

IMPORTANT! READ CAREFULLY: THIS IS A LEGAL AGREEMENT. BY DOWNLOADING, INSTALLING, COPYING, SAVING ON YOUR COMPUTER, OR OTHERWISE USING THIS SOFTWARE, YOU (AS DEFINED BELOW) ARE BECOMING A PARTY TO THIS AGREEMENT AND YOU ARE CONSENTING TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT.

IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN YOU SHOULD NOT DOWNLOAD OR INSTALL THE SOFTWARE, YOU SHOULD NOT USE THE SOFTWARE, AND IF YOU ALREADY DOWNLOADED OR INSTALLED THE SOFTWARE YOU SHOULD REMOVE THE SOFTWARE FROM YOUR SYSTEM AND DESTROY ALL COPIES.

Upon Your acceptance of this License Agreement (the "Agreement"), YourKit grants to You a non-exclusive and non-transferable license to use the Software, provided that You agree to the following:

PARTIES

"YourKit" means YourKit GmbH.

"You" means an individual or a legal entity exercising rights under, and complying with all of the terms of, this Agreement. For legal entities, "You" includes any entity which controls, is controlled by, or is under common control with You. For purposes of this definition, "control" means (a) the power, direct or indirect, to cause the direction or management of such entity, whether by contract or otherwise, or (b) ownership of fifty percent (50%) or more of the outstanding shares or beneficial ownership of such entity.

DEFINITIONS

"Software" means the binary code of YourKit YouMonitor with its Documentation.

GRANT OF LICENSE

The Software is the property of YourKit. The Software is licensed, not sold. Title and copyrights to the Software, in whole and in part and all copies thereof, and all modifications, enhancements, derivatives and other alterations of the Software regardless of who made any modifications, if any, are, and will remain, the sole and exclusive property of YourKit.

The Software is protected by United States Copyright Law and International Treaty provisions. Further, the structure, organization, and code embodied in the Software are the valuable and confidential trade secrets of YourKit and are protected by intellectual property laws and treaties. You agree to abide by the copyright law and all other applicable laws of the United States including, but not limited to, export control laws.

Your acceptance of this Agreement gives You certain obligations and limited rights to use the Software as set forth in this Agreement.

You may:

- (i) install and run any number of copies of the YouMonitor client to work with local and remote repositories;
- (ii) monitor any number of builds locally, except for builds running on a continuous integration server (CI server) whose monitoring is described below;
- (iii) simultaneously use as many YouMonitor repositories to monitor a CI server as licensed, i.e. for how many the corresponding fee has been paid or a free license has been granted by YourKit, and only with an active subscription; the repositories may be used to monitor one or several CI servers, and the limit applies to the total repository count; if the subscription expires, the CI plugin will stop monitoring and the repository sharing until the subscription is renewed or a new subscription is obtained;

(iv) make one copy of the Software for archival purposes;

You may not:

(v) sell, redistribute, encumber, give, lend, rent, lease, sublicense, or otherwise transfer the Software, or any portions of the Software, to anyone without the prior written consent of YourKit;

(vi) reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover the source code of the Software, or create derivative works from the Software.

For exceptions or modifications to this Agreement, please contact YourKit.

FREE OF CHARGE CONTINUOUS INTEGRATION SERVER MONITORING OPPORTUNITY FOR OPEN SOURCE PROJECTS

Developers of an open source project may request and, at YourKit discretion, be granted the right to monitor the open source project's CI Server free of charge.

RESTRICTED USE DURING EVALUATION PERIOD

You have a nonexclusive, nontransferable license to load and execute the unregistered copy of Software for a period of 30 days. (the "Evaluation Period")

During the evaluation period, you may use unlimited number of YouMonitor repositories to monitor a CI server.

The unregistered copy of Software may be used for evaluation and testing purposes only and not for general commercial use.

You must pay a license fee for the Software to obtain the right to use the Software for general commercial use.

The unregistered copy of Software contains a feature that will automatically disable the Software in 30 days after sending the evaluation key to You. If You agree to this YourKit License Agreement and pay the license fee, YourKit will deactivate this feature. YourKit will have no liability to You if the Software is disabled by this feature. You may not disable, destroy, or remove this feature of the Software, and any attempt to do so will terminate your license and rights under this Agreement.

RESTRICTED USE OF EARLY ACCESS SOFTWARE

YourKit Early Access Program (EAP) is the easiest way to get in touch with the latest technologies from YourKit. Within the EAP You can get an early access to new products and internal builds of future versions of YourKit software ("Early Access Software").

NOTE: EARLY ACCESS SOFTWARE IS A PREVIEW SOFTWARE AIMED AT PROVIDING YOU WITH AN OPPORTUNITY TO TEST THE NEWEST FEATURES SCHEDULED FOR THE NEXT MAJOR RELEASE. YOURKIT DOES NOT GUARANTEE THAT THIS SOFTWARE WILL RUN TROUBLE-FREE. USING THIS SOFTWARE IS AT YOUR OWN DISCRETION AND DOES NOT ENTITLE YOU TO ANY CUSTOMER SUPPORT.

You have a nonexclusive, nontransferable license to load and execute a copy of the Early Access Software for a limited period of time. You must immediately cease using the Early Access Software and delete all its copies as soon as one of the following conditions is met, whichever comes first:

(i) the Early Access Program for this Software version is over; this usually, but not necessarily, implies that an official release is made available;

- (ii) more than 90 days have passed since the date of particular Early Access Software build release date and a newer Early Access build is available;
- (iii) the Early Access Software may contain a feature that automatically disables the Software after some period of time, without any prior notice; YourKit will have no liability to You if the Software is disabled by this feature. You may not disable, destroy, or remove this feature of the Software, and any attempt to do so will terminate your license and rights under this Agreement.

The Early Access Software may be used for evaluation and testing purposes only and not for general commercial use.

PATENT AND COPYRIGHT INDEMNITY

YourKit will defend and indemnify You for all costs (including reasonable attorneys fees) arising from a claim that Software furnished and used within the scope of this Agreement infringes a U.S. copyright or U.S. patent provided that (i) You notify YourKit in writing within 30 days of the claim, (ii) YourKit has sole control of the defense and all related settlement negotiations, and (iii) You provide YourKit with the assistance, information, and authority necessary to perform the above.

YourKit will have no liability for any claim of infringement based on (i) code contained within the Software which was not created by YourKit (ii) use of a superseded or altered release of the Software, except for such alteration(s) or modification(s) which have been made by YourKit or under YourKit's direction, if such infringement would have been avoided by the use of a current, unaltered release of the Software that YourKit provides to You, or (iii) the combination, operation, or use of any Software furnished under this Agreement with programs or data not furnished by YourKit if such infringement would have been avoided by the use of the Software without such programs or data.

In the event the Software is held or believed by YourKit to infringe, or Your use of the Software is enjoined, YourKit will have the option, at its expense, to

- (i) modify the Software to cause it to become non-infringing,
- (ii) obtain for You a license to continue using the Software,
- (iii) substitute the Software with other Software reasonably suitable to You, or
- (iv) if none of the foregoing remedies are commercially feasible, terminate the license for the infringing Software and refund any license fees paid for the Software, prorated over a three-year term from the effective date of the Agreement. This Section states YourKit's entire liability for infringement.

LIMITED WARRANTY

THE SOFTWARE IS DELIVERED TO YOU "AS IS" AND YOURKIT MAKES NO WARRANTY AS TO ITS USE OR PERFORMANCE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOURKIT DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, WITH REGARD TO THE SOFTWARE, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHERS, WHICH VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION

DISCLAIMER OF DAMAGES

REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL YOURKIT BE LIABLE TO YOU FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR SIMILAR DAMAGES, INCLUDING ANY LOST PROFITS OR

LOST DATA ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE EVEN IF YOURKIT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN ANY CASE, YOURKIT' ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE. BECAUSE SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

TERMINATION

YourKit may terminate the right to use the Software upon notice to You (which may be delivered electronically by the same means as this Software is distributed), and You may terminate this Agreement at any time by destroying or erasing your copy of the Software. This Agreement automatically terminates if You fail to comply with its terms and conditions. Upon the termination of this Agreement, You must discontinue all use of the Software and remove the Software from your system. YourKit reserves the right at any time to cease the support of the Software and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the Software.

MARKETING

You agree to be identified as a customer of YourKit and You agree that YourKit may refer to You by name, trade name and trademark, if applicable, and may briefly describe Your business in YourKit' marketing materials and web site. You hereby grant YourKit a license to use Your name and any of Your trade names and trademarks solely in connection with the rights granted to YourKit pursuant to this marketing section.

GENERAL

This Agreement will be governed by the laws of Germany, without reference to conflict of laws principles. The rights are granted worldwide. This Agreement is the entire agreement between us and supersedes any other communications or advertising with respect to the Software and accompanying documentation. If any provision of this Agreement is held invalid, the remainder of this Agreement will continue in full force and effect. If you have any questions, please contact YourKit by email: sales@yourkit.com or support@yourkit.com. This Agreement may only be modified by written document which has been signed by both You and YourKit.