

Capacity Tracker for JIRA

End User License Agreement

March 2019

This End-User License Agreement (this “Agreement”) is between you, as either an individual or as an Entity (defined below), and Inprowiser, LLC. (“Inprowiser”).

READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE DOWNLOADING, INSTALLING, OBTAINING A LICENSE KEY (IF ANY), OR OTHERWISE ACCESSING OR USING INPROWISER’S PROPRIETARY SOFTWARE (“CAPACITY TRACKER”) ACCOMPANIED BY THIS AGREEMENT (THE “SOFTWARE”).

THE CAPACITY TRACKER SOFTWARE IS LICENSED TO YOU UNDER THIS AGREEMENT, NOT SOLD TO YOU. BY DOWNLOADING, INSTALLING, OBTAINING A LICENSE KEY (IF ANY), OR OTHERWISE ACCESSING OR USING ANY PART OF THE SOFTWARE, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS AND CONDITIONS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY (“ENTITY”), YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS, AND REFERENCES TO “YOU” OR “YOUR” REFER TO USER, THE INDIVIDUAL END-USER, AND THE ENTITY. IF YOU DO NOT HAVE THAT AUTHORITY OR IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT DOWNLOAD, INSTALL, OBTAIN A LICENSE KEY (IF ANY), OR OTHERWISE ACCESS OR USE THE SOFTWARE.

IF YOU ARE ACCESSING THE SOFTWARE AS PART OF A HOSTED SERVICE, THEN ALL OF THESE TERMS STILL APPLY. HOSTED SERVICES INCLUDE USING ANY INPROWISER’S SOFTWARE AS A SERVICE, AND ALWAYS MEANS THE VERSION OF THE HOSTED SERVICES DESCRIBED IN INPROWISER’S THEN-CURRENT PRODUCT DESCRIPTION. THE TERM “PRODUCTS” AS USED IN THIS END USER LICENSE AGREEMENT INCLUDES BOTH SOFTWARE AND HOSTED SERVICES.

You agree that your relationship with Inprowiser is also governed by Inprowiser's Terms and Conditions and Privacy Policy, which are expressly made part of this Agreement.

You may contact us by visiting <https://inprowiser.on.spiceworks.com/portal>. Allow us to contact you by providing your contact information upon downloading the Software, upon installing or accessing the Products.

1. License.

Grant of License. Subject to your full compliance with all terms and conditions of this Agreement, Inprowiser grants to you a revocable, nontransferable, nonsublicensable, nonexclusive, limited right and license to use the Products, in object code form only, and the accompanying documentation in accordance with the accompanying documentation and only as authorized by this Agreement, for the Term you selected in your Order Form. For purposes of this Agreement "Products" includes any updates, enhancements, modifications, revisions or additions to the Products made by Inprowiser and made available to you. Notwithstanding the foregoing, Inprowiser may, but is not required to, provide any updates, enhancements, modifications, revisions or additions to the Products.

In addition to the Products, Inprowiser may offers other products, which you can view and apply for license as and when available on Atlassian Marketplace.

Scope of Use. Your license allows you to run the Products only as received at the time of download for the number of authorized users and nodes on devices owned, leased or controlled by you. Your use of the Products on mobile devices may be subject to additional terms of use, such as Apple App Store Terms of Service or Google Play Terms of Service. Inprowiser may audit your company's use of the Products at any time. If the audit establishes that you have used the Products without a valid license, then the cost of the audit and applicable penalty transfers to you.

2. Payment and Restrictions.

You do not have an active license to use the Products unless and until you have paid the requested license fee or service fee. Inprowiser reserves the right to increase license fees or service fees for the Products, including a higher price for new initial licenses, for yearly renewals and for monthly charges. Inprowiser may also charge for software or services that initially

included in a license fee or service fee, including support, maintenance, updates or upgrades. You understand that Capacity Tracker or its licensors (“Inprowiser”) may modify or discontinue offering the Software at any time. This Agreement does not give You any rights not expressly and unambiguously granted herein.

You shall not, nor permit anyone else to, directly or indirectly: (i) copy, modify, or distribute the Products or license key (if any); (ii) reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or structure, sequence and organization of Products, in whole or in part (except that this restriction shall not apply to the limited extent restrictions on reverse engineering are prohibited by applicable law); (iii) assign, rent, lease, or use the Products for timesharing or service bureau purposes, or otherwise use the Products for any commercial purpose; or (iv) create any derivative works from or sublicense any rights in the Products. You shall maintain and not remove or obscure any proprietary notices on the Products, and shall reproduce such notices exactly on all permitted copies of the Products.

You represent, warrant and covenant that you will not use the Products: (i) to infringe the intellectual property or proprietary rights, or rights of publicity or privacy, of any third party; (ii) to violate any applicable federal, state or local law, statute, ordinance or regulation; (iii) to disseminate, transfer or store information or materials in any form or format (“Content”) that are harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, or otherwise objectionable or that otherwise violate any law or right of any third party; (iv) to disseminate any software viruses or any other computer code, files or programs that may interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment, or violate the security of any computer network; or (v) to run Maillist, Listserv, “bots,” “robots,” any form of auto-responder, or “spam,” or any processes that run or are activated while you are not logged in. You, not Inprowiser, remain solely responsible for all Content that you upload, post, e-mail, transmit, or otherwise disseminate using, or in connection with, the Products. You acknowledge that all Content you access through use of the Products is accessed at your own risk and you will be solely responsible for any damage or liability to any party resulting from such access.

3. Intellectual Property; Content.

You acknowledge that the Products and its accompanying documentation are protected by copyright and other intellectual property laws and treaties. You further acknowledge and agree that Inprowiser and its licensors shall continue

to own all title, ownership rights, and intellectual property rights in and to the Products, and any copies or portions thereof, and any accompanying documentation. You understand that Inprowiser or its licensors may modify or discontinue offering the Products at any time. This Agreement does not give you any rights not expressly and unambiguously granted herein.

4. Support; Equipment.

Server Version of Products. If you are licensing the server version of the Products, your perpetual license entitles you to contact support, upgrades, patches, enhancements, and fixes (collectively, "Support") for one (1) year following the commencement of a fully paid support term for this version of the Products (or the next version, at Inprowiser's sole discretion, during such one (1) year support term), provided that you comply with all the terms and conditions of this Agreement. Such support is included for the license period in software as a service licenses. Your Support will automatically renew (and continue to renew) for a period of one (1) year unless you provide Inprowiser with written notice of your intent not to renew at least 90 days before the end of the existing Support term. The fee for Support after year one will be 50% of the original perpetual license fee, which included one year of Support.

For additional support services, please visit:

<https://inprowiser.on.spiceworks.com/portal/tickets>

You shall be responsible for obtaining and maintaining any equipment or ancillary services needed to connect to, access, or otherwise use the Products, including, without limitation, modems, hardware, software, and long distance or local telephone service. You shall be responsible for ensuring that such equipment or ancillary services are compatible with the Products.

Hosted Version of Products. If you are using the Hosted version of the Products, then you are licensing the use of a service which will include access to the then current version of the Inprowiser Software. If you have questions or problem with this version, please raise a support ticket.

You shall be responsible for obtaining and maintaining any equipment or ancillary services needed to connect to, access, or otherwise use the Products, including, without limitation, modems, hardware, software, and long distance or local telephone service. You shall be responsible for ensuring that such equipment or ancillary services are compatible with the Products.

5. Warranty Disclaimer.

THE PRODUCTS ARE PROVIDED "AS IS". INPROWISER MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND INPROWISER EXPRESSLY DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. FURTHER, INPROWISER DOES NOT WARRANT RESULTS OF USE OR THAT THE PRODUCTS ARE BUG FREE OR ERROR FREE OR THAT ITS USE WILL BE UNINTERRUPTED. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. ALL THE FOREGOING DISCLAIMERS ALSO APPLY IN FULL WITH RESPECT TO INPROWISER'S LICENSORS, SUPPLIERS, DISTRIBUTORS, CONTRACTORS AND AGENTS.

6. Indemnity.

You agree that Inprowiser and its licensors, distributors, contractors and agents (collectively, the "Indemnified Parties") shall have no liability whatsoever for any use you make of the Products. You shall indemnify and hold harmless the Indemnified Parties from any claims, damages, liabilities, costs and fees (including reasonable attorneys' fees) arising from (a) your failure to comply with any term of this Agreement; or (b) use of the Products in combination with other hardware, software or other systems that would have been avoided but for such use or combination. To the maximum extent permitted by applicable law, you hereby release, and waive all claims against, Inprowiser and its licensors, suppliers, employees and agents from any and all liability for claims, damages (actual and consequential), costs and expenses (including litigation costs and attorneys' fees) of every kind and nature, arising out of or in any way connected with use of the Products. If you are a California resident, you waive your rights under California Civil Code § 1542, which states, "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." Residents of other states and nations waive their rights under all analogous laws, statutes or regulations.

7. Limitation of Remedies and Damages.

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, SHALL THE INDEMNIFIED PARTIES BE LIABLE TO YOU OR ANY OTHER PERSON (I) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY

CHARACTER OR (II) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL. INPROWISER'S LIABILITY FOR DAMAGES OF ANY KIND WHATSOEVER ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL FEES PAID BY YOU TO INPROWISER, EXCEPT WHERE NOT PERMITTED BY APPLICABLE LAW, IN WHICH CASE INPROWISER'S LIABILITY SHALL BE LIMITED TO THE MINIMUM AMOUNT PERMITTED BY SUCH APPLICABLE LAW. ALL THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF INPROWISER HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU.

8. Termination.

If you selected a perpetual license for this Products in the Order Form, then this Agreement shall continue until terminated as set forth in this section. You may terminate this Agreement upon 90 days' notice to Inprowiser.

If you selected software as a service license for these Products in the Order Form, then you have paid for a one-month license which will automatically renew (and continue to renew) unless you provide Inprowiser with written notice of your intent not to renew at least 90 days before the end of the existing term. You will be responsible for paying for additional terms at the then-current rate.

Your rights under this Agreement will terminate automatically and irrevocably without notice from Inprowiser if you fail to comply with any term(s) of this Agreement, including any attempt to transfer a copy of the Software or Software license key (if any) to another party except as provided in this Agreement.

Upon termination for any reason, the Agreement granted hereunder shall terminate and you shall immediately discontinue all use of the Products and destroy and remove from all computers, hard drives, mobile devices, networks and other storage media all copies of the Products, but the terms of Section 2 (Restrictions); Section 5 (Warranty Disclaimer); Section 6 (Indemnity); Section 7 (Limitation of Liability); the last sentence of this Section 8 (Termination) and Section 10 (Miscellaneous) of this Agreement will otherwise remain in effect.

9. Export Law Assurances.

In connection with the Products, you agree to comply with all export laws and restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or other United States or foreign agency or authority, and you agree not to export, or allow the export or re-export of the Products in violation of any such restrictions, laws or regulations. By downloading, installing, accessing or using the Products, you agree to the foregoing and represent and warrant that you are not located in, under the control of, or a national or resident of any restricted country.

10. Miscellaneous.

No agency, partnership, joint venture, or employment is created as a result of this Agreement and you do not have any authority of any kind to bind Inprowiser in any respect whatsoever. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder. This Agreement is not assignable, transferable or sublicensable by you except with Inprowiser's prior written consent. Inprowiser may transfer, assign or delegate this Agreement and its rights and obligations without consent. You grant Inprowiser the right to include your name, trademark, logo or similar identifying material ("Your Marks") in a listing of customers on Inprowiser's website and in other promotional material in relation to the Products. Within thirty (30) days of your written request, Inprowiser will remove Your Marks from its website customer list and will make no further use of Your Marks in any future material promoting the Products. This Agreement as well as all disputes arising out of or in connection with this Agreement shall be governed by the laws of the State of New York, without regard to or application of choice of law rules or principles. Any dispute arising out of or in connection with this Agreement, or in future agreements resulting therefrom, shall be exclusively resolved before the state or federal courts located in New York, NY. You further agree not to bring claims on a representative, class member basis, or as a private attorney general, and agree not to assert any claims against us unless such claims are asserted by you in the forum required by this Agreement no later than one year following the date that your claim or cause of action arose.

This Agreement constitutes the entire agreement between you and Inprowiser with respect to the subject matter hereof and will supersede and replace all prior understandings and agreements, written or oral, regarding such subject matter, provided however, you will still be bound by Inprowiser's Terms and Conditions and Privacy Policy. We reserve the right to modify this Agreement at any time by providing such revised Agreement to you or by publishing the

revised Agreement. Your continued use of the Products shall constitute your acceptance to be bound by the terms and conditions of the revised Agreement.

YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ THIS END USER LICENSE AGREEMENT AND UNDERSTAND THE RIGHTS, OBLIGATIONS, TERMS AND CONDITIONS SET FORTH HEREIN. BY CLICKING ON THE ACCEPT BUTTON AND/OR CONTINUING TO INSTALL OR OTHERWISE USE THE PRODUCTS, YOU EXPRESSLY CONSENT TO BE BOUND BY ITS TERMS AND CONDITIONS AND GRANT TO INPROWISER THE RIGHTS SET FORTH HEREIN.