



## SALTSTACK SECOPS BETA LICENSE AGREEMENT

This BETA LICENSE AGREEMENT (this "Agreement") is made as of \_\_\_\_\_, 2019 (the "Effective Date"), between SaltStack, Inc., ("SaltStack"), having its principal place of business at 3400 N. Ashton Blvd, Suite 110, Lehi, UT 84043 and \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ ("Licensee").

WHEREAS, SaltStack is developing software containing certain proprietary functionality known as SaltStack SecOps, along with related materials and documentation (collectively, the "Beta Product");

WHEREAS, SaltStack shall provide to Licensee pre-release, beta version(s) of the Beta Product, in accordance with the terms and conditions of this Agreement for the purpose of testing and evaluating the Beta Product's suitability for use in Licensee's business (the "Beta Test");

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions contained in this Agreement, the parties hereto, intending to be legally bound, agree as follows:

### 1. Licensee's Rights for the Beta Product

- 1.1 **License.** Subject to the terms and conditions of this Agreement, SaltStack hereby grants to Licensee a temporary, personal, non-transferable, non-exclusive, non-sub-licensable, limited license, to use, during the term of this Agreement, the Beta Product solely for Licensee's testing and evaluation at the site(s) agreed upon by the parties. Any use involving payments to Licensee or commercial use of the Beta Product is prohibited. The Beta Product may only be installed in one or more testing environments and may not be installed in any production environment.
- 1.2 **Restrictions.** Licensee shall not, without SaltStack' prior written consent: (i) reverse engineer, decompile, edit, modify, disassemble or otherwise attempt to derive the source code of the Beta Product, or alter or modify the Beta Product or any portions thereof; (ii) copy all or any portion of the Beta Product, and/or documentation; (iii) offer for sale or otherwise transfer, offer or deliver the Beta Product, in whole or in part, to any third party; (iv) remove any copyright, trademark or other proprietary rights, legends, markings or notices appearing on or contained in the Beta Product or any portion thereof.

### 2. Ownership

- 2.1 SaltStack shall have sole and exclusive ownership of all right, title, and interest in and to the Beta Product and any additions or modifications thereto arising during the performance of the Beta test or as a result of any other collaboration between the parties (including their respective personnel). Licensee hereby assigns to SaltStack, Licensee's entire right, title and interest (including, without limitation, all patent rights, design rights, copyrights and trade secrets) in any modifications or improvements to the Beta Products which Licensee may propose or make during the Beta Test or which Licensee and SaltStack may jointly make during the Beta Test.
- 2.2 To the extent any development or modification to the Beta Product is made by Licensee which is not owned by SaltStack pursuant to provisions of subsection 2.1 above, such development or modification is hereby fully licensed to SaltStack, including the right to grant sublicenses, on an exclusive, worldwide royalty-free basis for reproduction, distribution, modification and use throughout the world for a period ending on the date of expiration of the last to expire of the patent, copyright or other intellectual property rights covering such modifications or developments.

### 3. Confidentiality

- 3.1 **Confidential Information.** The Beta Product (including its developments and modifications) includes know-how, trade secrets and inventions belonging to SaltStack ("Confidential Information"). Confidential Information further includes any information of either party, whether disclosed orally, in writing, visually, or in any other recorded or tangible form, concerning the parties' products or the parties' businesses to the extent that the parties have not made such information publicly available. Licensee hereby acknowledges that any and all output of the Beta Product, as modified, test results and reports provided or developed by Licensee and developments and modifications under Section 2 constitute SaltStack's Confidential Information. However, "Confidential Information" does not include (1) any information which is or may become generally known to the public through no act or omission of the receiving party; (2) information that becomes known to a party without confidential or proprietary restriction from a source other than the other party that does not owe a duty of confidentiality to either party with respect to such information or without breach of any obligation to either party; or (3) information that was independently developed by a party prior to this Agreement as evidenced by documentation and instruments executed prior to the Effective Date. In addition, either party may use or disclose Confidential Information to the extent either party is legally compelled to disclose such Confidential Information; provided, however, that prior to any such compelled disclosure, the receiving party will provide the disclosing party with a written advance notice and will cooperate reasonably with the disclosing party in protecting against, and limiting the scope of such disclosure or use of the Confidential Information.
- 3.2 **Limitations on Use and Disclosure.** Each party agrees not to disclose any of the other party's Confidential Information to any third party and agrees to use the same degree of care to prevent the unauthorized disclosure of the other party's Confidential Information that it uses to protect its own confidential information of like importance, but in no event less than a reasonable degree of care. Neither party will use, exploit nor copy the other party's Confidential Information for any purpose or activity other than those specifically provided herein. Licensee hereby acknowledges that unauthorized use or disclosure of SaltStack's Confidential Information will cause irreparable harm to SaltStack. If said unauthorized use or disclosure occurs, Licensee will immediately notify SaltStack and take such steps as reasonably requested by SaltStack to remediate any unauthorized use or disclosure and to prevent any subsequent unauthorized use or disclosure. Each party shall be responsible for breaches made by its employees.

### 4. Report

Licensee shall report to SaltStack, as soon as practical, any perceived defect in the Beta Product and, following the discovery of any material defect, shall terminate its use of the Beta Product. At the conclusion of the Beta Test, Licensee shall provide to SaltStack an evaluation of the Beta Product, including both positive and negative aspects.

### 5. Disclaimer of Warranty

Licensee understands and agrees that the Beta Product licensed hereunder may contain design errors and other defects, and that there is no guarantee that such errors and other defects will be corrected or that a commercial version of any or all of the Beta Product will be released. THE BETA PRODUCT IS LICENSED HEREUNDER "AS IS". SALTSTACK EXPRESSLY EXCLUDES ALL WARRANTIES, CONDITIONS, OR OTHER TERMS, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. LICENSEE AGREES THAT ANY AND ALL USE OF THE BETA PRODUCT IS AT LICENSEE'S OWN RISK, AND SALTSTACK WILL NOT BE LIABLE FOR ANY DAMAGES THAT MAY BE CAUSED IN WHOLE OR IN PART ARISING OUT OF LICENSEE'S USE OF THE BETA PRODUCT.

## 6. Limitation of Liability

- 6.1 Nothing contained in this Agreement shall be construed as (a) a warranty or representation that use of the Beta Product will be free from infringement of copyrights, patents or other rights of third parties; or (b) conferring by implication, estoppel, or otherwise, upon either party, any license or other right except the licenses and rights expressly granted in this Agreement; or (c) a warranty or representation that Licensee or any other entity, will be able to use the Beta Product for any purpose.
- 6.2 SALTSTACK AND ITS SUPPLIERS WILL NOT BE LIABLE, IN CONTRACT, TORT, OR OTHERWISE, FOR ANY ACTUAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR INCIDENTAL DAMAGES, INJURY, COST, OR EXPENSE, WHETHER FORESEEABLE OR UNFORESEEABLE (INCLUDING, BUT NOT LIMITED TO PROPERTY DAMAGE, AND LOSS OF DATA, USE, OR PROFITS) WHICH MAY ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE DELIVERY OR USE OF THE BETA PRODUCT OR ANY DEVELOPMENTS OR MODIFICATIONS THEREOF, EVEN IF SALTSTACK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO WAY LIMITING THE FOREGOING AND TO THE FULL EXTENT PERMITTED BY LAW, SALTSTACK WILL NOT BE LIABLE FOR NEGLIGENCE WITH RESPECT TO THE DESIGN OF THE BETA PRODUCT AND WILL NOT BE LIABLE UNDER ANY STRICT LIABILITY CLAIMS CONCERNING THE BETA PRODUCT. IF, DESPITE THE FOREGOING, SALTSTACK IS FOUND TO BE LIABLE TO LICENSEE BY ANY COURT OR OTHER TRIBUNAL BODY OF COMPETENT JURISDICTION FOR ANY DAMAGES OF ANY TYPE WHATSOEVER, SALTSTACK'S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL IN NO CASE EXCEED \$10,000 USD.
- 6.3 SaltStack shall bear no liability with respect to any failure to deliver to Licensee any Beta Product or any delays with respect to the delivery of any Beta Product. Except in the case of gross negligence and willful misconduct if SaltStack is found by a court of law to be liable for any damages arising under or in connection with this Agreement, SaltStack's total liability shall not exceed the aggregate amounts paid by Licensee to SaltStack for the particular Beta Product giving rise to such liability (if any) or ten thousand dollars, whichever is less.

## 7. Term and Termination

- 7.1 **Termination Without Cause.** SaltStack may terminate this Agreement for any reason upon written notice to Licensee at any time with thirty (30) days prior written notice.
- 7.2 **Termination for Cause.** Either party may immediately terminate this Agreement upon the occurrence of any of the following: (a) breach of this Agreement by the other party; (b) assignment of this Agreement other than as provided herein; or (c) bankruptcy or insolvency of the other party.
- 7.3 **Effect of Termination.** Upon the earlier of expiration or termination of this Agreement, the rights granted to Licensee hereunder, and SaltStack's obligations hereunder, shall terminate immediately. Licensee shall promptly return to SaltStack or destroy, at SaltStack's election, all copies of the Beta Product and all other SaltStack Confidential Information, including, without limitation, all of Licensee's materials and reports relating to the testing and evaluation of the Beta Product.

## 8. Marketing

Licensee understands and agrees that upon completion of the Beta Test, SaltStack may request to use any feedback provided by Licensee in connection with the Beta Test for marketing or other promotional purposes, including the use of Licensee's name in conjunction with such feedback (e.g., using a quote from Licensee, including Licensee feedback as part of a case study, etc.), and Licensee agrees not to unreasonably withhold its consent to such use.

SaltStack agrees not to use Licensee's name for any such marketing or promotional purposes without first so gaining Licensee's consent.

**9. General Provisions**

- 9.1 **Governing Law.** This Agreement is to be construed in accordance with and governed by the laws of the State of Utah as though performed wholly within the state of Utah and without giving effect to the principles of conflict of law. The competent courts located in Salt Lake City, Utah shall have exclusive jurisdiction with respect to any dispute arising from this Agreement. The parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods.
- 9.2 **Attorney's Fees.** In the event of a breach, the breaching party will pay to the other party any reasonable attorneys' fees and other costs and expenses incurred by such other party in connection with the enforcement of any provisions of this Agreement.
- 9.3 **Notices.** All notices required or permitted under this Agreement will be in writing and will be deemed given when: (a) delivered personally; (b) sent by confirmed telex or facsimile (followed by the actual document in air mail/air courier); (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) two (2) days after deposit with a commercial express air courier specifying next day delivery, with written verification of receipt. All communications will be sent to the addresses set forth in the cover sheet of this Agreement, or to such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph
- 9.4 **No Waiver.** The waiver or failure of either party to exercise in any respect any right provided in this agreement shall not be deemed a waiver of any other right or remedy to which the party may be entitled.
- 9.5 **Assignment.** Licensee shall not assign, in any manner, by operation of law or otherwise, its right, obligation or interest in or under this Agreement without the prior written consent of SaltStack.
- 9.6 **Entirety of Agreement.** The terms and conditions set forth herein constitute the entire agreement between the parties and supersede any communications or previous agreements with respect to the subject matter of this Agreement. There are no written or oral understandings directly or indirectly related to this Agreement that are not set forth herein. No change can be made to this Agreement other than in writing and signed by both parties.

Signed and dated,

SaltStack, Inc.

Licensee

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_