Terms of Service - YouTrack Cloud (Open Source)

Version 2.2, effective as of March 23rd, 2023

IMPORTANT! READ CAREFULLY:

This Subscription Agreement for JetBrains YouTrack Cloud (this "Agreement") contains the terms and conditions that govern your access to and use of the Service and Software (as defined below) and is an agreement between JetBrains and you or the legal entity you represent ("Subscriber" as defined below). You represent to JetBrains that you are lawfully able to enter into contracts and are at least 13 years old (i.e. you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent to JetBrains that you have legal authority to bind that entity. Please see the "Definitions" section for definitions of certain capitalized terms used in this Agreement.

IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU CANNOT USE JETBRAINS' SERVICE AND SOFTWARE. The Service and Software are not intended for use by children under 13. IF YOU ARE UNDER 13 YEARS OLD, PLEASE DO NOT USE THE SERVICE AND SOFTWARE IN ANY WAY.

1. DEFINITIONS

"Documentation" means the online documentation for Service accessible on JetBrains Site, as updated from time to time.

"Free Subscriber" means Subscriber who is using Service for free in accordance with the Subscription presented on JetBrains Site as free.

"GB" means a gigabyte of storage space available for Subscriber to use within Service.

"Hosting System" means any server, real or virtual, network, Internet connection, infrastructure, hardware and applications used by JetBrains to host Software.

"JetBrains" means JetBrains s.r.o. having its principal place of business at Na hřebenech II 1718/8, Prague, 14000, Czech Republic, ID.No: 265 02 275, entered into the Commercial Register of the Municipal Court in Prague, section C, file 86211.

"JetBrains Site" means websites operated by JetBrains, including, but not limited to, www.jetbrains.com.

"OS-Project Subscription" means a right to use Software and Services free of charge exclusively for non-commercial purposes as set forth in section 6 (b) of this Agreement.

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

"Service Subscription Term" means the period of time during which Subscriber is entitled to use Service and Software.

"Software" means the software program YouTrack Cloud, including downloadable parts of YouTrack provided by JetBrains in binary form. For the avoidance of doubt, Software is not produced to the specifications of Subscriber nor customized through modification or personalization, and is intended for mass distribution.

"Subscriber" means the open source development group specified in the Subscription Confirmation exercising rights under this Agreement and complying with all of the terms of this Agreement.

"Subscriber's Data" means all electronic data or information submitted by Subscriber via Service and stored by JetBrains on Hosting System.

"Subscriber's Data Storage Limit" means the number of GB a Subscriber is allowed to use within Service.

"Subscription" means the right of Subscriber to use Service and Software in accordance with this Agreement.

"Subscription Confirmation" means an email message sent by JetBrains to Subscriber to confirm Subscriber's right to use Service and Software including Service Subscription Term, the number of Users, and Subscriber's Data Storage Limit.

"URL" means a unique URL to JetBrains Site that allows Subscriber to use Service.

"User" means a software developer or other open source development group member who is authorized by Subscriber to use Software and Services for the purpose of development of an open source project .

2. SUBSCRIBERS' RESPONSIBILITIES

(a) Subscriber agrees to:

(i) register on JetBrains Site for using Service. Subscriber shall provide JetBrains with a name for Subscriber's identification, a valid email address, and other information required by the registration form on JetBrains Site to enable JetBrains to create Subscriber's URL;

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

(iii) use Service in compliance with Documentation and within the limitations set out in Subscription Confirmation. If the Subscription parameters as outlined in Subscription Confirmation obtained by Subscriber do not meet Subscriber's needs, Subscriber may adjust the parameters of Subscription as set forth in Section 4 and Section 6 of this Agreement. The new parameters of Subscription shall become effective immediately upon confirmation by JetBrains.

(b) Subscriber shall not, and will make sure that Users do not:

(i) modify, alter, tamper with, repair, or otherwise create derivative works of Service or associated Software (except to the extent Software or any or its parts are provided to Subscriber under a separate license that expressly permits the creation of derivative works);

(ii) reverse-engineer, disassemble, or decompile Service or apply any other process or procedure to derive the source code of Service or associated Software;

(iii) use Service in a way intended to avoid incurring fees or exceeding the limitations outlined in the Subscription Confirmation limits;

(iv) use Service 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;

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

(vi) provide access to Service or right to use Service to a third party.

(c) Subscriber shall be responsible for:

(i) Users' compliance with this Agreement. If Subscriber becomes aware of any violation of Subscriber's obligations under this Agreement by a User, Subscriber shall immediately terminate such User's rights to use Service;

(ii) the legality of Subscriber's Data and of the means by which Subscriber acquired Subscriber's Data. If Subscriber becomes aware of any Subscriber's Data violating this Agreement or any third-party rights, Subscriber shall immediately remove such Subscriber's Data from Service;

(iii) compliance with applicable laws and government regulations;

(iv) configuring and using the Service, and;

(v) the confidentiality of Subscriber's URL, any Subscriber's Data, passwords and user names and their use by Users; and

(vi) Subscriber's Data backup.

3. JETBRAINS' RESPONSIBILITIES

(a) If Subscriber has subscribed for using Service on JetBrains Site, JetBrains will provide Subscriber with a URL and other details required for using Service.

(b) JetBrains shall provide Subscription to Subscriber during the Service Subscription Term specified in Subscription Confirmation and to the extent permitted by the limitations outlined in Subscription Confirmation obtained by Subscriber.

(c) JetBrains will use commercially reasonable efforts to make Service available to Subscriber 24 hours a day, 7 days a week, except for:

(i) planned downtime;

(ii) Hosting System failures, including Internet software provider failures or delays, or;

(iii) any unavailability caused by circumstances beyond JetBrains' reasonable control (force majeure).

4. SUBSCRIPTIONS FOR USING THE SERVICE

Service Subscription Term for using Service in accordance with the obtained Subscription shall be the period of one (1) year. Service Subscription Term for Free Subscribers lasts until termination of this Agreement in accordance with its terms. Service Subscription Term shall commence on the Subscription start date and continue for the time period specified in Subscription Confirmation. The Subscription shall automatically terminate at the end of Service Subscription Term. The Customer can prolong Service Subscription Term for an additional period by extending the current Service Subscription Term, or purchase a new Subscription.

5. FREE TRIAL

(a) Subject to the terms of this Agreement, Subscriber is granted the right to use Service for evaluation purposes free of charge for a period specified in Subscription Confirmation starting from the date of switching to the free trial (the "Trial Period"). JetBrains will make Service available to Subscriber on a trial basis until the earlier of:

(i) expiration of the Trial Period, or;

(ii) Subscriber obtaining any of the available Subscriptions.

(b) Subscriber's use of Service during the Trial Period shall be limited to the internal evaluation of Software for the sole purpose of determining whether Service meets Subscriber's requirements and whether Subscriber desires to continue using Service.

(c) JETBRAINS DOES NOT WARRANT THAT ANY SUBSCRIBER'S DATA ENTERED BY SUBSCRIBER DURING THE TRIAL PERIOD AND ANY CUSTOMIZATIONS MADE TO SERVICE BY OR FOR SUBSCRIBER DURING THE FREE TRIAL WILL BE STORED OR AVAILABLE UPON EXPIRATION OF THE TRIAL PERIOD, UNLESS SUBSCRIBER OBTAINS AN APPROPRIATE PAID SUBSCRIPTION TO CONTINUE USING SERVICE. Subscriber is responsible for taking measures to prevent loss or damage of Subscriber's Data upon expiration of the Trial Period.

6. ADDITIONAL SUBSCRIPTION EXCEPTIONS AND RESTRICTIONS

(a) If Subscriber is an open source development group and its member has been granted OS-Project Subscription by JetBrains at its discretion, Subscriber's rights to use Services and Software shall be restricted solely to development of non-commercial open source projects that meet the Open Source Definition at https://www.opensource.org/docs/osd. Any commercial use of Services and Software with OS-Project Subscription is expressly prohibited by JetBrains.

(b) In no event are the Subscribers identified in clause 6.A above allowed to have more than 200 Users at any point in time, unless explicitly confirmed by JetBrains in writing.

(c) Subscriber's right to use Services and Software with OS-Project Subscriptions, shall be limited to one (1) year.

7. OWNERSHIP

(a) JetBrains retains ownership of all proprietary rights to Service and Software associated or displayed with Service, and to all related trade names, trademarks, and service marks. Subscriber's rights acquired in relation to Service are limited to those necessary to enable Subscriber and its Users to effectively use Service. All other rights remain reserved to JetBrains.

(b) JetBrains does not acquire any rights to Subscriber's Data transmitted, collected, or created by Subscriber via Service. Subscriber retains ownership of all proprietary rights to Subscriber's Data.

(c) Subscriber grants JetBrains a royalty-free, worldwide, irrevocable, sub-licensable, transferable, perpetual license to use and incorporate into Service any suggestions, enhancement requests, recommendations or other feedback provided by Subscriber and its Users with regards to Service or Software.

8. INDEMNIFICATION

(a) Subscriber 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) Subscriber's or any User's use of Service (including any activities under Subscriber's URL and use by Subscriber's employees and personnel);

(ii) the breach of this Agreement or violation of applicable law by Subscriber or any User;

(iii) Subscriber's Data or the combination of Subscriber's Data with other applications, content, or processes, including any claim involving alleged infringement or misappropriation of third-party rights by Subscriber's Data or by use, development, design, production, advertising or marketing of Subscriber's Data; or

(iv) a dispute between Subscriber and any User.

(b) JetBrains will promptly notify Subscriber of any claim subject to the previous section above, but JetBrains' failure to promptly notify Subscriber will only affect Subscriber's obligations to the extent that JetBrains' failure prejudices Subscriber's ability to defend the claim. Subscriber may:

(i) use counsel of Subscriber's own choosing (subject to JetBrains' written consent) to defend against any claim; and

(ii) settle the claim as Subscriber deems appropriate, provided that Subscriber obtains 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.

9. DISCLAIMER

SERVICE AND THE ASSOCIATED SOFTWARE ARE PROVIDED "AS IS." JETBRAINS MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING SERVICE AND/OR SOFTWARE, INCLUDING ANY WARRANTY THAT SERVICE AND/OR SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING SUBSCRIBER'S DATA, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, JETBRAINS DISCLAIMS ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

10. LIMITATIONS OF LIABILITY

(a) JETBRAINS WILL NOT BE LIABLE TO SUBSCRIBER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL,

OR DATA), EVEN IF JETBRAINS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, JETBRAINS WILL NOT BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH:

(i) SUBSCRIBER'S INABILITY TO USE THE SERVICE AND/OR SOFTWARE, INCLUDING AS A RESULT OF ANY TERMINATION OR SUSPENSION OF THIS AGREEMENT OR SUBSCRIBER'S USE OF SERVICE AND/OR SOFTWARE;

(ii) JETBRAINS' DISCONTINUATION OF PROVIDING SERVICE AND/OR SOFTWARE;

(iii) ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF SERVICE AND/OR SOFTWARE FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS;

(iv) THE COST OF PROCUREMENT OF A SUBSTITUTE SERVICE OR SOFTWARE;

(v) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY SUBSCRIBER IN CONNECTION WITH THIS AGREEMENT OR SUBSCRIBER'S USE OF OR ACCESS TO THE SERVICE AND/OR SOFTWARE; OR

(vi) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS, OR FAILURE TO STORE ANY OF SUBSCRIBER'S DATA.

(b) IN ANY CASE, JETBRAINS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO (i) THE AMOUNT THAT SUBSCRIBER ACTUALLY PAID TO JETBRAINS UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM, OR (i) IN CASE OF OS-PROJECT SUBSCRIPTIONS, THE AMOUNT OF FIVE (5) USD . THIS LIMITATION WILL APPLY EVEN IF JETBRAINS HAS BEEN ADVISED OF THE POSSIBILITY OF LIABILITY EXCEEDING SUCH AMOUNT AND NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

(c) JetBrains will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond JetBrains' reasonable control, including, but not limited to, acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquakes, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

11. TEMPORARY SUSPENSION

JetBrains may suspend Subscriber's right to use Service or any portion of Service immediately upon a notice to Subscriber if JetBrains determines that:

(i) Subscriber's or User's use of Service may adversely impact or poses security or legal risks to JetBrains, Service, Hosting System, or any third party;

(ii) Subscriber has ceased to operate in the ordinary course of business, made an assignment for the benefit of creditors or similar disposition of Subscriber's assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or

(iii) Subscriber is using Subscription in violation of this Agreement.

12. TERM AND TERMINATION

(a) This Agreement takes effect when Subscriber clicks an "I Accept" button or checkbox presented with these terms and shall continue until terminated by either party as provided herein.

(b) Either party may terminate this Agreement for cause if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Subscriber can terminate this Agreement for cause upon 30 days written notice to JetBrains of a material breach if such breach remains uncured at the expiration of such period.

(c) Upon termination of this Agreement for cause by Subscriber as outlined in clause 12. (b) above, JetBrains shall refund to Subscriber any prepaid fees covering the Service Subscription Term remaining after the Agreement termination date. Upon any termination for cause by JetBrains, Subscriber shall pay any unpaid fees (if applicable) covering the remainder of the Service Subscription Term after the Agreement termination date.

(d) JetBrains may terminate this Agreement immediately upon notice to Subscriber if (i) JetBrains decides to cease providing Service due to any business, economical, legal, or regulatory reason or (ii) Subscriber has violated the terms of this Agreement and not cured such violation within 3 days of receiving notice of such violation from JetBrains, or (iii) the Free Subscriber has not logged in for 3 calendar months in a row.

(e) JetBrains will store Subscriber's Data and make it available to Subscriber for export after the Agreement termination date according to the following schedule:

(i) Subscriber's Data of Trial Period Users may be deleted one month and two weeks after the expiration of Service Subscription Term.

(ii) Subscriber's Data of Free Users may be deleted 3 months and two weeks after the last interaction of the User with Service.

(iii) Subscriber's Data of Users with an unpaid Subscription may be deleted 3 months and two weeks after the expiration of Service Subscription Term.

(iv) Subscriber's Data of Users with a paid Subscription may be deleted 6 months and two weeks after the expiration of Service Subscription Term.

Upon expiration of the periods of time outlined above, JetBrains will have no obligation to store or make available to Subscriber any of Subscriber's Data and, unless legally prohibited, will have the right to remove Subscriber's Data from Hosting System. JetBrains will notify Subscriber about the planned deletion of Subscriber's Data in advance. JetBrains will exercise commercially reasonable efforts to keep a backup of the deleted Subscriber's Data for one month after deletion unless Subscriber instructs JetBrains to delete the backup of Subscriber's Data along with Subscriber's Data. After this time, it will not be possible to restore the deleted Subscriber's Data anymore.

(f) Subscriber can request manual deletion of Subscriber's Data currently stored with JetBrains through filling out the relevant request form on JetBrains Site. JetBrains will use commercially reasonable efforts to keep an automatic backup of Subscriber's Data deleted in this manner for 1 month after deletion, unless Subscriber instructs JetBrains to delete the backup of Subscriber's Data along with Subscriber's Data.

(g) If JetBrains reasonably believes that:

(i) the use of Software or Services by the Subscriber is unauthorized or fraudulent;

(ii) information provided to JetBrains by the Subscriber in connection with this Agreement is incomplete, inaccurate, legally invalid or unverifiable; or

(iii) the Subscriber has breached Clause 6(a) of this Agreement,

JetBrains may terminate this Agreement on seven (7) day's notice to the Subscriber ("Notice Period"). From the date of such termination notice until the expiry of the Notice Period, JetBrains may immediate suspend the Subscriber's access to the Software and Services. During the Notice Period, the Subscriber may object to the termination in writing and must provide any information reasonably requested by JetBrains.

13. NOTICES

(a) JetBrains may provide any notice to Subscriber under this Agreement by posting such notice on JetBrains Site or sending a message to Subscriber's email address. Notices that JetBrains provides by posting on JetBrains Site will be effective upon posting and notices JetBrains provides by email will be effective when JetBrains sends the email message. It is Subscriber's responsibility to keep Subscriber's email address current.

(b) To give JetBrains any notice under this Agreement, Subscriber shall contact JetBrains by fax at +420 241 722 540, by email at sales@jetbrains.com, or by personal delivery, overnight courier, or registered or certified mail to JetBrains as specified in this Agreement. JetBrains may update the facsimile number, address or email for notices to

JetBrains by posting a notice on JetBrains Site. Notices provided by personal delivery will be effective immediately. Notices provided by facsimile transmission or overnight courier will be effective one business day after they are sent. Notices provided by registered or certified mail will be effective three business days after they are sent. Notices provided by email will be effective on the next business day after they are sent.

14. CLOSING PROVISIONS

(a) Subscriber agrees to be identified as a customer of JetBrains and agrees that JetBrains may refer to Subscriber by name, trade name and trademark, if applicable, and may briefly describe Subscriber's business in JetBrains marketing materials, on JetBrains Site, and in public or legal documents. Subscriber hereby grants JetBrains a worldwide, non-exclusive, royalty-free license to use Subscriber's name and any of Subscriber's trade names and trademarks solely pursuant to this marketing section.

(b) This Agreement is governed by the laws of the Czech Republic. All disputes arising from the present Agreement and/or in connection with it shall be finally brought to and decided by any relevant competent common court in 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.

(c) JetBrains may modify this Agreement at any time by posting a revised version of the Agreement on JetBrains Site. The modified terms will become effective upon posting of a revised version of the Agreement on JetBrains Site. By continuing to use Service after the effective date of any modification to this Agreement, Subscriber agrees to be bound by the modified terms. It is Subscriber's responsibility to check JetBrains Site regularly for modifications to this Agreement.

(d) The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship between the parties.

(e) Sections 7, 8, 9, 10, 12 (c), 12(d), 14(a), 14(b), and 14(c) shall survive any termination or expiration of this Agreement.

(f) There are no third-party beneficiaries to this Agreement.

(g) If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

(h) 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 and agree to the JetBrains Privacy Notice 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 Notice, OR DO NOT KNOW WHETHER YOU HAVE THE LEGAL CAPACITY TO ACCEPT THESE TERMS, PLEASE ASK YOU PARENT OR LEGAL GUARDIAN FOR HELP.

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

Address: Na Hřebenech II 1718/8, Prague, 14000, Czech Republic

Fax: +420 241 722 540

Email: sales@jetbrains.com