



## JFROG CLOUD TERMS AND CONDITIONS

THESE JFROG CLOUD TERMS AND CONDITIONS (THE "AGREEMENT") ARE MADE BETWEEN THE JFROG ENTITY DEFINED BELOW ("JFROG"), ON BEHALF OF ITSELF AND ITS AFFILIATES, AND YOU ("CUSTOMER"), ON BEHALF OF ITSELF AND ITS AFFILIATES. PLEASE CAREFULLY READ THIS AGREEMENT BEFORE REGISTERING TO THE JFROG PLATFORM. BY REGISTERING FOR A SUBSCRIPTION (AS DEFINED BELOW) OR EXECUTING AN ORDER FORM (AS DEFINED BELOW), YOU HEREBY: (I) ACCEPT AND AGREE TO THIS AGREEMENT; AND (II) REPRESENT THAT IF YOU ARE ACTING ON BEHALF OF A COMPANY, ORGANIZATION OR LEGAL ENTITY, THAT YOU ARE AUTHORIZED TO BIND SUCH COMPANY, ORGANIZATION OR LEGAL ENTITY TO THIS AGREEMENT. JFROG AND CUSTOMER MAY BE REFERRED TO IN THIS AGREEMENT, INDIVIDUALLY AS "PARTY" AND COLLECTIVELY AS "PARTIES".

### 1. DEFINITIONS

Capitalized terms not otherwise defined in this Agreement shall have the respective meanings assigned to them in this Section 0.

- 1.1. **"Affiliate"** means any entity that controls, is controlled by, or is under common control with a Party, where "control" means the ownership of at least fifty percent (50%) of the voting interests of such entity or the powers to direct or cause the direction of the management and policies of such entity whether by contract or otherwise.
- 1.2. **"Cloud Marketplace"** means a digital catalog of software listings from cloud computing service providers supported by the JFrog Platform.
- 1.3. **"Cloud Platform"** means a cloud computing service and geographical hosting region supported by the JFrog Platform which are selected by Customer.
- 1.4. **"Contributing Developer"** or **"Advanced Security User"** means any Customer User who accesses or uses any of the security features in the JFrog Platform or creates or modifies Customer's code, binaries, or binary repositories being scanned or monitored by the security features through any actions or policies set by Customer or Customer Users that trigger security scans.
- 1.5. **"Customer Artifacts"** means binary artifacts, containers, images or configuration files uploaded to the JFrog Platform which are provided by, on behalf of, or at the direction of Customer in connection with the Customer's software.
- 1.6. **"Customer Data"** means Customer Artifacts and Customer User Information.
- 1.7. **"Customer User"** means Customer's and Customer's Affiliates' employees, contractors, consultants, service providers or development partners authorized by the Customer to use the JFrog Platform as permitted herein.
- 1.8. **"Customer User Information"** means Customer User's name, username, email address and last login IP address.
- 1.9. **"Documentation"** means the written and/or electronic end user technical documentation pertaining to the JFrog Platform as provided by JFrog and made available at <https://www.jfrog.com/confluence/display/JFROG/JFrog+Documentation>.
- 1.10. **"External User"** means a third party which is not a Customer User.

- 1.11. **"Feedback"** means feedback regarding the JFrog Platform such as ideas, questions, comments and suggestions which do not constitute Customer Data.
- 1.12. **"Inactivity"** means a period of twenty-one (21) consecutive days during which there was no storage, transfer or use of Customer Data.
- 1.13. **"Instance"** means a server of the JFrog Platform or distribution edge server hosted and managed by JFrog on a Cloud Platform on behalf of the Customer.
- 1.14. **"Intellectual Property Rights"** means any and all rights existing from time to time under patent law, copyright law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights, and any and all applications, modifications, improvements, or corrections thereto, including all derivative works, renewals, extensions and restorations, now or hereafter in force and effect worldwide.
- 1.15. **"Internal Use"** means use of the JFrog Platform within the Customer's and/or Customer's Affiliates' organization for internal DevOps purposes under the direction of the Customer and/or Customer's Affiliates subject to the scope and limitations of the applicable Subscription Level. Internal Use excludes (i) access or use by any third party; and/or (ii) access or use for the benefit of any third party.
- 1.16. **"JFrog About Box"** means <https://jfrog.com/about-box/>.
- 1.17. **"JFrog Brand Guidelines"** means <https://jfrog.com/brand-guidelines/>.
- 1.18. **"JFrog Cloud Data Processing Addendum (JFrog DPA)"** means <https://jfrog.com/jfrog-cloud-data-processing-addendum/>.
- 1.19. **"JFrog Technical and Organizational Measures (JFrog TOMs)"** means <https://jfrog.com/jfrog-toms/>.
- 1.20. **"JFrog Certificate Program"** means <https://jfrog.com/trust/certificate-program/>.
- 1.21. **"JFrog Marks"** means JFrog's and/or its Affiliates' trademarks, logos, trade names, service marks, logos, domain names and all other proprietary identifiers used by JFrog in connection with the JFrog Platform.
- 1.22. **"JFrog Platform"** means JFrog's proprietary end-to-end DevOps platform managed and hosted by JFrog for the management, scanning and distribution of Customer Artifacts. The JFrog Platform includes Self-Hosted Features and any JFrog software, feature or add-on hosted and managed either by JFrog or by the Customer as applicable to Customer's Subscription or included in Customer's Order Form.
- 1.23. **"JFrog Service Level Agreement"** means JFrog's standard support Service Level Agreement available at <https://jfrog.com/platform/sla/>.
- 1.24. **"Monthly Commitment"** means the Fees for a Subscription (excluding Fees for Professional Services and Platinum Support or other services set forth in an Order Form) divided by the number of months during the applicable Subscription Term.
- 1.25. **"Monthly Subscription"** means a Subscription of one (1) month, which will automatically renew for subsequent one (1) month periods unless terminated in accordance with this Agreement.
- 1.26. **"MyJFrog"** means JFrog's customer online portal dedicated to the management of Subscriptions and made available at <https://my.jfrog.com/>.

- 1.27. **"Order Form"** means an ordering document, whether by way of an online registration to the JFrog Platform through the Website, Cloud Marketplace or by way of a document executed by and between the Parties, that identifies the commercial terms for a purchase of a Subscription, including the applicable Subscription Level, Subscription Term and Fees.
- 1.28. **"Platform Metrics"** means the metrics by which the JFrog Platform is billed as set forth in an Order Form, including, but not limited to, data consumption, number of Instances, number of Advanced Security Users, and number of actions taken regarding Customer Artifacts.
- 1.29. **"Platinum Support SLA"** means JFrog's extended support services and SLA as set forth at <https://jfrog.com/platinum/sla/>.
- 1.30. **"Prepaid Subscription"** means a Subscription with a minimum period of twelve (12) months unless stated otherwise in an Order Form for which Customer has pre-paid Fees to be used on a draw-down basis during the applicable Subscription Term.
- 1.31. **"Professional Services"** means configuration, implementation, deployment, consulting, training or similar services related to the JFrog Platform.
- 1.32. **"Reseller"** means a third party authorized by JFrog to sell a Subscription to Customer on behalf of JFrog.
- 1.33. **"Security Breach"** means a breach of security leading to any unauthorized, accidental or unlawful destruction, loss, alteration, disclosure of, or access to Customer Data which has been validated by JFrog.
- 1.34. **"Self-Hosted Feature"** means a feature or add-on of the JFrog Platform which is hosted and managed by Customer.
- 1.35. **"SOW"** means a statement of work that describes the Professional Services to be provided by JFrog to Customer.
- 1.36. **"Subscription"** means a JFrog plan that Customer subscribes to, in order to access and use the JFrog Platform.
- 1.37. **"Subscription Level"** means a Subscription tier reflecting the features, Self-Hosted Features and Platform Metrics Customer will be entitled to use as part of the JFrog Platform as well as the applicable level of maintenance and support.
- 1.38. **"Subscription Term"** means the effective term of a Subscription as set forth in the applicable Order Form.
- 1.39. **"Third Party Components"** means third party software, files, components and materials that are subject to open source or third-party license terms.
- 1.40. **"Trial Period"** means the duration of a Trial Version as determined by JFrog in its sole discretion.
- 1.41. **"Trial Version"** means a trial Subscription to the JFrog Platform.
- 1.42. **"Usage Data"** means information about Customer's use of the JFrog Platform, which includes version, setup, configuration, integration and consumption.
- 1.43. **"Website"** means the JFrog website at [www.jfrog.com](http://www.jfrog.com).

## 2. LICENSE

- 2.1. **License.** Subject to the terms and conditions of this Agreement and solely during the applicable Subscription Term, JFrog grants Customer and its Affiliates a non-exclusive, non-transferable, non-sublicensable and limited right to access and use the features of the JFrog Platform set forth in the applicable Order Form, solely for Customer's Internal Use and limited to the number of features set forth in the Order Form.
- 2.2. **External User Rights.** To the extent included in Customer's Subscription Level or Order Form and subject to the terms and conditions of this Agreement, JFrog grants Customer, a non-exclusive, non-transferable, non-sublicensable and limited right to grant External Users limited access to Customer's Instance solely for downloading Customer Artifacts during the applicable Subscription Term. Except as expressly stated in this Section 2.2, Customer is prohibited from granting External Users any other rights or permissions to Customer's Instance. Customer shall be liable for any breach of this Agreement by External Users.
- 2.3. **Self-Hosted Feature.** To the extent included in Customer's Subscription Level or Order Form and subject to the terms and conditions of this Agreement, JFrog grants Customer a non-exclusive, non-transferable, non-sublicensable and limited right to download, install, use and access the Self-Hosted Feature solely for Customer's Internal Use during the applicable Subscription Term and limited to the number of Self-Hosted Features set forth in the Order Form. Customer agrees to maintain the Self-Hosted Feature on a version that is within eighteen (18) months from its release date, otherwise JFrog shall not be required to provide maintenance and support for such Self-Hosted Feature. Except as expressly stated in this Section 2.3, no title, right or interest in or to Self-Hosted Features is transferred or granted to Customer.
- 2.4. **Customer's Affiliates.** Customer's Affiliates may enter into an Order Form with JFrog which references this Agreement, unless Customer indicates otherwise in writing. Customer shall be liable for any breach of this Agreement by its Affiliates.

### **3. RESTRICTIONS ON USE**

- 3.1. Except as expressly permitted by this Agreement, Customer shall not directly or indirectly:
  - 3.1.1. allow any person or legal entity other than Customer Users and External Users (solely subject to Section 2.2) to access or use the JFrog Platform as permitted herein. Customer shall be liable for any breach of this Agreement by Customer Users and External Users;
  - 3.1.2. attempt to decipher, reverse translate, decompile, disassemble or otherwise reverse engineer or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats, programming or interoperability interfaces of the JFrog Platform;
  - 3.1.3. modify, convert, alter, change, manipulate, divide, part or revise the JFrog Platform, or any part thereof;
  - 3.1.4. sublicense, resell, transfer, distribute, pledge, loan, lease, market, rent, or use the JFrog Platform in any service bureau arrangement, facility management or third-party training;
  - 3.1.5. circumvent, disable or otherwise interfere with security-related features of the JFrog Platform or features that enforce limitations on its use;
  - 3.1.6. delete or in any manner remove or alter JFrog Marks, distinctive brand features and notices;
  - 3.1.7. use the JFrog Platform to transmit, distribute, scan or otherwise make available through or in connection with the JFrog Platform, any binaries, artifacts, images, or components

of software which are not owned by, licensed to or under the lawful possession of Customer or External Users, unless Customer has obtained all required licenses, rights and/or permissions;

- 3.1.8. transmit any malicious code, viruses, worms or other items of a destructive or deceptive nature into or through the JFrog Platform;
- 3.1.9. access or use the JFrog Platform for the purpose of competitive analysis and/or to create a product or service competitive with the JFrog Platform;
- 3.1.10. access or use the JFrog Platform in a manner that does not comply with the Documentation and/or with JFrog's written instructions;
- 3.1.11. use any proxying, caching or other mechanism to provide any third parties (other than those permitted under this Agreement) with access to and/or use of the JFrog Platform; or
- 3.1.12. transmit to the JFrog Platform any personal data and/or special category of personal data (also known as sensitive data) as defined under applicable data protection and privacy laws and regulations, except for Customer User Information.

#### **4. SUBSCRIPTION TO THE JFROG PLATFORM**

- 4.1. **Registration.** Customer may register for a Subscription to the JFrog Platform:
  - 4.1.1. **Monthly Subscription** – via the Website or through a Cloud Marketplace by creating a username and a password and providing the necessary information required by JFrog; or
  - 4.1.2. **Prepaid Subscription** – by executing an Order Form.
- 4.2. When registering for a Subscription, Customer shall select (i) the Subscription Level; (ii) the Cloud Platform on which Customer Data will be stored; and (iii) the Subscription Term, if applicable.
- 4.3. Customer is responsible for maintaining the confidentiality of Customer User Information and its login credentials used to access the JFrog Platform. Customer agrees to immediately notify JFrog of any unauthorized disclosure or use of its Customer User Information and/or login credentials.
- 4.4. **Trial Version.** JFrog, in its sole discretion, shall determine the Subscription Level, Trial Period, Platform Metrics and applicable fees for any Trial Version. Customer acknowledges and agrees that the terms of this Agreement apply to a Trial Version during the Trial Period subject to the following: (i) Maintenance and Support (Section 4.5), Service Warranty (Section 10), Uptime And Downtime Compensation (Section 12) and JFrog's indemnification obligation (Section 14.1) shall not apply to a Trial Version; (ii) to the maximum extent permitted by applicable law, JFrog disclaims all obligations, warranties and liabilities with respect to a Trial Version; and (iii) JFrog reserves the right, in its sole discretion, to terminate Customer's right to use and access any Trial Version during the Trial Period at any time and for any reason without any liability.
- 4.5. **Maintenance and Support.** To the extent included in Customer's Subscription Level, JFrog will provide Customer with maintenance and support services in accordance with JFrog Service Level Agreement. JFrog will provide Customer with extended support ("**Platinum Support Service**") as set forth in the Platinum Support SLA, solely to the extent included in Customer's Order Form.

- 4.6. **Enhancing the JFrog Platform.** As part of JFrog's continued efforts to improve the JFrog Platform, JFrog may, from time to time, add or remove features and functionalities, increase or decrease limits and modify Platform Metrics of the JFrog Platform. JFrog shall provide Customer with reasonable advance notice prior to implementing any changes that may materially and adversely derogate the functionality of the JFrog Platform as set forth in the Documentation ("**Adverse Changes**"). Adverse Changes shall not apply to Customer's current Subscription but only upon renewal of Customer's Subscription, except for unpaid Subscriptions for which such changes shall apply effective immediately without advance notice.

## **5. FEES**

- 5.1. Fees may comprise of (i) fees for the applicable Subscription Level; (ii) fees for purchasing additional Platform Metrics to be used during the applicable Subscription Term; and (iii) fees for Professional Services, Platinum Support or other services set forth in an Order Form (the "**Fees**"). All Fees are non-refundable unless stated otherwise in this Agreement. Customer agrees to monitor its usage of the Platform Metrics as set forth in the applicable Order Form and upon JFrog's request, accurately report this information through MyJFrog or in the form of a usage report prior to renewing its Subscription.
- 5.2. **Monthly Subscriptions.** Customer shall pay the Fees for Monthly Subscriptions as set forth in the Order Form. The Fees shall be paid at the end of each calendar month during the Subscription Term by charging the credit card Customer provided to JFrog.
- 5.3. **Prepaid Subscriptions.** Customer shall pay the Fees for Prepaid Subscriptions in accordance with the following:
- 5.3.1. All Fees for a Prepaid Subscription are due and payable in advance in accordance with the payment terms and methods set forth in the Order Form.
- 5.3.2. JFrog shall, on a monthly basis, draw down from the Fees the applicable Monthly Commitment as well as any Fees for usage of Platform Metrics in excess of the Monthly Commitment.
- 5.3.3. Unless stated otherwise in an applicable Order Form, Platform Metrics shall be used on a monthly basis based on the Monthly Commitment and not roll over during the Subscription Term or upon renewal of a Subscription.
- 5.3.4. During the initial thirty (30) days following the earlier of (i) the expiration of the Subscription Term; or (ii) the drawdown of all Fees, Customer shall be invoiced the Monthly Commitment as well as any Fees for usage of Platform Metrics in excess of the Monthly Commitment. Following the initial period of thirty (30) days, Customer shall be invoiced in accordance with JFrog's current pricing.
- 5.4. **Cloud Marketplace.** To the extent Customer has purchased a Subscription through a Cloud Marketplace, Customer shall pay the Fees (i) specified on the applicable offer as provided in the Cloud Marketplace; or (ii) as set out in an Order Form included in the Cloud Marketplace offer. Customer agrees that all Fees shall be paid through the billing of Customer's account with the applicable Cloud Marketplace in accordance with the payment terms set out in the applicable offer. Fees for usage of Platform Metrics in excess of the Monthly Commitment shall be billed on a monthly basis.
- 5.5. **Overdue Fees.** If Customer fails to pay any amount due under this Agreement according to the payment terms set forth on Customer's Order Form, without limiting JFrog's rights or remedies,

JFrog may charge interest on any amount overdue at the maximum rate permitted by law. Customer shall reimburse JFrog for all reasonable costs incurred by JFrog in collecting any late payments or interest, including attorneys' fees. JFrog may also deduct the amount of any debt or unpaid fees from Fees paid for a renewal of a Prepaid Subscription.

- 5.6. **Taxes.** All Fees and amounts payable under this Agreement are exclusive of sales, use, value-added, withholding, other taxes and duties ("**Taxes**"). Customer shall pay all applicable Taxes, except for Taxes payable on JFrog's net income. If any Tax must be withheld or deducted from any payment made by Customer under this Agreement, Customer shall gross-up such payment by an amount that will ensure that after applying the required withholding or deduction, JFrog shall receive an amount equal to the payment otherwise due to JFrog.
- 5.7. **Invoice.** JFrog shall issue to Customer a digital invoice upon execution of an applicable Order Form in accordance with the terms set forth in the Order Form. Any invoicing requirements specific to Customer must be notified to JFrog in writing prior to the execution of an Order Form. Any costs associated with Customer's invoicing requirements shall be borne by Customer.
- 5.8. **Resellers.** Customer may purchase Prepaid Subscriptions through a Reseller. If Customer chooses to use a Reseller, Customer hereby agrees and acknowledges that:
  - 5.8.1. JFrog and Reseller will enter into an Order Form in which Reseller shall purchase a Subscription on behalf of Customer and pay to JFrog the applicable Fees;
  - 5.8.2. JFrog will not be bound by any commitment, agreement or understanding entered into between Customer and Reseller;
  - 5.8.3. JFrog shall not be liable for any acts or omissions of Reseller;
  - 5.8.4. Customer's use of and access to the JFrog Platform will be governed by the terms and conditions of this Agreement; and
  - 5.8.5. any failure of Reseller to pay JFrog applicable Fees shall be considered a breach of this Agreement by Customer, entitling JFrog to collect payment and interest directly from Customer without limiting JFrog's rights or remedies set out in this Agreement or prescribed by applicable law.
- 5.9. **New Prices.** JFrog reserves the right to modify the Fees at any time, upon thirty (30) days prior written notice, such notice may be provided on the website, MyJFrog or via email. Unless stated otherwise in an applicable Order Form, any modified prices shall not apply retrospectively.

## **6. CUSTOMER DATA AND USAGE DATA**

### **6.1. Customer Data**

- 6.1.1. As between Customer and JFrog, Customer owns and will retain all right, title and interest of any nature, including Intellectual Property Rights, in and to Customer Data. Customer maintains full administrative control over Customer Data including the right to view, modify, download or delete it at any time.
- 6.1.2. Customer hereby grants JFrog a worldwide, non-exclusive, transferable, sub-licensable, royalty-free license to store, monitor and use Customer Data solely as necessary to provide Customer with access to and use of the JFrog Platform during the Subscription Term in accordance with this Agreement. Except as set forth herein, nothing in this Agreement shall be construed as transferring any right, title or interest in or to Customer Data to JFrog or any third parties.

## 6.2. Usage Data

- 6.2.1. Customer agrees that during the Subscription Term JFrog may collect, store and use Usage Data in order to facilitate the provision of the JFrog Platform, and for maintenance, support, account management and billing purposes.
- 6.2.2. Customer agrees that JFrog owns all Usage Data which shall remain at all times subject to JFrog's confidentiality and security obligations under this Agreement.
- 6.2.3. JFrog may use Usage Data to enhance the JFrog Platform provided that such data is aggregated and/or anonymized (i.e., in a form that does not allow a third party to identify Customer as the source of the information).

## 7. CONFIDENTIALITY

- 7.1. **"Confidential Information"** means any information of a Party ("**Discloser**"), whether written, other tangible form or verbal, that is disclosed to or observed by the other Party ("**Recipient**") in connection with this Agreement or other potential business relationship between the Parties, which at the time of disclosure is marked as being "Confidential" or "Proprietary" or is reasonably identifiable as confidential given the nature of the information or the circumstances of disclosure. Confidential Information may include, but is not limited to, ideas, inventions, procedures, processes, specifications, software, computer programs, trade secrets, know-how, methods, business plans, financial data and analyses, financial forecasts, marketing plans, roadmaps, customer and supplier information, drawings, models or other intellectual property. "Confidential Information" shall not include any information that Recipient can demonstrate by its written records that: (i) was already known to Recipient at the time of disclosure; (ii) is independently developed by or for Recipient without reference to or use of Discloser's Confidential Information; (iii) is obtained from a third party without a breach of confidentiality obligations; or (iv) is or becomes publicly known or generally available to the public without breach of confidentiality.
- 7.2. **Use and Non-Disclosure.** Recipient shall:
  - 7.2.1. protect Discloser's Confidential Information using the same degree of care Recipient uses to protect its own confidential information of a similar nature, but in no event less than a reasonable degree of care;
  - 7.2.2. use Confidential Information solely to exercise rights and fulfill obligations under this Agreement;
  - 7.2.3. only disclose Confidential Information to its Affiliates, employees, officers, directors, agents, contractors, consultants, service providers or professional advisors (collectively, "**Representatives**") who (i) "need to know" the Confidential Information in connection with their respective rights and obligations under this Agreement and (ii) are bound by confidentiality obligations no less stringent than those in this Agreement; and
  - 7.2.4. not reverse engineer, disassemble, decompile nor remove proprietary markings from Confidential Information without Discloser's prior written consent.
- 7.3. Recipient shall be liable for any breach of this Section 7 by its Representatives.
- 7.4. **Compelled Disclosure.** Recipient may disclose Confidential Information to the extent required by applicable law, regulatory authority, or a court of competent jurisdiction ("**Compelled Disclosure**"), provided that Recipient (i) gives prompt written notice to Discloser of such



Compelled Disclosure when legally permissible; (ii) reasonably cooperates with Discloser in seeking a protective order or otherwise preventing or restricting such disclosure; and (iii) only discloses that portion of Confidential Information required to comply with the Compelled Disclosure.

- 7.5. **Return/Destroy.** Recipient, upon written request and as directed by Discloser, shall promptly return or destroy all documents and materials containing Confidential Information of Discloser in its possession or under its control, including all copies, notes and extracts. Recipient shall confirm in writing to Discloser the completion of the return or destruction of Confidential Information. Notwithstanding the foregoing, Recipient may maintain copies of Confidential Information as required for legal or regulatory purposes or as part of its standard archival or computer back-up systems, provided that such Confidential Information shall continue to be subject to the terms of this Agreement.

## **8. DATA PROTECTION AND SECURITY**

- 8.1. **Processing of Personal Data.** To the extent JFrog processes any personal data on behalf of the Customer in connection with the JFrog Platform, the provisions of JFrog DPA shall apply.
- 8.2. **Technical and Organizational Measures.** JFrog will implement JFrog TOMs and monitor Customer Data in accordance with industry best practices. To the extent commercially and reasonably feasible, JFrog TOMs will (i) ensure the security and integrity of Customer Data; (ii) prevent introduction of viruses, malicious code and similar harmful elements into the JFrog Platform; (iii) protect against threats or hazards to the security or integrity of Customer Data; and (iv) prevent unauthorized access to Customer Data.
- 8.3. **JFrog Certificate Program.** JFrog shall annually validate compliance with the JFrog Certificate Program and audit its controls and infrastructure in line with (i) applicable risk level; (ii) JFrog's policies and procedures; (iii) legal and regulatory requirements; and (iv) industry best practices.
- 8.4. **Security Breach.** JFrog will promptly, within 72 hours from JFrog's validation, notify Customer of a Security Breach which might affect Customer Data, unless such notification is delayed or prohibited by an act or order of any governmental agency or similar authority. JFrog will provide Customer with a description of (i) the nature of the Security Breach; (ii) likely consequences of the Security Breach; and (iii) mitigation measures taken to address the Security Breach. JFrog shall take all necessary steps consistent with industry best practices, considering the severity of the risk, to resolve such Security Breach as quickly as possible and to prevent its recurrence. JFrog will reasonably assist Customer with conducting investigations and analysis regarding the Security Breach.

## **9. JFROG'S INTELLECTUAL PROPERTY RIGHTS**

- 9.1. All right, title, and interest in and to the JFrog Platform, its underlying software, features and any related Documentation, including associated Intellectual Property Rights, are and shall remain with JFrog, its Affiliates and/or their respective suppliers and licensors. Except as expressly granted in Section 2 above, no right, title, interest or license is granted to or implied under any of JFrog's Intellectual Property Rights.
- 9.2. **JFrog Marks.** All right, title, and interest in and to the JFrog Marks, including associated Intellectual Property Rights, are and shall remain with JFrog, its Affiliates and/or their respective suppliers and licensors. No right, title, interest or license is granted to or implied under any JFrog Marks. Any use of the JFrog Marks shall be limited to the terms of JFrog Brand Guidelines.

## **10. SERVICE WARRANTY**

- 10.1. **Warranty.** JFrog warrants, solely for Customer's benefit, that the JFrog Platform, if operated as instructed by JFrog and as specified in the Documentation and/or this Agreement, shall operate substantially in accordance with the functional specifications in the Documentation during the Subscription Term ("**Service Warranty**").
- 10.2. JFrog's sole liability and Customer's sole and exclusive remedy for any breach of the Service Warranty shall be the repair of any errors in the JFrog Platform which are causing it not to substantially operate in accordance with the Service Warranty, within thirty (30) days from the verification of such errors by JFrog.
- 10.3. **Limitations.** The Service Warranty only applies to errors causing failures in the operation of the JFrog Platform as made generally available and does not apply if:
  - 10.3.1. it is caused by the combination, operation or use of the JFrog Platform with software, hardware or other materials not authorized by JFrog;
  - 10.3.2. it is caused by problems inherent to Customer's use and/or configuration;
  - 10.3.3. the JFrog Platform is used in violation of this Agreement or not in accordance with the Documentation; or
  - 10.3.4. with respect to a JFrog Self Hosted Feature:
    - 10.3.4.1. an error is caused by maintenance, installation, repairs or modifications done by the Customer not in accordance with the Documentation or without JFrog's authorization;
    - 10.3.4.2. an error would have been avoided by the use of an updated version of the JFrog Self Hosted Feature made generally available.

## **11. DISCLAIMER**

- 11.1. EXCEPT AS SET FORTH IN THIS AGREEMENT AND TO THE EXTENT PERMITTED BY APPLICABLE LAW:
  - 11.1.1. THE JFROG PLATFORM IS LICENSED TO CUSTOMER ON AN "AS IS" BASIS AND WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THAT THE USE OF THE JFROG PLATFORM WILL BE UNINTERRUPTED OR ERROR FREE, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, ACCURACY, COMPLETENESS, OR FITNESS FOR A PARTICULAR PURPOSE.
  - 11.1.2. CUSTOMER IS SOLELY RESPONSIBLE FOR ANY CUSTOMER ACTS OR OMISSIONS BASED ON THE RESULTS OBTAINED FROM CUSTOMER'S USE OF THE JFROG PLATFORM OR ANY OUTPUT THEREOF (INCLUDING WITHOUT LIMITATION ANY REPORTS, RECOMMENDATIONS, LISTS, GRAPHS, INSIGHTS AND/OR STATISTICS). THE JFROG PLATFORM AND ANY OUTPUT GENERATED BY THE JFROG PLATFORM SHOULD NOT BE CONSIDERED LEGAL ADVICE AND ANY OUTPUT IS PROVIDED FOR CONVENIENCE PURPOSES ONLY.
  - 11.1.3. OUTPUT OF THE JFROG PLATFORM MAY BE BASED ON THIRD PARTY RESOURCES AND DATABASES AND THEREFORE JFROG DOES NOT GUARANTEE: (I) THAT OUTPUTS ARE INCLUSIVE OF ALL COMPONENTS, LIBRARIES, DEPENDENCIES, LICENSES AND VULNERABILITIES; AND (II) THAT THE ANNOTATION OF SUCH COMPONENTS, LIBRARIES, DEPENDENCIES, LICENSES AND VULNERABILITIES IS COMPLETE.

## 12. UPTIME AND DOWNTIME COMPENSATION

### 12.1. Definitions

- 12.1.1. **“Uptime”** means the percentage of time for which the JFrog Platform (excluding any third-party services used in conjunction with the JFrog Platform) is available, calculated per month. Uptime information and Maintenance Time is available at <https://status.jfrog.io/>.
- 12.1.2. **“Downtime”** means a one (1) minute period during which the JFrog Platform is not available to Customer. Downtime is measured based on JFrog’s server-side error rate of applicable health-check pings from two sources in a cluster for each Cloud Platform and per feature of the JFrog Platform. Downtime does not include periods of migration between Cloud Platforms and/or Maintenance Time.
- 12.1.3. **“Maintenance Time”** means any periods of planned maintenance, upgrade or update during which the JFrog Platform may not be available to Customer.
- 12.1.4. **“Service Credit”** means a free of charge extension of the Subscription Term by the number of calendar days specified in Section 12.3.1.

### 12.2. Uptime Guarantee. Subject to the terms and conditions of this Agreement and solely during the applicable Subscription Term, JFrog shall ensure an Uptime of at least 99.90%.

- 12.2.1. Uptime shall be calculated according to the following formula:

$$\text{Uptime (\%)} = \frac{T - D}{T} \times 100$$

Where:

T = total number of minutes in the applicable calendar month

D = total number of Downtime minutes in the applicable calendar month

- 12.2.2. The Uptime Guarantee shall not include Downtime which is due to: (i) Customer’s use of the JFrog Platform in a manner not authorized in this Agreement or not in accordance with the Documentation; or (ii) force majeure events.

### 12.3. Service Credits

- 12.3.1. Customer will be eligible to receive Service Credits for any failure of JFrog to meet the Uptime Guarantee in accordance with the following table:

Uptime	Number of Service Credits
< 99.90% - ≥ 99.0%	1
< 99.0% - ≥ 90.0%	7
< 90.0%	30

- 12.3.2. Service Credits are JFrog’s sole liability and Customer’s sole and exclusive remedy for any failure of JFrog to meet the Uptime Guarantee. Customer shall not be entitled to receive Service Credits if Customer is in breach of this Agreement.

- 12.3.3. To receive Service Credits, Customer must notify JFrog in writing to [service@jfrog.com](mailto:service@jfrog.com) within thirty (30) days following the end of the calendar month during which JFrog did not meet the Uptime Guarantee. Failure to comply with this requirement shall forfeit Customer's right to receive a Service Credit.

### 13. LIMITATION OF LIABILITY

- 13.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY LOSS OR DAMAGE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, FOR LOSS OF BUSINESS PROFITS AND BUSINESS INTERRUPTION), WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 13.2. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO ANY ORDER FORM OR THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO JFROG FOR THE PROVISION OF THE JFROG PLATFORM IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO A CLAIM. THIS SECTION 13.2 SHALL NOT APPLY TO: (I) A BREACH OF EITHER PARTY'S CONFIDENTIALITY OBLIGATIONS; (II) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS; (III) CUSTOMER'S BREACH OF THE RESTRICTIONS SET FORTH IN SECTION 3; (IV) CUSTOMER'S PAYMENT OBLIGATIONS TO JFROG; OR (V) MATTERS FOR WHICH LIABILITY CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

### 14. INDEMNIFICATION

- 14.1. **Indemnification by JFrog.** JFrog shall defend, indemnify and hold Customer and its Affiliates harmless from and against any liabilities, damages, losses, costs, fees and expenses (including reasonable attorney's fees) under or in connection with a third-party claim that the JFrog Platform, when used as authorized hereunder, infringes third party Intellectual Property Right (an "**Infringement Claim**"). In the event of an Infringement Claim or if JFrog reasonably determines that the following action are essential to avoid material liability, JFrog shall have the right in its sole discretion to either: (i) procure for Customer the right to continue using the JFrog Platform in accordance with the terms of this Agreement; (ii) replace any allegedly infringing feature with a non-infringing feature of equivalent function and performance; (iii) modify the JFrog Platform to avoid an Infringement Claim without materially derogating function and performance; or (iv) terminate this Agreement upon written notice and provide a prorated refund of unused prepaid Fees. Section 14.1, sets out Customer's sole and exclusive remedies for any Infringement Claim.
- 14.2. **Exclusions.** Section 14.1 shall not apply to the extent the underlying allegation of an Infringement Claim arises from: (i) modifications to the JFrog Platform not authorized or made by JFrog, but solely to the extent the alleged infringement is caused by such modification; (ii) combination of the JFrog Platform with other products, applications, or processes not authorized or made by JFrog, but solely to the extent the alleged infringement is caused by such combination; or (iii) any breach of this Agreement by Customer Users and/or External Users.
- 14.3. **Indemnification by Customer.** Customer shall defend, indemnify and hold JFrog and its Affiliates harmless from and against any liabilities, damages, losses, costs, fees and expenses (including reasonable attorney's fees) under or in connection with a third-party claim, suit or proceeding that Customer's use of the JFrog Platform infringes or misappropriates third party proprietary rights.

#### 14.4. Indemnification Process

- 14.4.1. The Party seeking indemnification ("**Indemnified Party**") shall provide the other Party ("**Indemnifying Party**") with prompt written notice of a claim subject to Section 14.
- 14.4.2. The Indemnifying Party shall have sole control and authority over the defense and/or settlement of the claim, provided that the Indemnified Party may join in defense with counsel of its own choice at its own expense. The Indemnified Party shall provide reasonable assistance in the investigation and defense of the claim at the Indemnifying Party's expense.
- 14.4.3. The Indemnified Party's failure to comply with its obligations under Sections 14.4.1 and 14.4.2 shall excuse the Indemnifying Party from its indemnification obligation, solely to the extent it was materially prejudiced as a result of such failure.
- 14.4.4. The Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement or compromise requiring the Indemnified Party to admit liability, pay money, or take or refrain from any action without the prior written consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or delayed.

#### 15. TERM, SUSPENSION AND TERMINATION

- 15.1. **Term.** This Agreement shall commence on the Effective Date and continue until (i) the expiration or termination of all of Customer's Subscriptions; or (ii) terminated as set forth herein ("**Term**"). If Professional Services continue to be provided under an SOW after termination or expiration of this Agreement, then this Agreement shall continue in effect with respect to such SOW until the SOW is terminated or all the obligations under such SOW are completed.
- 15.2. **Subscription Term**
  - 15.2.1. **Monthly Subscription.** A Monthly Subscription shall commence on the Subscription start date set forth in an Order Form and continue for a period of one (1) calendar month (which may be prorated for the initial month of the Subscription). Upon expiration of a Monthly Subscription, Customer's Subscription shall automatically renew for successive periods of one (1) calendar month unless Customer terminates its Subscription in accordance with Section 15.4.1.
  - 15.2.2. **Prepaid Subscription.** A Prepaid Subscription shall commence on the Subscription start date set forth in an Order Form and continue until the earlier of (i) the Subscription expiration date set forth in the Order Form; or (ii) the drawdown of all Fees. Upon expiration of a Prepaid Subscription, Customer's Subscription shall automatically convert into a Monthly Subscription to be charged in accordance with Section 5.3.4 unless (i) Customer notifies JFrog in writing seven (7) days prior to the Subscription expiration date to cancel the Subscription by sending an email to [service@jfrog.com](mailto:service@jfrog.com); or (ii) Customer executes an Order Form.
- 15.3. **Suspension.** In addition to other remedies available to JFrog, JFrog expressly reserves the right to suspend access to the JFrog Platform or access to maintenance and support if Customer: (i) fails to pay any applicable Fees when due; or (ii) is in breach of this Agreement. JFrog shall use reasonable efforts to notify Customer of such suspension in advance and provide reasonable assistance to Customer to remediate or mitigate such breach with the aim of avoiding suspension.

#### 15.4. Termination

15.4.1. **Monthly Subscription.** Either Party may terminate a Monthly Subscription on thirty (30) days written notice. Customer may terminate a Monthly Subscription through MyJFrog or by sending an email to [service@jfrog.com](mailto:service@jfrog.com). JFrog may terminate a Monthly Subscription for Inactivity without prior written notice to Customer.

15.4.2. **Prepaid Subscription.** Either Party may terminate a Prepaid Subscription in accordance with Section 15.4.3.

##### 15.4.3. Right of Termination

15.4.3.1. **Material Breach.** Either Party may terminate this Agreement, any Subscription and/or SOW upon the material breach of any term of this Agreement by the other Party which is not cured within thirty (30) days following the delivery of such written notice.

15.4.3.2. **Legal Cause.** Either Party may terminate this Agreement, any Subscription and/or SOW if: (i) the other Party ceases operation without a successor; (ii) the other Party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such Party (and not dismissed within thirty (30) days thereafter); or (iii) applicable law or applicable government or court order prohibits performance under this Agreement.

##### 15.4.4. Effect of Termination

15.4.4.1. Upon termination or expiration of this Agreement, any Subscription and/or SOW: (i) JFrog will terminate Customer's access to the JFrog Platform and/or the provision of Professional Services; (ii) the licenses granted to Customer under this Agreement shall terminate; (iii) Customer shall cease all use of the JFrog Platform; and (iv) JFrog shall delete all Customer Data within sixty (60) days, provided that JFrog shall retain any Usage Data. Upon termination or expiration of this Agreement, Customer will lose all access to the JFrog Platform and any Customer Data stored therein. Customer is responsible for downloading all Customer Data prior to termination or expiration of this Agreement, and JFrog shall not have any obligation to retain Customer Data after the effective date of termination of this Agreement. The foregoing rights and obligations shall also apply to the termination or expiration of a specific Subscription, but solely to the specific Instance and Customer Data associated with the applicable Subscription.

15.4.4.2. Upon termination or expiration of this Agreement, Customer shall immediately pay any outstanding Fees due and payable under this Agreement, provided that if Customer terminates this Agreement due to a material breach of JFrog in accordance with Section 15.4.3.1, Customer shall only be required to pay outstanding Fees up to and until the effective date of termination and receive a prorated refund of unused prepaid Fees.

- 15.5. **Survival.** Sections 0 (Definitions); 3 (Restrictions on Use); 5 (Fees); 6.2 (Usage Data); 7 (Confidentiality); 9 (JFrog's Intellectual Property Rights); 11 (Disclaimer); 13 (Limitation of Liability); 14 (Indemnification); 15 (Term, Suspension And Termination); 17 (Miscellaneous) shall survive any termination or expiration of this Agreement, and Section 6.1 (Customer Data) shall survive any termination or expiration of this Agreement for as long as JFrog retains Customer Data.

## **16. PROFESSIONAL SERVICES**

- 16.1. **Statement of Works.** Any Professional Services agreed between the Parties shall be set forth in a SOW and charged in accordance with the applicable SOW. Each SOW is hereby incorporated into this Agreement by reference. To the extent of any conflict between the terms of this Agreement and any terms set forth in a SOW, this Agreement shall prevail, unless and to the extent expressly stated otherwise in the applicable SOW.
- 16.2. **Professional Services Warranties.** JFrog represents and warrants that it will perform the Professional Services in a diligent manner in accordance with (i) industry best standards and practices; and (ii) all material requirements set forth in the SOW.
- 16.3. Customer will notify JFrog in writing of any breach of these professional services warranties within thirty (30) days after performance of the non-conforming Professional Services. On receipt of such notice, JFrog, in its sole discretion, will either (i) use commercially reasonable efforts to re-perform the Professional Services in conformance with these warranties; or (ii) will terminate the affected Professional Services upon written notice and provide a prorated refund of unused prepaid Fees for the nonconforming Professional Services. Section 16.3 sets out Customer's sole and exclusive remedies under or in connection with any failure to meet these professional services warranties.
- 16.4. **No Development.** Professional Services shall not include the creation or development of any Intellectual Property Rights for Customer by JFrog.

## **17. MISCELLANEOUS**

- 17.1. **Compliance with Laws.** Each Party shall comply, at its own expense, with applicable local, state, national and international laws and regulations, including without limitation, export administration regulations, laws regarding data protection, security and privacy and shall obtain and maintain all governmental approvals, licenses, permits and authorizations which may be required with regards to its rights and obligations hereunder during the Term.
- 17.2. **Insurance.** JFrog shall maintain, during the Term, insurance coverages with a reputable insurer as set forth in JFrog's certificate of insurance which is available upon Customer's written request.
- 17.3. **Subcontracting.** JFrog may subcontract its obligations under this Agreement, in whole or in part provided that JFrog shall be liable for any breach of this Agreement by its subcontractors.
- 17.4. **Third Party Components**
- 17.4.1. The JFrog Platform is made with certain Third Party Components which are listed in the Documentation and on JFrog About Box. JFrog shall maintain and update the Documentation and JFrog About Box following any changes to the Third Party Components forming part of the JFrog Platform.
- 17.4.2. Subject to the terms and conditions of this Agreement, Customer may link, connect or use Third Party Components in conjunction with the JFrog Platform solely in accordance

with the Documentation. Customer expressly acknowledges and agrees that any such link, connection or use is at Customer's sole risk and responsibility.

17.5. **Publicity Rights.** JFrog may identify Customer as a customer in JFrog's promotional materials, website or other public communications. Customer hereby grants JFrog a world-wide, non-exclusive, sub-licensable, transferable, royalty-free and revocable license during the Subscription Term to use Customer's company name and logo in connection therewith. Customer may request that JFrog cease doing so by submitting an email to [service@jfrog.com](mailto:service@jfrog.com) at any time.

17.6. **Feedback.** If Customer provides JFrog with Feedback, such Feedback shall be deemed to be non-confidential, and JFrog shall have a worldwide, non-exclusive, transferable, sub-licensable, royalty-free, perpetual license to use or incorporate such Feedback into its products and services.

17.7. **Governing Law and Jurisdiction**

17.7.1. The JFrog entity entering into this Agreement; the law governing this Agreement which apply in the event of a dispute arising out of or in connection with this Agreement; and the courts that have exclusive jurisdiction over any such dispute depend on where the Customer is domiciled in accordance with the following table:

	<b>If Customer is domiciled in</b>	<b>Governing law, excluding any conflict of laws principles or rules and without regard to the United Nations Convention on Contracts for the International Sale of Goods</b>	<b>Courts with exclusive and sole jurisdiction (including non-contractual)</b>	<b>JFrog entity entering into this Agreement</b>
I	The USA; a country in North America, Central America, South America or the Caribbean	State of California, USA	The competent state or federal courts located in San Francisco, California	JFrog, Inc.  270 E Caribbean Dr., Sunnyvale, CA 94089



II	Israel or a geographic region that does not fall into one of the designations described in this table, then Customer will fall into this category	Israel	Tel Aviv, Israel	JFrog Ltd  3 HaMachshev St., Netanya, Israel
III	A country in APAC (Asia Pacific); a country in EMEA (Europe, Middle East, and Africa) excluding countries in row II and IV of this table	English	High Courts in London, UK	
IV	Belgium, France or Luxembourg	France	Paris, France	JFrog SAS  21, boulevard de la Marquette in Toulouse (31000), France

17.7.2. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and attorneys' fees.

- 17.8. **Notices.** Except as set forth herein, any notice required or permitted by this Agreement must be in writing (which includes email) and shall be effective upon receipt when sent by certified mail or recognized overnight delivery service to the address of the Party set forth above.
- 17.9. **Severability; No Waiver.** If any term of this Agreement is or becomes invalid, illegal or unenforceable, the rest of the Agreement will remain in effect. No failure of either Party to enforce any rights under this Agreement shall act as a waiver of such rights.
- 17.10. **Conflicts.** The terms of this Agreement shall take precedence over any conflicting terms in an Order Form unless expressly set forth to the contrary in such Order Form. Any Customer terms in any purchase order, portal or otherwise shall not apply to Customer's purchase and/or use of the JFrog Platform unless agreed to in writing by an authorized representative of JFrog.
- 17.11. **Injunctive Relief.** The Parties agree that a breach of this Agreement may result in irreparable harm for which there may be no adequate remedy at law. The non-breaching Party shall be entitled to seek equitable relief in any court of competent jurisdiction worldwide, including specific performance and injunctive relief, without the need to prove irreparable harm or post a bond or other security.
- 17.12. **Entire Agreement.** This Agreement constitutes the complete, final and exclusive statement of the terms of the agreement between the Parties regarding the subject matter hereof and supersedes all prior agreements, representations or understandings.
- 17.13. **Assignment.** Neither Party may assign this Agreement without the prior written consent of the other Party, except that each Party may assign this Agreement to its Affiliates or in connection with a merger, acquisition, sale of all or substantially all of its assets, or any similar transaction

of such Party. The Parties' rights and obligations under this Agreement will bind and inure to the benefit of their permitted successors and assigns.

- 17.14. **Changes to this Agreement.** This Agreement including any referenced documents and policies may be amended from time to time by JFrog in its sole discretion. Unless expressly stated otherwise, any amendment shall become effective on the dated listed above.