

End User License Agreement

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1. DEFINITIONS

“Accessible Code” means source code that is unprotected and accessible.

“Application” means a software application by Licensor’s which may include computer software, Accessible Code and Protected Code, associated media, Media, printed materials, electronic documentation, Internet-based services and Embedded Software.

“Authorized User” means a person who accesses and uses the Software under a User License.

“Embedded Software” means any third party software licensed by Licensor from a third party and embedded in the Software.

“Fees” mean all fees and expenses payable by the Licensee to Licensor in consideration for renting the Software as well as – if applicable – for providing services of Maintenance.

“High Priority Bug” means an error in the Software which leads to complete disability to use the Software (e.g. Software does not load).

“Maintenance” means the provision by Licensor to Licensee, of Software updates and/or enhancements made generally available to customers from time to time, and online technical support for the sole purpose of addressing technical issues relating to the use of the Software.

“Media” means all images, icons, text files, pdfs or other static non-code assets contained within the Software.

“Office Hours” means timeframe between 9 a.m. CET and 5 p.m. CET from Monday to Friday.

“Paid License” means a license for which Fees have not been waived by Licensor.

“Parties” means either Licensor or the Licensee or both.

“Protected Code” means any source code that is protected against access by the Licensee and any third party without Licensor’s prior written permission and is otherwise not accessible under this Agreement.

“Rent” means rent of the Software from a Reseller or Licensor.

“Reseller” means a third party selling and distributing Licensor services, products, or both, under authorization from the Licensor.

“Service Request” means any request from the Licensor towards Licensee including request for support and technical questions. A Service Request receive a ticket and will be processed through the service desk portal on swarmos.com.

“Software” means one or more Applications

“Subscription” means the process of obtaining access to Software by registering to the Atlassian Marketplace platform, selecting a Software by Licensor, completing the order form and processing payment of the Fee for the selected Term.

“Term” means the duration in time after which the User License expires and which is selected on Subscription (monthly or yearly).

“Supplemental Software” means updates, supplements, add-on components, or internet based service components of the Software that Licensor may provide to the Licensee or make available to the Licensee after the date the Licensee has concluded this Agreement.

“User License” means a license granted under this Agreement to the Licensee to permit an Authorized User to use the Software. The number of User Licenses granted to the Licensee is dependent on the Fees paid by the Licensee.

“User Tier” means the number of maximum users which Licensee registered for Atlassian products.

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The Software is rented, not sold. Upon Licensee's acceptance of this Agreement Licensor grants the Licensee the right to use the Software subject to the following:

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The licenses granted are subject to the condition that the Licensee must ensure the maximum number of Authorized Users accessing and using the Software concurrently not higher than the number of User Licenses for which the necessary Fees have been paid to the Reseller or Licensor. The Licensee may purchase additional User Licenses at any time on payment of the appropriate Fees to the Reseller or Licensor.

2.2 Pricing Model

Licensor offers Subscription according to a staggered pricing of the Software. Fees will be determined by the existing Licensee's User Tier Size, as defined in Atlassian's tier user pricing policy (e.g. if Licensee is in possession of 500 JIRA licenses, Fees will be due for 500 Authorized Users of the Software regardless of how many users actually use the Software) during the Term. Fees are payable in advance, and will be due monthly, except if Licensee opted for yearly payment on Subscription. Fees are non-refundable for the Term selected on Subscription. Licensor might offer trial versions of the software which are free of charge during a trial period.

2.3 General Rental and License Terms

2.3.1 Scope

Each license granted by Licensor under this Agreement is worldwide, valid during the Term and for the specified User Tier, non-exclusive and non-transferable, unless otherwise specified in writing.

Licensee agrees not to (a) decompile, reverse engineer, disassemble, modify, adapt, create derivative works from, or otherwise attempt to derive, any part of or the whole of the Software; (b) sell, sublicense, distribute, reproduce, transmit, circulate, disseminate, translate or reduce to or from any electronic medium or machine readable form any part of or the whole of the Software or any data/information not owned by the Licensee; (c) make the Software available by rental, timesharing, a subscription service, hosting or outsourcing; and (d) directly or indirectly access or use any Embedded Software independently of the rest of the Software.

2.3.2 Protection Mechanisms

The Software includes license protection mechanisms that are designed to manage and protect the intellectual property rights of Licensor and its third-party suppliers.

Licensee must not modify, alter, attempt to defeat or defeat such protection mechanisms or the use rules that the protection mechanisms are designed to enforce. Any such violation by the Licensee will result in the immediate termination of this license.

2.3.3 Permitted Computers

Except as otherwise agreed in writing by Licensor, the Licensee must only make the Software available for use on hardware systems owned, leased or controlled by the Licensee and according to the User Tier.

2.4 Service Level

Licensor will react to Service Requests with Licensee's technical queries regarding potential bugs during Office Hours. Licensor will react to Service Requests regarding High Priority Bugs within four (4) hours during Office Hours and within twenty-four (24) hours with regard to all other queries.

3. FEES

The Licensee must pay all Fees by the due date and in the manner directed at the time of Rent of the Software. Failure to pay Fees by the due date will result in Licensor's right to termination of this Agreement for cause.

4. MAINTENANCE

4.1 Supplemental Software and Services

This Agreement applies to Supplemental Software unless Licensor provides additional terms with any Supplemental Software.

4.2 Support Services

Licensor may offer support services, and such services may be subject to the payment of additional fees. Any such support services will be the subject of a separate agreement.

5. INTELLECTUAL PROPERTY

5.1 Ownership and Reservation of Rights

Licensor retains all rights, title and interest in and to the Software (other than Embedded Software), as well as all intellectual property rights (such as copyright, patent and trademark) in and to the Software not expressly granted to Licensee in this

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5.4 Warranty

The Licensor warrants that:

it has the right to enter into this Agreement and to grant to the Licensee a right to use the Software as contemplated by this Agreement;

the Software will conform in all material respects to the Software's documentation; and

the Software is free from viruses, worms, time bombs, Trojan horses and other harmful code.

6. BREACH BY LICENSEE

If Licensee breaches this Agreement by the distribution or use of Software outside of the terms of the User License Licensor is entitled (without prejudice to any other right or claim that Licensor or any third party owner of Embedded Software may have against Licensee) to charge Licensee, in addition to any other Fees payable by Licensee under this Agreement, three times the fee Licensee would have owed if the use of the Software had been legally covered by this Agreement

7. TERM AND TERMINATION

7.1 This Agreement is valid for the Term or until terminated with or without cause.

7.1.1 This Agreement may be terminated without cause at the end of a month by sending a written notice at least one month before (e.g. notice of termination is received on June 20, the Agreement will be terminated on July 31).

7.1.2 The right to terminate the Agreement for cause to a material breach is reserved. A breach is material if a substantial provision of this Agreement is violated and – if curable – is not cured within 20 days after having received a written notice announcing such breach. A termination for cause is only possible within three months after having acquired knowledge of the material breach.

7.1.3 Without prejudice to any other rights and in addition to any other termination rights in this Agreement, Licensor may terminate with immediate effect, this Agreement if: (a) the Licensee fails to comply with the terms and conditions of this Agreement; (b) Licensee suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts; (c) Licensee commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of Licensee (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of Licensee with one or more other companies or the solvent reconstruction of Licensee; (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over Licensee (being a company); (f) the holder of a qualifying floating charge over the assets of Licensee (being a company) has become entitled to appoint or has appointed an administrative receiver; (g) a person becomes entitled to appoint a receiver over the assets of Licensee or a receiver is appointed over the assets of Licensee; (h) a creditor or encumbrancer of Licensee attaches or Licensee takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of Licensee's assets and such attachment or process is not discharged within 14 days; or (i) Licensee suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

7.2 After termination of this Agreement all rights to use the Software automatically revert to Licensor and Licensee is not entitled to use the Software any more. Licensee must cease access to and cease use of the Software.

7.3 Upon at least 30 days notice, Licensor reserves the right to terminate any Internet-based services provided to the Licensee or made available to the Licensee through the use of the Software.

7.4 Termination of this Agreement by Licensee before the end of the Term does not give the right to Licensee to claim a refund of the Fee or part of the Fee, except if Licensee has the right to terminate the Agreement for good cause; then fees for the remaining time of the Term are refundable on a pro rata basis.

8. INDEMNIFICATION

8.1 Indemnification by Licensor

Subject to Section 10, Licensor will indemnify and hold harmless Licensee against all costs, expenses, losses and claims made against Licensee as a result of any infringement of a third party's intellectual property rights arising from the Licensee's or its Authorized Users use of the Software. Licensee must notify promptly Licensor of the charge of infringement or of the legal proceeding, give Licensor sole control of the defense and related settlement negotiations, and Licensee must provide Licensor, at Licensor's expense, with reasonable assistance and information, but no cost or expense shall be incurred for the account of Licensee without its prior written consent.

If the Software becomes, or in the opinion of Licensor may become, the subject of a claim of infringement of any third party's intellectual property rights, Licensor may, at its option and in its discretion: (a) procure for Licensee the right to use the Software free of any liability; (b) replace or modify the Software to make it non-infringing; or (c) terminate immediately this Agreement and refund any license Fees related to this Software paid by Licensee. The foregoing states the sole liability of Licensor and the exclusive remedy of Licensee for any infringement of intellectual property rights by the Software or any other items provided by Licensor under this Agreement.

8.2 Indemnification by Licensee

Licensee will indemnify and hold harmless Licensor against all costs, expenses, losses and claims made against Licensor as a result of any infringement of a third party's intellectual property rights arising from the Licensee's or its Authorized User's unauthorized use of the Software under this Agreement. Licensor must notify promptly Licensee of the charge of infringement or of the legal proceeding, give Licensee sole control of the defense and related settlement negotiations, and Licensor must provide Licensee, at Licensee's expense, with reasonable assistance and information, but no cost or expense shall be incurred for the account of Licensor without its prior written consent.

9. LIMITED WARRANTY

9.1 Disclaimer of Warranties

To the maximum extent permitted by applicable law, Licensor and its third-party suppliers provide the Software and any Maintenance (Clause 6) AS IS AND WITH ALL FAULTS, and except otherwise expressly contained in the Agreement hereby disclaim all other warranties or remedies, whether express, implied or statutory, including but not limited to the performance, condition, merchantability, fitness for a particular purpose, data accuracy, availability, or reliability. Additionally, Licensee acknowledges that Licensor's Software are hosted by third-parties, and that the availability is subject to a third party's Service Level Agreement.

9.2 Non-excludable Remedies

The Licensee may have remedies against Licensor imposed by law or statute that cannot be excluded by Licensor and its third party suppliers. To the extent the Licensee has such legal remedies against Licensor or its third party suppliers then to the fullest extent permitted by law Licensor and its third party suppliers' liability are limited (a) at Licensor's option, to: (i) in the case of the Software: 1) repairing or replacing the Software; or 2) the cost of such repair or replacement; and (ii) in the case of Maintenance; 1) resupply of the Maintenance; or 2) the cost of having the Maintenance supplied again; or (b) if the limitation set forth in Clause 10.2(a) is not applicable, then Licensor's maximum liability shall be equal to three times the amount actually paid by the Licensee for the Software.

10. LIMITATION OF LIABILITY

10.1 Licensor shall not be liable to the Licensee where faults arise from:

(a) the possession, use, development, modification or maintenance of the Software (or any part thereof) by the Licensee other than in accordance with this Agreement, if the infringement would have been otherwise avoided;

(b) misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by Licensee);

(c) any breach of the Licensee's obligations under this Agreement;

(d) any modification not authorized by Licensor resulting in a departure from this Agreement; or

(e) any operator error on the part of the Licensee.

(f) any damage arising out of the fact that Licensee did not make a daily backup of his data and content.

10.2 Limitation on Damages

Licensor shall provide unlimited liability for gross negligence or wilful misconduct or express representations or for claims based on Product Liability Act (Produkthaftungsgesetz) or claims regarding to injury of body, life or health. The expiry term is governed by law.

In the event of ordinary negligence, Licensor only accepts liability for the foreseeable damages typical to the contract, insofar as there is a breach of duty the fulfilment of which is vital for the proper performance of the contract and the observation of which the buyer may regularly rely on ("cardinal obligation"). The expiry term for such claims for damages of Licensee is one year from the legal beginning of expiry.

Insofar as the liability of the seller is excluded or limited, this also applies to the personal liability of the employers, employees, colleagues, representatives and vicarious agents of Licensor.

11. LICENSEE PUBLICITY RIGHTS

During the term of this Agreement, Licensee grants Licensor the right to include Licensee as a customer in Software promotional material, including Licensee's logo. Licensee can deny Licensor this right at any time by submitting a written request via email to info@swarmOS.com and requesting to be excluded from Software promotional material. Requests generally are acted upon within thirty (30) calendar days. Physical promotional material in stock may still be distributed.

12. IMPROVING LICENSOR'S PRODUCTS

Licensor is always striving to improve its products. In order to do so, Licensor needs to collect information about its users and to measure, analyze, and aggregate how its users interact with its products, such as usage patterns and characteristics of our user base. Licensor collects such information and uses the information as per its Privacy Policy. Licensee has reviewed and agrees to Licensor's Privacy Policy

13. ASSIGNMENT

Licensee may assign this Agreement to succeeding parties in the case of a merger, acquisition or change of control. Licensor may assign its rights and obligation under this Agreement without consent of Licensee. Any permitted assignee shall be bound by the terms and conditions of this Agreement.

14. GOVERNING LAW AND VENUE

This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed

by and construed in accordance with the laws of Germany with exception of conflicts of law and the United Nations Convention on Contracts for the Sale of Goods (CISG).

The courts of Mühlheim an der Ruhr (Amtsgericht) and Duisburg (Landgericht) shall be the exclusively competent courts of jurisdiction. However, Licensor is entitled to sue Licensee at Licensee's place of business.

15. ENTIRE AGREEMENT

15.1 This Agreement (and any addendum or amendment to this Agreement which is included with the Software) is the entire agreement between the Licensee and Licensor relating to the Software and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this Agreement.

15.2 Each party acknowledges that, in entering into this Agreement (and the documents referred to in it), neither relies on any statement, representation, assurance or warranty ("Representation") of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement or those documents.

16. NOTICES

All notices to Licensor will be sent to:

swarmOS GmbH, Hotterstraße 3, 80331 München, Germany, info@swarmos.com .
All notices to Licensee will be sent to the physical address or the email address provided by Licensee upon Rent of the Software.

Notice will be deemed received and properly served 24 hours after an electronic communication (including email) is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an electronic communication, that such communication was sent to the specified address of the addressee.

17. WAIVER

17.1 If Licensor fails, at any time during the term of this Agreement, to insist upon strict performance of any of the Licensee's obligations under this Agreement, or if Licensor fails to exercise any of the rights or remedies to which it is entitled under this Agreement, this shall not constitute a waiver of such rights or remedies and shall not relieve the Licensee from compliance with such obligations.

17.2 A waiver by Licensor of any default shall not constitute a waiver of any subsequent default.

17.3 No waiver by Licensor of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to the Licensee in writing.

18. SEVERABILITY

If any provision of the Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

19. NO PARTNERSHIP

Nothing in the Agreement is intended to, or shall be deemed to, establish any agency, partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

20. INTERPRETATION

In this Agreement, the following rules apply: (a) a reference to a party includes its personal representatives, successors or permitted assigns; (b) a reference to writing or written includes faxes, e-mails, communications via websites and comparable means of communication.

21. SURVIVAL

Clauses 1, 5, 8-10, 12, 13,14-18, and 20 shall survive any termination of this Agreement.