



END USER SOFTWARE LICENSE AND MAINTENANCE AGREEMENT VERSION 2024.2 (GLOBAL BDS)

IMPORTANT INFORMATION - READ CAREFULLY

UNLESS YOU (THE "CUSTOMER") HAVE OBTAINED PERMISSION TO USE THE LICENSED PRODUCT UNDER A SEPARATE, DULY SIGNED LICENSE AGREEMENT OR AN EVALUATION LICENSE WITH BLACK DUCK OR AN AUTHORIZED DISTRIBUTOR, THE ACCOMPANYING LICENSED PRODUCT IS PROVIDED UNDER THE FOLLOWING TERMS AND CONDITIONS AND ANY SUPPLEMENTAL TERMS REFERENCED BELOW AND YOUR RIGHT TO USE THE LICENSED PRODUCT IS CONDITIONED UPON YOUR ACCEPTANCE OF THIS AGREEMENT (THE "EULM").

DEPENDING ON WHICH COUNTRY YOU TRANSACT BUSINESS WITH BLACK DUCK FROM, OTHER VERSIONS OF THIS EULM MAY BE APPLICABLE. FOR PRODUCTS USED OR SERVICES PROVIDED IN A COUNTRY IN THE AMERICAS, ISRAEL OR AFRICA OR FOR UNITED STATES DOLLAR TRANSACTIONS IN RUSSIA OR CHINA MAINLAND, THE MOST CURRENT VERSION IDENTIFIED FOR "AMERICAS AFRICA ISRAEL" SHALL APPLY. FOR PRODUCTS USED OR SERVICES PROVIDED IN TAIWAN, THE MOST CURRENT VERSION IDENTIFIED FOR "TAIWAN" SHALL APPLY. FOR PRODUCTS USED OR SERVICES PROVIDED IN JAPAN, THE MOST CURRENT VERSION IDENTIFIED FOR "JAPAN" SHALL APPLY. FOR PRODUCTS USED OR SERVICES PROVIDED IN KOREA, THE MOST CURRENT VERSION IDENTIFIED FOR "GLOBAL BDS" SHALL APPLY. FOR PRODUCTS USED OR SERVICES PROVIDED IN CHINA MAINLAND IN RENMINBI, THE MOST CURRENT VERSION IDENTIFIED AS "CHINA MAINLAND" SHALL APPLY. FOR PRODUCTS USED OR SERVICES PROVIDED IN ANY COUNTRY OTHER THAN THOSE IDENTIFIED ABOVE, THE MOST CURRENT VERSION IDENTIFIED FOR "GLOBAL BDS" SHALL APPLY. PLEASE REFER TO SECTION 8.14 BELOW FOR MORE INFORMATION.

IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS AND YOU DO NOT HAVE A SEPARATE LICENSE AGREEMENT AS REFERENCED ABOVE, YOU MAY NOT USE OR COPY THE LICENSED PRODUCT AND YOU MUST DELETE ANY COPIES OF IT FROM YOUR SYSTEMS.

TERMS AND CONDITIONS

1. **SCOPE AND KEY TERMS.** The Licensed Product is the proprietary information of Black Duck or its suppliers who retain exclusive title to their intellectual property rights in the Licensed Product. Customer's rights to the Licensed Product are limited to those expressly granted below and Black Duck reserves all rights not expressly granted in this Agreement.

1.1 **Purchasing Agreements.** The terms and conditions in this End User Software License and Maintenance Agreement and the Purchasing Agreement(s) accepted by both Customer and Black Duck contain all terms and conditions applicable to Customer's use of the Licensed Product (collectively, the "Agreement"). A "Purchasing Agreement" is a document that references this Agreement and identifies the specific Licensed Product and rights being licensed hereunder, including the applicable License Type, quantity, license term, Territory, Code Base, or other license constraint, and the fees and payment terms for the Licensed Product licenses (the "License Transaction"). An Affiliate of Customer may purchase licenses to the Licensed Product by executing a Purchasing Agreement referencing this Agreement provided that this Agreement governs all such licenses and such Affiliate complies with all Customer obligations referenced in this Agreement and the Purchasing Agreement. Customer agrees that it shall be responsible for the acts and omissions of its Affiliates with respect to any Licensed Product licensed under an applicable Purchasing

Agreement. Customer agrees that Customer purchases under this Agreement and any Purchasing Agreement incorporated herein by reference are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Black Duck regarding future functionality or features.

1.2 "Affiliate" of a party to this Agreement means another person or entity that, directly or indirectly, controls, is controlled by or is under common control with such party. For the purposes of this definition, "control" means owning a beneficial interest (either directly or indirectly) in more than 50% of the outstanding shares or securities or other ownership interest entitled to vote for the election of directors or similar managing authority. An entity shall be deemed to be an Affiliate under this Agreement for only so long as such requisite conditions are maintained.

1.3 "Authorized User" means a Party's, and its Affiliate's employees or authorized contractors: (a) whose duties require access to or use of the Licensed Product or Confidential Information for the benefit of that party; and (b) whose legal obligations to protect confidential and proprietary information require protection of the Licensed Product and Confidential Information to at least the same extent as set out in this Agreement.

1.4 "Code Base" means those portions of Party's

software identified in an applicable Purchasing Agreement by reference to the name of the product, project or package.

1.5 **“Documentation”** means the user documentation, in written, electronic or other format, which describes the Licensed Product and its operation and which Black Duck makes generally available to its licensed customers for use with the Licensed Product.

1.6 **“License Type”** means the usage rights purchased under the applicable Purchasing Agreement. License Types offered by Black Duck from time to time can be found at: <https://www.blackduck.com/company/legal/license-types.html>.

1.7 **“Licensed Product”** means the specific products (including hosted products designated as “Subscription Services” in the Purchasing Agreement) provided by Black Duck and listed in a Purchasing Agreement and (a) all related Documentation, and (b) all updates (including Licensed Product Updates), modifications and maintenance services provided to Customer.

1.8 **“Licensed Product Updates”** means features and functionalities of Licensed Products which may be updated from time to time, including but not limited to updated protocols for Defensics; updated checkers for Coverity; updated definitions of, and metadata from open source and vulnerabilities related to Open Source Software for applicable Black Duck labeled products; and updated vulnerability definitions for Seeker.

1.9 **“Plug-In”** means additional functionality or features available to an end user through a standalone component used in conjunction with a Licensed Product.

1.10 **“Territory”** means the specific country(ies) or geographical areas identified in the applicable Purchasing Agreement to which Customer’s usage of the Licensed Product is limited.

1.11 **“Hosting Services”** shall have the meaning set forth in the Hosting Services Addendum.

## 2. LICENSE.

2.1 **License Grant.** Subject to Customer’s compliance with this Agreement, Black Duck grants Customer a nonexclusive, non-transferable license, solely during the license term and in the Territory set out in the applicable Purchasing Agreement, to (a) use and operate the Licensed Product to the extent permitted by Customer’s payment of applicable fees, solely for the purpose of developing, analyzing, building or testing the Code Base, or other license constraint identified in such Purchasing Agreement, and (b) copy the Licensed Product as reasonably necessary to exercise the license rights granted in subsection (a), including making a reasonable number of copies for backup and archival purposes.

### 2.2 **Transaction Taxes; Withholding Taxes.**

a. Fees payable to Black Duck under this Agreement

are exclusive of any transaction taxes (including sales, use, consumption, value-added and similar transaction based taxes) which may be imposed, in accordance with applicable laws, as a result of the licenses granted by Black Duck to Customer. Customer agrees to bear or reimburse Black Duck for all such transaction taxes. Taxes and duties are based on where the Licensed Product is electronically delivered and where Services are delivered. Applicable sales tax will be included on invoices for Licensed Products and / or Services. Invoices for Licensed Products and / or Services are issued upon Customer execution of the applicable Purchasing Agreement.

b. If an amount payable hereunder is subject to deduction of any legally imposed income withholding tax, then: (i) Customer may deduct and withhold from the total amount due Black Duck an amount not exceeding the amount of withholding permitted under the domestic laws of the applicable jurisdiction or any applicable income tax treaty; and (ii) Customer shall remit such withheld sums to the applicable taxing authority on behalf of Black Duck. Customer shall obtain official receipts issued by the appropriate taxing authority or other official documentation evidencing payment thereof and shall provide such documentation to Black Duck to establish that any such withholding taxes had been paid within a reasonable period of time, but in any event within sixty (60) days after the payment made to Black Duck from which such withholding tax payment was withheld. Customer shall provide reasonable cooperation to Black Duck in obtaining tax exemption for withholding tax under Customer’s local country procedures and/or attempting to recover any taxes withheld in excess of the amount required by law. Customer shall have no recourse against Black Duck for withholding taxes, including, but not limited to, primary payment or reimbursement, unless Customer shall have deducted such withholding taxes paid to the relevant authorities at the time of remittance and provided Black Duck with such official documentation of Customer’s payment of such taxes to the applicable authorities in accordance with this Section.

2.3 **Conditions.** The rights granted to Customer above are conditional upon Customer’s compliance with the following obligations:

a. Customer will not copy Black Duck’s Licensed Products or Documentation, in whole or in part, except as expressly authorized in this Agreement.

b. Customer will not transfer, assign, lease, lend or rent Black Duck’s Licensed Products or Documentation, use them to provide service bureau, time-sharing or other services, or otherwise provide or make the functionality thereof available to third parties except as expressly authorized in this Agreement.

c. Customer will not disassemble, decompile, reverse engineer, modify or create derivative works of the Licensed Products or Documentation nor permit any third party to do



so, except to the extent such restrictions are prohibited by applicable mandatory local law.

d. Customer will not allow access or use of the Licensed Products by, and will not display the Licensed Products user interfaces to anyone other than the Authorized Users without Black Duck's prior written consent.

e. Customer will not disclose to any third party any comparison of the results of operation of the Licensed Products with other products.

f. Customer will not delete or in any manner alter the copyright, trademark or other proprietary rights notices appearing on the Licensed Product as delivered by Black Duck. Customer will reproduce such notices on all copies Customer is authorized to make of the Licensed Product.

g. Customer's use of the Licensed Product is time-limited to the licensed term set out in the applicable Purchasing Agreement, and such use and access may be monitored and regulated through a license management tool (the "License Manager") and a Licensed Product Updates tool. The License Manager will report such data (collectively, "License Manager Data") to Black Duck. Customer will not install or use the Licensed Product in a manner that circumvents or interferes with the operation of the License Manager, the Licensed Product Updates tool or any other technological measure that controls access to the Licensed Product. Some configurations may require the License Manager or the Licensed Product Updates tool to be installed only on designated servers. For those configurations, Black Duck will support two changes to the designated servers during any twelve-month period upon prior written notice.

h. For telemetry data, Black Duck's Use and Compliance Data Policy is posted at: <https://www.blackduck.com/company/legal/use-compliance-data-policy.html>.

**2.4. Applicable Fees, Taxes and Delivery.** All applicable fees are owed upon the effective date of the Purchasing Agreement, are non-refundable upon such date, and are payable in accordance with the payment schedule set out in the Purchasing Agreement. All past due amounts will incur interest at a rate of 1.5% per month or the maximum rate permitted by law, whichever is less. If Customer does not pay an amount by the scheduled due date, Black Duck will have the right to withhold the delivery of the license keys and / or terminate the Purchase Agreement and accelerate the due date of all remaining payments. In the foregoing event, Customer will owe the entire outstanding balance as soon as Customer receives written notice from Black Duck that payment is overdue. Fees payable are net amounts, without deduction for taxes or duties. Customer will pay taxes and duties (including but not limited to sales, use and withholding taxes) associated with its purchases under the Purchasing Agreement, except for Black Duck's net income taxes. Taxes and duties are based on where the Licensed Products are electronically delivered and where Services are delivered.

Applicable sales tax will be included on invoices for Licensed Products and / or Services. Invoices for Licensed Products and /or Services are issued upon Customer's execution of the Purchasing Agreement. Where practical, Black Duck will deliver the Licensed Products electronically and delivery will be deemed to occur upon the Licensed Products being available for electronic download. Delivery of any tangible media will be made F.O.B. point of shipment.

**2.5. Offsite Contractors.** Customer may allow Authorized Users that are offsite contractors to access and use the Licensed Products solely for Customer's benefit in accordance with this Agreement provided that: (a) Customer is responsible for the acts and omissions of its offsite contractors with respect to any Licensed Product licensed under this Agreement; (b) Customer ensures that the Licensed Products are completely and irretrievably uninstalled from any offsite contractor's equipment and premises (except for those modules necessary to view results and other data generated from using the Licensed Product) immediately upon completion of the offsite contractor's services requiring use of the Licensed Products; and (c) Customer has a written agreement in place with the offsite contractor requiring that the offsite contractor protect the Licensed Product, Confidential Information and intellectual property at least to the same extent as set forth in this Agreement. Customer acknowledges that Black Duck has no warranty or other obligations to Customer's offsite contractors.

**2.6. Licensed Product Updates.** Customers with licenses to Licensed Products are granted the right to use, as part of the Licensed Products, such Licensed Product Updates as and when they are made generally available to Black Duck's end user customers who have purchased such maintenance/support offering and for such term as indicated in the applicable Purchasing Agreement. This Agreement does not otherwise permit Customer to obtain and use Licensed Product Updates.

**2.7. Special Terms for Third Party Software.** The Licensed Product may contain open source or community source software ("Open Source Software") provided under separate license terms (the "Open Source License Terms"). The applicable Open Source License Terms are identified in a directory named "Licenses" provided with the delivery of the Licensed Product. Customer's use of the Open Source Software in conjunction with the Licensed Product in a manner consistent with the terms of this Agreement is permitted, however, Customer may have broader rights under the applicable Open Source License Terms and nothing in this Agreement is intended to impose further restrictions on Customer's use of the Open Source Software. Open Source Software is provided "AS-IS", WITHOUT ANY WARRANTY OF ANY KIND, AND BLACK DUCK FURTHER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO OPEN SOURCE SOFTWARE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A

PARTICULAR PURPOSE. NEITHER BLACK DUCK NOR THE LICENSORS OF OPEN SOURCE SOFTWARE SHALL HAVE ANY LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OR DISTRIBUTION OF THE OPEN SOURCE SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Copyrights to Open Source Software are held by the copyright holders indicated in the copyright notices in the corresponding source files.

2.8. **Feedback and Analytics.** Customer may choose to, but is not required to, provide suggestions, data, feedback and other information to Black Duck, its subcontractors or authorized distributors regarding possible improvements in the operation, functionality or use of Black Duck's Licensed Products ("**Feedback**"). Customer hereby grants to Black Duck, its subcontractors and authorized distributors, a non-exclusive, perpetual, irrevocable, royalty-free and fully paid up license to use, copy, display, modify, create derivative works of and distribute any Feedback, and to make, have made, use, lease, sell, offer for sale, import, export or otherwise transfer any Black Duck product offering covered by any intellectual property rights in such Feedback solely for the purpose of (i) improving the operation, functionality or use of its existing and future product offerings and commercializing such offerings; and (ii) publishing aggregated statistics about software quality, provided that no data in any such publication can be used to specifically identify Customer or Customer's software code.

2.9. **Keys and Access.** Black Duck agrees to provide Customer those authorization keys and/or passwords, which are necessary to permit Customer to gain access to the Licensed Product made available to Customer for the Licensed Product which has been properly licensed to Customer in accordance with this Agreement. Notwithstanding anything to the contrary in this Agreement, Customer hereby acknowledges that Customer shall have no right or license to any software made available to Customer which has not been properly licensed to Customer pursuant to this Agreement or the applicable Purchasing Agreement, or that has been included therein solely as a matter of convenience, and that Customer agrees not to attempt to gain access to, or permit any third party to attempt to gain access to, such software.

2.10. **Plug-Ins.** For Customers with valid licenses to the Licensed Products, Customer is hereby granted the right to use, in conjunction with the Licensed Products, Plug-Ins made available for use with the Licensed Products. No additional Purchasing Agreements are required in connection with the use of such Plug-Ins. Customer's right to use such Plug-Ins is provided under the terms of this Agreement, including the license grant set forth in Section 2.1 of this Agreement. Any obligation of Black Duck under Sections 4.1 and 5.1 hereof,

and its obligations to provide Maintenance Services regarding Plug-Ins, shall apply only to the extent that such Plug-In has been developed by Black Duck or implemented for Customer by Black Duck and shall not extend to any conditions arising from Customer's environment or changes made by any third party programs that such Plug-In is used in conjunction with ("Modified Plug-Ins"). ALL MODIFIED PLUG-INS ARE PROVIDED AS-IS", WITHOUT ANY WARRANTY OF ANY KIND. BLACK DUCK AND ITS PARTNERS, SUPPLIERS AND DISTRIBUTORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO SUCH MODIFIED PLUG-IN, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. BLACK DUCK AND ITS PARTNERS, SUPPLIERS AND DISTRIBUTORS DISCLAIM ALL LIABILITY UNDER THIS AGREEMENT WITH RESPECT TO ANY MODIFIED PLUG-IN.

### 3. CONFIDENTIALITY.

3.1. **Confidential Information.** "**Confidential Information**" means: (a) each party's software products, in byte code or source code form; (b) any authorization keys and passwords delivered in order to operate such products; (c) Documentation, product road maps and development plans, and product pricing information; (d) any business, technical or training information of a party that, if disclosed in writing, is marked "confidential" or "proprietary" at the time of disclosure, or, if disclosed orally, is identified as "confidential" or "proprietary" at the time of disclosure, and is summarized in a writing sent by the disclosing party to the other party within thirty (30) days of such disclosure or, without a marking requirement where the receiving party knows or reasonably should understand the disclosure to be confidential or trade secret information; and (e) Customer specific terms and pricing set forth in any quotation, Purchasing Agreement or this Agreement.

3.2. **Exclusions.** Confidential Information does not include information that: (a) is or becomes generally known or available to the public through no act or omission of the party receiving Confidential Information ("**Receiving Party**"); (b) is rightfully known by the Receiving Party prior to receiving such information from the other party ("**Disclosing Party**") and without restriction as to use or disclosure; (c) is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information and without breach of this Agreement; or (d) is rightfully received by the Receiving Party from a third party without restriction on use or disclosure. The existence of this Agreement and the nature of the business relationship between the parties are not considered Confidential Information.

3.3. **Use and Disclosure Restrictions.** Receiving Party will not use the Disclosing Party's Confidential Information except as necessary to exercise the rights granted under this Agreement or to evaluate opportunities to license additional Licensed Products pursuant to this Agreement, and will not disclose such Confidential Information to any person or entity except



to its Authorized Users. Without limiting the generality of the foregoing, Customer agrees that it will not post the Licensed Product, the Documentation, or any screenshots of the Licensed Product or results generated by the Licensed Product, on any network that is accessible by anyone other than the Authorized Users. The foregoing obligations will not restrict either party from disclosing Confidential Information of the other party: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to contest such order or requirement; and (b) on a confidential basis to its legal or financial advisors that need to know in order to provide business advice to such party. In addition, each party may disclose the terms and conditions of this Agreement: (i) as required under applicable securities regulations; and (ii) on a confidential basis to present or future providers of venture capital and potential private investors in or acquirers of such party.

**3.4. Right of Equitable Relief.** The parties acknowledge that violations of the obligations of this Agreement may cause the non-breaching party irreparable injury for which an adequate remedy at law may not be available. Therefore, the non-breaching party shall be entitled to seek all remedies that may be available under equity, including immediate injunctive relief, in addition to whatever remedies may be available at law.

#### 4. WARRANTY.

**4.1. Limited Licensed Product Warranty.** Subject to the remainder of this [Section 4](#), for a period of ninety (90) days from earlier of the date that the Licensed Product is first made available to Customer for download or Customer's first receipt of the Licensed Product pursuant to an Purchasing Agreement, Black Duck represents and warrants that, (a) the media on which the Licensed Product is delivered will be free of defects in material and workmanship, (b) the Licensed Product will substantially conform to the functional specifications set forth in the applicable Documentation, and (c) it has used commercially available virus-detection software to scan the Licensed Product, and it has not knowingly introduced into the Licensed Product any virus, Trojan horse, trap door, or other code that is intended to cause harm to the Code Base or other systems.

**4.2. Sole Remedy.** If, during the warranty period set forth in [Section 4.1](#), Black Duck receives written notice from Customer of non-conformity of the Licensed Product with the warranty set forth in [Section 4.1](#), Black Duck will, as Customer's sole and exclusive remedy and Black Duck's entire liability for such non-conformity: (a) deliver a correction or workaround for the non-conformity; or (b) if Black Duck is unable to deliver such a correction or workaround, provide written notice to Customer and, upon Customer's return or confirmed destruction of all copies of the non-conforming Licensed Product to Black Duck, refund the license fees paid by Customer for such non-conforming Licensed Product. THE FOREGOING STATES

CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR WARRANTY CLAIMS RELATED TO THE LICENSED PRODUCT.

**4.3. Disclaimer.** Black Duck does not warrant that the Licensed Product will meet Customer's requirements, that the Licensed Product will operate in combinations with equipment, devices, software or systems provided by persons other than Black Duck, that the operation of the Licensed Product will be error-free or uninterrupted, or that the Licensed Product will discover all open source or third-party code, potential license conflicts, errors and vulnerabilities that may reside in the Code Base. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BLACK DUCK AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THOSE RELATED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY OR COMPLETENESS OF RESULTS, CONFORMANCE WITH DESCRIPTION, AND NON-INFRINGEMENT. BLACK DUCK AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, CONDITIONS AND REPRESENTATIONS ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE.

#### 5. INDEMNIFICATION.

**5.1. Infringement Indemnity.** Black Duck will defend or settle any action brought against Customer by paying all costs, damages and reasonable attorneys' fees that are finally awarded against Customer to the extent those amounts are based upon a third party claim that the Licensed Product, as provided by Black Duck to Customer under this Agreement and used in accordance with this Agreement, directly infringes any U.S. patent, or copyright or misappropriates any U.S. trade secret. However, Black Duck's obligations under this [Section 5](#) are subject to the following conditions: (a) Customer must promptly notify Black Duck in writing of the action; (b) Customer grants Black Duck sole control of the defense and settlement of the action; and (c) Customer must provide Black Duck, with all assistance, information and authority reasonably requested for the defense and settlement of the action. Black Duck will not be responsible for any compromise made or expense incurred without its consent. If use of any of the Licensed Product is, or in Black Duck's reasonable opinion is likely to be, the subject of an action specified in this [Section 5.1](#), Black Duck may, at its sole option and at no additional charge: (i) procure for Customer the right to continue using such Licensed Product; (ii) replace or modify such Licensed Product so that it is non-infringing and substantially equivalent in function to the original Licensed Product; or (iii) if options (i) and (ii) above are not accomplished despite Black Duck's reasonable efforts, terminate Customer's rights and Black Duck's obligations hereunder with respect to such Licensed Product and refund the unamortized portion of the license fees paid for such Licensed Product, based upon a straight-line depreciation over the term of the license commencing as of the date Customer received such Licensed Product.



5.2. **Exclusions.** Notwithstanding the terms of [Section 5.1](#), Black Duck will have no liability for any infringement or misappropriation action or claim of any kind to the extent that it results from: (a) modifications to the Licensed Product made by a party other than Black Duck, if the infringement or misappropriation would not have occurred but for such modifications; (b) the combination, operation or use of the Licensed Product with equipment, devices, software, systems or data not supplied by Black Duck, if the infringement or misappropriation would not have occurred but for such combination, operation or use; (c) Customer's failure to use the updated or modified Licensed Product provided by Black Duck to avoid infringement or misappropriation; (d) Black Duck's compliance with any designs or specifications provided by Customer; and/or (e) Customer's use of the Licensed Product other than as authorized by this Agreement.

5.3. **Sole Remedy.** THE PROVISIONS OF THIS [SECTION 5](#) SET FORTH BLACK DUCK'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND. EXCEPT AS SET FORTH ABOVE, BLACK DUCK AND ITS SUPPLIERS DISCLAIM ALL IMPLIED OBLIGATIONS WITH RESPECT TO INTELLECTUAL PROPERTY INDEMNIFICATION.

#### 6. LIMITATION OF LIABILITY.

6.1. **Exclusion of Damages.** Notwithstanding anything to the contrary, this Agreement does not limit liability due to death or personal injury caused by gross negligence, or liability due to fraudulent misrepresentations or willful misconduct, or liability arising from breaches of confidentiality obligations or license grants or conditions hereunder. SUBJECT TO THE FOREGOING SENTENCE, IN NO EVENT WILL EITHER PARTY, OR ITS SUPPLIERS, BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS, REVENUE, GOODWILL, ANTICIPATED SAVINGS) OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES ARISING OUT OF THIS AGREEMENT, WHETHER BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), FAILURE OF A REMEDY TO ACCOMPLISH ITS PURPOSE, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Customer acknowledges that Black Duck would not be able to provide the Licensed Product without the limitations set forth in this [Section 6](#). Customer may have other rights under applicable mandatory local laws. This Agreement does not change Customer's rights under applicable mandatory local laws if such laws do not permit it to do so.

6.2. **Cap on Liability.** IN NO EVENT WILL BLACK DUCK, ITS AFFILIATES OR ITS SUBSIDIARIES, OR ITS SUPPLIERS' AGGREGATE LIABILITY UNDER THIS AGREEMENT, OR RELATING TO ITS SUBJECT MATTER, EXCEED WITH RESPECT TO ANY LICENSED PRODUCT, THE AMOUNT PAID BY CUSTOMER FOR THE LICENSED PRODUCT GIVING RISE TO THE CLAIM, AND

WITH RESPECT TO SERVICES, THE AMOUNT PAID BY CUSTOMER FOR THE SERVICES GIVING RISE TO THE CLAIM.

#### 7. EXPIRATION AND TERMINATION.

7.1. **Term of Agreement.** The term of this Agreement shall begin on the Effective Date of this Agreement and will end when this Agreement is terminated by either party in accordance with this [Section 7](#).

7.2. **Term of Purchasing Agreement.** Each Purchasing Agreement will have its own term, as indicated by the License Term applicable to the Licensed Product licensed under such Purchasing Agreement.

7.3. **Termination for Breach.** Either party will have the right to terminate this Agreement or any Purchasing Agreement if the other party breaches any material term of the Agreement or Purchasing Agreement, as the case may be, and if such breach is capable of cure, the breaching party fails to cure such breach within thirty (30) days after receiving written notice thereof. Either party will have the right to terminate this Agreement if the other becomes insolvent or makes an assignment for the benefit of creditors, or a trustee or receiver is appointed for such other party or for a substantial part of its assets, or bankruptcy, reorganization or insolvency proceedings shall be instituted by or against such other party. Termination of this Agreement under this [Section 7](#) terminates all Purchasing Agreements and Licensed Product licenses granted hereunder.

7.4. **Effect of Termination or Expiration.** Upon termination or expiration of this Agreement or a Purchasing Agreement, all Licensed Product licenses and rights to use Confidential Information that are granted thereunder shall terminate. Upon termination of this Agreement or expiration of the license term in any Purchasing Agreement, Customer will: (a) promptly return to Black Duck or destroy the applicable Licensed Product and Confidential Information and all copies and portions thereof, in all forms and types of media; and (b) promptly pay all fees owing up to the date of termination.

7.5. **Survival.** [Sections 1, 2.3, 2.5, 2.6, 3, 4.3, 5.3, 6, 7.2, 7.3 and 8 of the Agreement](#), [Section 6 of the SDK Addendum](#), and the [Special Terms Addendum](#) and the [Hosting Services Addendum](#), will survive the termination or expiration of this Agreement or of any Purchasing Agreement.

#### 8. GENERAL.

8.1. **Ownership of IP Rights.** Black Duck, Inc. and its licensors own all patent rights, copyrights, trade secret rights, mask works, and trademark rights (including service marks and trade names), and any applications for these rights, in all countries ("**Intellectual Property Rights**") in the Licensed Products and the Documentation. Customer's only rights in the Licensed Products and the Documentation are the rights expressly granted in this Agreement; all other rights are reserved by Black Duck. Black Duck's licensors are third-party beneficiaries of, and thus may enforce against Customer, the license restrictions and confidentiality obligations in this



Agreement with respect to their intellectual property and proprietary information.

8.2. **“Maintenance Services”** means any standard Black Duck maintenance and support services (excluding onsite support or consulting services referenced in [Section 8.3](#) below) related to the Licensed Product, where such services shall be governed by the applicable Black Duck Maintenance Services terms attached to this Agreement. Except as indicated on an applicable Purchasing Agreement, fees for Licensed Products include Black Duck Standard Maintenance Services for the duration of the license term applicable to such Licensed Products. In the event that the Black Duck Maintenance Services Terms are not included herein (as an addendum hereto or otherwise), the terms for Black Duck Maintenance Services are hereby incorporated herein by references, and are available at: <https://www.blackduck.com/company/legal/end-user-licenses.html>.

8.3. **Onsite Support Services; Customer Success; Hosting Services.** If Black Duck provides any Services (as defined in the attached Onsite Support Services Terms Addendum, and excluding Maintenance Services referenced in [Section 8.1](#) above) to Customer, the Services shall be governed by the attached Black Duck Onsite Support Services Terms. In the event that the Black Duck Onsite Support Services Terms are not attached to this Agreement, the terms for Onsite Support Services, are hereby incorporated herein by reference, and are available at: <https://www.blackduck.com/content/dam/black-duck/en-us/legal/onsite-services/blackduck-standard-onsite-support-services-terms.pdf>. Onsite Support Services or Customer Success program services that remain unused at the end of the license term referenced in the applicable Purchasing Agreement will be forfeited and Customer will not be entitled to any refund for unused portions. If Black Duck provides any Hosting Services (as defined in the attached Hosting Services Addendum) to Customer, the Hosting Services will be governed by the attached Hosting Services Addendum.

8.4. **Software Development Kit.** For some Licensed Products, Black Duck provides a software development kit (“**SDK**”) to Customer with the Licensed Product. Use of the SDK shall be governed by the Black Duck SDK terms available at: <https://www.blackduck.com/company/legal/software-development-kit.html>

8.5. **Export Control.** Customer agrees that it shall remain familiar and fully compliant with its obligations under any and all laws, statutes, regulations, ordinances of any local, state, federal, national, or other jurisdictional locality, as applicable to the export, import, and/or end-use of the Licensed Product, Services and Maintenance Services. Licensed Products, Services and Maintenance Services sold under this Agreement may be subject to various Export Control Laws and Regulations including but not limited to, U.S. Export Administration Regulations (EAR), the U.S. Office of Foreign Asset Control (OFAC), the European Union (EU) Export Control

Regime Regulation (EC) No. 428/2009, and/or the EU Consolidated Sanctions List. Where the Licensed Products or technology is identified as export controlled from a country(ies) of export to (1) the destination country(ies), (2) a restricted/proscribed end user, and/or (3) a restricted end user, a government-issued export license must be obtained prior to fulfillment under this Agreement and in accordance with applicable laws. Customer agrees that Black Duck shall not be required to complete delivery of export controlled products or technology unless and until all required export licenses have been obtained.

8.6. **Assignment.** Customer may not assign this Agreement, or any licenses granted hereunder, in whole or in part, by operation of law or otherwise. Any attempt to so assign without such consent will be void and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party’s permitted successors and assigns.

8.7. **Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of Ireland, excluding that body of laws known as conflicts of law. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the courts located in Ireland and the parties irrevocably consent to the personal jurisdiction and venue therein.

8.8. **Verification and Audit.** In addition to the License Manager Data collected by the License Manager, Customer will monitor and track access to and use of the Licensed Product. At Black Duck’s written request, Customer will furnish Black Duck with (a) a certification signed by an authorized representative of Customer providing user or access information that identifies whether the Licensed Product is being used in accordance with the terms of this Agreement, and (b) log files from any License Manager that regulates access to the Licensed Product. Upon at least thirty (30) days prior written notice, Black Duck may engage, at its expense, an independent auditor to audit Customer’s use of the Licensed Product to ensure that Customer is in compliance with the terms of this Agreement and the applicable Purchasing Agreements. Any such audit will be conducted during regular business hours at Customer’s facilities and will not unreasonably interfere with Customer’s business activities. Customer will provide the auditor with access to the relevant records and facilities. If an audit reveals that Customer has underpaid fees to Black Duck during the period audited, then Black Duck will invoice Customer, and Customer will promptly pay Black Duck for such underpaid fees based on Black Duck’s price list in effect at the time the audit is completed. If the underpaid fees exceed five percent (5%) of the license fees paid by Customer for the Licensed Product, then Customer will also pay Black Duck’s costs of conducting the audit.

8.9. **Nonexclusive Remedy.** Except as expressly set forth in this Agreement, the exercise by either party of any of its

remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

8.10. **Force Majeure.** Neither party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, terrorism, riot, natural disasters or governmental action.

8.11. **Notices.** All notices required or permitted under this Agreement will be in writing. Notices will be effective upon delivery if delivered in person and upon mailing if delivered by courier service, overnight delivery services or by a form of certified or express mail. Notices affecting this Agreement as a whole will be sent to the address set forth above, if any, or to such other address of a party as such party may identify in writing; notices related to a particular transaction will be sent to the primary corporate addresses set forth in the Purchasing Agreement or to such other address as Customer or Black Duck may notify the other party in writing.

8.12. **Entire Agreement; Modification; Interpretation.** This Agreement, including any Addenda hereto and any Statements of Work attached thereto, and all accepted Purchasing Agreements referencing this Agreement, constitute the complete and exclusive understanding and agreement between the parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter. Customer agrees that additional or different terms on Customer's purchase order shall not apply. Failure to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Any waiver, modification or amendment of this Agreement will be effective only if in writing and signed by Customer and an authorized representative of Black Duck. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect. The word "including" when used in this Agreement will mean including without limitation of the generality of any description, definition, term or phrase preceding that word.

8.13. **Government Users.** If Customer is a branch or agency of the United States Government, or is acquiring any Licensed Product on behalf of any branch or agency of the United States Government, then the following provision applies. The Licensed Products and Documentation are comprised of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212, and are provided to the Government (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3.

8.14. **Black Duck Entities.** Black Duck Software, Inc. and its wholly-owned subsidiaries, including, but not limited to, Black Duck Software Limited, Black Duck Software Limited Taiwan Branch, Black Duck Software G.K., and Black Duck Software Shanghai Limited., have agreed to their respective rights and obligations regarding the distribution of the Licensed Products and the performance of obligations related to the Licensed Products. You acknowledge that: (a) Black Duck Software, Inc. or any directly or indirectly wholly-owned subsidiary or branch of Black Duck Software, Inc. may treat a purchase order addressed to that entity, representative office or branch as having been addressed to the appropriate entity or entities or branch with distribution rights for the geographic region in which the Licensed Products will be used; and (b) delivery will be completed by the Black Duck entity or branch with distribution rights for the geographic region in which the Licensed Products will be used or service will be provided. For products used or services provided in a country in the Americas, Israel or Africa or US dollar transactions in Russia or China Mainland, the distributing Black Duck entity is Black Duck Software, Inc., based in California, USA. For products used or services provided in Taiwan, the distributing Black Duck entity is Black Duck Software Limited Taiwan Branch, based in Taiwan. For products used or services provided in Japan, the distributing Black Duck entity is Black Duck Software G. K., based in Japan. For products used or services provided in China Mainland in Renminbi, the distributing Black Duck entity is Black Duck Software Shanghai Limited, based in China Mainland. For products used or services provided in any country other than those identified above, the distributing Black Duck entity is Black Duck Software Limited based in Ireland.

8.15. **Counterparts and Execution.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. An originally executed version of this Agreement or any Exhibit, attachment and subsequent Purchasing Agreement (including, where applicable, a Customer purchase order issued in response to a Purchasing Agreement where such issuance constitutes execution), that is delivered by one party to the other party, as evidence of signature, by facsimile, or by electronic mail after having been scanned as an image file (including, Adobe PDF, TIF, etc.) shall, for all purposes hereof, be deemed an original signature and neither party shall have the right to object to the manner in which the Agreement was executed as a defense to the enforcement of the Agreement.

8.16. **Controlling Language.** This Agreement has been prepared, negotiated and signed in English, and English is the controlling language of this Agreement. Even if any other language version is prepared, including the Japanese version of this document, such version is for convenience purposes only and the English version shall prevail if there is any difference between such version and English version.





END OF TERMS AND CONDITIONS

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## MAINTENANCE SERVICES TERMS ADDENDUM

1. **MAINTENANCE SERVICES.** “**Maintenance Services**” means the standard Maintenance and Support provided by Black Duck to Customer as further described below. Subject to Customer’s payment of applicable fees, Black Duck will provide the following standard Maintenance Services to Customer for the period agreed by the parties in the order documentation:

1.1 **Maintenance and Support.**

(a) **Maintenance.** “**Maintenance**” means the provision by Black Duck to Customer of any Releases or Workarounds that are made generally available by Black Duck to customers who subscribe for Black Duck’s Maintenance Services offering.

(i) A Release will be one of the following: A “**Major Release**” means a specific edition of the Licensed Product that contains major functionality changes. The content and timing of all Major Releases will be determined by Black Duck in its sole discretion. Major Releases are signified by version changes to the left of the decimal point (e.g. 2.0 -> 3.0) following the product name. A “**Minor Release**” means a specific edition of the Licensed Product that contains minor, but significant functionality changes and could include Licensed Product Updates. The content and timing of all Minor Releases will be determined by Black Duck in its sole discretion. Minor Releases are signified by version changes to the right of the decimal point (e.g. 2.5 -> 2.6) following the product name.

(ii) “**Workaround**” means a Licensed Product patch, error correction, or feasible change in operating procedures whereby the Licensed Product is made sufficiently functional so that Customer can continue to use the Licensed Product. Black Duck may provide Workarounds for a release to resolve a Service Issue for up to twelve (12) months after the earlier of (i) the date the subsequent Release is first made commercially available, and (ii) the date the current Release is no longer made available as a commercial offering by Black Duck. After such twelve (12) month period, Black Duck is not obligated to provide Workarounds but will support Customer’s update of the Licensed Product to the latest Release. Where

Workarounds are to be delivered to resolve a Service Issue, Black Duck will provide Customer with a single copy of a Workaround on suitable media or shall make available the applicable Workaround for download by Customer from Black Duck’s web site.

(b) **Support.** “**Support**” means the e-mail and telephone technical services that Black Duck offers regarding the use and function of the Licensed Product. Black Duck will provide Support and respond to Service Issues as further described below. A “**Service Issue**” is a Customer inquiry regarding the functionality or use of the Licensed Product. Customer agrees that Black Duck’s Support obligations concerning the Licensed Product’s use with third party products, including compilers, operating systems and other Licensed Product, shall be limited to those items set forth in the Documentation. Service Issues are assigned a classification at the time of Customer’s initial contact with Black Duck, and are classified according to the severity levels set forth below. Black Duck will initially respond in accordance with the response times applicable to Service Issues reported by telephone or e-mail during Black Duck’s regular service hours for the applicable region as set forth below. Failure to contact Customer within the response time period because Customer is unavailable (e.g., phone busy, no answer, in a meeting, or out of the office) does not constitute Black Duck’s noncompliance with the response commitment. Customer shall cooperate with Black Duck to provide reproducible results for any errors reported. Black Duck’s ability to provide Support will depend, in some cases, on the ability of Customer’s representatives to provide accurate and detailed information and to aid Black Duck in handling a Service Issue. Customer shall provide Black Duck with reasonable access to Customer systems, premises and staff as needed to provide Support. Black Duck will provide Support for each Release for at least eighteen (18) months after the subsequent Release is first made commercially available. After such period, Black Duck will provide Support, as needed, to Customer to update its use of the Licensed Product to the latest Release of the Licensed Product.

Service Issue Classification	Response Time	Next Steps
<b>Severity P1—Critical Business Impact:</b> Licensed Product is not functioning or is stopped or severely impacted so that Customer cannot reasonably continue use of Licensed Product and no Workaround is available.	One business day	Once the Service Issue is verified, Black Duck will engage development staff during Black Duck’s business hours (but in no event later than 12 hours after the Service Issue is verified) until a Workaround is achieved.
<b>Severity P2—Major Business Impact:</b> Licensed Product is functioning inconsistently causing significantly impaired Customer usage and productivity, such as periodic work stoppages and feature crashes.	One business day	Once the Service Issue is verified, Black Duck will engage development staff during Black Duck’s business hours (but in no event later than 24 hours after the Service Issue is verified) until a Workaround is achieved.
<b>Severity P3—Minor Business Impact:</b> Licensed Product is functioning inconsistently causing slightly impaired Customer usage and productivity but Customer can work around such inconsistency or impairment.	Two business days	Once the Service Issue is verified, Black Duck will consider a Workaround, if appropriate in Black Duck’s sole discretion, and Licensed Product enhancements for such Service Issue for inclusion in a subsequent Release.
<b>Severity P4—No Business Impact:</b> Licensed Product is functioning consistently but Customer requests minor changes in Licensed Product such as Documentation updates, cosmetic defects or enhancements.	Three business days	Once contact has been made with Customer, Black Duck will consider Licensed Product enhancements for inclusion in a subsequent Release.

(c) **Customer Point of Contact.** Customer will designate a specific individual to be the primary point of contact for Maintenance Service communications with Black Duck and will deliver contact information for such individual to Black Duck’s support team.

1.2 **Exclusions to Maintenance Services.** Maintenance Services do not include the right to access new or bundled product offerings made available by Black Duck, unless licenses for such offerings are separately purchased. Black Duck will not have any obligation to provide Maintenance Services for problems in the operation or performance of the Licensed Product to the extent caused by any of the following: (a) modifications to the Licensed Product made by a party other than Black Duck; (b) Customer’s use of the Licensed Product other than as authorized by the applicable agreement licensing the

Licensed Product to Customer or as provided in the Documentation; or (c) Customer’s use of releases other than those releases of the Licensed Product covered by Maintenance Services, (d) Customer’s failure to use any error corrections or updates thereto provided by Black Duck to address such problem, or (e) use of scripts or other deliverables provided to Customer under On-Site Support services. If, in its sole discretion, Black Duck determines that a problem in the operation or performance of the Licensed Product is caused by the foregoing, then Black Duck will notify Customer promptly and have no further Maintenance Service obligations related to such problem. If Customer requests services beyond standard Maintenance Services, Black Duck will have the right to invoice Customer at Black Duck’s then-current published time and materials rates for the provision of such services.

## 2. HOURS OF SERVICE AND CONTACT INFORMATION.

For Customers located in Europe:

Contact us by:	At	During
Email	<a href="mailto:software-integrity-support@blackduck.com">software-integrity-support@blackduck.com</a>	9:00 – 17:00 UK time
Phone	+44 (0) 1276 400352	9:00 – 17:00 UK time

For Japanese-language support:



Contact us by:	At	During
Email	<a href="mailto:software-integrity-support-japan@blackduck.com">software-integrity-support-japan@blackduck.com</a>	9am – 5pm JST
Phone	+81-03-6746-3666	9am – 5pm JST

For Korean-language support:

Contact us by:	At	During
Email	<a href="mailto:software-integrity-support-korea@blackduck.com">software-integrity-support-korea@blackduck.com</a>	9am – 5pm KST
Phone	+82-2-3404-9332	9am – 5pm KST

For Mandarin-language support:

Contact us by:	At	During
Email	<a href="mailto:software-integrity-support-china@blackduck.com">software-integrity-support-china@blackduck.com</a>	9am – 5pm CST
Phone	+86-4006-966-606	9am – 5pm CST

For Customers located in India:

Contact us by:	At	During
Email	<a href="mailto:software-integrity-support@blackduck.com">software-integrity-support@blackduck.com</a>	9:00 – 17:00 IST
Phone	+91-(0)80 6751 1888 or 1(800) 419-4311	9:00 – 17:00 IST

For all other Customers:

Contact us by:	At	During
Email	<a href="mailto:software-integrity-support@blackduck.com">software-integrity-support@blackduck.com</a>	7am – 6pm Pacific Time
Phone	+1 800-873-7793 or +1 415.321.5239	7am – 6pm Pacific Time

All contact information is subject to change upon notice from Black Duck. Closed on public holidays.

## END OF MAINTENANCE SERVICES TERMS ADDENDUM



## ONSITE SUPPORT SERVICES TERMS ADDENDUM

### 1. SERVICES

1.1. **Services.** In connection with Customer's use of the Licensed Product, Customer may retain Black Duck to provide Customer with the services set out in the applicable Purchasing Agreement, Customer Success Package and/or Statement of Work to the Agreement (collectively the "Services").

1.2. **Purchasing Agreements; Statements of Work.** To order Services, Customer shall enter into (a) written statements of work (each a "Statement of Work") identifying the Services or (b) Purchasing Agreements identifying the Services to be performed. Each Purchasing Agreement and/or Statement of Work must reference this Agreement.

1.3. **Performance of Services.** The Services shall be performed solely in relation to the licenses to the Licensed Product granted by Black Duck to Customer under the Agreement. Nothing in this Addendum grants Customer any rights to the Licensed Product other than as explicitly stated herein. If Black Duck personnel are working on Customer's premises: (a) Customer will provide a safe and secure working environment for such personnel; and (b) Black Duck will comply with all reasonable workplace safety and security standards and policies that are applicable to Customer's employees and of which Customer notifies Black Duck in writing and in advance of the commencement of any Services.

1.4. **Customer Responsibilities.** Customer will provide Black Duck with access to Customer's sites and facilities during Customer's normal business hours as reasonably required by Black Duck to perform the Services. Customer will also make available to Black Duck any data, information and any other materials reasonably required by Black Duck to perform the Services, including, but not limited to, any data, information or materials specifically identified in the Statement of Work (collectively, "Customer Materials").

1.5. **Relationship of the Parties.** Black Duck is performing the Services as an independent contractor, not as an employee, agent, joint venturer or partner of Customer. Black Duck acknowledges and agrees that its personnel are not eligible for or entitled to receive any compensation, benefits or other incidents of employment that Customer makes available to its employees. Accordingly, for a period of twelve (12) months following the completion of the Services, Customer agrees not to directly or indirectly solicit for employment any Black Duck employees or contractors, provided that a job posting

available to the general public shall not be deemed such a solicitation.

2. **FEES AND EXPENSES.** Customer will pay Black Duck fees in accordance with the terms set forth in the applicable Purchasing Agreement or Statement of Work. In addition, Customer will reimburse Black Duck for all reasonable and customary travel, lodging and other related expenses incurred by Black Duck or its personnel in connection with the performance of the Services upon being provided with receipts and other documentation for all such expenses.

3. **OWNERSHIP.** Material and associated intellectual property rights developed by a party prior to or outside of the scope of a Customer Success Package, Statement of Work or Purchasing Agreement ("Pre-Existing Material") shall be, as between the parties, owned by the developing party. Black Duck shall own all rights, title and interest in all scripts, methodologies, processes, and documentation, and all intellectual property rights therein, developed during the provision of the Services involving (i) implementation or installation of Licensed Products into Customer's environment, (ii) configuration of workflow or reporting capabilities of the Licensed Product, and (iii) optimization of the use of the Licensed Product in Customer's environment (collectively, the "Black Duck-Owned Work Product"). Black Duck hereby grants to Customer, for the license term applicable to the Licensed Product licensed to Customer under the applicable Purchasing Agreement, a nonexclusive, worldwide, right to use, reproduce and create derivative works of any Pre-Existing Material owned by Black Duck and incorporated into deliverables of the Services, and the Black Duck-Owned Work Product, for Customer's internal business purposes to aid in Customer's use of Licensed Product licensed by it.

4. **SERVICES WARRANTY.** Black Duck warrants that the Services will be performed in a professional and workmanlike manner consistent with applicable industry standards. If Black Duck receives from Customer a written notice of the Service's non-conformance with the provisions set forth in this [Section 4](#), Black Duck will, as Customer's sole and exclusive remedy and Black Duck's entire liability for any breach of the foregoing warranty, at Black Duck's sole option and expense, promptly re-perform the Services or refund to Customer the fees paid for the Services. THE FOREGOING STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR WARRANTY CLAIMS RELATED TO THE SERVICES.

## END OF ONSITE SUPPORT SERVICES ADDENDUM



## SPECIAL TERMS AND CONDITIONS ADDENDUM

1. **SEEKER; DEFENSICS.** If Customer has purchased a license to the Licensed Products known as either Seeker (“*Seeker*”) or Defensics (“*Defensics*”), the following additional terms apply:

1.1. ***Seeker***

1.1.1. ***Use in Test Environment Only.*** SEEKER IS AN AUTOMATED TESTING SOLUTION DESIGNED TO BE USED IN NON-PRODUCTION ENVIRONMENTS ONLY. As part of the processes completed by Seeker, Seeker will automatically generate requests to the applicable Customer website, thus activating various website and associated database operations. Such processes may add to, modify, tamper with, and /or delete any persistent data contained in such site or in such database. CUSTOMER IS HEREBY ADVISED TO EXCLUDE ALL WEBSITES FOR WHICH CUSTOMER DOES NOT WANT SEEKER TO PERFORM SUCH OPERATIONS. SUCH OPERATIONS MAY ALSO BE DISABLED FROM THE SETTINGS->TEST/GENERAL SCREEN.

1.1.2. ***Purpose; Data Modification; Data Collection.*** Customer understands that Seeker is software that conducts certain tests by (i) gathering data and information from the environments, websites, software products, databases, and servers in which it operates and potentially saving such data and information in the database of Seeker, and (ii) potentially changing, deleting, or otherwise altering such data and information. Customer further understands that Seeker is designed to be used solely as part of a development and test environments, which are not production environments.

1.1.3. ***Use of Customer End User Information.*** Seeker uses sample end user data (including names, passwords, addresses, account numbers, credit card numbers and other data) that has been created for use in the operations performed by Seeker (“**Test/Form Data**”). Customer end user data used in Customer’s production website, database and server environment may contain Personally Identifiable Information (as defined under U.S. law), Personal Data (as defined under European Union law and the implementing regulations of its member states) and other data regulated by U.S. and international law (collectively, “**Regulated Data**”). In the event that Customer provides Black Duck access to such Regulated Data for purposes of the performance of Black Duck Maintenance Services or otherwise, as between Black Duck and Customer, Black Duck shall be deemed a data processor and Customer shall be deemed the data controller with respect to such Regulated Data. CUSTOMER IS HEREBY ADVISED TO USE

THE SUPPLIED TEST/FORM DATA ONLY IN THE OPERATION OF SEEKER. CUSTOMER IS HEREBY FURTHER ADVISED THAT THE USE OF REGULATED DATA IN SEEKER OPERATIONS IS A VIOLATION OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IN THE EVENT THAT CUSTOMER USES REGULATED DATA IN SEEKER OPERATIONS, CUSTOMER SHALL HOLD BLACK DUCK HARMLESS FROM ANY LIABILITY RESULTING FROM SUCH USE.

1.1.4. ***Credit Card Usage.*** As part of Seeker’s operations, Seeker will automatically test credit card forms, creating credit card transactions using such credit card forms using Test/Form Data. CUSTOMER SHALL BE SOLELY RESPONSIBLE TO ENSURE THAT ANY ALL TESTED ENVIRONMENTS, APPLICATIONS, DATABASES, AND SERVERS CONTAIN TEST/FORM DATA ONLY. CUSTOMER IS HEREBY ADVISED TO USE TEST CREDIT CARD FORMS ONLY, AND TO DISCONNECT TESTED WEBSITES FROM PRODUCTION TRANSACTION SERVERS PRIOR TO TESTING. SUCH OPERATIONS MAY ALSO BE DISABLED FROM THE SETTINGS->TEST/GENERAL SCREEN. BLACK DUCK SHALL BEAR NO LIABILITY FOR AND CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR AND SHALL HOLD BLACK DUCK HARMLESS IN CONNECTION WITH ANY CUSTOMER-INITIATED CREDIT CARD TRANSACTIONS RESULTING FROM THE USE OF ANY DATA OTHER THAN TEST/FORM DATA IN THE OPERATION OF SEEKER.

1.2. ***Defensics***

1.2.1. ***Use in Test Environment Only.*** DEFENSICS IS AN automated TESTING SOLUTION DESIGNED TO BE USED IN NON-PRODUCTION ENVIRONMENTS ONLY. As part of the processes completed by Defensics, Defensics will automatically test specific protocols of Customer software identified by Customer. Such protocols may add to, modify, tamper with, and /or delete portions of the software under test, and may disable software functionality in production environments. CUSTOMER IS HEREBY ADVISED NOT TO USE DEFENSICS IN ANY PRODUCTION ENVIRONMENT.

2. ***DISCLAIMER.*** CUSTOMER IS NOT LICENSED TO USE SEEKER OR DEFENSICS IN PRODUCTION ENVIRONMENTS; IN THE EVENT THAT CUSTOMER USES EITHER SEEKER OR DEFENSICS IN PRODUCTION ENVIRONMENTS, BLACK DUCK SHALL BEAR NO RESPONSIBILITY FOR SUCH USES AND CUSTOMER SHALL BEAR ALL LIABILITY FOR SUCH USES AND SHALL HOLD BLACK DUCK HARMLESS IN CONNECTION WITH ANY LIABILITY RESULTING FROM SUCH CUSTOMER USES.

## END OF SPECIAL TERMS AND CONDITIONS ADDENDUM





## HOSTING SERVICES ADDENDUM

### 1. DEFINITIONS.

1.1 **"Hosted Software"** means the software described in the applicable Purchasing Agreement that Black Duck will provision hosting services for on behalf of Customer under the terms of this Hosting Services Addendum.

1.2 **"Hosting Services"** means the services related to the Hosted Software described in this Hosting Services Addendum.

2. **Hosting Services Description.** During the term set forth in the applicable Purchasing Agreement, Black Duck shall provision Hosting Services on behalf of Customer as follows:

Black Duck will be responsible for managing the set-up, configuration and hosting of the Hosted Software including, but not limited to, managing the installation of all revisions, new versions, and updates to the Hosted Software.

### 3. POST-TERMINATION HOSTING.

Black Duck will permit Customer to access the Hosted Software for a maximum of thirty (30) days post termination of the Agreement or the applicable Purchasing Agreement, as applicable, for the limited purpose of accessing and downloading any Customer data retained therein.

### 4. HOSTING SERVICES PERFORMANCE WARRANTY.

4.1 **Uptime.** Black Duck will (a) have at least 99.5% uptime ("**Service Availability**"), as measured monthly, excluding planned downtime and any time necessary to implement updates, upgrades or modification to the Hosted Software, and (b) not experience more than two (2) instances of unscheduled downtime of more than one (1) hour each in any rolling thirty (30) day period. Routine updates to the Hosted Software are scheduled once per month on a Sunday, typically between the hours of 4 am and 8 am (Eastern US time zone).

4.2 **Exclusions.** This Service Availability warranty shall not apply in the event of any interruption or failure of telecommunication or digital transmission links outside of Black Duck's network, Internet network congestion outside of Black Duck's network or other failures outside of Black Duck's network.

5. **Limitation of Liability.** EXCEPT FOR THE EXPRESS SERVICE AVAILABILITY WARRANTY STATED IN SECTION 4, THIS HOSTING SERVICES ADDENDUM DOES NOT CREATE ANY OTHER REPRESENTATION OR WARRANTY RELATED TO THE AVAILABILITY, ACCESSIBILITY, OR USEABILITY OF THE HOSTED SOFTWARE. THE REMEDIES STATED IN THE AGREEMENT ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BLACK DUCK'S FAILURE TO MEET THE WARRANTIES SET FORTH HEREIN.

6. **ENTIRE ADDENDUM.** The parties acknowledge that they have had previous discussions related to Black Duck's performance of the Hosting Services for Customer. This Addendum constitutes the complete and exclusive understanding and agreement between the parties on the subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to the Agreement or this Addendum.

END OF HOSTING SERVICES ADDENDUM