

# License Agreement for Upsource

Version 2, Effective as of November 29, 2016

IMPORTANT! READ CAREFULLY: THIS IS A LEGAL AGREEMENT. BY DOWNLOADING, INSTALLING, COPYING, SAVING ON YOUR COMPUTER, OR OTHERWISE USING THIS SOFTWARE, YOU (LICENSEE, AS DEFINED BELOW) ARE BECOMING A PARTY TO THIS AGREEMENT AND YOU ARE CONSENTING TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT.

IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU SHOULD NOT DOWNLOAD, INSTALL AND USE THE SOFTWARE.

Note: In case the terms of this Agreement are in conflict with the terms of any agreement individually negotiated and agreed between JetBrains and customer, the terms of the latter shall prevail.

**1. PARTIES** (a) “Licensor” means JetBrains s.r.o. having its principal place of business at Na hřebenech II 1718/10, Prague, 14700, Czech Republic, registered with Commercial Register kept by the Municipal Court of Prague, Section C, file 86211, ID.Nr.: 265 02 275.

(b) “Licensee” means either an individual or a legal entity specified in the License Certificate, exercising rights under, and complying with all of the terms of, this Agreement. For legal entities, “Licensee” includes any entity which controls, is controlled by, or is under common control with Licensee. For purposes of this definition, “control” means (a) the power, direct or indirect, to cause the direction or management of such entity, whether by contract or otherwise, or (b) ownership of fifty percent (50%) or more of the outstanding shares or beneficial ownership of such entity.

**2. DEFINITIONS** (a) “Account” means an electronic record on Server created by Licensee for the purpose of use of Software by a specific user.

(b) “Classroom License” means a license to use Software free of charge for non-commercial purposes as set forth in section 5 (a) of this Agreement.

(c) “License Certificate” means evidence of a license provided by Licensor to Licensee in electronic or printed form.

(d) “License Key” means a unique key-code that enables Licensee to run Software subject to the obtained User Pack.

(e) “OS-Project License” means a license to use Software free of charge for non-commercial purposes as set forth in section 5 (b) of this Agreement.

(f) “Server” means a server part of Software that enables administration of Accounts and performs other services as specified in Software documentation.

(g) “Software” means software program Upsource in binary form, including its documentation, upgrades provided pursuant to Section 9 of this Agreement (“Upgrades”), and any third-party software programs that are owned and licensed pursuant to Section 6 of this Agreement by parties other than Licensor and that are either integrated with or made part of Upsource (collectively, “Third-Party Software”).

(h) “User Pack” means a maximum number of users permitted to use Software.

**3. OWNERSHIP** (a) Software is the property of Licensor or its suppliers. Software is licensed, not sold. Title and copyrights to Software, in whole and in part and all copies thereof, and all modifications, enhancements, derivatives and other alterations of Software regardless of who made any modifications, if any, are, and will remain, the sole and exclusive property of Licensor and its suppliers.

(b) Software is protected by United States Copyright Law and International Treaty provisions. Further, the structure, organization, and code embodied in Software are the valuable and confidential trade secrets of Licensor and its suppliers and are protected by intellectual property laws and treaties. Licensee agrees to abide by the copyright law and all other applicable laws of the United States including, but not limited to, export control laws.

**4. GRANT OF LICENSE** Subject to the terms, conditions, and limitations set forth in this Agreement, including any amendments thereto, Licensor hereby grants to Licensee a limited, non-exclusive, non-transferable license to use Software as follows:

**(a) Licensee may:** (i) use up to ten (10) Accounts free of charge on a single instance of Server run by Licensor;

(ii) use more than ten (10) Accounts on a single instance of Server if Licensee has obtained a corresponding User Pack;

(iii) run one instance of Server with a single License Key; and

(iv) make one back-up copy of Software for archival purposes.

**(b) Licensee may not:** (i) sell, redistribute, assign, encumber, give, lend, rent, lease, sublicense, or otherwise transfer Software, or any portions of Software, to another individual or entity;

(ii) reverse-engineer, decompile, disassemble, modify, translate, make any attempt to discover the source code of Software, or create derivative works from Software;

(iii) run multiple instances of Server with the same License Key; or

(iv) use more Accounts on a single instance of Server than is set forth in the obtained User Pack.

**5. ADDITIONAL LICENSE EXCEPTIONS AND RESTRICTIONS.** (a) If Licensee who is an educational institution has been granted Classroom License, Licensee's rights to use Software shall be restricted solely to providing classroom instruction by Licensee to its students. Any commercial use of Software with Classroom License is expressly prohibited by Licensor.

(b) If Licensee who is an open source development group or its member has been granted OS-Project License, Licensee's rights to use Software shall be restricted solely to development of non-commercial open source projects that meet the Open Source Definition at <http://www.opensource.org/docs/osd>. Any commercial use of Software with OS-Project License is expressly prohibited by Licensor.

(c) Restrictions on the number of Accounts and Server instances set forth in paragraphs (i)-(iii) of section 4 (a) are not applicable to Classroom Licenses and OS-Project Licenses.

(d) Licensee's right to use Software, including all generally available Upgrades, with Classroom Licenses and OS-Project Licenses, shall be limited to one (1) year. Licensee may renew its Classroom License or OS-Project License for another 1-year period free of charge by submitting to Licensor a written request thirty (30) days prior to the license expiration.

**6. THIRD-PARTY SOFTWARE LICENSE** (a) Licensee agrees to comply with the terms and conditions contained in Third-Party Software licenses with respect to the applicable Third-Party Software available at [http://www.jetbrains.com/upsource/help?topic=third-party\\_software](http://www.jetbrains.com/upsource/help?topic=third-party_software).

(b) Licensee agrees and acknowledges that Sections 10 and 11 of this Agreement shall also govern Licensee's use of the Third-Party Software. Licensor will have no responsibility with respect to any Third-Party Software, and Licensee will look solely to the licensor(s) of the Third-Party Software for any remedy. Licensor

claims no right in the Third-Party Software, and the same is owned exclusively by the licensor(s) of the Third-Party Software.

(c) LICENSOR PROVIDES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, WITH RESPECT TO ANY THIRD-PARTY SOFTWARE.

**7. RESTRICTED USE DURING EVALUATION PERIOD** (a) Licensee may obtain from Licensor a free License Key to evaluate Software for a period of sixty (60) days, unless otherwise specified by Licensor (“Evaluation Period”).

(b) Licensee’s use of Software during Evaluation Period shall be subject to the terms of this Agreement (except for restrictions on the number of Accounts set forth in paragraph (ii) of section 4 (a)), but shall be limited to the internal Software evaluation for the sole purpose of determining whether Software meets Licensee’s requirements and whether Licensee desires to continue using Software.

(c) Upon expiration of Evaluation Period, Licensee shall do either of the following: (i) continue using Software free of charge subject to paragraph (i) of section 4 (a); (ii) obtain User Pack; or c) uninstall Software. Software contains a feature that will automatically deactivate exceeding Accounts upon expiration of Evaluation Period. Licensee may not disable, destroy, or remove this feature of Software, and any attempt to do so will be in violation of this Agreement and will terminate Licensee’s rights to use Software.

**8. LICENSE FEES AND PAYMENTS** Licensee agrees to the terms and conditions of Software purchase published on Licensor’s website at [www.jetbrains.com](http://www.jetbrains.com). Licensor may charge Licensee interest for any payment that is more than thirty (30) days past due at the rate of one and one-half percent (1.5%) per month or the highest amount allowed by law, whichever is lower.

**9. UPGRADES** 9.1 If Licensee’s use of Software falls under paragraph (i) of section 4(a), Licensor will provide all generally available Software Upgrades to Licensee free of charge until termination of this Agreement as set forth in section 13.

9.2 If Licensee has obtained User Pack, Licensor will provide all generally available Software Upgrades to Licensee free of charge during a 1-year period following the User Pack purchase (“Upgrade Subscription”). Licensee may renew Upgrade Subscription for another 1-year period as set forth on Licensor’s web site. Each subsequent Upgrade Subscription term will start on the day following expiration of the previous Upgrade Subscription term regardless of the actual Upgrade Subscription renewal date. If Licensee elects not to renew Upgrade Subscription, Licensee would retain perpetual right to continue using the most recent version of Software released by Licensor during applicable Upgrade Subscription term, subject to restrictions set forth in clause 4. This section 9.2 is not applicable to Classroom Licenses and OS-Project Licenses which are subject to section 5 (d).

9.3 Upon installing any Upgrade, Licensee shall cease using any previous License Key of Software.

9.4. Licensor may terminate Upgrade Subscription if:

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

(b) Licensee fails to make the timely payment of Upgrade Subscription fees;

(c) Licensor is required to do so by law (for example, where the provision of Software to Licensee is, or becomes, unlawful); or

(d) Licensor elects to discontinue to provide Software, in whole or in part.

9.5 Licensor will make reasonable effort to notify Licensee via email as follows:

(a) Thirty (30) days prior to termination of Upgrade Subscription in the events specified in clauses 9.4 (c) and 9.4 (d), and in such events Licensee will be entitled to refund of unused portion of prepaid subscription fees, if applicable;

(b) Three (3) days prior to termination of Upgrade Subscription in the event specified in clause 9.4 (b).

**10. LIMITED WARRANTY** SOFTWARE IS PROVIDED TO LICENSEE “AS IS” AND WITHOUT WARRANTIES. LICENSOR MAKES NO WARRANTY AS TO ITS USE OR PERFORMANCE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR, AND ITS AFFILIATES, SUPPLIERS AND RESELLERS, 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 SOFTWARE, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES.

**11. DISCLAIMER OF DAMAGES** (a) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR OR ITS AFFILIATES, LICENSORS, SUPPLIERS OR RESELLERS BE LIABLE TO LICENSEE UNDER ANY THEORY FOR ANY DAMAGES SUFFERED BY LICENSEE OR ANY USER OF SOFTWARE, OR FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR SIMILAR DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF THE USE OR INABILITY TO USE SOFTWARE, OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

(b) IN ANY CASE, LICENSOR’S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY LICENSEE FOR SOFTWARE UNDER THIS AGREEMENT OR 5 USD IF LICENSEE RECEIVED SOFTWARE FREE OF CHARGE.

**12. EXPORT REGULATIONS** Licensee shall comply with all applicable laws and regulations with regards to: economic sanctions; export controls; import regulations; and trade embargoes (“Sanctions”), including those of the European Union and the United States (specifically the Export Administration Regulations (EAR)). Licensee acknowledges 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, Licensee acknowledges 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.

**13. TERM AND TERMINATION** (a) Except as otherwise provided in License Certificate, the license granted herein shall be perpetual.

(b) If Licensee fails to comply with the terms and conditions of this Agreement, Licensor may terminate this Agreement and Licensee’s right and license to use Software. Licensee may terminate this Agreement at any time by notifying Licensor. Upon the termination of this Agreement, Licensee must discontinue use of Software, and delete all copies of Software from its computers and archives.

(b) LICENSEE AGREES THAT UPON TERMINATION OF THIS AGREEMENT FOR ANY REASON, LICENSOR MAY TAKE ACTIONS SO THAT SOFTWARE NO LONGER OPERATES.

**14. MARKETING** Licensee agrees to be identified as a customer of Licensor and agrees that Licensor may refer to Licensee by name, trade name and trademark, if applicable, and may briefly describe Licensee's business in Licensor's marketing materials and on Licensor's web site. Licensee hereby grants Licensor a license to use Licensee's name and any of Licensee's trade names and trademarks solely in connection with the rights granted to Licensor pursuant to this marketing section.

**15. GENERAL** (a) Licensor reserves the right at any time to cease the support of Software and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of Software.

(b) This Agreement, including the Third-Party Agreements, constitutes the entire agreement between the parties concerning Licensee's use of Software, and supersedes any and all prior or contemporaneous oral or written representations, communications, or advertising with respect to Software. No purchase order, other ordering document or any hand written 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 Licensee and Licensor.

(c) A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach. The provisions of this Agreement which require or contemplate performance after the expiration or termination of this Agreement shall be enforceable notwithstanding said expiration or termination.

(d) This Agreement will be governed by the laws of Czech Republic, without reference to conflict of laws principles. Licensee agrees that any litigation relating to this Agreement may only be brought in, and shall be subject to the jurisdiction of, any Court of Czech Republic.

(e) Titles are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. If any provision of this Agreement is held invalid, the remainder of this Agreement will continue in full force and effect. Either Licensor or Licensee may assign this Agreement in the case of a merger or sale of substantially all of its respective assets to another entity. This Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns.

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

Address: Na hrebenech II 1718/10, Prague, 14700, Czech Republic

Fax: +420 241 722 540

Email: [sales@jetbrains.com](mailto:sales@jetbrains.com)