

## Burp Suite Enterprise Edition Terms & Conditions of Supply

IMPORTANT NOTICE: PLEASE READ THE FOLLOWING TERMS BEFORE ORDERING OR DOWNLOADING ANY SOFTWARE FROM THIS WEBSITE, AS APPLICABLE TO THE LICENCE AND USE OF THAT SOFTWARE.

These Burp Suite Enterprise Terms & Conditions of Supply together with the documents referred to in it ("Terms") constitute the terms and conditions on which PortSwigger Ltd ("Licensor") will grant to any purchaser or user ("Licensee") a licence to use the software comprising Burp Suite Enterprise Edition ("Burp Suite Enterprise Edition" or the "Software"), following acceptance of an order as detailed below.

The following expressly form part of the Terms:

- the Burp Suite Enterprise Licence Agreement;
- the General Terms and Conditions;
- the Data Processing Agreement;
- the Privacy Policy; and
- any other documents referred to in the above.

Licensor may vary the Terms and any document expressly incorporated into the Terms from time to time by notifying Licensee by any reasonable means, including by the use of email correspondence.

The Terms apply to the exclusion of any other terms that the Licensee seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1. Licences to Burp Suite Enterprise Edition are available for purchase via the Licensor's website at <https://portswigger.net/buy>.

2. Placing an order for Burp Suite Enterprise Edition or confirming "I have read and accept the terms and conditions" on a webform is an offer by the Licensee to purchase a licence to the Software and does not constitute a contract until such time as the Licensor issues an email or web confirmation that the order is accepted by PortSwigger Ltd. Notwithstanding the foregoing, by installing or accessing the Software the Licensee affirms that it agrees to the terms of the License and the Burp Suite Enterprise Edition terms and conditions of supply, which bind the Licensee and its employees. The contract will only relate to the Software the Licensee has licensed, as set out in that confirmation or accepted by installing or accessing it. Notwithstanding any other communications between the parties, ordering and/or downloading the Software by the Licensee, or the ordering or download of the Software by another party at the instigation of the Licensee, shall constitute conclusive evidence that the Licensee has purchased the Software on the basis of these Terms and any order quotation provided by the Licensor.

3. The charges model that applies to Licensee's use of Burp Suite Enterprise Edition will be elected by the Licensee when placing the order and shall be either: (i) an upfront licence fee for a specified number of concurrent scans, payable in respect of each Licence Period (as defined in the Burp Suite Enterprise Edition Licence Agreement); (ii) an upfront license fee, payable in respect of each License Period and providing access to the usage-based charging mode, and a usage-based fee, payable in arrears at regular intervals during the Licence Period (as defined during the order process and each such interval being a "Usage Period") based upon Licensee's usage of the Software during the relevant Usage Period; or (iii), an upfront licence fee for an unlimited (subject to, in the case of Software hosted by Licensor and delivered to Licensee as a service (herein referred to as the "Hosted Software", Licensee's compliance with paragraph 1 (Fair Usage) of the Acceptable Use Policy) number of concurrent scans, payable in respect of each Licence Period (herein referred to as the "Unlimited Usage Model"). In order to elect the usage-based fee, the Licensee must provide the Licensor with a valid recurring payment method. Once an election of a charges model is made, it will apply for the duration of the Licence Period. The Licensee's use of Burp Suite Enterprise Edition as Hosted Software is subject to the Licensee's compliance with the Acceptable Use Policy.

4. The Licensor may, at any time, amend the usage-based fee and/or the Unlimited Usage Model for the provision of Hosted Software, so that either: (a) such amendment takes effect from the beginning of the next License Period; or (b) the amendment takes effect during the current License Period after the expiry of notice of the amendment provided by the Licensor (such advance notice being no less than 30 days), provided that in the case of (b) the Licensee has the right to terminate the license by promptly serving written notice to the Licensor to be served within that notice period, such termination to take effect immediately prior to the amendment, and in such cases the Licensee shall receive a pro-rata refund of the upfront license fee to reflect its unexpired term as at the point of such termination taking effect.

5. Unless PortSwigger Ltd has pre-approved the Licensee's purchase on credit in writing (and subject to any additional credit terms that apply to any such approval), payment of the upfront licence fee is required in advance. Shortly after the Licensee makes payment and the order has been accepted by Portswigger Ltd, the Licensee will receive an email containing instructions enabling the Licensee to access the Hosted Software or, in the case of Software installed and hosted by or on behalf of Licensee (herein referred to as the "Self-Hosted Software") download the Licensee's software and licence key. If the Licensee does not receive this email within 30 minutes of making payment, please email the Licensor, who will investigate the issue and endeavour to respond within one working day. In relation to purchases made on agreed credit terms, PortSwigger reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by their due date.

6. If the Licensee's license is subject to auto-renewal and the Licensee has provided a valid recurring payment method, then payment of the upfront licence fee will be taken 14 days before the then current Licence Period (as defined in the Burp Suite Enterprise Edition Licence Agreement) ("Renewal Payment Date"). Auto-renewal for specific licences can be disabled on the Licensee's account page.

7. If a usage-based fee has been elected, following the end of each Usage Period, the Licensor will invoice the Licensee setting out its usage of the Software and the applicable usage-based fee payable in respect of that Usage Period, except that if the usage incurred at any point during the Usage Period causes the Licensor-applied Usage Limit to be reached then the Licensor will invoice the Licensee for its usage incurred to date during the Usage Period. Payment of the usage-based fee will then be taken by the Licensor within a reasonable period as stated on the invoice. In the

event the Licensor is unsuccessful taking payment, the Licensor reserves the right to make further attempts to take payment. If payment is still unsuccessful, the Licensor may, in its sole discretion: (i) charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by their due date; and (ii) temporarily suspend the Licensee's usage of certain features of the Software including but not limited to the ability to scan until such time as payment has been successfully received.

8. In the account page, the Licensee may apply a limit on its usage during any Usage Period ("Licensee-applied Usage Limit"), which will mean that the Licensee is unable to use the Software such that cost that will be charged for the usage will be in excess of the cost equivalent of the Licensee-applied Usage Limit. If the Licensee reaches the Licensee-applied Usage Limit, the Licensor will temporarily suspend Licensee's usage of certain features of the Software including but not limited to the ability to scan until the start of the next Usage Period during the Licence Period. If the Licensee wishes its use of the Software to be restored during any period of temporary suspension period, it may do this by requesting a higher Usage Limit via its account page, such a request not to be withheld, unless it is deemed unreasonable by the Licensor (in its sole discretion) or if the higher Licensee-applied Usage Limit would be in excess of any Licensor-applied Usage Limit.

9. The Licensor may apply a limit on the usage of the Licensee ("Licensor-applied Usage Limit") which will mean that the Licensee is unable to use the Software if the cost for the usage which is unpaid by the Licensee (including usage incurred that is yet to be invoiced by the Licensor) will be in excess of the cost equivalent of the Licensor-applied Usage Limit. If the Licensee reaches the Licensor-applied Usage Limit, the Licensor will temporarily suspend Licensee's usage of certain features of the Software, including, but not limited to, the ability to scan until payment of usage invoiced brings the unpaid usage below the Licensor-applied Usage Limit.

10. If the Licensee wishes to cancel its order, the Licensee must email the Licensor within 7 days of making payment or payment being taken for auto-renewal licenses. If the order has been placed on credit, credit having been pre-approved by Licensor, the Licensee must email the Licensor within 7 days of placing the order, and in each case before the Licensee accesses the Software (in the case of Hosted Software) and downloads the software or licence key (in the case of Self-Hosted Software). If the Licensee has already accessed or downloaded the Software or licence key, it will not be possible to refund the order.

11. If the Licensee's payment is subject to any tax liability within any jurisdiction (for example, withholding tax) then it bears sole responsibility for meeting this liability, and no deductions must be made in the amount paid to Licensor. Licensor does not accept liability for any tax liabilities that may arise from the Licensee's purchase of the Software or any associated services hereunder.

12. When the contract for the purchase of Burp Suite Enterprise Edition has been concluded, such contract is made for the benefit of the Licensee and Licensor only and is not intended to benefit, or be enforceable by, anyone else.

13. These Terms (including all the documents referred to in them) are governed by and construed in accordance with English Law and submitted to the exclusive jurisdiction of the English courts.

#### Burp Suite Enterprise Edition Licence Agreement

This licence agreement, which incorporates the General Terms and Conditions below, (the "Licence") forms part of the Terms for the Software, which includes computer software, and the online documentation current and accessible on: <https://support.portswigger.net/> (the "Documentation").

THE DOCUMENTATION CONTAINS THE SYSTEM REQUIREMENTS FOR SOFTWARE TO RUN BURP SUITE ENTERPRISE EDITION BOTH AT BASIC AND OPTIMUM LEVELS AND INTERNET ACCESS IS REQUIRED: (I) DURING INSTALLATION TO ACTIVATE SELF-HOSTED SOFTWARE AND (II) TO ACCESS AND USE THE HOSTED SOFTWARE.

IF THE LICENSEE DOES NOT AGREE TO THE TERMS OF THE LICENCE AND THE BURP SUITE ENTERPRISE EDITION TERMS AND CONDITIONS OF

SUPPLY, THE LICENSOR IS UNWILLING TO LICENSE THE SOFTWARE TO THE LICENSEE AND (1) THE LICENSEE MUST DISCONTINUE ANY ON-GOING ORDERING PROCESS NOW AND MUST NOT ACCESS OR INSTALL THE SOFTWARE; AND/OR (2) WHERE THE SOFTWARE HAS ALREADY BEEN ACCESSED OR INSTALLED, THE LICENSEE MUST CEASE USING IT IMMEDIATELY.

WARNING: BURP SUITE ENTERPRISE EDITION IS DESIGNED TO TEST FOR SECURITY FLAWS AND CAN DO DAMAGE TO TARGET SYSTEMS DUE TO THE NATURE OF ITS FUNCTIONALITY. TESTING FOR SECURITY FLAWS INHERENTLY INVOLVES INTERACTING WITH TARGETS IN NON-STANDARD WAYS WHICH CAN CAUSE PROBLEMS IN SOME VULNERABLE TARGETS. THE LICENSEE MUST TAKE DUE CARE WHEN USING THE SOFTWARE, MUST READ ALL DOCUMENTATION BEFORE USE AND BACK UP TARGET SYSTEMS BEFORE USE. WHERE THE LICENSEE USES THE SOFTWARE ON PRODUCTION SYSTEMS OR OTHER SYSTEMS, IT EXPRESSLY HEREBY ACCEPTS THE RISK OF DAMAGE AND RISK OF LOSS OF DATA OR LOSS OF USE IN RESPECT OF SUCH DATA AND SYSTEMS AND ACCEPTS THAT IT SHOULD NOT USE THE SOFTWARE ON ANY SYSTEMS FOR WHICH IT DOES NOT ACCEPT THE RISK OF DAMAGE, RISK OF LOSS OF DATA OR LOSS OF USE.

## 1. GRANT AND SCOPE OF LICENCE

1.1. In consideration of the payment by the Licensee of any agreed licence fee and the Licensee agreeing to abide by the terms of the Licence, the Licensor hereby grants to the Licensee a non-exclusive, non-transferable licence for the period specified in the Licensee's order confirmation (the "Licence Period") to use the Software and the Documentation on the terms of the Licence.

1.2. If the Licence is subject to auto-renewal, a new Licence Period will commence on the expiry of the previous Licence Period, subject to successful payment being taken on the Renewal Payment Date. Each subsequent Licence Period commenced using the auto-renew process will be for the same duration as the previous Licence Period unless the Licensor has agreed otherwise with the Licensee in writing.

1.3. For Self-Hosted Software, each installation of Burp Suite Enterprise Edition on an individual computer needs to be activated before it will operate, including subsequent licences commenced using auto-renewal. The number of activations performed for each licence is monitored. The Licensor reserves the right to limit the number of activations allowed per licence, and to prevent further activations if this limit is exceeded.

1.4. In providing the Software the Licensor may process personal data pursuant to the Data Processing Agreement and the Licensee is responsible for ensuring it has (i) appropriate measures in place to minimise the personal data disclosed to Licensor; and (ii) complied with applicable data protection laws (including its obligations to ensure there is an appropriate lawful basis for disclosing the personal data to Licensor, and its transparency obligations). Processing for the purposes of performing internal analytics, or to perform its customer support and troubleshooting functions, shall be pursuant to Licensor's Privacy Notice (accessible here: <https://portswigger.net/privacy>).

1.5. The Licensee may:

1.5.1. as applicable, download, install, access and use the Software, including any Burp Apps (as defined in the General Terms and Conditions, section 5) for its internal business purposes and/or, (other than where Licensee elects the Unlimited Usage Model for Hosted Software), the provision of a bespoke consultancy service to clients where the Licensee is acting in a business advisory capacity only;

1.5.2. for Self-Hosted Software, make one copy of the Software for back-up purposes only, provided that this is necessary for the activities permitted under section 1.5.1;

1.5.3. receive and use any free supplementary software code (for Self-Hosted Software) or update of the Software (for Hosted Software) incorporating "patches"

and corrections of errors as may be provided by the Licensor from time to time on the basis that they are governed by the terms of the Licence;

1.5.4. use any Documentation in support of the use permitted under section 1.5.1 and make such numbers of copies of the Documentation as are reasonably necessary for its lawful use; and

1.5.5. analyse the behaviour and performance of the documented functionality of the Software and any Burp Apps (defined as aforesaid) and disclose the findings of such analysis to any party provided that such findings are provided simultaneously and in identical form to the Licensor.

1.5.6. resell the Software, provided that:

1.5.6.1. the Licensee procures that the purchaser is bound by the terms of this Licence for the benefit of the Licensor, with an ability for the Licensor to enforce such terms against the purchaser directly and that the Licensee indemnify the Licensor against all costs (including legal costs) charges and expenses incurred by the Licensor as a result of the failure by the Licensee to comply with the provisions of this paragraph and/or the resale by the Licensee of the Software to the purchaser; and

1.5.6.2. the Licensee has purchased the Software directly from the Licensor.

1.6. If the Licensee is a purchaser who has lawfully obtained the Software other than by direct purchase from the Licensor, the Licensee may carry out the activities specified in sections 1.5.1 to 1.5.5 above and, in consideration of the Licensor agreeing to provide updates of the Software to the Licensee during the Licence Period, either directly or via the relevant intermediary or intermediaries, the Licensee agree to be bound by the Licence directly in favour of the Licensor as if the Software were purchased directly from the Licensor. For clarity, updates to the Software may



be made available automatically as part of the Hosted Software or be made available for installation in the case of Self-Hosted Software.

1.7. The Licensee may not use the Software in breach of any prohibited behaviours as detailed in paragraph 2 (Prohibited Behaviours) of the Acceptable Use Policy (<https://portswigger.net/data-processing-agreement>).

## 2. LICENSOR'S LIABILITY: ATTENTION IS DRAWN PARTICULARLY TO THE PROVISIONS OF THIS CONDITION

2.1. Subject to the General Terms and Conditions, section 9.1, the Licensor's maximum aggregate liability under or in connection with this Licence, or any collateral contract, whether in contract, tort (including negligence) or otherwise, shall in each year be limited to the total licence fee paid during that year for the Software giving rise to the claim.

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These general terms and conditions are applicable to and form part of the Terms entered into between the Licensee and the Licensor for the Software and apply, unless specified or the context otherwise requires, whether the Software has been acquired either directly or indirectly by way of free download, pre-purchase or purchase on credit, free trial or by way of free licence for training purposes. Unless the context otherwise requires, words and expressions used in the remainder of the Terms shall have the same meanings when used in these general terms and conditions.

## 1. LICENSEE'S WARRANTY AND UNDERTAKINGS

1.1. The Licensee warrants that it is not purchasing licences to the Software as a consumer but will be using the Software in its business and that any users placing orders for the Software and/or accepting these Terms are duly authorised by the Licensee to acquire licences to the Software.

1.2. Except as expressly set out in the Licence or as permitted by any local law, the Licensee undertakes:

1.2.1. not to use (or allow to be used) the Software and the Documentation for any unlawful, unauthorised or irresponsible purposes, which shall include the use of the Software to scan sites and/or systems which Licensee does not have permission to scan. The Licensee acknowledges that the Software contains functionality that can be used to attack and compromise computer systems, and the Licensee shall be responsible for all losses, costs, liabilities or other damages incurred by the Licensor in connection with any claim by a third party in connection with a breach by the Licensee of this obligation;

1.2.2. to keep confidential any credentials provided by the Licensor enabling the Licensee to (as applicable) log in to the Licensor's server (for the purposes of downloading product builds and licence keys and to perform product activation, to create Extensions to the Self-Hosted Software (as defined in section 5), or to access the Burp Collaborator server or Hosted Software;

1.2.3. to obtain all necessary authorisations from system owners prior to using the Software or any Burp Apps thereon and implement additional security or technical measures which may be required from the Licensor from time to time to support such authorisation activities;

1.2.4. unless agreed by the Licensor not to copy the Software or Documentation except where such copying is incidental to normal use of the Software, or where it is necessary for the purpose of back-up or operational security;

1.2.5. subject to the provisions of section 5, not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Software or Documentation;

1.2.6. subject to the provisions of section 5, not to make alterations to, or modifications of, the whole or any part of the Software, nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;

1.2.7. not to disassemble, decompile, reverse engineer or create derivative works based on, the whole or any part of the Software nor attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by the Licensee during such activities:

1.2.7.1. is used only for the purpose of achieving inter-operability of the Software with another software program; and

1.2.7.2. is not unnecessarily disclosed or communicated without the Licensor's prior written consent to any third party; and

1.2.7.3. is not used to create any software which is substantially similar to the Software;

1.2.8. to supervise and control use of the Software and ensure that the Software is used by the Licensee's employees and representatives in accordance with the terms of the Licence;

1.2.9. to replace the current version of the Software with any updated or upgraded version or new release provided by the Licensor to the Licensee via its account or the Software, immediately on receipt (and failure to do so may result in the Licensee's ineligibility for support pursuant to this Agreement);

1.2.10. to keep all copies of the Self-Hosted Software secure and to maintain accurate and up-to-date records of the number of locations of all copies of the Self-Hosted Software;

1.2.11. to include the copyright notice of the Licensor on all entire and partial copies the Licensee makes of the Software on any medium;

1.2.12. not to provide or otherwise make available the Software in whole or in part (including but not limited to program listings, object and source program listings, object code and source code), in any form to any person other than the Licensee's employees without prior written consent from the Licensor;

1.2.13. unless specifically authorised by the Licensor in writing, not to use the Software as part of an automated service offering to third parties;

1.2.14. not to engage in any activity, practice or conduct which would constitute an offence under sections 1, 2, or 6 of the Bribery Act 2010, if such activity, practice or conduct had been carried out in the UK; and

1.2.15. to be responsible for all liability claims, actions, or causes of action, together with the legal costs of the Licensor in bringing the same, arising by reason of or in

any way relating to the Licensee's actions or activities of its employees, agents, or contractors under the Licence.

1.3 Licensee acknowledges that it has the right to delete Licensee data from the Software at any time throughout the duration of the Licence.

## 2. SUPPORT, UPGRADES AND AVAILABILITY

2.1. The accessing of Hosted Software or downloading of a licence for Self-Hosted Software entitles the Licensee to free product support provided via the Licensor's support centre portal on its website at the Licensor's sole discretion. Such support will be subject to any support conditions, guidance or FAQs available on <https://support.portswigger.net/> as updated from time to time.

2.2. If licences to new releases of the Software are offered for sale to the Licensor's customers generally, these may be made available free of charge to the Licensee for the duration of the Licence provided that the Licensee enters into a new licence agreement in respect of such new release on such terms as may be notified to the Licensee by the Licensor at that time. If no such new licence terms are notified, these terms shall continue to apply.

2.3. Licensor will use reasonable endeavours to ensure that Hosted Software is available at all times outside of scheduled maintenance windows or unscheduled downtime in the event of emergencies or circumstances outside of the Licensor's reasonable control.

## 3. BURP COLLABORATOR

3.1. The Licensor has developed Burp Collaborator which is a component of the Software's automated and manual testing tools available in respect of the Burp Suite

Enterprise Edition and Burp Suite Professional Software and the terms of this section 3 shall only apply in respect of that Software. Burp Collaborator involves the Licensee deploying a system on the public web (the "Collaborator Server") which acts as the recipient of third-system interactions that may be triggered by payloads that the Software sends to target systems enabling the detection of certain types of vulnerability. A full description of the functionality of Burp Collaborator forms part of the Documentation if it applies to the version of the Software the Licensee has downloaded (in the case of Self-Hosted Software) or accessed (in the case of Hosted Software).

3.2. The functionality of Burp Collaborator gives rise to issues that require careful consideration by the Licensee as fully set out in the Documentation. By utilising any features of the Software that may cause interaction with Burp Collaborator, the Licensee will be deemed to have read the relevant Documentation, fully understood the functionality and the alternative methods of utilisation of Burp Collaborator and considered the consequences of utilisation for its organisation and as a result of such consideration has decided that Burp Collaborator, in the form utilised by it, is suitable and appropriate for use by it. The Licensor considers Burp Collaborator to be efficacious in identifying vulnerabilities of the target website in connection with third-system interactions, but the Licensee must make its own evaluation before using the Collaborator Server in any of the alternative manners set out in the Documentation.

3.3. If the Licensee is permitted by the Licensor to use the Burp Collaborator server as part of a bespoke consultancy permitted under the terms of the Licence, by doing so the Licensee warrants to the Licensor that it has recommended the client to use the Burp Collaborator server in accordance with the terms of the Documentation and the client has instructed the Licensee to use the same having discussed with the Licensee the contents of the Documentation relating thereto.

#### 4. BURP INFILTRATOR

4.1. The Licensor has developed Burp Infiltrator which is a component of the Software for instrumenting deployed applications in order to facilitate testing using the Software in respect of the Burp Suite Enterprise Edition and Burp Suite Professional Software and the terms of this section 4 shall only apply in respect of

that Software. Burp Infiltrator involves the Licensee deploying or procuring deployment of the Infiltrator component within the target system which enhances the ability of the Software to detect certain types of vulnerability. A full description of the functionality of Burp Infiltrator forms part of the Documentation if it applies to the version of the Software the Licensee has downloaded (in the case of Self-Hosted Software). The Burp Infiltrator does not apply to Hosted software.

4.2. The functionality of Burp Infiltrator gives rise to issues that require careful consideration by the user as fully set out in the Documentation. By deploying or procuring deployment of the Infiltrator tool, the Licensee will be deemed to have read the relevant Documentation, fully understood the functionality of Burp Infiltrator and considered the consequences of utilisation for its organisation and any bespoke consultancy clients of the Licensee and, as a result of such consideration, has decided that Burp Infiltrator is suitable and appropriate for use by it and by any client of the Licensee. The Licensor considers Burp Infiltrator to be efficacious in helping to identify vulnerabilities of the target website, but the Licensee must make its own evaluation before utilising Burp Infiltrator in the manner set out in the Documentation.

4.3. If the Licensee causes its client to install or access Burp Infiltrator as part of a bespoke consultancy permitted under the terms of the Licence, by so doing it warrants to the Licensor that it has recommended to the client to install Burp Infiltrator on its system and has discussed with the client the contents of the Documentation relating thereto and the potential consequences of such installation or access.

## 5. EXTENSIONS

5.1. In the Licence Agreement "Extension" means all programming additions made by a Licensee or on his behalf or with his concurrence to Self-Hosted Software using any of Burp Suite's official APIs (as hereinafter defined) to either:

5.1.1. extend the functionality of the Self-Hosted Software; or

5.1.2. enable the Self-Hosted Software to inter-operate with other software;

but not to copy, clone, reproduce or emulate any existing feature of any software produced by the Licensor; and "Burp App" or "BApp" means an Extension adopted by the Licensor pursuant to this clause.

5.2. "Burp Suite's official APIs" means any of the official application programming interfaces made available by PortSwigger Ltd and further described as part of the Documentation.

5.3. Extensions may be created for the use of the Licensee provided that if any such Extension is published (which, for the avoidance of doubt, shall include sharing such Extension with another licensee or a third party unless the party to which the Extension is provided is either a client of the Licensee and the relevant Extension has been created for use on an engagement for that or another client of the Licensee, or another Licensee within the Licensee's organisation) the Licensee shall notify the Licensor and provide to it a copy of such Extension and the Licensee agrees that any such Extension shall, at the option of the Licensor, become either

5.3.1. a Burp App; or

5.3.2. part of the Software.

5.4. When the creation of an Extension is notified to the Licensor or shared publicly and comes to the attention of the Licensor the Licensor has the option, in its sole discretion, to make the Extension a Burp App (Burp App, or BApp) after having carried out such diligence as it deems appropriate, on the Extension.



5.5. The Licensor has established the BApp Store product feature where Burp Apps are described and may be downloaded without charge for use as an Extension.

5.6. All Extensions and Burp Apps remain the property of the author but by creating such Extension, the author has granted an irrevocable, worldwide, perpetual, non-exclusive licence free of charge to the Licensor to incorporate such Extension in the Software and to use, copy, modify and adapt it for any purpose at the Licensor's option and an irrevocable, perpetual, non-exclusive licence to use the Extension free of charge to all third party licensees who download the Burp App from the BApp Store.

5.7. If, at the sole option of the Licensor, the Licensor incorporates an Extension into the Software a notice will be placed on the BApp Store to that effect.

5.8. The Licensor retains the right, without incurring any liability to the Licensee, to disable without notice any Burp App being used by the Licensee where the Licensor considers in its sole discretion that it is necessary to do so for operational, security or quality reasons.

5.9. For the avoidance of doubt, Licensee may not make any Extension to the Hosted Software.

## 6. THIRD PARTY SOFTWARE

The Software may make use of third party technology that is provided with the Software. The Licensor may provide certain notices to the Licensee in the Documentation, readmes or notice files in connection with such third party technology. Third party technology will be licensed to the Licensee either under the terms of this License or, if specified in the Documentation, readmes or notice files, under separate terms or as otherwise notified to the Licensor by the Licensee.

## 7. INTELLECTUAL PROPERTY RIGHTS

7.1. The Licensee acknowledges that all intellectual property rights in the Software and the Documentation anywhere in the world belong to the Licensor, that rights in the Software are licensed (not sold) to the Licensee, and that the Licensee has no rights in, or to, the Software or the Documentation other than the right to use them in accordance with the terms of the Licence.

7.2. The Licensee acknowledges that it has no right to have access to the Software in source code form.

7.3. The integrity of this Software is protected by technical protection measures ("TPM") so that the intellectual property rights, including copyright, in the Software of the Licensor are not misappropriated. The Licensee must not attempt in any way to remove or circumvent any such TPM, nor apply or manufacture for sale or hire, import, distribute, sell or let for hire, offer or expose for sale or hire, advertise for sale or hire or have in its possession for private or commercial purposes any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of such TPM.

7.4. The Licensor will defend Licensee against any claim, demand, suit or proceeding made or brought against Licensee by a third party alleging that any Software or services infringe or misappropriate such third party's intellectual property rights (a "Third Party IPR Claim"), and will indemnify Licensee from any direct damages, finally awarded against Licensee as a result of, or for amounts paid by Licensee under a settlement approved by Licensor in writing of, a Third Party IPR Claim, provided that, in each case the Licensee:

7.4.1. promptly gives Licensor written notice of the Third Party IPR Claim;

7.4.2. gives the Licensor, at its sole option, the sole control of the defence and settlement of the Third Party IPR Claim; and

7.4.3. gives Licensor all reasonable assistance, at Licensor's expense.

7.5. If Licensor receives information about an infringement or misappropriation claim related to the Software or services, Licensor may in its discretion and at no cost to Licensee (i) modify the Software or services so that they are no longer claimed to infringe or misappropriate, (ii) obtain a license for Licensee's continued use of the Software or services in accordance with this Agreement, or (iii) terminate Licensee's subscriptions for such Software or services upon 30 days' written notice and refund Licensee any prepaid fees covering the remainder of the term of the terminated licence. The above defence and indemnification obligations do not apply if (1) the allegation does not state with specificity that the Software or services are the basis of the Third Party Claim; (2) a Third Party Claim arises from the use or combination of the Software or services or any part thereof with software, hardware, data, or processes not provided by Licensor, if the Software or Services or use thereof would not infringe without such combination; (3) a Third Party Claim arises from Software or services for which there is no charge or has been provided on a free trial or community licence basis; or (4) a Third Party Claim arises from the Licensee's or a third party's materials or application or Licensee's breach of this Agreement. This clause provides the Licensor's sole liability to, and the Licensee's exclusive remedy against, the Licensor for any Third Party IPR Claim.

## 8. LICENSOR'S WARRANTY

8.1. The Licensor warrants that for a period of 90 days from the date of purchase of the Software (the "Warranty Period") the Software will, when properly used, perform substantially in accordance with the functions described in the Documentation (provided that the Software is properly used on the computer and with the runtime environment for which it was designed as referred to in the Documentation). Burp Apps do not have the benefit of this warranty and the warranty in relation to Burp Collaborator is limited as set out in the Documentation as it relates to Burp Collaborator. This clause 8.1 does not apply in respect of Software for which there is no charge or has been provided on a free trial or community licence basis.

8.2. The Licensee acknowledges that the Software and the Burp Apps are provided "as is" and have not been developed to meet its individual requirements, and that it is therefore the Licensee's responsibility to ensure that the facilities and functions of the Software as described in the Documentation and the facilities and functions of any Burp App meet its requirements.

8.3. The Licensee acknowledges that the Software and the Burp Apps may not be free of bugs or errors, and agree that the existence of minor errors shall not constitute a breach of the Licence.

8.4. If, within the Warranty Period, the Licensee notifies the Licensor in writing of any defect or fault in the Software in consequence of which it fails to perform substantially in accordance with the Documentation, and such defect or fault does not result from the Licensee having amended the Software or used it in contravention of the terms of the Licence, the Licensor will, at its sole option, either repair or replace the Software, provided that the Licensee make available all the information that may be necessary to help the Licensor to remedy the defect or fault, including sufficient information to enable the Licensor to recreate the defect or fault.

## 9. LICENSOR'S LIABILITY: ATTENTION IS DRAWN PARTICULARLY TO THE PROVISIONS OF THIS CONDITION

9.1. Nothing in the Licence shall limit or exclude the liability of either party for death or personal injury resulting from negligence, fraud, fraudulent misrepresentation or any other liability that cannot be limited by law.

9.2. Subject to section 9.1, the Licensor's liability for losses suffered by the Licensee arising out of or in connection with the Licence (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall not include liability for:

9.2.1. loss of turnover, sales or income;

9.2.2. loss of business profits or contracts;

9.2.3. business interruption;

9.2.4. loss of the use of money or anticipated savings;

9.2.5. loss of information;

9.2.6. loss of opportunity, goodwill or reputation;

9.2.7. loss of, damage to or corruption of software or data; or

9.2.8. any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise.

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10.1. By entering into the Licence the Licensee agrees that the Licensor may refer to the Licensee as one of its customers internally and in externally published media and, where relevant, the Licensee grants its consent to the use of the Licensee's logo(s) for this purpose, unless the Licensee notifies the Licensor in writing that the Licensor may not refer to it for such purpose. Any additional disclosure by the Licensor with respect to the Licensee shall be subject to its prior written consent.

## 11. TERMINATION, EXPIRY AND SUSPENSION

11.1. Either party may terminate the Licence immediately by written notice to the other if the other party, or in the case of Licensee any of its users, commit a material or persistent breach of the Licence, including, in the case of Licensee, without limitation, any failure to make any payment due to the Licensor by its due date and which the breaching party fails to remedy (if remediable) within 14 days after the service of written notice requiring the breaching party to do so.

11.2. Licensor may terminate the Licence at any time for convenience on giving 30 days written notice to the Licensee, and in such cases the Licensee shall receive a pro-rata refund of the upfront license fee to reflect its unexpired term as at the point of such termination taking effect.

11.3. Upon expiry or termination for any reason:

11.3.1. all rights granted to the Licensee under the Licence shall cease;

11.3.2. the Licensee must cease all activities authorised by the Licence;

11.3.3. in the case of Self-Hosted Software, the Licensee must immediately delete or remove the Self-Hosted Software and any Burp Apps from all computer equipment in its possession, and immediately destroy or return to the Licensor (at the Licensor's option) all copies of the Self-Hosted Software and Burp Apps then in its possession, custody or control and, in the case of destruction, certify to the Licensor that it have done so;

11.3.4. subject to section 1.4 and the Data Processing Agreement, in the case of Hosted Software, the Licensee shall have 30 days prior to expiry or termination to export or delete Licensee data from the Hosted Software before such data is deleted by Licensor; and

11.3.5. the Licensee must immediately pay to the Licensor any sums due to the Licensor under the Licence.

11.4. Without prejudice to section 11.1, if payment of any fees due by Licensee has not been made or successfully collected prior to the due date as shown on the relevant invoice, Licensor shall have the right to suspend Licensee's usage of certain features of the Software, including but not limited to scanning, until such time as all amounts due are paid in full.

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## 12. TRANSFER OF RIGHTS AND OBLIGATIONS

12.1. The Licence is binding on the Licensee and the Licensor, and each of their respective successors and assigns.

12.2. The Licensee may not transfer, assign, charge or otherwise dispose of the Licence, or any of its rights or obligations arising under it, without the Licensor's prior written consent.

12.3. Where Licensee is a company, the licenses granted hereunder shall also extend to the Licensee's Group members (meaning, in relation to any company, that company, its subsidiaries, its ultimate holding company and all subsidiaries of such ultimate holding company, as such terms are defined in the Companies Act 2006), provided that such Group members have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

12.4. The Licensor may transfer, assign, charge, sub-contract or otherwise dispose of the Licence, or any of the Licensor's rights or obligations arising under it, at any time during the term of the Licence.

## 13. NOTICES

All notices given by the Licensee to the Licensor must be given to PortSwigger Ltd at office@portswigger.net or 6 Booths Park, Chelford Road, Knutsford, United Kingdom WA16 8ZS. The Licensor may give notice to the Licensee at either the e-mail or postal address the Licensee provided to the Licensor when purchasing the Software, or if the Licensee has updated their account details on the website following the purchase of the Software, these details shall be used. Notice will be deemed received and properly served immediately when posted on the Licensor's website, 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the



case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.

#### 14. EVENTS OUTSIDE LICENSOR'S CONTROL

14.1. The Licensor will not be liable or responsible for any failure to perform, or delay in performance of, any of the Licensor's obligations under the Licence that is caused by events outside its reasonable control (Force Majeure Event).

14.2. A Force Majeure Event includes any act, event, non-happening, omission or accident beyond the Licensor's reasonable control and includes in particular (without limitation) the following:

14.2.1. strikes, lock-outs or other industrial action;

14.2.2. civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat of or preparation for war;

14.2.3. fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic or any natural disaster or any steps taken by a regulatory or governmental authority in relation to any of the foregoing;

14.2.4. impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;

14.2.5. impossibility of the use of public or private telecommunications networks; and

14.2.6. the acts, decrees, legislation, regulations or restrictions of any government.

14.3. The Licensor's performance under the Licence is deemed to be suspended for the period that the Force Majeure Event continues, and the Licensor will have an extension of time for performance for the duration of that period. The Licensor will use its reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which its obligations under the Licence may be performed despite the Force Majeure Event.

## 15. WAIVER

15.1. If either party fails, at any time during the term of the Licence, to insist upon strict performance of any of the other party's obligations under the Licence, or if either party fails to exercise any of the rights or remedies to which it is entitled under the Licence, this shall not constitute a waiver of such rights or remedies and shall not relieve the other party from compliance with such obligations.

15.2. A waiver by either party of any default shall not constitute a waiver of any subsequent default.

15.3. No waiver by either party of any of the provisions of the Licence shall be effective unless it is expressly stated to be a waiver and is communicated to the other party in writing.

## 16. SEVERABILITY

If any of the terms of the Licence are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will

to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

## 17. ENTIRE AGREEMENT

17.1. This Licence and any document expressly referred to in it represents the entire agreement between the parties in relation to the licensing of the Software, the Documentation and any Burp Apps and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing.

17.2. The parties each acknowledge that, in entering into the Licence, they have not relied on any representation, undertaking or promise given by the other or implied from anything said or written in negotiations between the parties prior to entering into the Licence except as expressly stated in the Licence.

17.3. Neither party shall have any remedy in respect of any untrue statement made by the other, whether orally or in writing, prior to the date on which the parties entered into this Licence (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in these terms and conditions.

## 18. LAW AND JURISDICTION

The Licence, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and submitted to the exclusive jurisdiction of the English courts.

Acceptable Use Policy

## 1. FAIR USAGE

1.1. Licensee agrees the Licensee's use of the Hosted Software shall not be used in a manner which:

1.1.1. unduly burdens or overloads the Licensor's systems; and/or

1.1.2. impacts other users use of the Software.

## 2. PROHIBITED BEHAVIOURS

2.1. Licensee may not use, or facilitate or allow others to use the Software to:

2.1.1. scan unauthorised systems or sites; or

2.1.2. when using the Unlimited Usage Model for Hosted Software:

2.1.2.1. concurrently scan the same web application; or

2.1.2.2. scan systems or sites that are not owned by the Licensee.