

## Atlassian Customer Agreement

Effective starting: April 1, 2024

This Agreement is between Customer and Atlassian. “Customer” means the entity on behalf of which this Agreement is accepted or, if that does not apply, the individual accepting this Agreement. “Atlassian” means the Atlassian entity that owns or operates the Products that Customer uses or accesses listed at <https://www.atlassian.com/legal/product-terms>.

If you (the person accepting this Agreement) are accepting this Agreement on behalf of your employer or another entity, you agree that: (i) you have full legal authority to bind your employer or such entity to this Agreement, and (ii) you agree to this Agreement on behalf of your employer or such entity.

If you are accepting this Agreement using an email address from your employer or another entity, then: (i) you will be deemed to represent that party, (ii) your acceptance of this Agreement will bind your employer or that entity to these terms, and (iii) the word “you” or “Customer” in this Agreement will refer to your employer or that entity.

By clicking on the “Agree” (or similar button or checkbox) that is presented to you at the time of placing an Order, downloading Products, or by using or accessing the Products, you confirm you are bound by this Agreement. If you do not wish to be bound by this Agreement, do not click “Agree” (or similar button or checkbox), download the Products, or use or access the Products.

**1. Overview.** This Agreement applies to Customer’s Orders for Products and related Support and Advisory Services. The terms of this Agreement apply to both Cloud Products and Software Products, although certain terms apply only to Cloud Products or Software Products, as specified below. In addition, some Products are subject to additional Product-Specific Terms, and Support and Advisory Services are subject to the applicable Policies.

### 2. Use of Products.

**2.1. Permitted Use.** Subject to this Agreement and during the applicable Subscription Term, Atlassian grants Customer a non-exclusive, worldwide right to use the Products and related Support and Advisory Services for its and its Affiliates’ internal business purposes, in accordance with the Documentation and Customer’s Scope of Use.

**2.2. Restrictions.** Except to the extent otherwise expressly permitted by this Agreement, Customer must not (and must not permit anyone else to): (a) rent, lease, sell, distribute or sublicense the Products or (except for Affiliates) include them in a service bureau or outsourcing offering, (b) provide access to the Products to a third party, other than to Users, (c) charge its customers a specific fee for use of the Products, but Customer may charge an overall fee for its own offerings (of which the Products are ancillary), (d) use the Products to develop a similar or competing product or service, (e) reverse engineer, decompile, disassemble or seek to access the source code or non-public APIs to the Products, (f) modify or create derivative works of the Products, (g) interfere with or circumvent Product usage limits or Scope of Use restrictions, (h) remove, obscure or modify in any way any proprietary or other notices or attributions in the Products, or (i) violate the Acceptable Use Policy.

**2.3. DPA.** The DPA applies to Customer’s use of Products and related Support and Advisory Services and forms part of this Agreement.

### 3. Users.

**3.1. Responsibility.** Customer may authorize Users to access and use the Products, in accordance with the Documentation and Customer’s Scope of Use. Customer is responsible for its Users’ compliance with this Agreement and all activities of its Users, including Orders they may place, apps and Third Party-Products enabled, and how Users access and use Customer Data.

**3.2. Login Credentials.** Customer must ensure that each User keeps its login credentials confidential and must promptly notify Atlassian if it becomes aware of any unauthorized access to any User login credentials or other unauthorized access to or use of the Products.

**3.3. Domain Ownership.** Where a Cloud Product requires Customer to specify a domain (such as [www.example.com](http://www.example.com)) for the Cloud Product’s or a feature’s operation, Atlassian may verify that Customer or an Affiliate owns or controls that domain. Atlassian has no obligation to provide that Cloud Product or feature if Atlassian cannot verify that Customer or an Affiliate owns or controls the domain. Product administrators appointed by Customer may also take over management of accounts previously registered using an email address belonging to Customer’s domain, which become “managed accounts” (or similar term), as described in the Documentation.

**3.4. Age Requirements.** The Products are not intended for use by anyone under the age of 16. Customer is responsible for ensuring that all Users are at least 16 years old.

### 4. Cloud Products. This Section 4 only applies to Cloud Products.

**4.1. Customer Data.** Atlassian may process Customer Data to provide the Cloud Products and related Support or Advisory Services in accordance with this Agreement.

**4.2. Security Program.** Atlassian has implemented and will maintain an information security program that uses appropriate physical, technical and organizational measures designed to protect Customer Data from unauthorized access, destruction, use, modification or disclosure, as described in its Security Measures. Atlassian will also maintain a compliance program that includes independent third-party

audits and certifications, as described in its Security Measures. Further information about Atlassian's security program is available on the Atlassian Trust Center at <https://www.atlassian.com/trust>, as updated from time to time.

**4.3. Service Levels.** Where applicable, service level commitments for the Cloud Products are set out in the Service Level Agreement.

**4.4. Data Retrieval.** The Documentation describes how Customer may retrieve its Customer Data from the Cloud Products.

**4.5. Removals and Suspension.** Atlassian has no obligation to monitor Customer Data. Nonetheless, if Atlassian becomes aware that: (a) Customer Data may violate Law, Section 2.2 (Restrictions), or the rights of others (including relating to a takedown request received following the guidelines for Reporting Copyright and Trademark Violations at <https://www.atlassian.com/legal/copyright-and-trademark-violations>), or (b) Customer's use of the Cloud Products threatens the security or operation of the Cloud Products, then Atlassian may: (i) limit access to, or remove, the relevant Customer Data, or (ii) suspend Customer's or any User's access to the relevant Cloud Products. Atlassian may also take any such measures where required by Law, or at the request of a governmental authority. When practicable, Atlassian will give Customer the opportunity to remedy the issue before taking any such measures.

**5. Software Products.** This Section 5 only applies to Software Products.

**5.1. Modifications.** Atlassian may provide some portions of the Software Products in source code form for Customer to use internally to create bug fixes, configurations or other modifications of the Software Products, as permitted in the Documentation ("**Modifications**"). Customer must keep such source code secure (on computer devices and online repositories controlled by Customer), confidential, and only make it available to Customer's employees who have a legitimate need to access and use the source code to create and maintain Modifications. Customer may only use Modifications with the Software Products, and only in accordance with this Agreement, including the Third-Party Code Policy, the Documentation, and Customer's Scope of Use. Customer must not distribute source code or Modifications to third parties. Customer must securely destroy the source code at the earliest of: (a) Customer no longer needing to use source code to create or maintain Modifications, (b) termination or non-renewal of a relevant Subscription Term, or (c) Atlassian's request for any reason. Notwithstanding anything else in this Agreement, Atlassian has no support, warranty, indemnity or other responsibility for Modifications.

**5.2. License Verification.** Upon Atlassian's written request, Customer will promptly confirm in writing whether its use of the Software Products is in compliance with the applicable Scope of Use. Atlassian or its authorized agents may audit Customer's use of the Software Products no more than once every twelve (12) months to confirm compliance with Customer's Scope of Use, provided Atlassian gives Customer reasonable advance notice and uses reasonable efforts to minimize disruption to Customer. If Customer exceeds its Scope of Use, Atlassian may invoice for that excess use, and Customer will pay Atlassian promptly after invoice receipt.

**5.3. Number of Instances.** Unless otherwise specified in the Order or the Product-Specific Terms, Customer may install up to one (1) production instance of each Software Product included in an Order on systems owned or operated by Customer or its Users.

**6. Customer Obligations.**

**6.1. Disclosures and Rights.** Customer must ensure it has made all disclosures and obtained all rights and consents necessary for Atlassian to use Customer Data and Customer Materials to provide the Cloud Products, Support or Advisory Services.

**6.2. Product Assessment.** Customer is responsible for determining whether the Products meet Customer's requirements and any regulatory obligations related to its intended use.

**6.3. Sensitive Health Information and HIPAA.** Unless the parties have entered into a 'Business Associate Agreement,' Customer must not (and must not permit anyone else to) upload to the Cloud Products (or use the Cloud Products to process) any patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act.

**7. Third-Party Code and Third-Party Products.**

**7.1. Third-Party Code.** This Agreement and the Third-Party Code Policy apply to open source software and commercial third-party software Atlassian includes in the Products.

**7.2. Third-Party Products.** Customer may choose to use the Products with third-party platforms, apps, add-ons, services or products, including offerings made available through the Atlassian Marketplace ("**Third-Party Products**"). Use of such Third-Party Products with the Products may require access to Customer Data and other data by the third-party provider, which, for Cloud Products Atlassian will permit on Customer's behalf if Customer has enabled that Third-Party Product. Customer's use of Third-Party Products is subject to the relevant provider's terms of use, not this Agreement. Atlassian does not control and has no liability for Third-Party Products.

**8. Support and Advisory Services.** Atlassian will provide Support and Advisory Services as described in the Order and applicable Policies. Atlassian's provision of Support or Advisory Services is subject to Customer providing timely access to Customer Materials and personnel reasonably requested by Atlassian.

**9. Ordering Process and Delivery.** No Order is binding until Atlassian provides its acceptance, including by sending a confirmation email, providing access to the Products, or making license or access keys available to Customer. No terms of any purchase order or other business form used by Customer will supersede, supplement, or otherwise apply to this Agreement or Atlassian. Atlassian will deliver login instructions or license keys for Products electronically, to Customer's account (or through other reasonable means) promptly upon receiving payment of the fees. Customer is responsible for the installation of Software Products, and Atlassian has no further delivery obligations with respect to the Software Products after delivery of license keys.

## 10. Billing and Payment.

### 10.1. Fees.

- (a) Direct Purchases. If Customer purchases directly from Atlassian, fees and any payment terms are specified in Customer's Order with Atlassian.
- (b) Resellers. If Customer purchases through a Reseller, Customer must pay all applicable amounts directly to the Reseller, and Customer's order details (e.g., Products and Scope of Use) will be specified in the Order placed by the Reseller with Atlassian on Customer's behalf.
- (c) Renewals. Unless otherwise specified in an Order and subject to the Product, Support or Advisory Services continuing to be generally available, a Subscription Term will automatically renew at Atlassian's then current rates for: (i) if Customer's prior Subscription was for a period less than twelve (12) months, another Subscription Term of a period equal to Customer's prior Subscription Term, or (ii) if Customer's prior Subscription Term was for twelve (12) months or more, twelve (12) months. Either party may elect not to renew a Subscription Term by giving notice to the other party before the end of the current Subscription Term. Customer must provide any notice of non-renewal through account settings in the Products, by contacting Atlassian's support team or by otherwise providing Atlassian notice.
- (d) Increased Scope of Use. Customer may increase its Scope of Use by placing a new Order or modifying (by mutual agreement with Atlassian) an existing Order. Unless otherwise specified in the applicable Order, Atlassian will charge Customer for any increased Scope of Use at Atlassian's then-current rates, prorated for the remainder of the then-current Subscription Term.
- (e) Refunds. All fees and expenses are non-refundable, except as otherwise provided in this Agreement. For any purchases Customer makes through a Reseller, any refunds from Atlassian payable to Customer relating to that purchase will be remitted by that Reseller, unless Atlassian specifically notifies Customer otherwise at the time of refund.
- (f) Credit Cards. If Customer uses a credit card or similar online payment method for its initial Order, then Atlassian may bill that payment method for renewals, additional Orders, overages to scopes of use, expenses, and unpaid fees, as applicable.

### 10.2. Taxes.

- (a) Taxes Generally. Fees and expenses are exclusive of any sales, use, GST, value-added, withholding or similar taxes or levies that apply to Customer's Orders. Other than taxes on Atlassian's net income, Customer is responsible for any such taxes or levies and must pay those taxes or levies, which Atlassian will itemize separately, in accordance with an applicable invoice.
- (b) Withholding Taxes. To the extent Customer is required to withhold tax from payment to Atlassian in certain jurisdictions, Customer must provide valid documentation it receives from the taxing authority in such jurisdictions confirming remittance of withholding. This documentation must be provided at the time of payment of the applicable invoice to Atlassian.
- (c) Exemptions. If Customer claims exemption from any sales tax, VAT, GST or similar taxes under this Agreement, Customer must provide Atlassian a valid tax exemption certificate or tax ID at the time of Order, and after receipt of valid evidence of exemption, Atlassian will not include applicable taxes on the relevant Customer invoice.

**10.3. Return Policy.** Within thirty (30) days of its initial Order for a Product, Customer may terminate the Subscription Term for that Product, for any or no reason, by providing notice to Atlassian. Following such termination, upon request (which may be made through Customer's Atlassian account), Atlassian will refund Customer the amount paid for that Product and any associated Support under the applicable Order. Unless otherwise specified in the Policies or Product-Specific Terms, this return policy does not apply to Advisory Services.

**10.4. Suspension for Non-payment.** Atlassian may suspend Customer's rights to use Products or receive Support or Advisory Services if payment is overdue, and Atlassian has given Customer no fewer than ten (10) days' written notice.

## 11. Atlassian Warranties.

**11.1. Performance Warranties.** Atlassian warrants to Customer that: (a) the Products will operate in substantial conformity with the applicable Documentation during the applicable Subscription Term, (b) Atlassian will not materially decrease the functionality or overall security of the Products during the applicable Subscription Term, and (c) Atlassian will use reasonable efforts designed to ensure that the Products, when and as provided by Atlassian, are free of any viruses, malware or similar malicious code (each, a "**Performance Warranty**").

**11.2. Performance Warranty Remedy.** If Atlassian breaches a Performance Warranty and Customer makes a reasonably detailed warranty claim within 30 days of discovering the issue, Atlassian will use reasonable efforts to correct the non-conformity. If Atlassian determines such remedy to be impracticable, either party may terminate the affected Subscription Term. Atlassian will then refund to Customer any pre-paid, unused fees for the terminated portion of the Subscription Term. These procedures are Customer's exclusive remedy and Atlassian's entire liability for breach of a Performance Warranty.

**11.3. Exclusions.** The warranties in this Section 11 (Atlassian Warranties) do not apply to: (a) the extent the issue or non-conformity is caused by Customer's unauthorized use or modification of the Products, (b) unsupported releases of Software Products or Cloud Clients, or (c) Third-Party Products.

**11.4. Disclaimers.** Except as expressly provided in this Section 11 (Atlassian Warranties), the Products, Support and Advisory Services and all related Atlassian services and deliverables are provided "AS IS." Atlassian makes no other warranties, whether express, implied, statutory or otherwise, including warranties of merchantability, fitness for a particular purpose, title or non-infringement. Atlassian does not warrant that Customer's use of the Products will be uninterrupted or error-free. Atlassian is not liable for delays, failures or problems inherent in use of the internet and electronic communications or other systems outside Atlassian's control.

## 12. Term and Termination.

**12.1. Term.** This Agreement commences on the date Customer accepts it and expires when all Subscription Terms have ended.

**12.2. Termination for Convenience.** Customer may terminate this Agreement or a Subscription Term upon notice for any reason. Subject to Section 10.3 (Return Policy), Customer will not be entitled to any refunds as a result of exercising its rights under this Section 12.2, and any unpaid amounts for the then-current Subscription Terms and any related service periods will become due and payable immediately upon such termination.

**12.3. Termination for Cause.** Either party may terminate this Agreement or a Subscription Term if the other party: (a) fails to cure a material breach of this Agreement (including a failure to pay fees) within 30 days after notice, (b) ceases operation without a successor, or (c) seeks protection under a bankruptcy, receivership, trust deed, creditors' arrangement, composition or comparable proceeding, or if such a proceeding is instituted against that party and not dismissed within 60 days. If Customer terminates this Agreement or a Subscription Term in accordance with this Section 12.3, Atlassian will refund to Customer any pre-paid, unused fees for the terminated portion of the Agreement or applicable Subscription Term.

**12.4. Effect of Termination.** Upon expiration or termination of this Agreement or a Subscription Term: (a) Customer's rights to use the applicable Products, Support or Advisory Services will cease, (b) Customer must immediately cease accessing the Cloud Products and using the applicable Software Products and Cloud Clients, and (c) Customer must delete (or, on request, return) all license keys, access keys and any Product copies. Following expiration or termination, unless prohibited by Law, Atlassian will delete Customer Data in accordance with the Documentation.

**12.5. Survival.** These Sections survive expiration or termination of this Agreement: 2.2 (Restrictions), 4.2 (Security Program), 10.1 (Fees), 10.2 (Taxes), 11.4 (Disclaimers), 12.4 (Effect of Termination), 12.5 (Survival), 13 (Ownership), 14 (Limitations of Liability), 15 (Indemnification by Atlassian), 16 (Confidentiality), 17.4 (Disclaimer), 18 (Feedback), 20 (General Terms) and 21 (Definitions).

**13. Ownership.** Except as expressly set out in this Agreement, neither party grants the other any rights or licenses to its intellectual property under this Agreement. As between the parties, Customer owns all intellectual property and other rights in Customer Data and Customer Materials provided to Atlassian or used with the Products. Atlassian and its licensors retain all intellectual property and other rights in the Products, any Support and Advisory Services deliverables and related source code, Atlassian technology, templates, formats and dashboards, including any modifications or improvements.

## 14. Limitations of Liability.

**14.1. Damages Waiver.** **Except for Excluded Claims or Special Claims, to the maximum extent permitted by Law, neither party will have any liability arising out of or related to this Agreement for any loss of use, lost data, lost profits, interruption of business or any indirect, special, incidental, reliance or consequential damages of any kind, even if informed of their possibility in advance.**

**14.2. General Liability Cap.** **Except for Excluded Claims or Special Claims, to the maximum extent permitted by Law, each party's entire liability arising out of or related to this Agreement will not exceed in aggregate the amounts paid to Atlassian for the Products, Support and Advisory Services giving rise to the liability during the twelve (12) months preceding the first event out of which the liability arose. Customer's payment obligations under Sections 10.1 (Fees) and 10.2 (Taxes) are not limited by this Section 14.2.**

**14.3. Excluded Claims.** "**Excluded Claims**" means: (a) Customer's breach of Section 2.2 (Restrictions) or Section 6 (Customer Obligations), (b) either party's breach of Section 16 (Confidentiality) but excluding claims relating to Customer Data or Customer Materials, or (c) amounts payable to third parties under Atlassian's obligations in Section 15 (Indemnification by Atlassian).

**14.4. Special Claims.** For Special Claims, Atlassian's aggregate liability under this Agreement will be the lesser of: (a) two times (2x) the amounts paid to Atlassian for the Products, Support and Advisory Services giving rise to the Special Claim during the twelve (12) months preceding the first event out of which the Special Claim arose, and (b) US\$5,000,000. "**Special Claims**" means any unauthorized disclosure of Customer Data or Customer Materials caused by a breach by Atlassian of its obligations in Section 4.2 (Security Program).

**14.5. Nature of Claims and Failure of Essential Purpose.** The exclusions and limitations in this Section 14 (Limitations of Liability) apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy in this Agreement fails of its essential purpose.

## 15. Indemnification by Atlassian.

**15.1. IP Indemnification.** Atlassian must: (a) defend Customer from and against any third-party claim to the extent alleging that the Products, when used by Customer as authorized by this Agreement, infringe any intellectual property right of a third party (an "**Infringement Claim**"), and (b) indemnify and hold harmless Customer against any damages, fines or costs finally awarded by a court of competent jurisdiction (including reasonable attorneys' fees) or agreed in settlement by Atlassian resulting from an Infringement Claim.

**15.2. Procedures.** Atlassian's obligations in Section 15.1 (IP Indemnification) are subject to Customer providing: (a) sufficient notice of the Infringement Claim so as to not prejudice Atlassian's defense of the Infringement Claim, (b) the exclusive right to control and direct the investigation, defense and settlement of the Infringement Claim, and (c) all reasonably requested cooperation, at Atlassian's expense for reasonable out-of-pocket expenses. Customer may participate in the defense of an Infringement Claim with its own counsel at its own expense.

**15.3. Settlement.** Customer may not settle an Infringement Claim without Atlassian's prior written consent. Atlassian may not settle an Infringement Claim without Customer's prior written consent if settlement would require Customer to admit fault or take or refrain from taking any action (other than relating to use of the Products).

**15.4. Mitigation.** In response to an actual or potential Infringement Claim, Atlassian may, at its option: (a) procure rights for Customer's continued use of the Products, (b) replace or modify the alleged infringing portion of the Products without reducing the overall functionality of the Products, or (c) terminate the affected Subscription Term and refund to Customer any pre-paid, unused fees for the terminated portion of the Subscription Term.

**15.5. Exceptions.** Atlassian's obligations in this Section 15 (Indemnification by Atlassian) do not apply to the extent an Infringement Claim arises from: (a) Customer's modification or unauthorized use of the Products, (b) use of the Products in combination with items not provided by Atlassian (including Third-Party Products), (c) any unsupported release of the Software Products or Cloud Clients, or (d) Third-Party Products, Customer Data or Customer Materials.

**15.6. Exclusive Remedy.** **This Section 15 (Indemnification by Atlassian) sets out Customer's exclusive remedy and Atlassian's entire liability regarding infringement of third-party intellectual property rights.**

## **16. Confidentiality.**

**16.1. Definition.** "**Confidential Information**" means information disclosed by one party to the other under or in connection with this Agreement that: (a) is designated by the disclosing party as proprietary or confidential, or (b) should be reasonably understood to be proprietary or confidential due to its nature and the circumstances of its disclosure. Atlassian's Confidential Information includes any source code and technical or performance information about the Products. Customer's Confidential Information includes Customer Data and Customer Materials.

**16.2. Obligations.** Unless expressly permitted by the disclosing party in writing, the receiving party must: (a) hold the disclosing party's Confidential Information in confidence and not disclose it to third parties except as permitted in this Agreement, and (b) only use such Confidential Information to fulfill its obligations and exercise its rights in this Agreement. The receiving party may disclose such Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know (including, for Atlassian, the subcontractors referenced in Section 20.11 (Subcontractors and Affiliates)), provided the receiving party remains responsible for their compliance with this Section 16 (Confidentiality) and they are bound to confidentiality obligations no less protective than this Section 16 (Confidentiality).

**16.3. Exclusions.** These confidentiality obligations do not apply to information that the receiving party can demonstrate: (a) is or becomes publicly available through no fault of the receiving party, (b) it knew or possessed prior to receipt under this Agreement without breach of confidentiality obligations, (c) it received from a third party without breach of confidentiality obligations, or (d) it independently developed without using the disclosing party's Confidential Information. The receiving party may disclose Confidential Information if required by Law, subpoena or court order, provided (if permitted by Law) it notifies the disclosing party in advance and cooperates, at the disclosing party's cost, in any reasonable effort to obtain confidential treatment.

**16.4. Remedies.** Unauthorized use or disclosure of Confidential Information may cause substantial harm for which damages alone are an insufficient remedy. Each party may seek appropriate equitable relief, in addition to other available remedies, for breach or anticipated breach of this Section 16 (Confidentiality).

## **17. Free or Beta Products.**

**17.1. Access.** Customer may receive access to certain Products or Product features on a free, fully discounted or trial basis, or as an alpha, beta or early access offering ("**Free or Beta Products**"). Use of Free or Beta Products is subject to this Agreement and any additional terms specified by Atlassian, such as the applicable scope and term of use.

**17.2. Termination or Modification.** At any time, Atlassian may terminate or modify Customer's use of (including applicable terms) Free or Beta Products or modify Free or Beta Products, without any liability to Customer. For modifications to Free or Beta Products or Customer's use, Customer must accept those modifications to continue accessing or using the Free or Beta Products.

**17.3. Pre GA.** Free or Beta Products may be inoperable, incomplete or include errors and bugs or features that Atlassian may never release, and their features and performance information are Atlassian's Confidential Information.

**17.4. Disclaimer.** **Notwithstanding anything else in this Agreement, to the maximum extent permitted by Law, Atlassian provides no warranty, indemnity, service level agreement or support for Free or Beta Products and its aggregate liability for Free or Beta Products is limited to US\$100.**

**18. Feedback.** If Customer provides Atlassian with feedback or suggestions regarding the Products or other Atlassian offerings, Atlassian may use the feedback or suggestions without restriction or obligation.

**19. Publicity.** Atlassian may identify Customer as a customer of Atlassian in its promotional materials. Atlassian will promptly stop doing so upon Customer request sent to [sales@atlassian.com](mailto:sales@atlassian.com).

## **20. General Terms.**

**20.1. Compliance with Laws.** Each party must comply with all Laws applicable to its business in its performance of obligations or exercise of rights under this Agreement.

**20.2. Code of Conduct.** Atlassian must comply with its Code of Conduct in its performance of obligations or exercise of rights under this Agreement.

**20.3. Assignment.**

(a) Customer may not assign or transfer any of its rights or obligations under this Agreement or an Order without Atlassian's prior written consent. However, Customer may assign this Agreement in its entirety (including all Orders) to its successor resulting from a merger,

acquisition, or sale of all or substantially all of Customer's assets or voting securities, provided that Customer provides Atlassian with prompt written notice of the assignment and the assignee agrees in writing to assume all of Customer's obligations under this Agreement and complies with Atlassian's procedural and documentation requirements to give effect to the assignment.

(b) Any attempt by Customer to transfer or assign this Agreement or an Order, except as expressly authorized above, will be null and void.

(c) Atlassian may assign its rights and obligations under this Agreement (in whole or in part) without Customer's consent.

#### **20.4. Governing Law, Jurisdiction and Venue.**

(a) If Customer is domiciled: (i) in Europe, the Middle East, or Africa, this Agreement is governed by the laws of the Republic of Ireland, with the jurisdiction and venue for actions related to this Agreement in the courts of the Republic of Ireland, or (ii) elsewhere, this Agreement is governed by the laws of the State of California, with the jurisdiction and venue for actions related to this Agreement in the state and United States federal courts located in San Francisco, California.

(b) This Agreement will be governed by such laws without regard to conflicts of laws provisions, and both parties submit to the personal jurisdiction of the applicable courts. The United Nations Convention on the International Sale of Goods does not apply to this Agreement.

#### **20.5. Notices.**

(a) Except as specified elsewhere in this Agreement, notices under this Agreement must be in writing and are deemed given on: (i) personal delivery, (ii) when received by the addressee if sent by a recognized overnight courier with receipt request, (iii) the third business day after mailing, or (iv) the first business day after sending by email, except that email will not be sufficient for notices regarding Infringement Claims, alleging breach of this Agreement by Atlassian, or of Customer's termination of this Agreement in accordance with Section 12.3 (Termination for Cause).

(b) Notices to Atlassian must be provided according to the details provided at <https://www.atlassian.com/legal#how-do-i-provide-legal-notices-to-atlassian>, as may be updated from time to time.

(c) Notices to Customer must be provided to the billing or technical contact provided to Atlassian, which may be updated by Customer from time to time in Customer's account portal. However, Atlassian may provide general or operational notices via email, on its website or through the Products. Customer may subscribe to receive email notice of updates to this Agreement, as described at <https://www.atlassian.com/legal#notification-of-updates-in-terms-and-policies>.

**20.6. Entire Agreement.** This Agreement is the parties' entire agreement regarding its subject matter and supersedes any prior or contemporaneous agreements regarding its subject matter. In the event of a conflict among the documents making up this Agreement, the main body of this Agreement (i.e., Sections 1 through 21, inclusive) will control, except that the Policies, Product-Specific Terms and DPA will control for their specific subject matter.

**20.7. Other Atlassian Offerings.** Atlassian makes available other offerings that can be used with the Products which, in some cases, are subject to separate terms and conditions, available at <https://www.atlassian.com/legal>. These other offerings include training services, developer tools and the Atlassian Marketplace. For clarity, this Agreement controls over any such terms and conditions with respect to Customer's use of the Products (including any Atlassian Apps).

**20.8. Interpretation, Waivers and Severability.** In this Agreement, headings are for convenience only and "including" and similar terms are to be construed without limitation. Waivers must be granted in writing and signed by the waiving party's authorized representative. If any provision of this Agreement is held invalid, illegal or unenforceable, it will be limited to the minimum extent necessary so the rest of this Agreement remains in effect.

#### **20.9. Changes to this Agreement.**

(a) Atlassian may modify this Agreement (which includes the Policies, Product-Specific Terms and DPA) from time to time, by posting the modified portion(s) of this Agreement on Atlassian's website. Atlassian must use commercially reasonable efforts to post any such modification at least thirty (30) days prior to its effective date.

(b) For free subscriptions, modifications become effective during the then current Subscription Term, in accordance with Atlassian's notice.

(c) For paid subscriptions:

(i) except as specified below, modifications to this Agreement will take effect at the next Order or renewal unless either party elects to not renew pursuant to Section 10.1(c) (Renewals), and

(ii) Atlassian may specify that modifications will become effective during a then-current Subscription Term if: (A) required to address compliance with Law, or (B) required to reflect updates to Product functionality or introduction of new Product features. If Customer objects, Customer may terminate the remainder of the then-current Subscription Term for the affected Products as its exclusive remedy. To exercise this right, Customer must notify Atlassian of its termination under this Section 20.9(c) within thirty (30) days of the modification notice, and Atlassian will refund any pre-paid fees for the terminated portion of the applicable Subscription Term.

**20.10. Force Majeure.** Neither party is liable for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) due to events beyond its reasonable control and occurring without that party's fault or negligence.

**20.11. Subcontractors and Affiliates.** Atlassian may use subcontractors or its Affiliates in the performance of its obligations under this Agreement, but Atlassian remains responsible for its overall performance under this Agreement and for having appropriate written agreements in place with its subcontractors to enable Atlassian to meet its obligations under this Agreement.

**20.12. Independent Contractors.** The parties are independent contractors, not agents, partners or joint venturers.

### **20.13. Export Restrictions.**

(a) The Products may be subject to U.S. export restrictions and import restrictions of other jurisdictions. Customer must comply with all applicable export and import Laws in its access to, use of, and download of the Products or any part of the Products. Customer must not (and must not allow anyone else to) export, re-export, transfer or disclose the Products or any direct product of the Products: (i) to (or to a national or resident of) any U.S. embargoed jurisdiction (ii) to anyone on any U.S. or applicable non-U.S. restricted- or denied-party list, or (iii) to any party that Customer has reason to know will use the Products in violation of U.S. export Law, or for any restricted end user under U.S. export Law.

(b) Customer must not provide Atlassian any data subject to the U.S. International Traffic in Arms Regulations or similar Laws in other jurisdictions governing defense articles, technology or services and must not use the Products for any activity subject to such Laws.

**20.14. Government End-Users.** If Customer is a United States federal, state or local government customer, this Agreement is subject to, and is varied by, the Government Amendment available at <https://www.atlassian.com/legal/government-amendment>.

**20.15. No Contingencies.** The Products, Support and Advisory Services in each Order are purchased separately and not contingent on purchase or use of other Atlassian products and services, even if listed in the same Order. Customer's purchases are not contingent on delivery of any future functionality or features.

## **21. Definitions.**

**"Acceptable Use Policy"** means Atlassian's acceptable use policy available at <https://www.atlassian.com/legal/acceptable-use-policy>.

**"Advisory Services"** means advisory services as described in the Advisory Services Policy.

**"Advisory Services Policy"** means Atlassian's advisory services policy available at <https://www.atlassian.com/legal/advisory-services-policy>.

**"Affiliate"** means an entity that, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with a party, where "ownership" means the beneficial ownership of more than fifty percent (50%) of an entity's voting equity securities or other equivalent voting interests and "control" means the power to direct the management or affairs of an entity.

**"Agreement"** means this Atlassian Customer Agreement, as well as the Product-Specific Terms, the DPA and the Policies.

**"Atlassian Apps"** means apps developed by Atlassian for use with Cloud Products or Software Products, as designated by Atlassian in the Atlassian Marketplace.

**"Atlassian Marketplace"** means the online platform to purchase apps for Atlassian products currently branded the Atlassian Marketplace and accessible at <https://marketplace.atlassian.com/>.

**"Cloud Products"** means Atlassian's cloud products, including client software for its cloud products ("**Cloud Clients**").

**"Code of Conduct"** means the Atlassian Code of Business Conduct & Ethics, available at <https://investors.atlassian.com/governance/governance-documents/default.aspx>.

**"Customer Data"** means any data, content or materials provided to Atlassian by or at the direction of Customer or its Users via the Cloud Products, including from Third-Party Products.

**"Customer Materials"** means materials and other resources that Customer provides to Atlassian in connection with Support or Advisory Services.

**"Documentation"** means Atlassian's usage guidelines and standard technical documentation for the applicable Product, available at <https://support.atlassian.com/>, unless otherwise specified in the Product-Specific Terms.

**"DPA"** means the Atlassian data processing addendum available at <https://www.atlassian.com/legal/data-processing-addendum>.

**"Laws"** means all applicable laws, regulations, conventions, decrees, decisions, orders, judgments, codes and requirements of any government authority (federal, state, local or international) having jurisdiction.

**"Order"** means Atlassian's ordering document or online order specifying the Products, Support or Advisory Services to be provided under this Agreement, accepted by Atlassian in accordance with Section 9 (Ordering Process and Delivery).

**"Policies"** means the Acceptable Use Policy, Advisory Services Policy, guidelines for Reporting Copyright and Trademark Violations, Privacy Policy, Security Measures, Service Level Agreement, Support Policy, Third-Party Code Policy and any additional Atlassian policies specified in Product-Specific Terms.

**"Privacy Policy"** means Atlassian's privacy policy available at <https://www.atlassian.com/legal/privacy-policy>.

**"Products"** means the applicable Cloud Products or Software Products made available by Atlassian in connection with an Order. Products also include Atlassian Apps.

**"Product-Specific Terms"** means product-specific terms that apply only to certain Products, available at <https://www.atlassian.com/legal/product-terms>.

**"Reseller"** means a partner authorized by Atlassian to resell Atlassian's Products, Support and Advisory Services to customers.

**"Scope of Use"** means Customer's entitlements to the Products specified in an Order, which may include: (a) number and type of Users, (b) numbers of licenses, copies or instances, or (c) entity, division, business unit, website, field of use or other restrictions or billable units.

**"Security Measures"** means Atlassian's security practices available at <https://www.atlassian.com/legal/security-measures>.

**"Service Level Agreement"** means the service level commitments, if any, for a Cloud Product as described at <https://www.atlassian.com/legal/sla>.

**“Software Products”** means Atlassian’s installed software products and any generally-available bug fixes, updates and upgrades it provides to Customer, including through Support.

**“Subscription Term”** means the term for Customer’s use of or access to the Products and related Support and Advisory Services as identified in an Order.

**“Support”** means the level of support for the Products corresponding to Customer’s Scope of Use, as identified in the Support Policy.

**“Support Policy”** means the Atlassian support offerings documentation available at <https://confluence.atlassian.com/support/atlassian-support-offerings-193299636.html>.

**“Third-Party Code Policy”** means Atlassian’s third-party code policy available at <https://www.atlassian.com/legal/third-party-code-policy>.

**“User”** means any individual that Customer authorizes to use the Products. Users may include: (i) Customer’s and its Affiliates’ employees, consultants, contractors and agents (ii) third parties with which Customer or its Affiliates transact business (iii) individuals invited by Customer’s users (iv) individuals under managed accounts, or (v) individuals interacting with a Product as Customer’s customer.