

Code Sight Free, Trial and Commercial End-User Software License Agreement

IMPORTANT, PLEASE READ THESE TERMS CAREFULLY. BY ACCESSING, DOWNLOADING OR USING THIS SOFTWARE YOU ("LICENSEE") ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS LICENSE AGREEMENT ("AGREEMENT") AND YOU AGREE TO BE BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE AGREEMENT, DO NOT ACCESS, DOWNLOAD OR OTHERWISE USE THE SOFTWARE.

YOU ACKNOWLEDGE THAT THIS LICENSE IS BEING ACQUIRED ON BEHALF OF THE COMPANY, FIRM OR OTHER LEGAL ENTITY THAT YOU REPRESENT. YOU THEREFOR WARRANT THAT YOU HAVE THE AUTHORITY TO AGREE TO THIS AGREEMENT ON BEHALF OF SUCH COMPANY, FIRM OR OTHER LEGAL ENTITY.

1. Definitions

- (a) **"Black Duck"** means Black Duck, Inc. and its licensors, if any.
- (b) **"Commercial Version"** means a version of the Software that is Developer-Based Software or LOC-Based Software and is not available for resale, and neither a Free Version, nor a Trial Version.
- (c) **"Developer-Based Software"** means, software that is licensed for use based on the maximum number of Users that can access and utilize the software.
- (d) **"Documentation"** means any documentation files accompanying the Software.
- (e) **"Free Version"** means a version of the Software, so identified, to be used internally only and solely for the purposes of design, development and evaluation.
- (f) **"LOC-Based Software"** means software that is licensed for use based on the maximum number of lines of code that can be indexed over the lifetime of the product.
- (g) **"Trial Version"** means a version of the Software, so identified, to be used only to review, demonstrate and evaluate the Software for a limited time period. The Trial Version may have limited features, may lack the ability for the Licensee to save the end product, and will cease operating after thirty (30) days.
- (h) **"License Type"** means either LOC-Based Software or Developer-Based Software.
- (i) **"Software"** means only the Black Duck Code Sight software program(s) and third party software programs, in each case, supplied by Black Duck herewith, and corresponding documentation, associated media, printed materials, and online or electronic documentation. Any

updates to such Software to which Licensee is entitled to receive and that has been provided to Licensee by Black Duck shall also mean Software for purposes of this Agreement.

(j) “**Subscription Fees**” means the fees to be paid by Licensee to Black Duck or to a Value Added Reseller in connection with the purchase of a Commercial Version of the Software for the duration of any Subscription Period.

(k) “**Subscription Period**” means the amount of calendar time that the Licensee is authorized to use the Software.

(l) “**User**” means each individual of Licensee who has access and may potentially utilize the Software.

(m) “**Value Added Reseller**” or “**VAR**” means a business that creates or adds value to existing software and technology products and remarkets the value-added products to end users.

2. License Grant

The licenses granted in this Section 2 (License Grant) are subject to the terms and conditions set forth in this Agreement:

- (a) If the Software is a Free Version: Black Duck grants to the Licensee a non-exclusive, non-transferable license to use the Software, to index and search source code, provided that (i) the Software is installed on only one server, (ii) the Software and Documentation are not modified, and (iii) all copyright notices are maintained on the Software and Documentation at all times. Registration is not required for use of the Free Version of Software, and Licensee is permitted to search up to a lifetime limit of 200,000 lines of code. Licensee agrees and acknowledges that the Software and Documentation shall be used only by Licensee, for internal business use, and not in the operation of a service bureau, or business that benefits any other person or entity or in connection with any publicly accessible web site.
- (b) If the Software is a Trial Version: Black Duck grants to the Licensee a non-exclusive, non-transferable license to use the Trial Version Software to index and search source code provided that (i) the Software is installed on only one server, (ii) the Software and Documentation are not modified, and (iii) all copyright notices are maintained on the Software and Documentation at all times. The Trial Version of Software requires the following of the Licensee: (i) a complete and accurate registration form, (ii) a valid email address for delivery of the registration key, and (iii) Licensee’s use is subject to the usage restrictions set forth at http://www.blackducksoftware.com/go/codesight_additional_terms. Licensee acknowledges and agrees that Black Duck will be collecting system and usage data arising out of the use of the Trial Version Software. Such data may be used by Black Duck for various business purposes. Licensee agrees and acknowledges that the Software and Documentation shall be used only by Licensee, for internal business use, and not in the operation of a service bureau, or business that benefits any other person or entity or in connection with any publicly accessible web site.

- (c) If the Software is a Commercial Version: subject to the terms and conditions of this Agreement, Black Duck Software grants to Licensee a non-exclusive, non-transferable license to install and use the Software on one or more computers during the Subscription Period, provided, however, that Licensee uses the Software to serve only such capacity corresponding to the License Type for the Software purchased. If Licensee elected to purchase (i) the LOC-Based Software, the total lines of code indexed must not exceed the maximum total lines of code in the license purchased for such installation and use, or (ii) Developer-Based Software, the total number of Users, who have access to the Software shall not exceed the total number of developers specified in the license purchased.

3. Replacement, Modifications, Upgrades, Support

Black Duck, at its sole discretion, may provide updates in connection with the Software. Updates may be provided by email, downloads or otherwise as Black Duck deems appropriate. Updates will be provided without charge during the Subscription Period, unless as otherwise specified by Black Duck in advance.

4. Ownership

Licensee has no ownership rights in the Software. Rather, Licensee has a limited license to use the Software (i) for as long as this Agreement remains in full force and effect and subject to any applicable Subscription Period, (ii) provided that any other agreement concerning Licensee's use of the Software including, but not limited to, an agreement with Black Duck's VAR, remains in full force and effect and (iii) for so long as Licensee has timely made payment of any Subscription Fees due Black Duck or its VAR. Ownership of the Software, Documentation and all intellectual property rights therein, including but not limited to, any patent, copyright, trade secret, trademark or other proprietary rights, shall remain at all times with Black Duck. Any other use of the Software by any person, business, corporation, government organization or any other entity is strictly forbidden and a violation of this Agreement.

5. Copyright

The Software and Documentation contain material that is protected by United States Copyright Law and trade secret law, and by international treaty provisions. All rights not granted to you herein are expressly reserved by Black Duck. Licensee may not remove any proprietary notices from any copy of the Software or Documentation.

6. Restrictions

This is not a perpetual license. Licensee has no right to retain or to use the Software after termination of the applicable Subscription Period for any reason. Licensee may not permit access or use of the Software for any Users other than the Users licensed and paid for by Licensee. Licensee may make a reasonable number of copies of the Software exclusively for inactive back-up, disaster recovery, failover or archival purposes. Licensee may not publish, display, disclose, rent, lease, modify, loan, distribute, transfer, assign or sublicense the Software or create derivative works based on the Software or any part thereof. Licensee may not reverse engineer,

decompile, translate, adapt, or disassemble the Software, nor shall the Licensee attempt to create the source code from the object code for the Software. Licensee acknowledges that, at its sole discretion, Black Duck may further restrict or limit the use of the Free Version or Trial Version Software at any time.

7. Confidentiality

Licensee acknowledges that the Software contains proprietary trade secrets of Black Duck and hereby agrees to maintain the confidentiality of the Software using at least the same degree of care as used to maintain the confidentiality of their own most confidential information. Licensee agrees to reasonably communicate the terms and conditions of this Agreement to those persons employed by Licensee or otherwise within their organization who come into contact with the Software, and to use reasonable best efforts to ensure their compliance with such terms and conditions, including, without limitation, not knowingly permitting such persons to use any portion of the Software for the purpose of deriving the source code of the Software.

8. Limited Warranty

8.1 EXCEPT WITH RESPECT TO SECTION 8.2, and subject to the terms and conditions of this Section 8 (Limited Warranty), Black Duck warrants that the Commercial Version of Software will perform substantially as described in its Documentation for the first 30 days of the Subscription Period, provided that it is used in accordance with the Documentation, including within the specified operating environment. This warranty is only for the benefit of the Licensee.

8.2 FOR THE FREE AND TRIAL VERSION, ANY USE BY LICENSEE OF THE SOFTWARE IS AT LICENSEE'S OWN RISK. THE SOFTWARE IS PROVIDED "AS IS". NO WARRANTY IS MADE THAT THE SOFTWARE WILL OPERATE ERROR-FREE OR REGARDING THE RESULTS TO BE ACHIEVED, NO WARRANTY IS MADE THAT THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS.

8.3 EXCEPT AS EXPRESSLY PROVIDED HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY LAW, BLACK DUCK DISCLAIMS ALL WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. BLACK DUCK DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET ANY REQUIREMENTS OR NEEDS LICENSEE MAY HAVE, OR THAT THE SOFTWARE WILL OPERATE ERROR FREE, OR IN AN UNINTERRUPTED FASHION, OR THAT ANY DEFECTS OR ERRORS IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE IS COMPATIBLE WITH ANY PARTICULAR PLATFORM. SOME JURISDICTIONS DO NOT ALLOW THE WAIVER OR EXCLUSION OF IMPLIED WARRANTIES SO THEY MAY NOT APPLY TO LICENSEE.

8.4 Licensee's sole and exclusive remedy for breach of the warranty in Section **Error! Reference source not found.** will be as follows:

For the period commencing on the 1st day of the Subscription Period and ending 30 days thereafter, if the Software does not operate substantially in conformity with the Documentation, Licensee will notify Black Duck or VAR no later than 10 days after the expiration of the 30 day period. Black Duck will use reasonable commercial efforts to supply a correction or work-around within 15 days (“**Warranty Cure Period**”). If Black Duck is unable to correct or work around the nonconformity within such Warranty Cure Period, then Licensee may elect to terminate the license and is entitled to a full refund of the Subscription Fees paid for the Software. Licensee must elect such termination within 15 days of the end of the Warranty Cure Period.

9. Limitation of Liability

IN NO EVENT WILL BLACK DUCK BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, OR FOR ANY CLAIM BY ANY OTHER PARTY, EVEN IF BLACK DUCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BLACK DUCK'S AGGREGATE LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION OR OTHERWISE SHALL NOT (i) FOR THE FREE AND TRIAL VERSION EXCEED \$50 USD OR (ii) FOR THE COMMERCIAL VERSION EXCEED THE SUBSCRIPTION FEES RECEIVED BY BLACK DUCK FROM LICENSEE DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM . BECAUSE SOME STATES AND/OR COUNTRIES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY.

10. Export Restrictions

Black Duck makes no representation that the Software or Documentation is appropriate or available for use outside of the United States of America. Software and Documentation obtained from this site are further subject to United States export controls. No Software or Documentation may be downloaded or otherwise exported or re-exported (1) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria, or any other country to which the United States has embargoed goods; or (2) to anyone on the U.S. Treasury Department's List of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading or using the Software or Documentation, Licensee represents and warrants that they are not located in, under the control of, or a national or resident of any such country or on any such list.

11. Termination

11.1 This Agreement is effective upon accessing, downloading or using the Software and shall continue until it is terminated. You may terminate this Agreement at any time by discontinuing your access to the Software or by destroying or returning to Black Duck all copies of the Software and Documentation in your possession or under your control.

11.2 For the Free Version and the Trial Version, Black Duck may terminate this License Agreement for convenience and for any or no reason and may, at its sole discretion, require you to return the Software to Black Duck or discontinue your access to the Software at any time.

11.3 Upon 6 months prior written notice, in the event Black Duck chooses to discontinue the Software, Black Duck may terminate this Agreement with respect to such Program; provided that, the effective date of such termination (i.e. the date 6 months from the Program discontinuation notice date) will not occur before the end of Licensee's then-current Subscription Period.

11.4 In addition to any other termination rights provided in this Agreement, either party may terminate this Agreement immediately upon written notice if the other party materially breaches any provision of this Agreement and fails to cure such breach within 30 days after delivery of a written notice describing the breach

11.5 Upon notification of termination, you agree to terminate your access and use of the Software and destroy or return to Black Duck all copies of the Software and Documentation and to certify in writing, if so requested by Black Duck, that all known copies, including backup copies, have been destroyed. All provisions relating to confidentiality, proprietary rights, and non-disclosure shall survive the termination of this License Agreement.

12. General

12.1 This License Agreement shall be construed, interpreted and governed by the laws of the Commonwealth of Massachusetts without regard to conflicts of law provisions thereof. The parties expressly disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. The exclusive jurisdiction and venue for any disputes arising out of or relating to this License Agreement shall be an appropriate federal or state court sitting in Boston, Massachusetts, USA. Licensee hereby consents to such jurisdiction and venue and waives any objection to the same.

12.2 Any waiver or modification of this License Agreement shall only be effective if it is in writing and signed by both parties hereto.

12.3 If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this License Agreement shall be interpreted so as to reasonably affect the intention of the parties.

12.4 This Agreement shall constitute the entire Agreement between the parties hereto provided, however, that if Licensee has or enters into a Master License and Subscription Agreement with Black Duck, the provisions of such Master License and Subscription Agreement shall take

precedence over this Agreement. Notwithstanding the foregoing, Black Duck may enforce any provisions of an agreement between the Licensee and the VAR intended for the benefit of Black Duck.