

# CloudBees Subscription Agreement: SA-201508

[Terms of Service for CloudBees, Inc. \(users located in countries within the Americas and Asia Pacific regions\)](#)

[Terms of Service for CloudBees International SA \(users located in countries in the EMEA region\)](#)

## **TERMS OF SERVICE FOR SUBSCRIPTIONS AND TRIALS FROM CLOUDBEES, INC.**

Note: If you are located in the Americas or Asia Pacific regions, these terms apply to you. If you are located in the EMEA region, [please see terms below](#) for CloudBees International SA.

Last updated: 5/11/2018

This Subscription Agreement shall govern Customer's initial purchase on the Effective Date as well as any future purchases made by Customer which reference this Agreement. CloudBees provides the software products ("Products") listed on an Order Form on a subscription basis (each, a "Subscription"). The term of each Subscription is designated in the applicable Order Form (each, a "Subscription Term"). As part of each Subscription, CloudBees provides the support services described at [www.cloudbees.com/SLA](http://www.cloudbees.com/SLA).

**1. Grant of License.** Subject to all of the terms and conditions of this Agreement, during the Subscription Term, CloudBees grants to Customer a non-transferable, non-sublicensable, non-exclusive, limited license to install the Products specified in an Order Form and for Customer's employees to use the Products for Customer's own internal use, but only in accordance with (i) the Documentation, (ii) this Agreement, and (iii) the Subscription Term and other restrictions set forth in the applicable Order Form. Customer shall not, on its own or through any parent, subsidiary, Affiliate, agent or other third party: (a) sell, lease, license, distribute, sublicense or otherwise transfer in whole or in part, any of the Products or the Documentation to a third party; (b) decompile, disassemble, translate, reverse engineer or otherwise attempt to derive source code from the Products, in whole or in part, nor will Customer use any mechanical, electronic or other method to trace, decompile, disassemble, or identify the source code of the Products or encourage others to do so; (c) allow access or permit use of the Products by any users other than authorized users, or any use which violates the technical restrictions of the Products, any additional licensing terms provided by CloudBees via Documentation, notification, and/or policy change posted at <http://www.cloudbees.com>, or the terms of this Agreement; or (v) modify or create derivative works based upon the Products.

**2. Subscription Term and Renewals.** The length of the Subscription Term shall be designated in the Order Form. Except as set forth on the applicable Order Form, the rates for any Subscription Term renewals shall be CloudBees' then-current Subscription rates.

**3. Payment Terms.** All fees are as set forth in the applicable Order Form and shall be paid by Customer. All payments are non-refundable. If Customer is required to pay any withholding tax, charge or levy in respect of any payments due to CloudBees hereunder, Customer agrees to gross up payments actually made such that CloudBees shall receive sums due hereunder in full and free of any deduction for any such withholding tax, charge or levy. Payments will be made without right of set-off or chargeback. If payment of any fee is overdue, CloudBees may suspend provision of the Support until such delinquency is corrected.

**4. Warranty Disclaimer.** THE PRODUCTS AND SUPPORT ARE PROVIDED "AS IS." CLOUDBEES DOES NOT WARRANT THAT THE PRODUCTS AND SUPPORT PROVIDED TO CUSTOMER UNDER THIS AGREEMENT WILL OPERATE UNINTERRUPTED, THAT THEY WILL BE FREE FROM DEFECTS, OR THAT THE PRODUCTS ARE DESIGNED TO MEET CUSTOMER'S BUSINESS REQUIREMENTS. NEITHER CLOUDBEES NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE LIMITED WARRANTY PERIOD. Customer acknowledges that the Products ARE not intended for use in connection with any high risk or strict liability activity (including, without limitation, air or space travel, power plant operation, or life support or emergency medical operations) and that CloudBees makes no warranty and shall have no liability in connection with any use of the Products or cloud services in such situations.

**5. LIMITATION OF REMEDIES.** CLOUDBEES SHALL NOT BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

**6. LIMITATION OF LIABILITY.** CLOUDBEES' TOTAL AGGREGATE LIABILITY FOR CLAIMS ARISING HEREUNDER SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY CLOUDBEES IN AN AMOUNT NOT TO EXCEED THE AMOUNT PAID BY CUSTOMER TO CLOUDBEES DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM GIVING RISE TO THE CLAUSE OF ACTION ARISES. The provisions of this Section allocate risks under this Agreement between Customer and CloudBees. CloudBees' fees for the Subscriptions reflect this allocation of risks and limitation of liability.

**7. STATUTE OF LIMITATIONS.** NEITHER PARTY SHALL BRING ANY CLAIM BASED ON THE SUBSCRIPTIONS OR SUPPORT PROVIDED HEREUNDER MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.

**8. Amendments; Waivers.** No supplement, modification, or amendment of the terms of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other form employed or provided by Customer will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

**9. Entire Agreement.** This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the CloudBees Jenkins Platform subscription, unless such terms and conditions are expressly stated as an amendment to this Agreement and duly signed on behalf of both parties.

**10. Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such party, including but not limited to any strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval of a license by a government agency.

**11. Assignment.** Neither party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, which shall not be unreasonably withheld, and any such assignment in violation of this Section shall be void, except that the transfer of this Agreement or rights granted hereunder to a successor entity in the event of a merger, corporate reorganization, or acquisition shall not constitute an assignment for purposes of this Section. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their successors and permitted assigns.

**12. Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the State of New York and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act (UCITA). The exclusive jurisdiction and venue for actions related to the subject matter hereof shall be the New York state and United States federal courts located in New York, New York, and the parties irrevocably consent to such personal jurisdiction of such courts and waive all objections thereto.

**13. Survival.** Sections 2 (Term of Agreement), 4 (Warranty Disclaimer), 5 (Limitation of Remedies and Damages), 6 (Limitation of Liability), and 7 (Statute of Limitations), shall survive any termination or expiration of this Agreement.

## **TERMS OF SERVICE FOR SUBSCRIPTIONS AND TRIALS FROM CLOUDBEES INTERNATIONAL SA**

Note: If you are located in the EMEA region, these terms apply to you. If you are located in the Americas or Asia Pacific regions, [please see terms above](#), for CloudBees, Inc.

Last updated: May 11, 2018

This Subscription Agreement shall govern Customer's initial purchase on the Effective Date as well as any future purchases made by Customer which reference this Agreement. CloudBees provides the software products ("Products") listed on an Order Form on a subscription basis (each, a "Subscription"). The term of each Subscription is designated in the applicable Order Form (each, a "Subscription Term"). As part of each Subscription, CloudBees provides the support services described at [www.cloudbees.com/SLA](http://www.cloudbees.com/SLA).

**1. Grant of License.** Subject to all of the terms and conditions of this Agreement, during the Subscription Term, CloudBees grants to Customer a non-transferable, non-sublicensable, non-exclusive, limited license to install the Products specified in an Order Form and for Customer's employees to use the Products for Customer's own internal use, but only in accordance with (i) the Documentation, (ii) this Agreement, and (iii) the Subscription Term and other restrictions set forth in the applicable Order Form. Customer shall not, on its own or through any parent, subsidiary, Affiliate, agent or other third party: (a) sell, lease, license, distribute, sublicense or otherwise transfer in whole or in part, any of the Products or the Documentation to a third party; (b) decompile, disassemble, translate, reverse engineer or otherwise attempt to derive source code from the Products, in whole or in part, nor will Customer use any mechanical, electronic or other method to trace, decompile, disassemble, or identify the source code of the Products or encourage others to do so; (c) allow access or permit use of the Products by any users other than authorized users, or any use which violates the technical restrictions of the Products, any additional licensing terms provided by CloudBees via Documentation, notification, and/or policy change posted at <http://www.cloudbees.com>, or the terms of this Agreement; or (v) modify or create derivative works based upon the Products.

**2. Subscription Term and Renewals.** The length of the Subscription Term shall be designated in the Order Form. Except as set forth on the applicable Order Form, the rates for any Subscription Term renewals shall be CloudBees' then-current Subscription rates.

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**5. LIMITATION OF REMEDIES.** CLOUDBEES SHALL NOT BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

**6. LIMITATION OF LIABILITY.** CLOUDBEES’ TOTAL AGGREGATE LIABILITY FOR CLAIMS ARISING HEREUNDER SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY CLOUDBEES IN AN AMOUNT NOT TO EXCEED THE AMOUNT PAID BY CUSTOMER TO CLOUDBEES DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM GIVING RISE TO THE CLAUSE OF ACTION ARISES. The provisions of this Section allocate risks under this Agreement between Customer and CloudBees. CloudBees’ fees for the Subscriptions reflect this allocation of risks and limitation of liability.

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**11. Assignment.** Neither party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, which shall not be unreasonably withheld, and any such assignment in violation of this Section shall be void, except that the transfer of this Agreement or rights granted hereunder to a successor entity in the event of a merger, corporate reorganization, or acquisition shall not constitute an assignment for purposes of this Section. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their successors and permitted assigns.

**12. Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of Switzerland without regard to conflicts of laws provisions thereof. All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("ICC") by a single arbitrator appointed in accordance with said Rules. The Emergency Arbitrator Provisions shall not apply. The arbitration shall be conducted in Zurich, Switzerland. The arbitration shall be conducted in English. Notwithstanding the above, the parties may agree at any time to submit the dispute to non-binding mediation in accordance with the ICC Rules of Mediation.

**13. Survival.** Sections 2 (Term of Agreement), 4 (Warranty Disclaimer), 5 (Limitation of Remedies), 6 (Limitation of Liability), and 7 (Statute of Limitations), shall survive any termination or expiration of this Agreement.