NYRKIÖ

Nyrkiö Oy – Terms Of Service

1. **Customer and Service Provider**

   1.1. "Customer" refers to the legal entity that is signing up for the Service.

   1.2. "Service Provider" refers to Nyrkiö Oy (business ID 3409758-4, Järvenpää, Finland), whose contact details and official web pages are:

   - helloworld@nyrkio.com and https://nyrkio.com

2. **Acceptance of Terms**

   2.1. These Terms of Service ("Terms") create a binding subscription agreement ("Subscription") between the Service Provider and the Customer subscribing to Nyrkiö's Continuous Benchmarking Service. Any use of the Service signifies the Customer's acceptance of these Terms in their entirety.

   2.2. The Subscription grants the Customer a right to use the Service during the Subscription period according to these Terms and in exchange for the consideration defined in the Subscription plan.

   2.3. By electing to proceed under these terms, the Customer confirms that they have independently evaluated these Terms and deemed them and the chosen Subscription tier sufficient to meet the Customer's specific security, privacy, and technical requirements.

   2.4. The person signing up or by otherwise accessing the Service confirms that they have the right to agree to these Terms, subscribe to the Service and use the Service on behalf of the Customer.

3. **Service Description**

   3.1. "Continuous Benchmarking" is the process of creating performance tests, and executing them as part of the Continuous Integration flow of a modern software development process. Then followed by subsequent data analysis of the results produced by each execution of the performance tests, and if regressions are found, marking the commit that has introduced a regression, and alerting the developer to investigate the problem. The objective of Continuous Benchmarking is to prevent performance regressions in the software product being developed.

3.2. The Service Provider provides a software-as-a-service (SaaS) platform designed to facilitate various steps of a software developer's Continuous Benchmarking process.

3.3. The Service consists of two main components: the "Runner Service" and the "Change Detection Service". The Runner Service provides optimized servers for executing performance tests as third-party runners integrated with the Customer's GitHub workflows. The Change Detection Service analyzes performance test results using a change point detection algorithm and displays the analysis on the Service Provider's platform. The term "Service" refers to the Service Provider's Continuous Benchmarking Service as a whole.

3.4. The Service does not cover, offer tools for or otherwise support all aspects of software performance testing. Nor is the Service Provider claiming to be an authority on what activities specifically are or should be part of Continuous Benchmarking.

3.5. The Runner Service uses optimized server configurations to minimize noise and spikes in the performance test results. The Runner Service integrates with and is provided through GitHub, where the Service Provider acts as a third-party runner. On the other hand, the servers are not configured to be high performance or better performance or price-performance than other third party runners. For the sake of clarity, the Service Provider is not affiliated with GitHub.

3.6. The Service is provided in following steps:

3.6.1. To use the Runner Service, the Customer must have a valid Subscription. This can be either a pre-paid monthly or annual subscription or a metered usage based subscription, which is invoiced at the end of each month.

3.6.2. The Customer must have installed the Runner Service into their GitHub organization and select the repositories that will be using the runners from the Service Provider. The act of installing the Runner Service and explicitly granting necessary permissions to it is what enables the Service Provider to connect to GitHub APIs and register the optimized third party runners so that they become available for the Customer. The Customer can choose to grant each of the permissions, or not, and can at any time also remove previously granted permissions - using the Settings pages in GitHub.

3.6.3.   To execute performance tests using the runner servers provided by the Service Provider, the Customer shall reference a suitable runner type in their GitHub Actions configuration file. This is explained in more detail in GitHub's own documentation and is subject to change.

3.6.4.   Service Provider offers, and has listed on its web page, different sizes and also different other configurations of the runner servers. Depending on the choice of server type, the cost per hour will be different. Similarly for the pre-paid monthly or annual subscriptions, they will consume the monthly quota of cpu-hours at different rates.

3.6.5.   The Customer's performance tests will then be executed by GitHub Actions just like they would normally be.

3.6.6.   At the end of each test, the Customer may use HTTP API calls (or other integrations the Service Provider may offer) to send the results to the Change Detection Service.

3.6.7.   It is possible to use only the Runner Service without Change Detection Service, or also to use Change Detection without using the Service Provider's Runners.

3.6.8.   The Service Provider analyzes this data using a change detection algorithm. The algorithm detects regressions and improvements.

3.6.9.   The Service Provider displays the analysis results to the Customer in a graphical format at the platform designed for performance data analysis.

3.6.10.   The Service Provider may in the future add more observability tools to this process, in addition to the Change Detection Service.

3.7.   The Service detects all performance changes. The Customer acknowledges that a positive change (e.g., code becoming faster) may also trigger an alert or a failed test status in GitHub, as any unexpected change may indicate a bug.

3.8.   The Service Description may occasionally change as the Service Provider develops the Service. Please see the Service Provider's web page for more information concerning the Service.

4. Subscription Tiers

4.1. The Service Provider offers a "Business" subscription tier and an "Enterprise" subscription tier. In addition, there is a consumption based, "Metered" tier available. These general terms and conditions apply to all types of plans/tiers.

4.2. In addition, these Terms apply also to free trials or a Free tier/plan, if offered by the Service Provider.

5. Customer's Code and Data

5.1. Access to Source Code. The Customer acknowledges that copies of the Customer's source code and binaries ("Benchmark Code") are transferred to the Service Provider's servers for execution of performance tests. The Customer grants the Service Provider a right to facilitate the execution and analysis of the Benchmark Code.

5.2. The Service Provider treats Benchmark Code as confidential and is prohibited from modifying the code.

5.3. For the sake of clarity, the Service Provider operates on an ephemeral environment. All resources used for test execution, including any code profiling or analysis, are provisioned strictly for the duration of the task and are automatically destroyed upon completion to ensure no residual data remains. The Benchmark Code is never transferred outside the runner servers.

5.4. In addition, The Customer grants the Service Provider rights to use any data provided by the Customer to provide the Service to the Customer.

5.5. The Service Provider may use the performance data, results of the Service, and any other data provided by the Customer or generated during the use of the Service for general service improvement purposes.

6. Customer's General Obligations

6.1. The Customer commits to using the Service in accordance with these Terms and any currently applicable guidelines (or other guidance provided by the Service Provider) related to the Service and in line with sound business practices.

6.2. The Customer agrees to pay special attention to respecting any third-party rights in relation to competitive testing and benchmarking.

6.3. Any abuse of the system is not allowed, and if necessary, the Service Provider may give binding instructions concerning the technical aspects of the use of the Service.

6.4. The up-to-date Guidelines, such as Getting Started and API -documents, can be found online (see the Service Provider's web page). The Service Providers may make updates and changes to the guidelines and other relevant material from time to time.

6.5. Data Storage and Backups. The Service is not intended for the primary storage of code, performance data, or change points. The Customer is solely responsible for determining which data is critical and for maintaining independent backups of such information.

7. Pricing, Billing Mechanisms and Payment terms

7.1. Pricing and Billing Structure. Subscription price and content are determined based on the plan selected by the Customer during the signing-up process. The plans are described online (see Service Provider's webpage). Plans are available under different billing structures:

7.1.1. Monthly or Annual Subscriptions: A fixed recurring fee charged at the start of each billing cycle for access to the Service or

7.1.2. Metered usage fees: Variable costs incurred based on actual usage. This usage is measured at minute granularity as reported by the underlying infrastrucure provider. These costs are aggregated and typically billed at the end of the cycle. However, the Service Provider reserves the right to automatically charge the Customer's payment method for the amount accrued to date, without waiting to the end of the billing cycle.

7.2. The accepted payment methods are presented online (see the Service Provider's webpage) and may change occasionally.

7.3. The Customer is obliged to follow payment terms presented during the signing-up process. If the Customer chooses to pay by a credit card, the Customer agrees to authorize charges to their designated credit card for the Services provided (see Sections 7.1 and 7.2).

7.4. If the charge fails or the Customer leaves the invoice unpaid, the Service provider may terminate the Subscription according to Section 14.3.

7.5. According to the Finnish Interest Act, late payment fees will incur interest (currently 12,5 %). Prices are stated excluding VAT.

7.6. Resource Limits and Safety Stops. The Customer may set monthly budget limits and maximum compute hours for their account.

8. Acceptable Use and Amount of Data

8.1. Cloud Resource Usage. The Service is intended strictly for performance testing, specifically continuous benchmarking. The Customer shall not use the cloud environment for any other purposes.

8.2. Automatic Termination of Processes. Instances or processes may terminate automatically due to various reasons such as infrastructure automation, resource limits, maintenance, or hardware failures. In addition, the Service Provider reserves the right to automatically terminate any process that is flagged as potentially malicious or non-compliant with these terms.

8.3. The subscription plan may limit the amount of stored and processed data. If these limitations are met, the Service Provider deletes the oldest data first.

9. Service Level and Limitation of liability

9.1. The Service Provider aims for an average server startup time of approximately 10 minutes from the request. Please note that tests may remain in queue during service interruptions or hardware failures.

9.2. Support services are provided according to the Subscription plan.

9.3. The Service Provider maintains commercially reasonable efforts and industry-standard diligence in managing infrastructure, including regular backups and maintenance. However, the Service is provided "as is" without any warranties, guarantees, or representations, whether expressed or implied. The Service Provider does not warrant or guarantee the accuracy, reliability, availability, completeness, or suitability of the Service for any particular purpose.

9.4. However, if the Service is unavailable for a continuous period exceeding twenty-four (24) hours, the Customer is entitled to a credit applied to the next billing cycle. The credit is calculated on a pro-rata basis as the number of full twenty-four (24) hour periods of unavailability divided by thirty (30), multiplied by the Customer's monthly subscription fee. Service credits are issued automatically and represent the Customer's sole and exclusive remedy for Service unavailability.

9.5. For Customers on the Enterprise subscription tier, the Service Provider's total aggregate liability for direct damages arising out of or in connection with the Service shall not exceed the fees paid by the Customer during the three (3) month period immediately preceding the event giving rise to the claim. No claim may be brought where the total damages are less than EUR 500. For Customers on any other subscription tier, the Service Provider's liability is excluded to the fullest extent permitted by applicable law. Neither party shall

be liable for any indirect, incidental, consequential, or special damages, including but not limited to loss of profits, revenue, data, or business opportunities.

9.6. In the event that an individual test execution fails to produce, upload, or store results due to a technical error, the Customer is responsible for initiating any necessary re-executions or re-computations of the specific test. Unless otherwise agreed, in writing, or unilaterally by the Service Provider, the cost of the re-execution falls on the Customer.

9.7. The Customer acknowledges and accepts that in the rare and exceptional event of a major database failure or similar situation, historical test result data may be permanently lost. In such instances, the Service Provider shall not be liable for the loss of data. The Customer may at any time download their own copies or backups of any critical data they wish to preserve long-term.

9.8. The Customer acknowledges and agrees that the Customer uses the Service, and the results from the Service, at its own risk. The Service Provider shall not be held liable for any damages or losses arising from the use or inability to use the Service, the Customer's interpretation of the results computed by the Service, or the Customer's actions taken based on interpreting the results.

9.9. The accuracy of the Change Detection Service depends significantly on various factors, such as, but not limited to, the quality of the test result data. The Customer is responsible for the content and functionality of the code or scripts submitted for execution. If Customer executed the tests on some other runners or infrastructure, the Customer is solely responsible for the quality and accuracy of that test result data.

9.10. In addition, the Customer acknowledges and agrees that it is in the nature of the Service and a normal function of the Service not to find all the regression results and on the other hand also alert for false positive results.

9.11. The Service Provider is not liable for any possible breaches or violations committed by the Customer in relation to the Service. The Customer is solely responsible for the correctness and legality of the data they publish.

10. Account Creation, Personal Data and Privacy

10.1. The Customer must provide accurate information when signing up and creating an account.

10.2. The Service Provider collects contact and payment information, which includes personal data. The Service Provider may disclose the personal data to its contractors when necessary to provide the Service (e.g. for invoicing).

10.3. The Service Provider follows the EU's General Data Protection Regulation and expects the same from its contractors. The Service Provider's privacy policy can be found on the Service Provider's web page or upon request from the Service Provider.

10.4. The Customer is encouraged to use only anonymized, obfuscated, generated or simulated data for testing. In addition, the Customer must ensure that the code or any other data it provides for the Service Provider while using the Service does not include any personal data. Thus, the Service Provider does not process any personal data on behalf of the Customer.

11. Security

11.1. The Service Provider takes reasonable measures to ensure the security and safety of the Customer's user account, code copies and data within the Service.

11.2. Customers of the Enterprise subscription may opt to deploy the Runner Service in a dedicated VPC, or in their own VPC. Custom onsite solutions are also available, possibly at additional cost. Therefore, the Service Provider strongly recommends the Enterprise Subscription for Customers requiring a higher degree of confidentiality or those with internal policies preventing code transfer to third-party environments.

11.3. The Customer is responsible for all activities under its account. The Customer must choose a strong, unique password and report any unauthorized use or breaches immediately.

11.4. The Customer acknowledges that any data such as test names or test results (values) provided as a result of the Service may reveal confidential information. It is always the Customer's decision to transfer or publish any of that data, and the Customer carries all the responsibilities in relation to the transferring or publishing.

12. Reference

12.1. The Service may include a feature allowing Customers to make their results available online. If the Customer decides to use this feature, the Service Provider too may use the published results together with the company names and logos of the Customer elsewhere without additional permission.

12.2. In case the Customer decides to publish their results, the Customer is obliged to mention the Service Provider as the entity that has offered the Service.

13. Intellectual Property Rights

13.1. The Service Provider retains all rights and interests in the intellectual property associated with the Service. The Service is protected by copyright laws and other intellectual property rights.

13.2. The Customer has no right to sell or otherwise distribute the Service or parts of it for any other party under the name or trademarks of the Service Provider or in any other way directly or indirectly implicate that the Service Provider would be involved in or co-operate with the Customer.

13.3. The Customer warrants that it has the right to reproduce the code submitted to the Service and to make it available to the Service Provider for the purposes of the Service. The Customer shall be liable for any third-party intellectual property infringement claims and shall indemnify and hold the Service Provider harmless against such claims, including on behalf of the Service Provider.

14. Term and Termination

14.1. The Customer may end the Service freely during the Subscription period. The ending date is always the last date of the Customer's then-current Subscription. Thus, the ending date depends on the length of the Subscription chosen by the Customer.

14.2. The Service Provider may terminate the Subscription for any reason and if so, it will notify the Customer about this decision by email at least one (1) month before the termination takes effect.

14.3. If the Service Provider reasonably suspects or observes that the Customer is not adhering to these Terms or its use is otherwise violating these Terms or any applicable laws, the Service Provider reserves the right to suspend or terminate the Customer's account and access to the Service and terminate the Subscription without prior notice.

14.4. The Service Provider is not obligated to retain any of the Customer's data after the Subscription is terminated.

15. Modifications to the Terms

15.1. The Service Provider reserves the right to update or modify these Terms at any time. In addition, the Service Provider may change the price or content of the Subscription.

15.2. Any changes will become effective upon the due date of the payment following the change.

15.3. In addition to the previous subsection, the Service Provider reserves the right to make mandatory changes also during the Subscription. These changes and their effective dates, are communicated to each Customer by email.

16. Dispute Resolution and Jurisdiction

16.1. These Terms and any disputes arising from them shall be governed by and construed in accordance with the laws of Finland.

16.2. Any dispute, controversy, or claim arising out of or relating to these Terms or the breach, termination, or validity thereof shall be finally settled by arbitration in accordance with the Rules for Expedited Arbitration of the Finland Chamber of Commerce. The seat of arbitration shall be Helsinki, Finland. The language of the arbitration shall be English.

If You have any questions or concerns regarding these Terms or our Service, please contact us at helloworld@nyrkio.com.