

ATLASSIAN JIRA ENTERPRISE COMMERCIAL LICENSE

Warning Important Notice

The individual breaking the seal of this package or using this software represents and warrants that he or she has authority to enter into this agreement with Atlassian on behalf of the Subscriber, that he or she has read the terms and conditions set out herein and that the Subscriber agrees to be bound by the terms and conditions. If the Subscriber does not agree with the terms and conditions the Subscriber must not break the seal or use this software and must return the entire package to Atlassian immediately.

1. Definitions

Accessible Code means source code contained within the Product that is accessible under the terms and conditions of this agreement.

Atlassian means Atlassian Software Systems Pty Ltd (ABN 54 522 913 409) of Level 1, 275 George Street, Sydney, New South Wales 2000 Australia.

Authorised Person means an individual who is an employee, contractor, or consultant of the Subscriber.

Authorised Use means, in relation to the Product, a single installation (for greater clarity a single deployment of the Product within a J2EE application server) of the Product on a single physical server located at the Authorised Site, from where the Authorised Person may undertake use of the Product in accordance with the product documentation and populate the Subscriber's website with the Product for the use of the Subscriber's customers.

Authorised Site means the business premises of the Subscriber from time to time or the premises of a third party hosting provider contracted by Subscriber.

Product means Atlassian JIRA Enterprise Commercial Server, including any updates provided under the terms of this agreement in accordance with clause 6.

Protected Code means source code contained within the Product that is protected against access by Atlassian.

Subscriber means the individual or entity that has subscribed for the Product under the terms and conditions of this agreement.

USD means United States dollars.

2. Licence Fee

A one-off fee of USD 4,800.00 which is non-refundable and payable on acceptance of the terms and conditions set out herein.

3. Grant of Licence

Subject to the terms of this agreement, Atlassian grants to the Subscriber, and the Subscriber accepts from Atlassian, a worldwide, non-exclusive, non-transferable, non-sublicensable licence to use the Product.

4. No Warranty

Any person using the Product does so on the basis that Atlassian gives neither guarantee nor warranty nor makes any representations as to the correctness or completeness of the Product and no liability, contingent or otherwise is accepted by Atlassian for errors in the Product or omissions from the Product.

5. "As is" Basis

The Product is provided on an "as is" basis without warranty, express or implied, of any kind or nature, including, but not limited to, any warranties of performance or merchantability or fitness for a particular purpose. Without limitation, Atlassian will not be liable to any person for any loss, damage, cost, expense or other claim (including consequential damages and loss of profits) in relation to the Product including, without limitation: (1) any use or reliance on a Product by the person (including the form and content of errors in and/or omissions from any information contained in a Product); (2) any delay, interruption or other failure in the provision of the Product; or (3) any change in the form or content of the Product.

6. Atlassian's Obligations

Atlassian will supply the Subscriber with the Product and provide basic technical support for a period of 12 months from the Commencement Date, which will include all generally available updates and/or enhancements from time to time. For the avoidance of doubt, such technical support will include e-mail support for technical issues relating to the use of the Product but will not include any on-site visits to the Authorised Site or any other third party locations.

7. Subscriber Obligations

The Subscriber must at all times: (a) ensure that only an Authorised Person may use the Product and only for Authorised Use at the Authorised Site in accordance with the terms and conditions of this agreement; (b) install all updates and enhancements which Atlassian reasonably determines to be necessary to ensure the Subscriber's continued and effective use of the Product; (c) immediately advise Atlassian in writing if the Subscriber becomes aware of any unauthorised use of the Product by any person; (d) with respect to any use of the Product, include an attribution to Atlassian to be included on all user interfaces in the following format: "Powered by Atlassian JIRA", which must in every case include a hyperlink to <http://www.atlassian.com/software/jira>.

8. Unauthorised Use and Distribution

Where as a result of any deliberate or negligent act or omission by the Subscriber, a Product is supplied to or obtained by any person (other than an Authorised Person) without the prior written consent of Atlassian, Atlassian will immediately have the right (in addition to any other right or claim that Atlassian may have against the Subscriber) to retroactively charge the Subscriber (in addition to any other fees paid or payable by the Subscriber under this agreement) a fee equal to the Licence Fee specified in clause 2 multiplied by the number of persons to whom the Product has been wrongfully supplied or obtained (whether for gain or sale or otherwise).

9. Investigation of Unauthorised Use and Distribution

Where, after due investigation, Atlassian reasonably suspects that a Product has been supplied to or obtained by any person (other than an Authorised Person) without Atlassian's prior written consent, Atlassian has the right to request from the Subscriber a certificate of compliance for the purpose of calculating the total number and type of users and/or end-users of the Product so that Atlassian may ascertain whether it may exercise its rights under clause 8.

10. Subscriber's Restrictions

During the term of this agreement, the Subscriber must not without the prior written consent of Atlassian (which may be withheld and which may include certain conditions): (a) decompile, reverse engineer, disassemble, modify, adapt, create derivative works from, or otherwise attempt to derive, the Protected Code; (b) sell, redistribute, reproduce, transmit, circulate, disseminate, translate or reduce to or from any electronic medium or machine readable form the Product or any data/information provided to the Subscriber through the Product to a person (except that nothing in this paragraph (b) is intended to prevent an Authorised Person undertaking Authorised Use at the Authorised Site); (c) vary or amend the Authorised Use without Atlassian's prior written approval; (d) publish, promote, broadcast, circulate or refer publicly to the Atlassian name or logo, without the prior written consent of Atlassian; (e) commit any act or omission the likely result of which is that Atlassian's reputation will be brought into disrepute or which act or omission could reasonably be expected to have or does have a material and adverse effect on

ATLASSIAN JIRA ENTERPRISE COMMERCIAL LICENSE

Atlassian's interests. For the avoidance of doubt, subject to the terms and conditions contained herein, Subscriber is permitted to modify the Accessible Code to develop bug fixes, customizations, or additional features, solely for the purpose of using the Product as defined in, and during the term of, this Agreement. Under no circumstance may Subscriber embed the Accessible Code into another application without a separate OEM license agreement, nor shall Subscriber copy elements of the Accessible Code into other applications. In addition, the Product includes license protection mechanisms that are designed to manage and protect the intellectual property rights of Atlassian. Subscriber must not modify or alter those features to try to defeat the Product use rules that the license protection mechanisms are designed to enforce. The Accessible Code must be destroyed after the termination of this Agreement.

11. Term

This agreement commences on the date that the Subscriber receiving the Product ("the Commencement Date") and will continue in full force and effect until terminated in accordance with clause 12.

12. Termination

This agreement may be terminated by either party if the other party commits a material breach, being a breach of any one of Clauses 2,6,7, 8, 10 or 17.

13. Limitation of Liability

Where any law implies in this agreement any term, condition or warranty and that law avoids or prohibits a provision of this agreement excluding or modifying the application of or liability under any term, condition or warranty then the liability of Atlassian is limited to:(1) the re-supply of the Product; or (2) the payment of the cost of having the Product supplied again.

14. Intellectual Property

The Subscriber acknowledges that the Product and all intellectual property rights in relation to the Product are the property of Atlassian and Atlassian is entitled to take whatever action it may decide in order to protect its intellectual property rights in the Product.

15. Publicity Rights

The Subscriber grants Atlassian the right to include the Subscriber as a customer on Atlassian's website or other promotional material in relation to the Product. Within thirty (30) Business Days of the Subscriber's written request, Atlassian will remove the Subscriber's name from its website customer list and will make no further reference to the Subscriber in any future material promoting Product.

16. No assignment or amendment

This agreement may not be assigned or amended without the prior written consent of the parties.

17. Tax

Payments made by the Subscriber under this Agreement exclude any taxes or duties payable in respect of the goods or services supplied in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by Atlassian, the Subscriber must pay to Atlassian the amount of such taxes or duties in addition to the Licence Fee under this Agreement. Notwithstanding the foregoing, the Subscriber shall not be liable for any taxes or duties from which it is exempt at the time such taxes or duties are levied or assessed. Atlassian must provide the Subscriber with such documents as will enable the Subscriber to obtain a refund or credit for the amount so paid from any relevant revenue authority if such a refund or credit is available.

18. Governing Law

This agreement is governed by the laws of New South Wales (NSW), Australia and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of NSW, Australia.