

User Agreement for Atlassian Cloud Apps

This agreement applies to the Cloud Version of the Marketplace App

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Preamble

This User Agreement is a legal agreement between you (either an individual or a single legal entity) whose details are provided to us upon Subscription (defined below) ("Licensee") and resolution Reichert Network Solutions GmbH, Oklahomastr. 14, 66482 Zweibrücken, Germany ("Licensor") to use the Software. This User Agreement applies from the date when the Subscription Period starts ("Purchase"). The Licensee agrees to be bound by the terms of this User Agreement by subscribing to the Service. For the Trial Period free of charge the provisions in Appendix A shall apply.

By using the Cloud App, the Subscriber assures that it will use the Cloud App only in the pursuit of its commercial, academic or self-employed professional activities.

This User Agreement is accompanied by the Provider's [General Data Protection Statement](#).

1. Definitions

Atlassian Cloud Product: The Atlassian cloud-based product within which the Software is run (e.g. Jira, Confluence, Bitbucket).

Authorized User: A named person (Named User License Model) who uses the Service under this Agreement. The number of Authorized Users may not exceed the threshold of the purchased license.

Cloud App: Software run on systems under the control of the Provider to operate within Atlassian Cloud Products and provided to the Subscriber as cloud-based (software-as-a-service) solution for the applicable Subscription Term. The Cloud Apps are subject to modification from time to time at the Provider's sole discretion, for any purpose deemed appropriate by the Provider.

Confidential Information: All items (e.g. software, documents, media, information) that are protected by proprietary rights, contain trade or business secrets, or are designated as being confidential.

Documentation: The complete factual and technical description of the Software, bundled as files with the Software or published on the Licensor's web site.

License Fee: The remuneration for the use of the Service pursuant to sec. 7.

Platform: The online marketplace on which Licensee has purchased the Service.

Reseller: The third party operating the Platform and selling the Service via the Platform.

Service: The provision of the Software as an extension to an Atlassian Cloud product, as a service.

SLA: The Service Level Agreement, as published on the Licensor's web site.

Software: Licensor's Cloud App subscribed to by the Licensee. Its main technical features are described at <https://wiki.resolution.de/>.

Subscription: Purchase of the Service for a Subscription Term for a License Fee.

Subscription Term: The period for which a License Fee has been paid.

2. Obligations of the Licensor

2.1 The Licensor will provide the Licensee with the Service, for integration with its Atlassian Cloud Product instance. The Licensor will not provide the Software itself nor its source code. The process of Subscription to the Service and its addition to the Licensee's Atlassian Cloud Product instance may be called an "installation" on the Platform.

2.2 The Licensor shall provide the Documentation in electronic form by making it available on its web site. The Licensee may use the Documentation solely for internal purposes and may reproduce the Documentation solely within the context of its own use in accordance with this User Agreement. The Licensee may not translate, modify, expand or create derivative works of the Documentation.

2.3 The provisions of this Agreement for the Service shall accordingly apply to the Documentation.

3. Obligations of the Licensee

3.1 The Licensee shall conduct the integration of the Service himself.

3.2 The Licensee shall send error reports to the Licensor in accordance with the provisions of the SLA.

3.3 The Licensee shall assist the Licensor comprehensively and at its own expense with the error analysis and rectification.

3.4 The Licensee shall reimburse the Licensor for the additional expenses that the Licensor incurs due to a lack of cooperation on the part of the Licensee, unless the Licensee is not responsible for the lack of cooperation.

3.5 In the event that the error analysis should prove that a situation reported by the Licensee is not attributable to a Software defect or another issue with the Service for which the Licensor is liable, the Licensor shall be entitled to charge the Licensee with the expenses incurred in the error analysis, unless the Licensee was unable to determine that no defect existed for which the Licensor is liable.

4. Rights of Use

4.1 The Software underlying the Service is legally protected. The Licensor is the sole owner of any copyrights, patent rights, trademark rights and any other ancillary copyrights in and to the Software (other than Embedded Software). If the Software contains Embedded Software, the Licensor shall ensure that the Licensee's use of the Service is not in violation of the terms and conditions applicable for the Embedded Software.

4.2 The Licensor shall grant to the Licensee a perpetual, worldwide, and non-exclusive right of use of the Service for the term of and pursuant to this Agreement.

4.3 The right to use is limited to the Authorized Users.

4.4 The Licensee may upgrade the licence to a higher number of Authorized Users at any time by paying the appropriate fee to the Reseller or the Licensor. The Licensee is aware that the number of Authorized Users must be equal or higher to the number of Authorized Users of the respective Atlassian Cloud Product; otherwise the Service will cease to work.

4.5 All forms of exploitation – particularly: renting the Service to a third party – are not permitted without the prior written consent of the Licensor.

5. Transfer of the Service

5.1 Any transfer of the Service to a third party is subject to the following rules:

5.1.1 The Licensee only has the right to transfer the Service to third parties subject to the same usage restrictions set forth in this User Agreement.

5.1.2 The Licensee shall cease to use the Service on transferral. It will confirm this to the Licensor promptly and in writing.

5.1.3 Any transfer to a third party is permanent, i.e., there is no claim to return or option to re-purchase the Service from the third party.

5.1.4 The Licensee is obligated to inform the Licensor of the name of the third party to which the Service was transferred.

5.2 In the event of a breach of sec. 5.1 on the part of the Licensee, the Licensee will be liable for a contractual penalty in the amount of half of the amount that the third party would have had to pay to the Licensor for the Service based on the Licensor's then-current price list, at a minimum, the amount of half the compensation agreed for the provision of the Service, unless the Licensee is not responsible for the breach of sec. 5.1.

6. Term and Termination

6.1 This Agreement commences with Licensee's Purchase of the Service and runs for a fixed term according to Licensee's Purchase, called the Subscription Term. During this fixed term it cannot be terminated for convenience, and after the fixed term it will automatically expire.

6.2 The rights granted to the Licensee pursuant to sec. 4 shall not pass to the Licensee until full payment has been received.

6.3 The Licensor is entitled to terminate the rights pursuant to sec. 4 for cause if the Licensor cannot reasonably be expected to adhere to this Agreement, in particular, if the Licensee is in default with its payment of the License Fee, or if the Licensee significantly violates the provisions of this Agreement.

6.4 Termination pursuant to sec. 6.3 shall always be threatened with specification of the grounds and the grant of a reasonable period for rectification (normally at least two (2) weeks), and may only be declared within two (2) months after the set period ends. No period for rectification has to be granted if the Licensor cannot be reasonably expected to do so.

6.5 In the event that the Licensor terminate this EULA for cause, the Licensor shall be entitled to retain the License Fee, to which the Licensor would have been entitled without termination, as damages, less the expenditures saved by the Licensor due to the termination. This shall not apply if the Licensee is not responsible for the cause. Generally, the Licensor shall reduce the License Fee by a lump-sum in the amount of 10% to account for saved expenditures. The Licensee is entitled to prove that the Licensor has saved more than 10%.

6.6 Notices of termination shall be in writing to be effective.

6.7 Upon the expiry or termination of this Agreement, the Service may lose significant parts or the total range of the functionality. The Licensor may require the Licensee to remove the integration of the Service from its Atlassian Cloud Product instance.

7. Purchase and Payment Terms

7.1 The Licensee shall make a one-time upfront payment ("lump sum") to the Reseller in accordance with the Atlassian Marketplace's terms of use (available at <https://www.atlassian.com/licensing/marketplace/termsofuse>) as detailed on the Licensor's web page on the Atlassian Marketplace for all.

7.2 The Licensor may require additional reasonable compensation for additional expenditure caused by the Licensee's conduct in breach of contractual obligations or by the Licensee's failure to cooperate at all, in good time or as agreed, by the Licensee's use of the Service contrary to the intended purposes or the terms of this Agreement, or by the subsequent amendment or expansion of performance demands by the Licensee. This shall not apply where the Licensee is not responsible for the additional expenditure.

7.3 The Licensee may only make a set-off against claims that are not disputed by the Licensor or have been established with final force. Except in the area of sec. 354a of the German Commercial Code (HGB), the Licensee may assign claims under this Agreement to third parties solely with the prior written consent of the Licensor. The Licensee has a right of retention or the defence of non-performance of the agreement solely within the context of this Agreement.

8. Third Party Rights

8.1 The Licensor warrants that the use of the Service by the Licensee pursuant to this Agreement does not conflict with third-party rights. Where third-party rights are concerned, the Licensor shall provide the Licensee with a legally unobjectionable possibility to use the Service.

8.2 The Licensee shall notify the Licensor in writing without undue delay if third parties claim rights (e.g. copyrights or patent rights) to the Service or its underlying Software. The Licensee shall authorize the Licensor to conduct the dispute with such third party alone. The Licensee shall support the Licensor in the dispute. The Licensee shall, in particular, make the necessary information available in writing as well as the relevant documents, and shall answer questions of the Licensor. The Licensee is not entitled to admit the claims made by the third party without the prior written consent of the Licensor.

8.3 The Licensor shall not be liable for a breach of third-party rights that arises owing to use of the Service by the Licensee that is contrary to the terms of this Agreement, use outside the intended area of use, or use outside an Atlassian Cloud Product integration.

9. Warranty and Support

9.1 The Licensee will be able to use a Service that works as advertised on the Platform and described in detail in the Documentation.

9.2 The Licensor does not warrant that the Service is suitable for a certain purpose of use, unless it is explicitly stated in the Documentation mentioned before.

9.3 The Licensor is liable for defects of the Software underlying the Service only to the extent that it is responsible for them.

9.4 In the event of defects, the Licensor initially has a right to supplementary performance. At the discretion of the Licensor, supplementary performance may be conducted either by rectifying the defect, by updating the Software underlying the Service with a version that is free from this defect, or by informing the Licensee of a way to avoid the effects of the defect.

9.5 The Licensee shall have to accept at least two (2) attempts of supplementary performance for a defect.

9.6 A new version of the Software underlying the Service, or the previous version of the Software of equal value and without defects, shall have to be accepted by the Licensee if it can be reasonably expected to do so.

9.7 The Licensor updates the Software underlying the Service to new releases of the Software from time to time at its own discretion. It may happen that new releases do not contain all functionalities of previous releases or do not have full downward compatibility to previous versions of the Software. If both versions are provided at the same time, the Licensee can decide at his own choice which version to use, unless sec. 3.4 or sec. 3.5 apply. In case the Licensee uses new releases, this Agreement applies to such releases as well. Bugs will be fixed by using a new version of the Software which contains the fix.

9.8 We provide product support as specified on our documentation web site (see <https://wiki.resolution.de/display/SSSO/Support+Service+Level+Agreement>).

10. Liability

10.1 The Licensor shall pay damages and compensation for futile expenses, no matter on what legal ground, solely as follows:

10.1.1 Liability shall be unlimited in case of intent.

10.1.2 In case of gross negligence, the Licensor shall be liable in the amount of the typical damage foreseeable at the time of conclusion of this Agreement.

10.1.3 In case of a negligent breach of a material obligation the fulfilment of which enables proper performance of this Agreement in the first place, on fulfilment of which the Licensee generally relies and is entitled to rely and a breach of which jeopardizes achievement of the purpose of the contract (material obligation), the Licensor shall be liable in the amount of the typical damage foreseeable at the time this Agreement was concluded; however, not exceeding EUR 1 Mio.

10.1.4 In all other cases of negligent breaches of obligations by the Licensor, no liability shall arise.

10.1.5 In case of injury to life, limb or health and where claims under the German Product Liability Act are concerned, the statutory provisions shall apply.

10.1.6 Irrespective of the amount, the limitations of liability also apply to damage attributable to serious failure by our management to provide proper organizational channels.

10.2 The Licensor shall be at liberty to raise the defence of contributory negligence. In particular, the Licensee is responsible for backing up his data regularly. In case of data loss which is the Licensor's fault, the Licensor will therefore be liable solely for the costs of duplicating the data from the back-up copies to be created by the Licensee and for the recovery of data which would have also been lost if the data had been backed up properly.

10.3 Claims due to defects of quality and/or title shall regularly become statute-barred within 12 months after delivery. In cases of sec. 10.1.1, 10.1.2 or 10.1.5, the limitation period for claims due to this defect is three years.

11. Confidentiality, Communication and Marketing

11.1 The parties agree to treat in confidence, also beyond the end of this Agreement, all Confidential Information, of which they obtain knowledge or which are provided to them prior to or during performance of the contract by the other party, unless such Confidential Information becomes publicly known without a breach of the confidentiality obligation. The parties will keep and safeguard Confidential Information in a manner that excludes access by third parties. The Licensee will only enable access to Confidential Information for those employees and authorized persons who require such access in order to perform their work responsibilities. Such persons shall be instructed about the confidentiality obligation.

11.2 Where, in the course of providing its contractual obligations under this Agreement, the Licensor processes personal data for which the Licensee is the responsible party, or where access to such personal data is possible, the parties shall in advance enter into an agreement on contracted data processing that complies with the relevant statutory requirements.

11.3 The Licensor may name the Customer as a referential customer as of conclusion of this Agreement. The Licensee can deny this right at the time of the conclusion of this Agreement as well as at any time afterwards by submitting a request via email to info@resolution.de, requesting the references to be deleted. Upon receipt of such request, the Licensor will remove any reference to the Licensee within 30 days and make no further reference to the Licensee.

11.4 The Licensor shall be entitled to send emails to the Licensee with marketing materials regarding products and services of the Licensor similar or connected to the Service, unless the Licensee objects to such emails of the Licensor via email to info@resolution.de. The Licensee can object to such emails of the Licensor at any time.

11.5 Information provided by the Licensee will be used by the Licensor to provide support services, to promote our services, and to fulfil legal obligations (e.g. accounting). Information about the Licensee will not be shared with third parties. The Licensor will hold the personal data the Licensee provided to the Licensor for 3 years after the expiration of an active license, and for one year after the expiration of an evaluation license. The Licensee has the right to request details about his stored personal information, to object to the processing of his personal information, to rectify, to erase, to restrict, to port his personal information and to apply to a data protection authority. Any requests or objections regarding data protection issues you may direct to our data protection officer, reachable at gdpr@resolution.de.

12. Taxes

12.1 Payments made by the Licensee under this Agreement exclude any taxes or duties payable in respect to 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 the Licensor, the Licensee must pay to the Licensor the amount of such taxes or duties in addition to the License Fee under this Agreement.

13. Applicable law, Exclusive venue, and Severability

13.1 This Agreement shall be governed exclusively by German law excluding its conflict of laws rules and the standard UN Convention on Contracts for the International Sale of Goods (CISG).

13.2 Exclusive venue for all disputes arising from this agreement is Zweibrücken, Germany.

13.3 If any provision of this Agreement is prohibited, invalid or unenforceable in any jurisdiction, that provision will, as to that jurisdiction be ineffective to the extent of the prohibition, invalidity or enforcement without invalidating the remaining provisions of this Agreement or affecting the validity or enforcement of that provision in any other jurisdiction.

Appendix A - Trial Period

A.1 The Licensee may test the Service free of charge for a period of 30 days via the button "Try it free" on the Licensor's Marketplace page. The Licensee may renew the Test License five times, each time via the button "Try it free" on the Licensor's Marketplace page again. With the expiry of each Trial Period the Service will automatically stop functioning.