

# TOOLBOX SUBSCRIPTION LICENSE AGREEMENT FOR INDIVIDUAL CUSTOMERS

Version 2, effective as of March 16<sup>th</sup>, 2016

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 COMPUTER, OR OTHERWISE USING JETBRAINS SOFTWARE, SERVICES OR PRODUCTS, YOU ARE BECOMING A PARTY TO THIS 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 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.

1.2. “Licensee” or “You” means the individual specified in the Subscription Confirmation. For the avoidance of any doubt, Licensee 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 License Agreement.

2.2. “Product” for the purposes of this Agreement means any software provided under JetBrains Toolbox.

2.3. “Client” means a computer device used by Licensee for running 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 purposes of clarity, Fallback Version does not include any Product updates or upgrades other than Bug Fix Updates that Licensee 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 Licensee, having a unique name and password, and through which Licensee has access to Products in accordance with a Toolbox Subscription.

2.9. “JetBrains Toolbox” means all of JetBrains individual developer productivity software (as identified on the JetBrains website). JetBrains Toolbox does not include team productivity software or services such as YouTrack, TeamCity, UpSource, or Hub, or any other software, services or products other than those identified from time to time by JetBrains as individual developer productivity software.

2.10. “Subscription Confirmation” means an email confirming Licensee’s rights to access and use Products.

2.11. “Toolbox Subscription” specifies the subscription term, the set of Products covered by this Agreement, subscription fees and payment schedules.

### 3. GRANT OF LICENSE

Unless Toolbox Subscription is expired or this Agreement is terminated in accordance with Section 12, and subject to the terms and conditions specified herein, JetBrains grants You a limited, non-exclusive and non-transferable license to use each Product covered by 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 Product solely for archival purposes.

(B) You may not:

- (i) Rent, lease, reproduce, modify, adapt, create derivative works of, distribute, sell, sublicense or transfer the Product, or provide access to the Product or Your JetBrains Account to a third party;
- (ii) Reverse-engineer, decompile, disassemble, modify, translate the Product, or make any attempt to discover the source code of the Product;
- (iii) Remove or obscure any proprietary or other notices contained in the Product.

3.2. Following the expiration of this Agreement, the license rights in Section 3.1(A) shall continue on a perpetual, royalty-free, limited, non-exclusive, and non-transferable basis for the continued use of a Fallback Version of each Product covered by the Toolbox Subscription. The rights granted in this Section 3.2 are expressly contingent upon Licensee having paid in full the applicable Toolbox Subscription fees for the preceding 12 months or longer without interruption. The limitations set forth in clause 3.1(B) of this Agreement apply to the usage of the Fallback Version. The parties agree that upon expiration of this Agreement and Licensee's continued use of the Fallback Version, the provisions identified in Section 12.5 shall continue to apply to Licensee.

3.3. This license is only for natural persons who are purchasing a license to Products using their own funds only. Notwithstanding anything to the contrary set forth herein, You may not use any of the Products, and this license 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 license shall be invalid and void.

3.4. Products are made available on a limited license or access basis, and no ownership right is conveyed to You, irrespective of the use of terms such as "purchase" or "sale." JetBrains has and retains all right, title and interest, including all intellectual property rights, in and to the Products any and all related or underlying technology, and any modifications or derivative works of the foregoing created by or for JetBrains, including without limitation as they may incorporate Feedback (as defined below).

### 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 a 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 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 We verify Your rights to use the Product online. Product will periodically connect to JetBrains servers to update this information including changes to JetBrains Account credentials, Toolbox Subscription plan and payments made.

5.3. Alternatively, You may use an offline activation code that You can download in Your JetBrains Account. In the event 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**

Licensee must pay Toolbox Subscription fees in accordance with the JetBrains Terms of Purchase or reseller's terms of purchase, whichever is applicable. If Licensee fails to make the timely payment of Toolbox Subscription fees, this Agreement will be terminated and Licensee may not use Products except as set forth in Section 3.2 of this Agreement.

## **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 nonexclusive, 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, and 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"). The list of Third-Party Software included in each Product is available in Product documentation. All Third-Party Software is licensed to You under the terms of their respective licenses located 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, Licensee is granted a one-time right to install and use Product for evaluation purposes without charge for a period of thirty (30) days from the date of the Product installation, unless otherwise specified ("Evaluation Period"). Licensee's use of Product during Evaluation Period shall be limited to the evaluation of Product for the sole purpose of determining whether Product meets Licensee's requirements and whether Licensee desires to continue using Product.

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

## **10. LIMITED WARRANTY**

ALL PRODUCTS ARE PROVIDED TO YOU ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT WARRANTIES. USE OF THE SOFTWARE 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 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 PRODUCTS, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. THIS LIMITED WARRANTY GIVES LICENSEE SPECIFIC LEGAL RIGHTS. LICENSEE MAY HAVE OTHER RIGHTS, WHICH VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION. LICENSOR (AND ITS AFFILIATES, AGENTS, DIRECTORS AND EMPLOYEES) DOES NOT WARRANT THAT THE SOFTWARE IS ACCURATE, RELIABLE OR CORRECT; THAT THE PRODUCTS WILL MEET LICENSEE’S REQUIREMENTS; THAT THE SOFTWARE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SOFTWARE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY CONTENT OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SOFTWARE 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 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) ANY LOSS OF USE, DATA, GOODWILL, OR PROFITS, WHETHER OR NOT FORESEEABLE; (B) ANY LOSS OR DAMAGES IN CONNECTION WITH TERMINATION OR SUSPENSION OF YOUR ACCESS TO OUR PRODUCTS IN ACCORDANCE WITH THIS AGREEMENT, AND (C) 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 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 SERVICES OR SOFTWARE. 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 RELATED TO THIS AGREEMENT IS LIMITED TO ONE HUNDRED (100) US DOLLARS OR THE AGGREGATE AMOUNT THAT YOU PAID FOR PRODUCTS DURING THE THREE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE LIABILITY, WHICHEVER IS LARGER. THIS LIMITATION WILL APPLY EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF THE LIABILITY EXCEEDING THE AMOUNT AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## **12. TERM AND TERMINATION**

12.1. The term of this Agreement will commence upon acceptance of this Agreement by Licensee 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. 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).

12.3. JetBrains may terminate this agreement 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 subscription fees;
- (C) JetBrains is required to do so by law (for example, where the provision of the JetBrains Toolbox to Licensee is, or becomes, unlawful); or
- (D) JetBrains elects to discontinue to provide JetBrains Toolbox, in whole or in part.

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

- (A) Thirty (30) days prior to termination of the Agreement in the events specified in Clauses 12.3(C) and 12.3(D) above, 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 the Agreement in the event specified in Clause 12.3(B), and in such event Licensee will not be entitled to any refund of unused portion of prepaid subscription fees.

12.5 Upon expiration or termination of this Agreement by Licensee under Section 12.2, and if Licensee 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 Licensee's access to JetBrains' Products in the event that Licensee fails to make payment for its subscription.

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

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

### **14. EXPORT REGULATIONS**

Licensee agrees and accepts that JetBrains Toolbox may be subject to import and export laws of any country, including those of the European Union and United States (specifically the Export Administration Regulations (EAR)). Licensee acknowledges that it is not a citizen, national, or resident of, and is not under control of the governments of Cuba, Iran, North Korea, Sudan or Syria and is not otherwise a restricted end-user as defined by applicable export control laws. Further, Licensee acknowledges that it will not download or otherwise export or re-export JetBrains Toolbox or any related technical data directly or indirectly to the above-mentioned countries or to citizens, nationals, or residents of those countries, or to any other restricted end user or for any restricted end-use.

### **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 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 Licensee and JetBrains.

15.2. Reservation of Rights. JetBrains reserves the right at any time to cease the support of JetBrains Toolbox and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of 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 billing or technical contact You provide to us, posting on our blog, through Your JetBrains Account, or via the Product itself). If We modify Agreement, the modified version of Agreement will be effective upon the next Toolbox Subscription term. In this case, if You object to the updated Agreement terms, as Your exclusive remedy, You may cancel 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 is not enforceable, the unenforceability of that term will not affect any other terms.

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 of this Agreement is not a waiver of that section.

15.7. Governing Law. This Agreement will be governed by the laws of Czech Republic, without regard to conflict of laws principles. Licensee agrees that any litigation relating to this Agreement may only be brought in, and will be subject to the jurisdiction of, any relevant competent court of Czech Republic.

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 contracts” (“adhesion contracts”) 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 (hereinafter the “Dispute”) amicably. Should the parties to this Agreement fail to settle a Dispute amicably, Licensee has a right to submit a Dispute for an out-of-court resolution to Czech Trade Inspection Authority, web address: [www.coi.cz](http://www.coi.cz).

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

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

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