

# Trademark Sublicense



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## Sublicense Agreement The Jenkins Sublicense Agreement

Version 2.0

THIS JENKINS SUBLICENSE AGREEMENT (the "Sublicense") is between Software in the Public Interest, Inc., located in Indianapolis, Indiana (herein "SPI"), and Sublicensee, as identified on the Application Approval Statement (defined below) along with address and other contact information. This Sublicense is effective as of the Issuance Date specified on the Application Approval Statement (the "Effective Date").

### RECITALS

WHEREAS, SPI has certain trademark rights to the Jenkins mark (the "Trademark"), and SPI holds and exercises the exclusive right (a) to sublicense the use of the Trademark and goodwill to individuals and entities in order to protect the right of responsible persons to use the Trademark in connection with Authorized Goods/Services (as defined herein), and (b) to otherwise act for the benefit of the Jenkins community with respect to the Trademark; and

WHEREAS, Sublicensee desires to acquire the right from SPI to use the Trademark in connection with the Authorized Goods/Services identified in Sublicensee's sublicense application, to the extent Sublicensee's use of the Trademark is not considered "fair use." "Authorized Good/Services" means Jenkins-based goods/services. Jenkins-based goods are computer systems and software using, incorporating or derived from any version of the Jenkins core as posted by the Jenkins project at [jenkins-ci.org](#). Jenkins-based services are services that deploy, document, facilitate the use of, or enhance Jenkins-based goods. "Sublicensee Mark" is the mark Sublicensee has requested permission to use in commerce, as identified in Sublicensee's application approval statement sent to Sublicensee by SPI (the "Application Approval Statement").

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the adequacy and sufficiency of which is acknowledged, the parties agree as follows:

### TERMS OF SUBLICENSE

#### 1. Sublicense Grant.

##### 1.1 Grant.

Subject to the other terms and conditions of this Sublicense, SPI hereby grants to Sublicensee, and Sublicensee hereby accepts, a world-wide, non exclusive, perpetual, non transferable sublicense to use the Sublicensee Mark and goodwill, in the form on the Application Approval Statement (such form, the "Authorized Use"), in connection with the Authorized Goods/Services identified on the Application Approval Statement that are produced (if Authorized Goods) or provided (if Authorized Services) by or on behalf of Sublicensee.

##### 1.2 Consideration.

As due and adequate consideration for this Sublicense and for as long as this Sublicense remains in effect, Sublicensee hereby agrees to adhere to and abide by all the terms and conditions of this Sublicense including, without limitation, Section 1.3 (Consent), Section 1.4 (Non Exclusivity), Section 3.1 (Trademark Legend and Other Requirements), and Section 3.2 (Protection of Trademark). Sublicensee shall pay all taxes imposed as a result of the existence or operation of this Sublicense except any income and franchise tax imposed on SPI by any governmental entity.

##### 1.3 No Consent.

This Sublicense may not be used as evidence of SPI's consent to registration of a trademark or other registered mark with any registration authority in any jurisdiction. If any such application is or has been filed by or on behalf of Sublicensee for the Sublicensee Mark, and such registration authority finally denies such registration as being confusingly similar to the Trademark (or the equivalent doctrine in the relevant jurisdiction), then Sublicensee shall promptly, but no later than 30 calendar days' following such denial, cease and abandon all use of the Sublicensee Mark and any and all registration or application for registration thereof, and this Sublicense shall automatically terminate without need for any further action on the part of SPI. This Sublicense is not a guaranty that registration will be granted for use of the Sublicensee Mark (or any other mark incorporating the Trademark) in any jurisdiction, and SPI shall not undertake or have no obligation of any type or quality to assist Sublicensee obtain, maintain or defend any such rights Sublicensee may have or attain.

##### 1.4 Non Exclusivity.

SPI does not make any representation that SPI will not grant another sublicense to another sublicensee for use of the Trademark in a manner that is the same or similar to the Sublicensee Mark, nor shall SPI have any obligation to use or exercise any efforts, reasonable or otherwise, to determine whether a sublicense has been granted that is the same or similar to the Sublicensee Mark. Further, SPI shall have no obligation to mediate, resolve, or otherwise involve themselves or become involved in any dispute involving the Sublicensee Mark including, without limitation, disputes involving potentially conflicting uses. Sublicensee hereby agrees to indemnify and hold harmless SPI from any claims and costs arising out of such disputes involving Sublicensee relating to this Sublicense or the Sublicensee Mark, whether between Sublicensee and any other sublicensee(s) or between Sublicensee and other person(s) claiming rights in the Trademark or the Sublicensee Mark anywhere in the world.

#### 2. Term and Termination.

##### 2.1 Duration.

This Sublicense and the rights granted hereunder are perpetual and shall remain in force from the Effective Date, subject to the termination provisions herein.

## 2.2 Sublicensee Termination.

Sublicensee may terminate this Sublicense for any reason upon no more than 30 days' prior written notice, or such other time period as may be mutually agreed upon.

## 2.3 SPI Termination.

SPI may, in addition to any other rights it may have, terminate this Sublicense upon 30 days' prior written notice upon a breach by Sublicensee of any material term hereof; provided, however, that if the breach is capable of cure, Sublicensee shall have 21 days from the date of notice to cure the breach; provided further, however, that such cure period shall not apply in the sole and exclusive discretion of SPI if Sublicensee has previously breached and then cured, following notice by SPI, the same material term.

## 2.4 Automatic Termination.

This Sublicense shall terminate automatically upon the occurrence of any of the following unless otherwise agreed in advance in writing by SPI: (a) Sublicensee makes an assignment for the benefit of creditors, or if any proceeding under any bankruptcy or insolvency law is commenced by or against the Sublicensee; (b) the sale, transfer, or encumbrance of any rights granted hereunder, or the making of any levy, seizure, or attachment thereof or thereon without the consent of the SPI; (c) an acquisition, merger, or other transaction that results in a change of control of the Sublicensee; (d) Sublicensee ceases using the Sublicensee Mark in commerce; or (e) pursuant to Section 1.3. Sublicensee agrees to use reasonable efforts to notify SPI promptly, via its website, of any cessation of use by Sublicensee of the Sublicensee Mark.

## 2.5 Obligations Upon Termination.

Immediately upon termination of this Sublicense for any reason, Sublicensee shall cease and discontinue completely and permanently use of the Sublicensee Mark in commerce, except as may be permitted under the doctrine of fair use or its equivalent in any particular jurisdiction. The following provisions shall survive termination of this Sublicense for any reason: this Section 2.5 (Obligations Upon Termination); Section 4 (Limited Warranty; Disclaimers of Warranties and Liabilities); and Section 5 (Miscellaneous).

## 3. Additional Sublicensee Rights and Obligations.

### 3.1 Trademark Legend and Other Requirements.

Sublicensee is required to place the following legend conspicuously on all Authorized Goods/Services, and at least once in the area of the title page of any documentation or sales literature accompanying the Authorized Goods/Services:

"The registered trademark Jenkins® is used pursuant to a sublicense from SPI, owner of the mark on a world-wide basis."

Recognizing that there may be space limitations, any reasonable facsimile of this language may be used as a substitute where made necessary by such space limitations. In case of doubt as to the proper shortened form, exemplars should be submitted to SPI. The first reference to the Trademark standing alone (not including the Sublicensee Mark) in the documentation and advertising of the product shall also bear the circle ® symbol by the word mark Jenkins. SPI shall have a reasonable right to request copies of and to inspect products and advertising distributed by Sublicensee as an aid to enforcing its Trademark and its rights hereunder, as a part of policing the Trademark. Sublicensee shall not make any statements in its advertisements, manuals or literature that imply that its use of the Sublicensee Mark or Trademark, or a modified version of the Sublicensee Mark or the Trademark, is any type of certification or standard authorized by SPI.

### 3.2 Protection of Trademark.

Sublicensee agrees not to challenge, oppose, petition to cancel or otherwise attack or limit the Trademark (whether its validity, enforceability, scope of coverage, or otherwise) or SPI's exclusive ownership thereof anywhere in the world.

### 3.3 Authorized Uses.

Sublicensee agrees that SPI is not responsible or makes any representation about rules, regulations, laws or other restrictions or conditions of using the Sublicensee Mark in any jurisdiction. Sublicensee shall have no recourse whatsoever against SPI if Sublicensee cannot use the Trademark or the Sublicensee Mark in connection with the Authorized Use in any given territory(ies) for any reason.

## 4. LIMITED WARRANTY; DISCLAIMERS OF WARRANTIES AND LIABILITIES

4.1 SPI warrants that it owns the right to sublicense the Trademark in the United States and anywhere else that SPI owns the Trademark. SPI MAKES NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE (E.G., THAT ANY AUTHORIZED GOODS/ SERVICES TO WHICH THE SUBLICENSEE MARK IS APPLIED ARE COMPLIANT WITH ANY STANDARDS) AND ANY WARRANTY WITH RESPECT TO NON-INFRINGEMENT OF THE TRADEMARK, THE SUBLICENSEE MARK, OR OF THE AUTHORIZED GOODS/SERVICES BEARING THE TRADEMARK AND/OR SUBLICENSEE MARK.

4.2 EXCEPT FOR ANY BREACH OF THE LIMITED WARRANTY ABOVE, SPI EXPRESSLY DISCLAIMS LIABILITY FOR ANY DAMAGES INCURRED BY SUBLICENSEE AND THIRD PARTY CLAIMS OF ANY KIND THAT MAY ARISE OUT OF SUBLICENSEE'S USE OF THE TRADEMARK AND/OR THE SUBLICENSEE MARK.

4.3 Without these limitations on warranties and disclaimers, and without other limitations on SPI's obligations set forth elsewhere in this Sublicense (including, without limitation, those identified in Section 1.3 (Consent) and Section 1.4 (Non Exclusivity)), SPI would not grant the Sublicense at any royalty rate or under any circumstances. These disclaimers of liability and warranties shall be effective as to any country in which Sublicensee (or another for or on behalf of Sublicensee) manufactures, sells, licenses or performs Authorized Goods/Services using the Sublicensee Mark.

## 5. Miscellaneous.

### 5.1 No Sublicensee Rights.

Sublicense shall not have any rights against SPI.

### 5.2 Assignment.

SPI may assign or transfer its rights under this Sublicense to a subsidiary, affiliate or parent of SPI. Sublicensee may not assign or transfer this Sublicense (whether by agreement or operation of law) without the prior written consent of SPI, which consent may be given or denied in its sole discretion. This Sublicense shall in all cases be binding on the parties' successors and assigns.

### 5.3 Notices.

All notices provided for in this Sublicense shall be in writing and shall be effective when actually received by the addressees at the addresses listed in the Application Approval Statement. Either party may change its address to which notices or requests shall be directed by written notice to the other party (which may be via email at the last known email address), but until such change of address has been received any notice or request sent to the addresses listed below shall be effective upon mailing or sending (if by email) and shall be considered as having been received.

### 5.4 Severability.

If any term or provision of this Sublicense shall be held invalid under any applicable law, rule or regulation of any jurisdiction, then that provision notwithstanding, this Sublicense shall remain in full force and effect and such provision shall be deemed deleted.

### ~~5.5 Governing Law and Jurisdiction.~~

~~This Sublicense is made under and shall be governed by and construed in accordance with U.S. trademark law and the internal laws of the State of New York without regard to its conflict of law provisions. The parties hereby consent to the exclusive jurisdiction and venue of the state and federal courts located in \*\*\*\* County, \*\*\*\*, for any dispute arising under this Sublicense.~~

### 5.6 Entire Agreement.

The provisions of this Sublicense contain the entire understanding between the parties relating to the Trademark, the Sublicensee Mark and the Authorized Uses. Such provisions supersede and cancel all prior provisions, negotiations, agreements and commitments related to the subject matter of this Sublicense. This Sublicense may only be modified in a writing signed by both parties.

### 5.7 Indemnity by Sublicensee.

As an express condition of this Sublicense, Sublicensee hereby agrees to indemnify and hold SPI harmless from any and all third party claims that may arise in any manner in any country by reason of Sublicensee's use of the Sublicensee Mark on its Authorized Goods/Services and in its advertising. There are no exceptions to this indemnity, which shall include not only damages, interest, and expenses incurred but also reasonable attorney fees and the full costs of defending any such claims.

### 5.8 No Waiver.

No waiver of any breach of any provision of this Sublicense shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.