TOOLBOX SUBSCRIPTION AGREEMENT FOR INDIVIDUAL CUSTOMERS

Version 4.1, effective as of January 9th, 2019

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 PURCHASE, OR BY DOWNLOADING, INSTALLING, COPYING, SAVING ON YOUR DEVICE, OR OTHERWISE USING 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.

1. PARTIES

1.1. "JetBrains" or "We" means JetBrains s.r.o., having its principal place of business at Na Hrebenech 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. "Customer" or "You" means the individual specified in the Subscription Confirmation who is at least 13 years old or in the case of Redistributable Products a sole proprietor or natural person with sufficient legal capacity to enter into this Agreement using the Redistributable Product in accordance with this Agreement. For the avoidance of doubt, Customer is a natural person and not a corporation, company, partnership or association or other entity or organization.

2. DEFINITIONS

2.1. "Agreement" means this Toolbox Subscription Agreement.

2.2. "Product" means any generally available JetBrains software product identified by JetBrains as an individual developer tool. For the avoidance of doubt, the Product is not produced to the specifications of the Customer nor customized through modification or personalization, and is intended for mass distribution.

2.3. "Client" means a computer device used by Customer for running the Product.

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

2.5. "Bug Fix Update" for a particular Product Version means a software update or release that is specifically identified by JetBrains as a bug fix for that Product Version.

2.6. "Fallback Date" means the date that was 12 months prior to the date of expiration of the Toolbox Subscription.

2.7. "Fallback Version" means the most recent Product Version that JetBrains made available for public purchase prior to the Fallback Date, along with any Bug Fix Updates for that Product Version. For the purpose of clarity, the "Fallback Version" does not include any Product updates or upgrades other than Bug Fix Updates that Customer may have used in the period between the Fallback Date and the date of expiration of the Toolbox Subscription.

2.8. "JetBrains Account" or "JBA" means an account at https://account.jetbrains.com created by Customer, having a unique name and password, and through which Customer has access to Products in accordance with a Toolbox Subscription.

2.9. "JetBrains Toolbox" means the set of Products which are subject to this Agreement. For the avoidance of doubt, JetBrains Toolbox does not include JetBrains team productivity software or services such as YouTrack, TeamCity, Upsource, or Hub, or any other software, services or products which do not fall within the definition of Section 2.2 and which are subject to different terms and conditions.

2.10. "Redistributable Product" means an independent module of the Product or the Product as a whole designed to be redistributed and designated by JetBrains as "Redistributable" in its name or in its official description.

2.11. “Subscription Confirmation” means an email confirming Customer’s rights to access and use Products (excl. Redistributable Products).

2.12. “Toolbox Subscription” specifies the subscription term and Products provided to Customer, subscription fees and payment schedules. Toolbox Subscription does not apply to Redistributable Products.

3. GRANT OF RIGHTS

3.1. Unless the Toolbox Subscription 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 each Product covered by the Toolbox Subscription as follows:

(A) You may:

(i) Install and use any version of the Product covered by the Toolbox Subscription on any number of Clients and on any operating system supported by the Product;

(ii) Make one backup copy of the Product solely for archival/security backup purposes.

(B) You may not:

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

(ii) Provide access to the Product or Your JetBrains Account or right to use the Product to a third party;

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

(iv) Remove or obscure any proprietary or other notices contained in the Product.

3.2. Following the expiration of this Agreement, the rights stipulated in Section 3.1(A) shall continue on a perpetual, royalty-free, non-exclusive, and non-transferable basis for the continued use of a Fallback Version of each Product covered by the Toolbox Subscription. The limitations set forth in Section 3.1(B) of this Agreement apply to the usage of the Fallback Version, as shall Section 12.5. The rights granted in this Section 3.2 are expressly contingent upon Customer not being in breach of this Agreement, including having paid in full the applicable Toolbox Subscription fees for the preceding 12 months or longer without interruption.

3.3. This subscription is only for natural persons who are purchasing a subscription to Products using only their own funds. Notwithstanding anything to the contrary set forth herein, You may not use any of the Products, and this grant of rights shall not be in effect, in the event that You do not pay Toolbox Subscription fees using Your own funds. If any third party pays the Toolbox Subscription fees or if You expect or receive reimbursement for those fees from any third party, this grant of rights shall be invalid and void.

3.4. Customer acknowledges that no ownership right is conveyed to You, irrespective of the use of terms such as “purchase” or “sale.” JetBrains has and retains all rights, title and interest, including all intellectual property rights, in and to the Products and any and all related or underlying technology, and any modifications or derivative works thereof, including without limitation as they may incorporate Feedback (as defined below).

3.5. If an independent module of the Product or the Product as a whole is a Redistributable Product, the following provisions shall apply in addition to Sections 3.1-3.4:

(A) You may:

(i) use the Redistributable Product without quantitative restrictions unless specified otherwise in the terms relating to the use of the particular Redistributable Product;

(ii) transfer, reproduce, redistribute and provide access to the Redistributable Product to a third party;

(iii) sell your product containing or using the Redistributable Product to a third party, but not the Redistributable Product as such;

(iv) redistribute the Redistributable Product onto another Client for legitimate purposes in accordance with applicable law and use the Redistributable Product on that Client, provided that You have received authorization from the owner of such Client to deploy and use the Redistributable Product in this way. You will indemnify JetBrains

against any loss, costs or damages arising from Your deployment of the Redistributable Product onto another Client in violation of this clause.

(B) You hereby agree to ensure that the use of any Redistributable Product you reproduce, redistribute or provide access to, to a third party is governed by an agreement concluded between the relevant third party as a Customer and JetBrains and that such third party is bound by the agreement prior to the use of any such Redistributable Product. JetBrains is the exclusive owner and exclusive licensor of any Redistributable Product. You acknowledge that you are liable to JetBrains for any loss or damages in connection with the breach of this section.

4. PURCHASING THROUGH RESELLERS

This Agreement applies whether You purchase a Toolbox Subscription directly from JetBrains or through resellers. If You purchase through a reseller, Toolbox Subscription details shall be as stated in the Subscription Confirmation issued by the reseller to You, and the reseller is responsible for the accuracy of any such Subscription Confirmation. Resellers are not authorized to make any promises or commitments on JetBrains' behalf, and You understand and agree that JetBrains is not bound by any obligations to You other than as specified in this Agreement.

5. ACCESS TO PRODUCTS

5.1. You must register for a JetBrains Account and have Internet access in order to place orders, to access or receive Products, or to renew a subscription. Any registration information that You provide to Us via Your JetBrains Account must be accurate, current and complete. You must also update Your information so that We may send notices, statements and other information to You by email or through Your JetBrains Account. You are responsible for all actions taken through Your accounts.

5.2. You may use Your JetBrains Account credentials in the Product so that We can verify Your rights to use the Product online. You acknowledge and agree that the Product will periodically connect to JetBrains servers to update this information including changes to JetBrains Account credentials, Toolbox Subscription plans and payments made.

5.3. Alternatively, You may use an offline activation code that You can download in Your JetBrains Account. If you use this option, it is Your responsibility to download a new activation code and apply it to the Product registration screen every time you make changes to the Toolbox Subscription or whenever a Toolbox Subscription is renewed.

5.4. All deliveries under this Agreement will be electronic. You must have an Internet connection in order to access Your JetBrains Account and to receive any deliveries. For the avoidance of doubt, You are responsible for Product download and installation.

6. FEES

Customer shall pay its Toolbox Subscription fees in accordance with the JetBrains Terms of Purchase or the reseller's terms of purchase, whichever is applicable. The Toolbox Subscription fees shall be paid in full, and any levies, duties and/or taxes imposed by Customer's jurisdiction (including, but not limited to, value added tax, sales tax and withholding tax) shall be borne solely by Customer. Customer may not deduct any amounts from fees payable to JetBrains or the reseller, unless otherwise specified in the applicable terms of purchase.

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 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, royalty or restriction based on intellectual property rights or otherwise.

8. THIRD-PARTY SOFTWARE

8.1. The Products include code and libraries licensed to Us by third parties, including open source software ("Third-Party Software"). A 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. TOOLBOX SUBSCRIPTION TRIAL

9.1. Subject to the terms of this Agreement, Customer is granted a one-time right to install and use the Product for evaluation purposes without charge for a period of thirty (30) days from the date of the Product installation, unless otherwise specified (the "Evaluation Period"). Customer's use of the Product during the Evaluation Period shall be limited to the evaluation of the Product for the sole purpose of determining whether the Product meets Customer's requirements and whether Customer desires to continue using the Product.

9.2. Customer may withdraw from using the Product at Customer's sole discretion anytime before expiration of the Evaluation Period. Upon expiration of the Evaluation Period, Customer's right to continue to use the Product will terminate, unless Customer purchases a Toolbox Subscription to the Product. The Product contains a feature that will automatically disable the Product upon expiration of the Evaluation Period.

9.3. Limitations contained in this Section 9 do not apply to the use of Redistributable Products, which may be used for the term of this Agreement.

10. WARRANTY LIMITATIONS

10.1 ALL PRODUCTS ARE PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS. USE OF THE PRODUCTS IS AT CUSTOMER'S OWN RISK.

10.2 JETBRAINS MAKES NO WARRANTY AS TO THE PRODUCTS' USE OR PERFORMANCE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, JETBRAINS (OR ITS AFFILIATES, SHAREHOLDERS, AGENTS, DIRECTORS, AND EMPLOYEES), ITS LICENSORS, SUPPLIERS (WHICH SHALL INCLUDE THE PROVIDERS OF THIRD PARTY SOFTWARE), AND RESELLERS (COLLECTIVELY HEREUNDER, "JETBRAINS PARTIES") DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER 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 PRODUCTS AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, JETBRAINS PARTIES DO NOT REPRESENT OR WARRANT THAT THE PRODUCTS: (A) ARE ACCURATE, RELIABLE OR CORRECT; (B) WILL MEET ANY CUSTOMER REQUIREMENTS; (C) WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; (D) ARE FREE OF DEFECTS OR ERRORS AND THAT ANY, IF FOUND, WILL BE CORRECTED; AND/OR (E) ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

10.3 ANY CONTENT OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE PRODUCTS ARE DOWNLOADED AT CUSTOMER'S OWN RISK; CUSTOMER AGREES IT IS SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS PROPERTY OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD.

10.4 CUSTOMER MAY HAVE OTHER RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION. THIS DOCUMENT IS NOT INTENDED TO ABROGATE SUCH RIGHTS.

11. DISCLAIMER OF DAMAGES

11.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE JETBRAINS PARTIES BE LIABLE TO CUSTOMER, CUSTOMER'S AFFILIATES, USERS, OR ANYONE ELSE FOR: (A) ANY LOSS OF USE, DATA, GOODWILL, OR PROFITS, WHETHER OR NOT FORESEEABLE; (B) ANY LOSS OR DAMAGES IN CONNECTION WITH TERMINATION OR SUSPENSION OF CUSTOMER'S ACCESS TO THE PRODUCTS IN ACCORDANCE WITH THIS AGREEMENT; OR (C) ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER (EVEN IF THE RELEVANT JETBRAINS PARTY HAS 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 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 CUSTOMER'S USE OF OR ACCESS TO THE PRODUCTS OR SUPPORT. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

11.2. THE JETBRAINS PARTIES' TOTAL LIABILITY IN ANY MATTER ARISING OUT OF OR IN RELATION TO THIS AGREEMENT IS LIMITED TO THE GREATER OF (A) ONE HUNDRED (100) US DOLLARS OR (B) THE AGGREGATE AMOUNT PAID OR PAYABLE BY THE CUSTOMER DURING THE THREE-MONTH PERIOD PRECEDING THE EVENT, FOR THE PRODUCTS GIVING RISE TO THE LIABILITY. THIS LIMITATION WILL APPLY EVEN IF THE JETBRAINS PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF LIABILITY EXCEEDING SUCH AN 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 Customer as set forth in the preamble above, and will continue for each Product through the end of the applicable subscription period specified in the respective Subscription Confirmation or in the case of Redistributable Products until terminated by either Customer or JetBrains. This Agreement will automatically renew with respect to a Product for a successive Toolbox Subscription term, unless terminated as set forth herein.

12.2. You may terminate this Agreement at any time by cancelling the subscription for one or more Products via Your JetBrains Account. If such termination occurs during a then-current subscription period, this Agreement will continue to be effective until the end of that subscription period. Such termination does not relieve You of the obligation to pay any outstanding subscription fees owed to JetBrains, and no credits or refunds will be issued to You for prepaid subscription fees (except as set forth in JetBrains' Terms of Purchase, if applicable). In the case of Redistributable Products, Customer may terminate this Agreement with immediate effect by notifying JetBrains of such termination, discontinuing use of the Redistributable Product and deleting all copies of the Redistributable Product from its Clients and archives.

12.3. JetBrains may terminate this agreement if:

(A) Customer has materially breached this Agreement and fails to cure such breach within thirty (30) days of written notice thereof;

(B) Customer fails to make the timely payment of subscription fees in accordance with Section 6 of this Agreement;

(C) JetBrains is required to do so by law (for example, where the provision of the JetBrains Toolbox to Customer is, or becomes, unlawful); or

(D) JetBrains elects to discontinue providing the JetBrains Toolbox, in whole or in part.

12.4. JetBrains will make reasonable efforts to notify Customer via email as follows:

(A) Thirty (30) days prior to termination of the Agreement in the events specified in Sections 12.3(C) and 12.3(D) above, and in such events Customer will be entitled to a refund of the unused portion of prepaid subscription fees, if applicable;

(B) Three (3) days prior to termination of the Agreement in the event specified in Section 12.3(B), and in such event Customer will not be entitled to any refund of the unused portion of prepaid subscription fees.

12.5. Upon expiration or termination of this Agreement by Customer under Section 12.2, and if Customer elects to use the Fallback Version subject to Section 3.2 of the Agreement, Sections 3.2, 7, 8, 10 and 11 of this Agreement will survive.

13. TEMPORARY SUSPENSION FOR NON-PAYMENT

13.1. JetBrains reserves the right to suspend Customer's access to JetBrains' Products if Customer fails to pay its subscription.

13.2. If JetBrains suspends Customer's access to JetBrains' Products for non-payment according to Section 13.1., Customer must pay all past due amounts in order to restore its access to JetBrains' Products.

13.3. Customer hereby agrees that JetBrains is entitled to charge Customer for the time period during which Customer has access to JetBrains Products until Customer or JetBrains terminates or suspends Customer's subscription in accordance with this Agreement.

14. EXPORT REGULATIONS

Customer shall comply with all applicable laws and regulations with regards to economic sanctions, export controls, import regulations, and trade embargoes (all herein referred to as "Sanctions"), including those of the European Union and United States (specifically the Export Administration Regulations (EAR)). Customer declares that it 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. Further, Customer warrants that it will not download or otherwise export or re-export the JetBrains Toolbox or any related technical data directly or indirectly to any person targeted by Sanctions or download or otherwise use the JetBrains Toolbox for any end-use prohibited or restricted by Sanctions.

15. GENERAL

15.1. Entire Agreement. This Agreement, including the Third-Party Software license terms, constitutes the entire agreement between the parties concerning its subject matter and supersedes any prior agreements between You and JetBrains regarding Your use of any JetBrains software covered by the JetBrains Toolbox. 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 Customer and JetBrains.

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

15.3. 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 (by, for example, sending an email to the email address of the billing or technical contact You provided to us, posting on our blog, through Your JetBrains Account, or via the Product itself). If We modify this Agreement, the modified version of the Agreement will be effective from the start of the next Toolbox Subscription term. In this case, if You object to the updated Agreement terms, as Your exclusive remedy, You may cancel Your Toolbox Subscription. You may be required to click through the updated Agreement to show Your acceptance. For the avoidance of doubt, any Subscription Confirmation is subject to the version of the Agreement in effect on the Subscription Confirmation date.

15.4. 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.

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

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

15.7. Governing Law. This Agreement will be governed by the laws of the Czech Republic, without regard to conflict of laws principles. Customer 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.

15.8. 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.

15.9. The parties to this Agreement undertake to make their best efforts to settle any disputes arising hereunder ("Dispute") amicably. Should the parties to this Agreement fail to settle a Dispute amicably, Customer has a right to submit a Dispute for an out-of-court resolution to the Czech Trade Inspection Authority, web address: www.coi.cz.

15.10. Notice. JetBrains may deliver any notice to Customer via electronic mail to an email address provided by Customer, JetBrains Account, 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 Customer via email, (ii) upon being uploaded to Your JetBrains Account (irrespective of when Customer actually receives it), (iii) upon personal delivery, (iv) one (1) day after deposit with an express courier, (v) or five (5) days after deposit in the mail, whichever occurs first.

15.11. Children and minors. If You are under 18 years old, then by entering into this Agreement you explicitly stipulate, that (i) You have 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: sales@jetbrains.com