

# NMAP OEM 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 Delaware company located at 9450 SW Gemini Dr #1337, Beaverton, OR 97008-7105 (“**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 License**” (if checked, Licensee is a “**Perpetual Licensee**”)

“**Perpetual License Fee**”: \$ \_\_\_

“**Maintenance Period**” (for updates & support, starting on Effective Date):     months

“**Maintenance Fee**”: \$ \_\_\_

\_\_\_ “**Fixed Term License**” (if checked, Licensee is a “**Fixed Term Licensee**”)

“**Fixed Term**”:     months

“**Fixed Term Fee**” (includes distribution rights, updates & support): \$ \_\_\_

2.2 License Fees. All amounts are in U.S. Dollars. 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. For Perpetual Licenses,

2.3 Maintenance Term. The **Maintenance Term** is the period of time during which Licensee is entitled to Updates and Support as described in Articles 7 and 8. Fixed Term Licenses always include maintenance in the Fixed Term Fee, so the Maintenance Term is the same as the Term: it starts on the Effective Date and continues until the license is terminated. For Perpetual Licenses, the Maintenance Term starts on the Effective Date and lasts through every paid Maintenance Period until Licensee chooses to terminate maintenance pursuant to Section 4.3 or the license itself is otherwise terminated. If the Maintenance Period is listed as DECLINED, no maintenance is included and the Licensee is treated as having immediately terminated maintenance per Section 4.3.

### 2.4 Payment.

For Perpetual Licenses: Payment of the Perpetual License Fee and the first Maintenance Fee (if any) are due in full by thirty (30) days after the Effective Date. The second payment will be due exactly one Maintenance Period from the Effective Date and further payments will be due at each subsequent Maintenance Period unless and until Licensee terminates maintenance as provided in Section 4.3. Maintenance fees cover Updates and Support as described in Articles 7 and 8.

For Fixed Term Licenses: The first Fixed Fee payment is due thirty (30) days after the Effective Date. The second payment will be due exactly one Fixed Term from the Effective Date and further payments will be due at each subsequent Fixed Term unless Licensee elects to terminate its Nmap distribution, update, and support rights as described in Section 4.4.

### 3. NMAP TECHNOLOGY

3.1 **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 3.2 (“Special Restrictions”) or elsewhere in this Agreement text. While Insecure provides “Nmap OEM” branded binaries on some platforms and recommend those for OEM use, Licensees may choose to use and redistribute the non-OEM-branded versions of Nmap which are freely distributed from <https://nmap.org> instead. Those are considered Nmap Technology for the purposes of this agreement. Licensee may use any version of Nmap Technology or other Updates released during their Maintenance Term. Earlier versions may also be used, though that is not recommended.

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 for Convenience. Perpetual Licensees may terminate maintenance and cease paying future Maintenance Fees by providing written notice to Insecure. Such maintenance termination will take effect on the Maintenance 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, Maintenance Term is ended and Licensee is no longer entitled to Nmap Technology Support or Updates. No refunds of previously paid Maintenance 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 Fixed Term License for Convenience. Term Licensees may terminate this license and cease paying the Fixed Term Fee by providing written notice to Insecure. Such termination will take effect on the Fixed Term Fee due date following the termination notice, or when the current paid-up Fixed Term Fee period ends, whichever is later. After such a termination becomes effective, Licensee is no longer entitled to redistribute Nmap Technology. Rights already granted to existing end user customers are unaffected per Section 4.7. No refunds of previously paid Fixed Term 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 Perpetual License Fee, Maintenance Fee, or Fixed Term 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 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. UPDATES

Nmap Technology is under active development and regularly produces performance improvements, bug fixes, and feature enhancements. These are often first released as standalone code patches and then bundled into new releases.. These code patches and new releases are collectively known as **Updates**. Licensees may use any Updates which were released during their Maintenance Term. Release dates and Update descriptions are provided at <https://nmap.org/changelog>. Major updates are announced on the Nmap announcement mailing list and Insecure recommends that at least one Licensee employee subscribe at <https://nmap.org/mailman/listinfo/announce>. Licensee may also subscribe to notification of minor Updates (code patches) by “watching” the Nmap Github: <https://github.com/nmap/nmap>.

## 8. SUPPORT

8.1 Included Support. During the Maintenance Term, Insecure will provide e-mail and telephone developer support (“**Support**”). 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](mailto: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.

8.2 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.

## **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), 4.6 (Cessation of Use), 4.7 (End User License Agreements Unaffected); 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 supersedes 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**

Insecure.Com LLC (“**Insecure**”)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Email: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Email: \_\_\_\_\_  
Date: \_\_\_\_\_