the Product is not produced to the specifications of the User nor customized through modification or personalization, and is intended for mass distribution, and b) this Agreement covers the EAP versions of the Product only.

2.10. "Product Version" means a release, update, or upgrade of the Product that is not identified by JetBrains as being made for the purpose of fixing software bugs.

2.11. "Privacy Policy" means the JetBrains Privacy Policy available at <https://www.jetbrains.com/legal/docs/privacy/privacy.html>, which may be updated from time to time.

2.12. "Personal Data" means any information relating to an identified or identifiable natural person.

2.13. "Service" means access to the Product hosted by JetBrains on the Hosting System and provided to the User by JetBrains via the Internet. For the avoidance of doubt, the Service is not produced to the specifications of the User nor customized through modification or personalization, and is intended for mass distribution.

3. GRANT OF RIGHTS

3.1. Unless the EAP Term has expired or this Agreement is terminated in accordance with Section 12, and subject to the terms and conditions specified herein, JetBrains grants You a non-exclusive and non-transferable right to use the Product as follows:

(a) You may use any version of the Product on any number of Clients supported by the Product as specified in the Product documentation;

(b) You must not, and You will ensure Your Users do not:

(i) rent, lease, reproduce, modify, adapt, create derivative works of, distribute, sell, or transfer Product;

(ii) provide access to the Product or right to use the Product to a third party other than Your Users;

(iii) reverse-engineer, decompile, disassemble, modify, translate, or make any attempt to discover the source code of the Product;

(iv) remove or obscure any proprietary or other notices contained in the Product;

(v) attempt to gain unauthorized access to the Product or Hosting System;

(vi) use the Product to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy or copyrights.

4. YOUR RESPONSIBILITIES

(a) You agree to:

(i) obtain an Internet connection, any equipment necessary for the Internet connection, and any third-party software necessary for using the Product, including, but not limited to, browser software that supports a data security protocol compatible with the protocol used by JetBrains;

(ii) use the Product in compliance with this EAP Agreement and applicable laws; and

(iii) register Your use of the Product on the JetBrains Website. You must provide JetBrains with a valid email address and other accurate information as requested by the registration form on the JetBrains Website.

(b) You are responsible for:

(i) the legality of Your Data, Your Users' Data and the means by which You acquired the Your Data or Your Users' Data. If any of Your Users' Data violates this Agreement or any third-party rights, You shall immediately remove the User's Data from the Product;

(ii) compliance with applicable laws and government regulations;

(iii) configuring and using the Product;

- (vi) the confidentiality of the username and passwords You or Your Users have established in connection with the Product; and
- (v) Your Data backup and the Data backup of Your Users.

5. ACCESS TO PRODUCTS

- 5.1. The Product Holder and its Users are solely responsible for the accuracy and completeness of any information provided to JetBrains and any action taken through the Product.
- 5.2. You acknowledge that the Product and Service require a permanent Internet connection in order to work.
- 5.3. All deliveries under this Agreement will be electronic. You must have an Internet connection in order to access the Product and to receive any deliveries.
- 5.4 JetBrains reserves the right to modify your Domain or assign you a different Domain if JetBrains reasonably believes You are not using Your Domain in good faith, in accordance with applicable laws or with the terms of this Agreement.

6. PERSONAL DATA

6.1. In connection with Your use of the Product, We and the companies controlling, controlled by, or under Our common control (“Affiliates”) will process the information set out in clause 6.2, for the following purposes:

- 6.1.1. To provide You with software, services, or information;
- 6.1.2. To protect Us from piracy and unlawful use of Our software or services;
- 6.1.3. To improve Our offerings based on usage;
- 6.1.4. For Our internal evidence and to protect the rights and interests of Us and other users;
- 6.1.5. To promote and market Our software and services;
- 6.1.6. To fulfill the legal duties stipulated by accounting, taxation, and other laws.

You may object to the processing of Your Personal Data for the purposes 6.1.2 through 6.1.5 at any time. More detailed information about Personal Data processing for the above-mentioned purposes and about Your rights can be found in the Privacy Policy.

6.2. For the above purposes, JetBrains may collect the following Personal Data: Personal Data relating to You as a User and Product Holder (if appropriate), including first name, last name, email address, company name and size, country, other contact and identification details, data about the usage of our software and services, cookies and SSH public key, information about Your subscription and payments, Your IP address, Your username, and any password You have used for your registration.

6.3 The Product may send certain information to JetBrains, which will not contain any Personal Data.

6.4. The Product may electronically send anonymous information to JetBrains related to Your usage of the Product features. This information may include, but is not limited to, actions invoked, and other interactions with the Product features. This information will contain neither source code nor Your Personal Data.

6.5 If JetBrains receives personal data of Users or the Product Holder through the Product:

- a) JetBrains will only process such personal data for the purposes for which they have been provided to JetBrains in compliance with applicable laws and the instructions of the Product Holder that are specified in this Agreement;
- b) The Product Holder instructs JetBrains to process such personal data as necessary to carry out the purpose for which the personal data were handed over to JetBrains;
- c) JetBrains will ensure that persons processing such personal data are bound by confidentiality obligations;
- d) JetBrains will implement adequate security measures as specified in Article 32 of General Data Protection Regulation 2016/679 (“GDPR”);

- e) JetBrains will only use sub-processors for such personal data if the conditions under Article 28 section 2 and 4 of the GDPR are fulfilled;
- f) JetBrains will help the Product Holder in implementing reasonable and adequate organizational and technological measures to help Product Holder comply with its obligations regarding data subject requests;
- g) JetBrains will render reasonable assistance to Product Holder in achieving compliance with Articles 32 to 36 of GDPR;
- h) If requested, JetBrains will either delete or return all such personal data depending on Product Holder decision;
- i) JetBrains will provide all relevant information to the Product Holder necessary to prove compliance with Article 28 of GDPR and provide an audit report to Product Holder not older than 18 months demonstrating JetBrains compliance.

6.6 Processing of personal data of Users by the Product Holder is fully within the responsibility and liability of the Product Holder.

7. FEEDBACK

You have no obligation to provide Us with ideas, suggestions, or proposals (“Feedback”). However, if You submit Feedback to us, then You grant Us a non-exclusive, worldwide, royalty-free license that is sub-licensable and transferable, to use, sell, offer to sell, import, reproduce, publicly display, distribute, modify, or publicly perform Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise.

8. THIRD-PARTY SOFTWARE

8.1. Products include code and libraries licensed to Us by third parties, including open source software (“Third-Party Software”). The list of Third-Party Software included in each Product is available in the Product documentation. All Third-Party Software is provided to You under the respective terms stipulated in the Product documentation.

8.2. JETBRAINS PROVIDES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY THIRD-PARTY SOFTWARE AND EXPRESSLY DISCLAIMS ANY WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

9. INDEMNIFICATION

(a) You will defend, indemnify, and hold harmless JetBrains, its Affiliates, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys’ fees) arising out of or relating to any third-party claim concerning:

- (i) Your or any of Your User’s use of the Service (including any activities under Your URL and use by Your Users) and the Product;
- (ii) the breach of this Agreement or violation of applicable law by You or any of Your Users;
- (iii) Your Data or the combination of Your Data with other applications, content, or processes, including any claim involving alleged infringement or misappropriation of third-party rights by Your Data or by use, development, design, production, advertising, or marketing of Your Data; or
- (iv) a dispute between You and any User.

(b) You and JetBrains (as applicable) will promptly notify You of any claim subject to the previous section above, but JetBrains’ failure to promptly notify You will only affect Your obligations to the extent that JetBrains’ failure prejudices Your ability to defend the claim. You may:

- (i) use counsel of Your own choosing (subject to JetBrains’ written consent) to defend against any claim; and

(ii) settle the claim as You deem appropriate, provided that You obtain prior written consent from JetBrains before entering into any settlement. JetBrains may also assume control of the defense and settlement of the claim at any time.

10. LIMITED WARRANTY

THE EAP PRODUCTS INCLUDE EXPERIMENTAL AND EARLY PRE-RELEASE SOFTWARE, WHICH ARE PROVIDED TO YOU ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT WARRANTIES. USE OF THE PRODUCT AND SERVICE IS AT YOUR OWN RISK. JETBRAINS MAKES NO WARRANTY AS TO ITS USE OR PERFORMANCE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, JETBRAINS, AND ITS SUPPLIERS AND RESELLERS, DISCLAIM ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, WITH REGARD TO THE PRODUCT AND SERVICE, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. THE USER MAY HAVE OTHER RIGHTS, WHICH VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION. JETBRAINS (AND ITS AFFILIATES, AGENTS, DIRECTORS, AND EMPLOYEES) DOES NOT WARRANT THAT THE PRODUCT IS ACCURATE, RELIABLE, OR CORRECT; THAT THE PRODUCT WILL MEET THE PRODUCT HOLDER’S OR USER’S REQUIREMENTS; THAT THE PRODUCT WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE PRODUCT IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT ANY CONTENT, INCLUDING YOUR OR YOUR USER’S DATA, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. ANY CONTENT OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE PRODUCT ARE DOWNLOADED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY OR LOSS OF DATA THAT RESULTS FROM SUCH A DOWNLOAD.

11. DISCLAIMER OF DAMAGES

11.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL JETBRAINS (OR ITS AFFILIATES, AGENTS, DIRECTORS, OR EMPLOYEES), OR JETBRAINS’ LICENSORS, SUPPLIERS, OR RESELLERS, BE LIABLE TO YOU OR ANYONE ELSE FOR:

- (a) THE USER’S INABILITY TO USE THE PRODUCT, INCLUDING AS A RESULT OF ANY TERMINATION OR SUSPENSION OF THIS AGREEMENT OR THE USER’S USE OF PRODUCT;
- (b) JETBRAINS’ DISCONTINUATION OF THE PROVISION OF THE PRODUCT;
- (c) ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE PRODUCT FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES, OR OTHER INTERRUPTIONS;
- (d) THE COST OF PROCUREMENT OF A SUBSTITUTE PRODUCT;
- (e) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY USER IN CONNECTION WITH THIS AGREEMENT OR THE USER’S USE OF OR ACCESS TO THE PRODUCT;
- (f) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR DELETION, DESTRUCTION, DAMAGE, LOSS, OR FAILURE TO STORE, ANY OF THE USER’S DATA;
- (g) ANY LOSS OF USE, DATA, GOODWILL, OR PROFITS, WHETHER OR NOT FORESEEABLE;
- (h) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR DELETION, DESTRUCTION, DAMAGE, LOSS, OR FAILURE TO STORE ANY OF YOUR OR YOUR USER’S DATA;
- (i) ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHATSOEVER (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES), INCLUDING THOSE (X) RESULTING FROM LOSS OF USE, DATA, OR PROFITS, WHETHER OR NOT FORESEEABLE, (Y) BASED ON ANY THEORY OF LIABILITY, INCLUDING A BREACH OF CONTRACT OR WARRANTY, STRICT LIABILITY, NEGLIGENCE OR OTHER TORTIOUS ACTION, OR (Z) ARISING FROM ANY OTHER CLAIM ARISING OUT OF OR

IN CONNECTION WITH YOUR USE OF OR ACCESS TO THE PRODUCT OR SUPPORT. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

11.2. OUR TOTAL LIABILITY IN ANY MATTER ARISING OUT OF OR IN RELATION TO THIS AGREEMENT IS LIMITED TO FIVE (5) US DOLLARS. THIS LIMITATION WILL APPLY EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF LIABILITY EXCEEDING SUCH AMOUNT AND NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

12. TERM AND TERMINATION

12.1. The term of this Agreement will commence upon the acceptance of this Agreement by the User as set forth in the preamble above, and will continue for each Product covered by this Agreement through the end of the applicable EAP Term.

12.2. You may terminate this Agreement on 30 days notice by contacting the Product technical support team via support@jetbrains.space email in writing.

12.3. JetBrains may terminate this Agreement immediately at any time for convenience. JetBrains will notify You of any such termination via email.

12.4. Upon expiration or termination of this Agreement by the User under Section 12.2, Sections 7, 8, 9, 10, and 11 of this Agreement will survive.

13. EXPORT REGULATIONS

The User shall comply with all applicable laws and regulations with regard to economic sanctions, export controls, import regulations, and trade embargoes (all herein referred to as “Sanctions”), including those of the European Union and the United States of America (specifically the Export Administration Regulations (“EAR”)). The User declares that the User is not a person targeted by Sanctions, nor is it otherwise owned or controlled by or acting on behalf of any person targeted by Sanctions. Furthermore, the User warrants that it will not download or otherwise export or re-export software or any related technical data directly or indirectly to any person targeted by Sanctions or download or otherwise use software for any end-use prohibited or restricted by Sanctions.

14. GENERAL

14.1. Entire Agreement. This Agreement, including the Third-Party Software license terms and any other terms specifically referred to herein, constitutes the entire agreement between the parties concerning its subject matter and supersedes any prior agreements between You and JetBrains regarding Your use of the Product. Other than as specified in clause 14.4, no purchase order, other ordering document, or any handwritten or typewritten text which purports to modify or supplement the printed text of this Agreement or any schedule will add to or vary the terms of this Agreement unless signed by both the User and JetBrains.

14.2. Reservation of Rights. JetBrains reserves the right at any time to cease the support of the Product and to alter prices, features, specifications, capabilities, functions, terms of use, release dates, general availability, or other characteristics of the Product.

14.3. JetBrains does not acquire any rights to the User’s Data transmitted, collected, or created by the User via the Service. The User retains ownership of all proprietary rights to the User’s Data.

14.4. Changes to this Agreement. We may update or modify this Agreement from time to time, including any referenced policies and other documents. If a revision meaningfully reduces Your rights, We will use reasonable efforts to notify You (for example, by contacting You at the email address You have provided to us, by posting on JetBrains Website, or via the Product itself). If We modify this Agreement, the modified version of the Agreement will be effective from the date of your receipt of the notice, unless otherwise specified by JetBrains. In this case, if

You object to the updated Agreement terms, as Your exclusive remedy, you may terminate this Agreement. You may be required to click through the updated Agreement to show Your acceptance.

14.5. Severability. If a particular term of this Agreement is not enforceable, the unenforceability of that term will not affect any other terms of this Agreement.

14.6. Headings. Headings and titles are for convenience only and do not affect the interpretation of this Agreement.

14.7. No Waiver. Our failure to enforce or exercise any part of this Agreement is not a waiver of that section.

14.8. Governing Law. This Agreement will be governed by the laws of the Czech Republic, without regard to conflict of law principles. The User agrees that any litigation relating to this Agreement may only be brought in, and will be subject to the jurisdiction of, any competent court of the Czech Republic. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

14.9. You declare that You have had sufficient opportunity to review this Agreement, understand the content of all of its clauses, negotiate its terms, and seek independent professional legal advice in that respect before entering into it. Consequently, any statutory “form contract” (“adhesion contract”) regulations shall not be applicable to this Agreement.

14.10. Notice. JetBrains may deliver any notice to the User via electronic mail to an email address provided by the User, registered mail, personal delivery, or renowned express courier (such as DHL, FedEx or UPS). Any such notice will be deemed to be effective (i) on the day the notice is sent to the User via email, (ii) upon personal delivery, (iii) one (1) day after deposit with express courier, or (iv) five (5) days after deposit in the mail, whichever occurs first.

14.11. Children and minors. If You are under 18 years old, then by entering into this Agreement you explicitly stipulate, that (i) You have the legal capacity to conclude this Agreement or that you have valid consent from a parent or legal guardian to do so and (ii) You understand the JetBrains Privacy Policy available at: <https://www.jetbrains.com/legal/docs/privacy/privacy.html>. You may not enter into this Agreement if you are under 13 years old. IF YOU DO NOT UNDERSTAND THIS SECTION, DO NOT UNDERSTAND THE JETBRAINS PRIVACY POLICY, OR DO NOT KNOW WHETHER YOU HAVE THE LEGAL CAPACITY TO ACCEPT THESE TERMS, PLEASE ASK YOUR PARENT OR LEGAL GUARDIAN FOR HELP.

For exceptions or modifications to this Agreement, please contact JetBrains at:

Address: Na Hrebenech II 1718/10, Prague, 14000, Czech Republic

Fax: +420 241 722 540

Email: legal@jetbrains.com