NMAP TECHNOLOGY LICENSE AGREEMENT

THIS NMAP TECHNOLOGY LICENSE AGREEMENT (together with all exhibits and other attachments hereto, the "Agreement") is entered into and effective as of the last signature date set forth below, or 14 days after the first signature on the fully executed contract, whichever is earlier ("Effective Date"), by and between ________________ ("Licensee"), and Insecure.Com, LLC, a California company located at 113 Cherry St #1337, Seattle, WA 98104-2205 ("Insecure").

1. COVERED PRODUCTS

Insecure licenses its technology for use in specific products. This Agreement covers the following product(s): ______ ("Covered Products").

2. LICENSE STRUCTURE, FEES, AND PAYMENT

2.1 License Structure.

___ Perpetual (if checked, this is a "Perpetual License")

"Perpetual License Fee": $__

"Initial Maintenance Period" (for updates & support, starting on Effective Date): 1 year

"Initial Maintenance Fee": $__

Optional "Annual Maintenance Fee" (after Initial Maintenance Period): $__

___ Annual (if checked, this is an "Annual Term License")

"Annual Fee" (includes distribution rights, updates & support): $__

(Annual Fee is due on every anniversary of the Effective Date until terminated)

2.2 License Fees. All amounts are in U.S. Dollars. For perpetual Licenses, License Fees consist of the Perpetual License Fee, Initial Maintenance Fee, and optional Annual Maintenance Fees. For Annual Term Licenses, they consist of the Annual Fee. If any of these fees are listed as “Reseller”, this sale is through a reseller ("Reseller") and the exact amounts payable has been worked out separately between Reseller and Insecure. Similarly, the amount charged to Licensee by Reseller for the software is negotiated between those two parties.

2.3 Payment. For Perpetual Licenses, payment of the Perpetual License Fee and the Initial Maintenance Fee (if any) are due in full by thirty (30) days after the Effective Date. Thereafter, Annual Maintenance Fee payments shall be due annually on each anniversary of the Effective Date during the Term for updates and support as described in Articles 7 and 8, unless Licensee terminates maintenance as provided in Section 4.3. For Annual Term Licenses, the first Annual Fee is due thirty (30) days after the Effective Date and then on every anniversary of the Effective Date unless Licensee elects to terminate its Nmap distribution, update, and support rights as described in Section 4.4.

3. NMAP TECHNOLOGY

Nmap Technology refers to the Nmap OEM product as described at https://nmap.org/oem/. Licensee may utilize all components and features of Nmap OEM except as specifically excluded by Section 2.2 ("Special Restrictions") or elsewhere in this Agreement text.

3.1 Licensed Versions. Licensee may use Nmap Technology from the Nmap Security Scanner Version __________ in accordance with this Agreement. Previous versions may be used, though that is not recommended. Later versions may only be used if the Annual Fee has been paid (i.e. maintenance was
active) at the time they were released. This set of permitted Nmap versions are herefore known as the Licensed Versions.

3.2 Special Restrictions. No special restrictions on Licensee’s usage of Nmap Technology were negotiated as part of this contract.

4. TERM AND TERMINATION

4.1 Term. The term of each license granted hereunder (“Term”) shall be perpetual, unless terminated as provided for in Sections 4.2, 4.4 or 4.5.

4.2 Termination for Cause. Either party may, without prejudice to any other remedy they may have, terminate this Agreement in the event of any material breach of this Agreement by the other party which isn’t remedied within thirty (30) days after notifying the breaching party. The notification must fully describe the breach and declare intent to terminate the Agreement if not remedied.

4.3 Termination of Perpetual License Maintenance and Support for Convenience. For Perpetual Licenses, Licensee may terminate maintenance and cease paying future Annual Maintenance Fees by providing written notice to Insecure. Such maintenance termination will take effect on the Annual Fee due date following the termination notice, or when the current paid-up maintenance period ends, whichever is later. After the maintenance termination becomes effective, Licensee is no longer entitled to Nmap Technology support or any future updates or new version releases. No refunds of previously paid Annual Fees are provided upon termination, but those license and support rights continue for their original duration and no further payments will be due. This election to terminate maintenance does not constitute termination of the Agreement as a whole.

4.4 Termination of Annual Term License for Convenience. For Annual Licenses, Licensee may terminate this license and cease paying the Annual Fee by providing written notice to Insecure. Such termination will take effect on the Annual Fee due date following the termination notice, or when the current paid-up Annual Fee period ends, whichever is later. After such a termination becomes effective, Licensee is no longer entitled to redistribute Nmap Technology or use any updates made available after termination. Rights already granted to existing end user customers are unaffected per Section 4.7. No refunds of previously paid Annual Fees are provided upon termination, but those license and support rights continue for their original duration and no further payments will be due.

4.5 Trial Period Termination with Refund. Licensee may terminate this Agreement for any reason during the first six months from the Effective Date by notifying Insecure of that election. Insecure will provide a full refund within 30 days of all money paid by licensee, including any License Fee and Annual Fee payments. Licensee may not redistribute Nmap Technology in any form after electing termination, though rights already granted to existing end user customers are unaffected per Section 4.7.

4.6 Cessation of Use. Upon termination of this Agreement, Licensee shall cease distributing the Nmap Technology in Covered Products.

4.7 End User License Agreements Unaffected. Upon termination for whatever reason, except for Licensee or End-User breach of Section 5.2, the end user license agreements shall remain unaffected.

5. LICENSE SCOPE

5.1 Duplication and Distribution by Licensee. Subject to the terms and conditions of this Agreement, Insecure grants Licensee a non-exclusive, worldwide, non-transferable, license to use, reproduce, distribute, and display the Nmap Technology as necessary or desirable to incorporate and adapt Nmap Technology into the Covered Products, and to update, market, and distribute those products to end users. Licensee may distribute to end users directly, or through multiple tiers of distribution, including resellers, distributors, VARS and OEMs.
5.2 License of Nmap Technology to End Users. Licensee may grant to end users the right to use Covered Products. Licensee may not permit end users to sublicense or externally redistribute Nmap Technology in whole or in part, except as allowed by copyright provisions such as the first sale doctrine and principal of exhaustion.

5.3 Modifications. During the Term, Licensee shall have the non-sublicensable right to modify, add-on to, or enhance the Nmap Technology for the purpose of creating the Covered Products and shall own all rights thereto; provided, however, that to the extent that such a modified product constitutes a “derivative work” as defined by 17 U.S.C. 101, Licensee’s rights therein shall remain subject to this Agreement.

5.4 Internal Use. Licensee may use Nmap Technology internally for purposes related to development, distribution, testing, and usage of the Covered Products.

6. PROPRIETARY RIGHTS

6.1 Ownership. Licensee acknowledges and agrees that the copyright, patent, trade secret, and all other intellectual property rights of whatever nature in the Nmap Technology, and all copies thereof, partial or complete, in all media and whether or not not merged into other materials, are and shall remain the property of Insecure, and nothing in this Agreement shall be construed as transferring any aspects of such rights to Licensee or any third party.

6.2 Use of Nmap Trademark. “Nmap” is a registered trademark of Insecure. Licensee may use the Nmap trademark to identify its use of Nmap Technology in the Covered Products.

7. SUPPORT

7.1 Included Support. During the Term, Insecure will provide e-mail and telephone developer support at no extra charge beyond the Annual Fee. This includes troubleshooting and fixing errors in Nmap Technology and/or generating work-arounds, as well as providing advice relating to the use and implementation of Nmap Technology in Covered Products. Custom programming other than to fix errors in Nmap Technology is not included. E-mail to support@nmap.com is the preferred form of support, and Insecure may not have staff available at all times to take calls. Insecure will use commercially reasonable efforts to respond to any and all developer support requests within twenty-four (24) hours and to resolve the requests as quickly as possible.

7.2 Additional Support. Should Licensee require on-site support or support beyond what is outlined herein, a support fee for such required additional support shall be negotiated in good faith by the parties. Licensee is under no obligation to purchase any additional support from Insecure.

8. UPDATES

Insecure shall provide updates such as error fixes and enhancements throughout the Term at no extra charge beyond the Annual Fee. Updates are announced on the Nmap announcement mailing list. Insecure recommends that at least one employee of Licensee subscribe at https://nmap.org/mailman/listinfo/announce.

9. WARRANTY AND DISCLAIMERS

9.1 Authority. Each party warrants and represents to the other party that it has full power and authority to enter into this Agreement and to carry out its obligations hereunder.

9.2 Non-Infringement. Insecure warrants and represents to Licensee that Nmap Technology does not infringe upon the U.S. copyright, trademark, or trade secret rights of any other person or entity. Insecure represents and warrants that it holds the copyrights necessary to extend the licenses described by this Agreement.
9.3 Functionality. For the period of one (1) year following the Effective Date, Insecure represents and warrants to Licensee that the unmodified Nmap Technology shall operate in the manner documented, and covenants that upon notification to Insecure of any errors, Insecure will, during its normal business hours and at no cost to Licensee, use reasonable efforts to correct such errors which are reproducible and verifiable by Insecure. To ensure that Nmap Technology meets Licensee’s needs, Insecure has made it freely available for testing at http://nmap.org/. Licensee is encouraged to test it before executing this Agreement.

9.4 Warranty Disclaimer. THE WARRANTY SET FORTH BY SECTION 9.3 IS A LIMITED WARRANTY AND IS THE ONLY FUNCTIONAL OR OPERATIONAL WARRANTY MADE BY INSECURE. EXCEPT AS SPECIFICALLY PROVIDED BY SECTION 9.3, INSECURE EXPRESSLY DISCLAIMS, AND LICENSEE HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. INSECURE DOES NOT WARRANT THAT THE NMAP TECHNOLOGY WILL MEET LICENSEE’S REQUIREMENTS OR THAT THE OPERATION OF THE NMAP TECHNOLOGY WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS IN THE NMAP TECHNOLOGY WILL BE CORRECTED. INSECURE’S LIMITED WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF INSECURE FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE INSTALLATION, USE OR PERFORMANCE OF THE NMAP TECHNOLOGY.

9.5 Adverse Reactions. Nmap Technology is not designed to crash systems and should not pose any problems for standards-conformant network equipment. However, some systems, devices, and applications have occasionally been reported to react adversely to port scans, OS detection, service detection probes, and NSE scripts. This is an error in the network device in question, and not in Nmap Technology. Nmap Technology should not be used against mission-critical systems without careful monitoring.

9.6 Accuracy. Nmap attempts to provide quick, accurate results even in the face of occasional dropped or delayed packets and unfamiliar devices. But there are limits as to what Nmap can compensate for. In addition, techniques such as version and operating system guessing are an inexact science. So Nmap Technology will not always result in 100% accurate results, though Insecure will attempt to understand and correct for any reported misidentifications.

9.7 Warranties to Third Parties. Any warranty granted by the Licensee to any end users shall be that of Licensee alone, and Insecure shall not be liable to any such person on any cause of action or theory of recovery whatsoever. Insecure shall not be liable to any third party as express or implied third party beneficiary under this Agreement.

10. Third-Party Libraries AND NPCAP

10.1 Third-Party Libraries. The Nmap Security Scanner can be configured to use a number of open source programming libraries. These libraries all have BSD-style licenses which allow royalty-free redistribution within other software (including commercial/proprietary software) as long as certain minimal terms are met. For example, some require an acknowledgment or warranty disclaimer in the product documentation of any software which includes them. These third party libraries are not prepared by or owned by Insecure, and do not comprise part of Nmap Technology. However, some are included with the Nmap Security Scanner as a convenience. We maintain a list of these libraries along with their license requirements and how they may be used and/or excluded from Nmap. The latest version of the list is available at https://svn.nmap.org/nmap/docs/Nmap-Third-Party-Open-Source.pdf. The version of the file applicable to a specific Nmap release can be found in source code package we distribute for each release at docs/Nmap-Third-Party-Open-Source.pdf. Licensee is responsible for complying with the
licenses for any libraries it uses.

10.2 Npcap OEM License. The Nmap OEM Windows builds and zip packages include our Npcap OEM Windows packet capture and transmission software product (https://npcap.com). We also provide download credentials to download Npcap OEM by itself (as long as maintenance is active) in case Licensee wishes to test or use a different version with Nmap. Npcap OEM may be distributed along with Nmap under the same terms of this agreement as long as it is only used by Nmap and not directly by Licensee’s software. If Licensee wishes to redistribute Npcap OEM and use it directly by their software (rather than through Nmap), redistribution licenses are available from https://nmap.org/npcap/oem/redist.html. Unlimited copies of Npcap OEM may also be used internally by Licensee as long as it’s being used for purposes related to the Nmap redistribution objective of this license. This would include QA, testing, and development of products utilizing Nmap. If Licensee wishes to use Npcap OEM internally for purposes unrelated to this Nmap redistribution license, Npcap OEM internal-use licenses are available from https://nmap.org/npcap/oem/internal.html. The support, warranty, and indemnification provisions of this license all apply to Npcap as well as long as the Npcap use and/or redistribution relates to the Nmap redistribution objectives of this license.

11. DELIVERY

Insecure shall make the Nmap Technology and the corresponding Documentation available for download from http://nmap.org, or at such other address as Insecure may designate.

12. ASSIGNMENT

Except as provided herein, neither party may assign this Agreement or its rights hereunder without the prior written consent of the other Party. Either party may, without consent of the other party, assign this Agreement or its rights hereunder to any successor succeeding to the assigning party’s business to which this Agreement relates, provided that such successor assumes all obligations of the assignor under this Agreement. In the event of such an assignment by Licensee, Covered Products (Section 1) status and rights are not conferred to all products of the successor, but only to existing Covered Products and direct derivatives (such as new versions or editions of those products). These Covered Products may be rebranded and/or further developed by the successor.

13. INDEMNITY AND LIABILITY

13.1 Indemnification. Subject to Article 14 and the balance of this Article 13, as Licensee’s sole and exclusive remedy for any breach of Section 9.2, or claim relating to infringement matters of any kind, Insecure hereby agrees to indemnify Licensee against any settlement, judgment and reasonable defense costs resulting from a third party claim that the Nmap Technology, furnished and used within the scope of this Agreement, infringes any copyright, trademark, or trade secret provided that as conditions of indemnification each of the following is met: (a) Insecure is given written notice of the claim within thirty (30) days of its receipt; (b) Insecure is given immediate and complete control over the defense and/or settlement of the claim, and Licensee fully cooperates with Insecure in such defense and/or settlement; (c) Licensee does not prejudice in any manner Insecure’s conduct of such claim; and (d) the alleged infringement is not based upon the use of the Nmap Technology in a manner prohibited under this Agreement, or in a manner for which Nmap Technology was not designed; and (e) Licensee shall render to Insecure a full accounting of any amounts for which indemnification is sought.

13.2 Altered Version. Notwithstanding Section 13.1, Insecure shall have no liability for any claim of infringement based on (a) the use of a superseded or altered version of the Nmap Technology if infringement would have been avoided by the use of a current or unaltered version of Nmap Technology which Insecure made available to Licensee, provided that Insecure notified Licensee that superseded
version contained a possible infringement, or (b) the combination, operation or use of the Nmap Technology with software, hardware or other materials not furnished by Insecure, if infringement would have been avoided but for such combination, operation, or use.

13.3 Modification and Replacement. Notwithstanding Section 13.1, if any third party asserts that the Nmap Technology infringes a third party copyright, trademark, or trade secret, or if Insecure determines that claim of infringement by a third party is possible, it may, at its election and at no additional license fee to Licensee (a) obtain a license from such third party, (b) modify the Nmap Technology so that it is not infringing, or (c) refund the applicable License Fee payment. Upon its election of any such alternative Insecure shall incur no further indemnity to Licensee for any continued use by Licensee of the Nmap Technology in prior form.

14. LIMITATION OF LIABILITY

14.1 High Risk Use. The Nmap Technology is not designed, manufactured, or intended for use in hazardous environments requiring fail-safe performance where the failure of the software could lead directly to death, personal injury, or significant physical or environmental damage ("High Risk Activities"). Use of Nmap Technology in High Risk Activities is not authorized.

14.2 Force Majeure. Neither of the Parties shall be liable for any loss or for any failure to perform any obligation hereunder due to causes beyond its control including without limitation industrial disputes of whatever nature, power loss, telecommunications failure, acts of God, or any cause beyond its reasonable control.

15. GENERAL

15.1 Headings. The headings and captions used in this Agreement are for convenience only and are not intended to be used as an aid to interpretation.

15.2 Section References. Except as stated otherwise, all references to a “Section” shall mean sections of the main body of this Agreement and not of a Schedule.

15.3 Severability. The provisions of this Agreement are severable, and if any part of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected.

15.4 Binding. This Agreement will be binding upon and inure to the benefit of the Parties hereto, their respective successors and assigns.

15.5 No Waiver. Failure by either party to exercise any right or remedy under this Agreement does not signify acceptance of the event giving rise to such right or remedy.

15.6 No UCITA. The parties “opt out” of UCITA in the event that any performance of this Agreement would implicate the laws of a jurisdiction which has adopted UCITA.

15.7 Choice of law and disputes. This Agreement will be governed by and construed in accordance with the laws of the State of Washington, as if performed wholly within the state and without giving effect to the conflicts of law principles of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Washington, and the parties hereby consent to personal jurisdiction and venue therein.

15.8 Notices. Notices required or permitted to be given or delivered under this Agreement shall be given in writing and either (a) hand delivered, (b) delivered by mail or courier service with delivery confirmation, or (c) sent by email, as long as the recipient responds to acknowledge receipt.

15.9 Relationship of the Parties. Each of the parties expressly acknowledges that the relationship
intended to be created by this Agreement is a business relationship based entirely on and circumscribed by the express provisions of this Agreement and that no joint venture, agency, fiduciary or employment relationship is intended or created by reason of this Agreement.

15.10 Survival. Sections 5.2 (License to End Users), 4.5 (Cessation of Use), 4.6 (End User License Agreements); and Articles 6 (Proprietary Rights), 14 (Limitations of Liability), and 15 (General) shall survive the termination of this Agreement for any reason, and continue for such time as they may remain applicable. Articles 9 (Warranty and Disclaimers) and 13 (Indemnity and Liability) shall survive for one (1) year following termination of the Agreement or termination of updates and support.

15.11 Amendments. The parties further agree that any amendment, waiver, or other matter relating hereto shall require a document signed by both parties. All amendments or modifications of this Agreement shall be binding upon the parties despite any lack of consideration. When one party is granting a right to the other without any consideration, a document signed by the granting party is valid and binding.

15.12 Entire Agreement. This document, when taken with any Schedules, comprise the entire agreement between the Parties regarding the subject matter hereof and supersede and merge all prior proposals, understandings and all other agreements, oral and written, between the Parties relating to the Agreement.

15.13 Counterparts and Electronic Signature. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement and all ancillary documents may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

The parties have duly executed this Agreement by the authorized signatures below.

Licensee

By: ____________________________  Name: ____________________________
Title: ____________________________  Email: ____________________________
Date: ____________________________

Insecure.Com LLC (“Insecure”)

By: ____________________________  Name: ____________________________
Title: ____________________________  Email: ____________________________
Date: ____________________________