

## **ATTACHMENT 3**

# **Carbon Black Response License Agreement**

## END USER AGREEMENT

This End User Agreement (this “Agreement”, also referred to elsewhere as “EULA”) is a legal agreement between the entity entering into this Agreement and Carbon Black, Inc., a Delaware corporation (“Carbon Black”). This Agreement governs orders placed by Customer (defined below) to access and use Carbon Black’s On-Premise Software, Cloud Services, and/or Cb Services (and any updates and modifications thereto).

BY ISSUING AN ORDER TO CARBON BLACK (OR ITS AUTHORIZED CHANNEL PARTNER) OR OTHERWISE USING OR ACCESSING THE PRODUCTS MADE AVAILABLE BY CARBON BLACK HEREUNDER, CUSTOMER AGREES TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE AN INDIVIDUAL (“YOU”) ACTING ON BEHALF OF CUSTOMER, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO LEGALLY BIND CUSTOMER TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT HAVE AUTHORITY TO BIND CUSTOMER, OR IF YOU OR CUSTOMER DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU AND CUSTOMER MAY NOT USE THE PRODUCTS.

This Agreement consists of, collectively, this base agreement, the terms and conditions detailed in the Product Addendum attached hereto, and the applicable Policies. In the event of any conflict between the terms and conditions set forth in the base Agreement and those set forth in the Product Addendum, the terms and conditions of such Product Addendum shall control.

**DEFINITIONS.** Unless otherwise indicated in this Agreement, the following terms, when capitalized, shall have the following meaning: “**Cb Services**” means, as applicable, Professional Services and Maintenance and Support Services. “**Channel Partner**” means, as applicable, the authorized reseller, distributor, or other authorized third party that markets and sells the Products. “**Cloud Services**” means the Web-based application services made generally available by Carbon Black on a subscription basis and identified on the applicable Order. “**Customer**” means the authorized party executing this Agreement and to the extent specified on any Order hereunder its affiliates (including parents, subsidiaries and other entities controlling or under common control with any of such entities) or its authorized third party service providers; provided however, that, in each case, Customer shall be solely responsible for ensuring compliance with the applicable terms and conditions of the Agreement and Customer shall remain liable for any breach of such terms and conditions by its affiliates and third party service providers. “**Customer Data**” means all Customer-specific and Customer-identifiable data submitted to or collected by the Products by or on behalf of Customer. “**Delivery**” means the date Carbon Black provides access to the keys to Customer for On-Premise Software, or the date Carbon Black provides Customer with log-in access to the Cloud Services. “**Documentation**” means, as applicable, the functional specifications, user guides, “help” pages, installation instructions, descriptions or technical requirements created and provided by Carbon Black generally to its customers, either in documentary form or via Product information

websites. **“Endpoint”** means the computer device(s) on which the Sensor Software (defined below) is installed in accordance with the Documentation, including, but not limited to, laptops, desktops, tablets, point of sale devices and servers. **“Feedback”** means suggestions, enhancement requests, recommendations or other input provided to Carbon Black regarding the Products. **“Fees”** means amounts payable for the Products to which the Customer subscribes under this Agreement. **“Maintenance and Support”** means the maintenance and support services detailed in the Carbon Black Maintenance and Support Policy located on the Policies Page (defined below). **“On-Premise Software”** means: (i) Carbon Black’s proprietary software products as specified on Order(s); and/or (ii) Carbon Black’s proprietary sensor software required for use with certain Products, and which is installed on Customer Endpoints (“Sensor Software”). **“Order”** means an order form issued by Customer for the purchase of the applicable Products, or a Customer or Channel Partner purchase order, as applicable. **“Policies”** means the policies and documents applicable to Carbon Black and the Products, that are located at the following URL: <https://www.carbonblack.com/policies> (“Policies Page”). **“Product Addendum”** means the product addendum attached hereto as Exhibit 1 and incorporated herein by reference, which contains product-specific terms and conditions. **“Product(s)”** means, as applicable, the Cloud Services, On-Premise Software, and Cb Services, as applicable, to which Customer subscribes under this Agreement. **“Professional Services”** means, if applicable, training, implementation or Product-related services specified on the Order(s) or detailed in a Statement of Work. **“Subscription Term”** means the period of time Customer is authorized to use Products, as identified on an Order. **“Statement of Work”** means, if applicable, any written, mutually signed work statement that references this Agreement or an Order and which details activities and terms relating to Professional Services.

#### **ORDERS; FEES; TAXES; PAYMENT TERMS.**

**Orders.** Customer shall place Orders directly with Carbon Black or with a Channel Partner. The terms relating to Fees, taxes and payment terms detailed in this Section 2 apply solely to Orders placed directly with Carbon Black. Corresponding terms for Orders placed with a Channel Partner shall be agreed to by and between Customer and such Channel Partner.

**Fees.** The Fees for Products shall be set forth in the Order. All Fees payable hereunder are non-refundable, except as may be otherwise expressly provided in this Agreement.

**Taxes.** The Fees do not include applicable taxes. Customer will reimburse Carbon Black for all sales, use, excise, and property taxes, value-added tax (VAT), goods and services tax (GST), or other taxes, levies, duties or withholdings Carbon Black is required to collect or remit to applicable tax authorities (except for any taxes based on Carbon Black’s net income). In the event that Customer has to withhold any taxes on payments to Carbon Black, Customer shall gross up the amounts payable to Carbon Black so that following such payment and tax withholding, Carbon Black receives the Fees in full.

**Payment Terms.** The Fees for each Order are payable net thirty (30) calendar days from the date of invoice unless otherwise specified in the applicable Order. Unless otherwise agreed to in

writing by Carbon Black or the Channel Partner, all payments hereunder shall be made in U.S. dollars and are free from all setoffs.

## **PRIVACY AND SECURITY.**

**Privacy and Security.** As further described in Carbon Black's Privacy Policy which is located on the Policies Page, Carbon Black will take reasonable and appropriate technical and organizational measures designed to protect Customer Data against unauthorized access, accidental loss or damage, and unauthorized destruction. The security provided by Carbon Black shall be in accordance with Carbon Black's information security policies included on the Policies Page and good industry practices relating to protection of the type of data typically processed by Carbon Black. Carbon Black's European Union General Data Protection Regulation Policy is located on the Policies Page.

**Data Processing.** The parties acknowledge that Customer Data may contain personal data (as defined under applicable data protection laws) and Carbon Black shall process such data in accordance with the documented instructions of Customer regarding the collection, processing and protection of personal data, and in accordance with this Agreement. Customer hereby consents to Carbon Black's processing of Customer Data, including personal data, for the purposes of carrying out its obligations under this Agreement, and for other lawful purposes in accordance with applicable laws and regulations. Customer is responsible for obtaining any required consents from individual data subjects relating to the use of the Products.

**Disclosure of Personal Data.** Carbon Black will not disclose personal data outside of Carbon Black or its controlled subsidiaries except: (i) as Customer directs; (ii) as described in this Agreement; or (iii) as required by law. The Product may include optional functionality provided by third party processors. In the event Customer chooses to utilize such functionality, Customer will be provided advance notification in the Product of the processing details. Following such notification, Customer may choose to: (a) refrain from utilizing the applicable functionality, in which case such processing will not occur; or (b) proceed with the functionality, in which case Carbon Black will be authorized to process in accordance with the details provided. Carbon Black is responsible for its third party processor compliance with Carbon Black's obligations in the Agreement and shall ensure that such third parties are bound by written agreements that require them to provide at least the level of data protection required of Carbon Black by the Agreement.

**Threat Intelligence Data Collection.** Certain Carbon Black Products may collect data relating to malicious or potentially malicious code, attacks, and activities on Customer Endpoints ("Threat Intelligence Data"). Threat Intelligence Data is collected by Carbon Black for analysis and possible inclusion in a threat intelligence feed utilized by certain Products. Prior to inclusion in any threat intelligence feed, Threat Intelligence Data will be: (i) reduced to a unique file hash or to queries or general behavioral descriptions that can be used to identify the same or similar malicious or potentially malicious code in Customer's systems and other Carbon Black customer systems; and/or (ii) be anonymized and made un-attributable to any particular Customer or individual. Carbon Black may distribute Threat Intelligence Data to its customers at its discretion

as part of its threat intelligence data feed. Customer agrees that Threat Intelligence Data is not Customer Data, and Carbon Black may retain, use, copy, modify, distribute and display the Threat Intelligence Data for its business purposes, including without limitation for developing, enhancing, and supporting products and services, and for use in its threat intelligence feed.

## **RIGHTS; CUSTOMER RESTRICTIONS.**

**Rights in Carbon Black Products.** Carbon Black reserves all rights to the Products and all intellectual property relating thereto not specifically granted in this Agreement. All Products under this Agreement are provided under subscription and not sold, and shall remain the sole and exclusive property of Carbon Black.

**Feedback.** If Customer or any users provide Carbon Black with any Feedback, Carbon Black may use and exploit such Feedback at its discretion without attribution of any kind. All Feedback is provided by Customer without warranties. Customer shall have no obligation to provide Feedback.

**Rights in Customer Data.** As between Customer and Carbon Black, except as otherwise set forth in this Agreement, all right, title and interest in and to the Customer Data is owned exclusively by Customer.

**Customer Restrictions.** Except as may otherwise be explicitly provided for in this Agreement, Customer shall not, and shall take reasonable steps to ensure its Administrative Users (defined below) do not: (i) sell, transfer, rent, copy (other than for archival or backup purposes), reverse engineer (except as allowed by and in compliance with applicable law), reverse compile, modify, tamper with, or create derivative works of the Products, (ii) use the Products to operate a service bureau, outsourcing, sublicensing, or similar business for the benefit of third parties; (iii) use the Products other than in connection with Customer's internal business; (iv) remove any copyright and trademark notices incorporated by Carbon Black in the Products; (v) cause or permit others to access or use the Products in order to build or support, and/or assist a third party in building or supporting, software or services competitive to Carbon Black; (vi) perform or disclose any of the following security testing on the Products (including any Cloud Services environment or associated infrastructure): network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing or penetration testing; or (vii) use the Products to: (a) perform any activity that is unlawful, or that interferes with any use of the Products or the network, systems and/or facilities of Carbon Black or its service providers; (b) store, process, publish or transmit any infringing or unlawful material, or material that constitutes a violation of any party's privacy, intellectual property or other rights; or (c) perform any activity intended to circumvent the security measures of Carbon Black or its service providers. Customer is responsible for all administrative access by its personnel and, if applicable, its service providers ("Administrative Users") through its login credentials, for controlling against unauthorized access, and for maintaining the confidentiality of usernames and passwords. If Customer becomes aware of any breach of this Section 4.4, Customer will notify Carbon Black and remedy the situation immediately, including, if necessary, limiting, suspending or terminating an Administrative User's access to the Products.

## REPRESENTATIONS AND WARRANTIES.

**Mutual Representation and Warranties.** Each party represents and warrants to the other that: (i) it has the legal right and authority to enter into this Agreement and perform its obligations hereunder; and (ii) it will not introduce into the Products any virus, worm, Trojan horse, time bomb, or other malicious or harmful code (excluding, however, any legitimate mechanism to disable operation of the Products after the expiration of a Subscription Term).

**Threat Intelligence Feeds.** The information provided via any threat intelligence feed is provided on an "AS-IS" and "AS-AVAILABLE" basis only.

**Sensor Software.** For Products that utilize Sensor Software, Carbon Black warrants that the Sensor Software will conform in all material respects to the specifications detailed in the Documentation at the time of Delivery and, if Customer is entitled to receive Maintenance and Support Services, any Updates provided for the Sensor Software will be compatible with the then-current Cloud Services or version of On-Premise Software, as applicable.

**Cb Services Limited Warranty.** Carbon Black warrants that the Cb Services will be performed in a professional and workmanlike manner consistent with industry standards for similar types of services. For any breach of the foregoing limited warranty, Customer's exclusive remedy shall be to terminate the applicable Cb Services and receive and refund any prepaid but unused Fees applicable to the non-compliant Cb Services.

**Carbon Black Products.** The warranty for specific Carbon Black Products is detailed in the Product Addendum. The limitation on warranties in Section 5.6 below, the exclusion of certain warranties in Section 5.7 below, and the disclaimer of actions set forth in Section 5.8 below, also apply to any warranties set forth in the Product Addendum.

**LIMITATION ON WARRANTIES.** Carbon Black warranties are for the benefit of Customer only and are void if: (i) the Products are integrated by Customer with third party products, unless integrated in accordance with the applicable Documentation; (ii) the Products are altered by anyone other than Carbon Black or an authorized representative of Carbon Black; (iii) the Products are improperly installed, maintained or accessed by anyone other than Carbon Black or an authorized representative of Carbon Black; (iv) Customer is utilizing a version of the On-Premise Software no longer supported by Carbon Black; or (v) the Products are used in violation of the applicable Documentation or Carbon Black's instructions or this Agreement.

**EXCLUSION OF CERTAIN WARRANTIES.** Except for warranties detailed in the Product Addendum, the foregoing warranties are in lieu of and exclude all other express and implied warranties, including but not limited to, warranties of merchantability, title, fitness for a particular purpose, non-infringement, error free operation or non-intrusion due to hacking or other similar means of unauthorized access. No written or oral representation, made by Carbon Black personnel or otherwise, which is not contained in this Agreement, will be deemed to be a warranty by Carbon Black or give rise to any liability of Carbon Black whatsoever. Customer acknowledges that it is impossible under any available technology for any products to identify and eliminate all malware or potential threats.

## **DISCLAIMER OF ACTIONS CAUSED BY AND/OR UNDER THE CONTROL OF THIRD**

**PARTIES.** Carbon Black does not and cannot control the flow of data to or from Carbon Black's network and other portions of the internet, and accordingly Carbon Black disclaims any and all warranties and liabilities resulting from or related to a failure in the performance of internet services provided or controlled by a third party other than any contractor or agent of Carbon Black hereunder.

## **LIMITATION OF LIABILITY.**

**NO CONSEQUENTIAL DAMAGES.** Except for in relation to: (i) a breach of Section 9 (Confidentiality); (ii) a party's violation of the other party's intellectual property rights; or (iii) a party's indemnification obligation in this Agreement; notwithstanding any provision of this Agreement to the contrary, in no event shall either party or its suppliers, officers, directors, employees, agents, shareholders, or contractors ("Related Parties") be liable to the other party for consequential, incidental, special, punitive or exemplary damages (including but not limited to lost revenues, profits or data, or costs of business interruptions other economic loss) arising from or in connection with any cause including but not limited to breach of warranty, breach of contract, tort, strict liability, failure of essential purpose or any other economic losses, even if the other party is advised of the possibility of such damages.

**LIMIT ON LIABILITY.** Except for liability arising from: (i) a breach of Section 9 (Confidentiality) below; (ii) a party's violation of the other party's intellectual property rights; (iii) a party's indemnification obligation in this Agreement; or (iv) a party's fraud, willful misconduct or violation of Section 10.9; the maximum cumulative liability of a party and its related parties for any and all claims in connection with this Agreement or the subject matter hereof, including but not limited to claims for breach of warranty, breach of contract, tort, strict liability, failure of essential purpose or otherwise, shall in no circumstance exceed the fees paid to Carbon Black for the applicable Product(s) giving rise to the liability in the twelve (12) month period immediately preceding the applicable claim.

**INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY.** Carbon Black shall: (i) defend and indemnify Customer and its officers, directors, employees and agents from and against all claims and causes of action arising out of an allegation that the Products (hereinafter the "Indemnified Product[s]") infringe a third party copyright, trademark, patent, or other intellectual property right; and (ii) pay the resulting cost and damages finally awarded against Customer by a court of competent jurisdiction or the amount stated in a written settlement signed by Carbon Black, as long as Customer gives Carbon Black: (a) prompt written notice of such claim or action; (b) the right to control and direct the investigation, preparation, defense, and settlement of the action; and (c) reasonable assistance and information with respect to the claim or action. If a final injunction is obtained against Customer's right to continue using the Indemnified Product or, if in Carbon Black's opinion an Indemnified Product is likely to become the subject of a claim, then Carbon Black may, at its election, either: (1) obtain the right for Customer to continue to use the Indemnified Product; or (2) replace or modify the Indemnified Product so that it no longer infringes but functions in a materially equivalent manner. If Carbon Black determines that neither of these alternatives is

reasonably available, then Carbon Black may terminate this Agreement and refund any prepaid unused Fees applicable to the infringing Indemnified Product. This section shall not apply to infringement or misappropriation claims arising in whole or in part from: (A) designs, specifications or modifications originated or requested by Customer; (B) the combination of the Indemnified Products or any part thereof with other equipment, software or products not supplied by Carbon Black if such infringement or misappropriation would not have occurred but for such combination; or (C) Customer's failure to install an update or upgrade, where same would have avoided such claim. THE FOREGOING STATES CARBON BLACK'S ENTIRE OBLIGATION AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ACTUAL OR POTENTIAL THIRD PARTY INFRINGEMENT CLAIMS OR CAUSES OF ACTION.

#### **TERMINATION.**

**Termination for Cause.** Either party may terminate this Agreement or an individual Order if the other party: (i) fails to cure a material breach of this Agreement or the applicable Order within thirty (30) calendar days after its receipt of written notice regarding such breach; or (ii) files or acquiesces to a bankruptcy or similar petition. Termination of the entire Agreement shall be deemed to include termination of any and all active Orders.

**Effect of Termination.** Upon the effective date of termination of the Agreement or an Order: (i) Carbon Black will immediately cease providing the applicable Cloud Services and/or Cb Services; (ii) Customer will immediately cease use of any On-Premise Software and remove such On-Premise Software from its systems; and (iii) any and all of Customer's current and, in the case of termination for cause by Carbon Black, future payment obligations under this Agreement immediately become due. In the event of termination for cause by Customer, Carbon Black will refund any prepaid, unused Fees pro rata from the date of termination.

#### **CONFIDENTIALITY.**

**Confidential Information.** As used in this Agreement, "Confidential Information" means all information of either party that is not generally known to the public, whether of a technical, business or other nature, that is disclosed by one party to the other party or that is otherwise learned by the recipient in the course of its activities with the disclosing party, and that has been identified as being proprietary and/or confidential or that the recipient reasonably ought to know should be treated as proprietary and/or confidential under the circumstances of disclosure. Confidential Information of Carbon Black also includes the terms, conditions, and pricing of this Agreement, and the results of any benchmarking, testing, or competitive evaluations Customer performs on the Products. Each party shall use reasonable care to hold the other party's Confidential Information in confidence and not disclose such Confidential Information to anyone other than to its personnel, contractors, attorneys, and accountants with a need to know. A recipient shall not reproduce or use such information for any purpose other than as reasonably required to perform pursuant to this Agreement or as reasonably necessary for use of the Products as contemplated by this Agreement. Either party may disclose the existence and nature of the relationship between the parties established hereby, provided it does not disclose any of the specific terms of such relationship.



**Exceptions.** The obligations of either party pursuant to this Section 9 shall not extend to any information that: (i) recipient can demonstrate through written documentation was already known to the recipient prior to its disclosure to the recipient; (ii) was or becomes known or generally available to the public (other than by act of the recipient); (iii) is disclosed or made available in writing to the recipient by a third party having a bona fide right to do so; (iv) is independently developed by recipient without the use of any Confidential Information; or (v) is required to be disclosed by process of law, provided that the recipient shall notify the disclosing party promptly upon any request or demand for such disclosure.

**Injunctive Relief.** The parties acknowledge that any breach of this Section 9 may cause immediate and irreparable injury to the non-breaching party for which monetary damages may be inadequate, and in the event of such breach, the non-breaching party shall be entitled to seek injunctive relief, in addition to all other remedies available to it at law or in equity.

#### **MISCELLANEOUS.**

**Notices.** Any notice under this Agreement must be in writing and sent by certified letter, receipted commercial courier or e-mail transmission (acknowledged in like manner by the intended recipient) to the respective addresses shown on the Order(s), and shall be deemed given on the date received by the recipient, except that Carbon Black may provide notice of changes to Policies, if required, via written announcement on its customer portal, which shall be deemed given on the date of such announcement. Any party may from time to time change such address or individual by giving the other party notice of such change in accordance with this Section.

**Export Control.** Customer acknowledges that any Products and Confidential Information provided under this Agreement may be subject to U.S. export laws and regulations. Customer agrees that it will not use, distribute, transfer, or transmit the Products or Confidential Information in violation of U.S. export regulations. Without limiting the foregoing: (i) each party warrants and represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports; and (ii) Customer shall not permit individuals to access or use the Products in violation of any U.S. or United Nations export embargo, prohibition or restriction.

**Usage.** Upon request, Customer agrees to certify to its compliance with the quantity and usage restrictions set forth in this Agreement and any Order for On-Premise Software, or to allow Carbon Black or its approved designee to inspect Customer's data processing systems and records to verify such compliance. Carbon Black may review Customer's usage of the Cloud Services to determine Customer's compliance with the quantity and usage restrictions of this Agreement and any Order. Carbon Black will promptly notify Customer if Carbon Black (or a Customer certification) determines that Customer's usage of the Products exceeds purchased quantities, and if so, Customer shall promptly pay to Carbon Black additional Fees applicable to such prior over-usage, and either: (i) immediately discontinue any such overuse; or (ii) purchase such additional quantities to cover Customer's actual usage going forward, at Carbon Black's then current charges.

**Applicable Law.** This Agreement shall be governed by the law of the State of New York, U.S.A., excluding: (i) its conflicts of laws principles; (ii) the United Nations Convention on Contracts for the International Sale of Goods; and (iii) the Uniform Computer Information Transactions Act (UCITA) as adopted by any state.

**Assignment.** Except in the event of a merger, acquisition or sale of all or substantially all of a party's assets, neither party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other party (not to be unreasonably withheld). Any assignment in contravention of this provision shall be null and void. All the terms and provisions of this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

**Non-Waiver.** The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

**Relationship of the Parties.** Carbon Black is an independent contractor. The provisions of this Agreement shall not be construed to establish any form of partnership, agency or other joint venture of any kind between Customer and Carbon Black, nor to constitute either party as the agent, employee or legal representative of the other.

**Force Majeure.** Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control.

**Compliance with Laws.** Carbon Black will comply with all laws and regulations applicable to it and its provision of the Products. Carbon Black is not responsible for compliance with any laws or regulations applicable to Customer or Customer's industry that are not generally applicable to information technology service providers. Carbon Black does not determine whether Customer Data includes information subject to any specific law or regulation. Customer must comply with all laws and regulations applicable to it and its use and possession of the Products.

**Severability.** Any provision of this Agreement that is unenforceable shall not cause any other remaining provision to be ineffective or invalid.

**Modification of Agreement.** Except as set forth herein, no addition to or modification of this Agreement shall be binding on either of the parties hereto unless reduced to writing and executed by an authorized representatives of each of the parties.

**Modification of Cloud Services and Policies.** Notwithstanding anything to the contrary in this Agreement, from time to time at its sole reasonable discretion Carbon Black may make upgrades, changes and/or improvements to: (i) the Cloud Services, in order to enhance the Cloud Services generally and/or remedy any issues with the Cloud Services; or (ii) the Policies, in order to address changes to Products or applicable laws or regulations. Notwithstanding the foregoing, except as is required as a result of changes to applicable laws or regulations, Carbon Black will not modify any Cloud Services or Policies in any way designed to: (a) materially degrade the Cloud Services or Policies; or (b) add additional material obligations for Customer.

**Survival.** All provisions of this Agreement that reasonably may be interpreted or construed as surviving termination of this Agreement shall survive the termination of this Agreement.

**Counterparts; Electronic Signature.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. The parties hereby consent to electronic signature as a binding form of execution of this Agreement and related documents.

**Evaluation and Beta Use Terms and Conditions.** Carbon Black may, at its sole discretion and upon mutual written agreement of the parties, grant Customer the right to use the Products for evaluation or beta testing purposes in accordance with the terms of this Agreement.

Notwithstanding anything to the contrary anywhere in this Agreement, the following terms and conditions shall also apply to (and supersede any conflicting terms in the event of a conflict) Customer's evaluation or beta use of the Products: (i) the Products may be used solely for Customer's internal assessment of the capabilities, performance, and suitability of the Products and in no event for production use; (ii) the Products ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND, and Carbon Black disclaims all warranties, support obligations, and other liabilities and obligations for Customer's evaluation or beta use of the Products; and (iii) Customer agrees to defend, indemnify and hold harmless Carbon Black from all claims, damages, and losses, howsoever arising and whether direct, indirect, or consequential, including all legal fees and expenses, arising from Customer's evaluation or beta use of the Products.

**Ultrahazardous Activities.** The Products are not designed or intended for use in any hazardous environment requiring fail-safe performance or operation in which the failure of the Products could lead to death, personal injury, or property damage, including without limitation the design or operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems (or the on-line control of equipment in any such environment.) Customer hereby agrees that it will not use the Products in such environments.

**Entire Agreement; English Language Controls.** This Agreement comprises all the terms, conditions and agreements of the parties hereto with respect to the subject matter hereof and supersedes all other negotiations, proposals, or agreements of any nature whatsoever, unless otherwise specifically provided. Any contradictory or pre-printed terms and conditions that Customer may provide in connection with an Order shall be deemed null and void. This Agreement and all Orders, notices, or other documents given or to be given under this Agreement will be written in the English language only.

## **EXHIBIT 1: PRODUCT ADDENDUM**

### **Part 1: Additional Terms and Conditions Specific to Cloud Services**

**Cloud Services.** This Product Addendum Part 1 applies for all Carbon Black Cloud Services.

**Grant of Rights for Cloud Services.** During the applicable Subscription Term, Carbon Black will make the then-current version of the Cloud Services available to Customer, and hereby grants

Customer the right to access and use the Cloud Services for the number of Endpoints identified in an Order. For clarity, the Cloud Services may include and require the use of the Sensor Software. **Cloud Services Warranty.** Carbon Black warrants that the Cloud Services will conform in all material respects to the specifications detailed in the applicable Documentation during the Subscription Term. If the Cloud Services do not comply with this warranty, Carbon Black will (at its option), as Customer's sole and exclusive remedy: (i) within a reasonable period of time repair, replace, or modify the Cloud Services so that they comply with this warranty, or (ii) terminate this Agreement or applicable Order and refund any prepaid but unused Fees applicable to the non-compliant Cloud Services.

**Service Level Warranty.** Carbon Black warrants that the Cloud Services will be available in accordance with the Carbon Black Service Level Agreement ("SLA"), which is available on the Policies Page and incorporated herein by reference. The SLA states Customer's sole and exclusive remedy for any breach of this Service Level Warranty.

**Suspension.** In the event of a breach or suspected breach of any of the restrictions in Section 4.4 of the body of the Agreement, Carbon Black reserves the right to suspend Customer's Cloud Services if reasonably necessary to prevent harm to Carbon Black, Customer, other customers, and/or Carbon Black's partners, vendors and suppliers, with such notice and for such period as may be reasonable in the context of the prospective harm.

**CB Defense for VMware.** In the event Customer purchases a subscription to Cb Defense for VMware, this Product Addendum Part 1 applies in its entirety, and: (i) Customer hereby consents to the transfer of Customer Data, including, if applicable, personal data, by and between Carbon Black and VMware as necessary, for the purposes of processing such data in accordance with this Agreement; and (ii) references to "Endpoints" shall be deemed references to "CPUs" as applicable.

## **Part 2: Additional Terms and Conditions Specific to On-Premise Software**

**On-Premise Software.** This Product Addendum Part 2 applies for all Carbon Black On-Premise Software.

**Grant of Rights for On-Premise Software.** Customer is granted for the Subscription Term specified in the applicable Order(s) a worldwide, non-exclusive, non-assignable (except pursuant to a permitted assignee under the Agreement), non-transferable right to: (i) install and use (in accordance with the Documentation and for internal business purposes only) the applicable On-Premise Software (including Sensor Software) on the number of servers and/or Endpoints specified in the applicable Order(s); and (ii) copy and run the applicable On-Premise Software for testing and disaster recovery purposes.

**On-Premise Software Warranty.** Carbon Black warrants that for a period of ninety (90) days from Delivery, the On-Premise Software will conform in all material respects to the specifications detailed in the Documentation. If the On-Premise Software does not comply with this warranty, Carbon Black will (at its option), as Customer's sole and exclusive remedy: (i) within a reasonable period of time repair, replace, or modify the applicable On-Premise Software so that it complies with this

warranty, or (ii) terminate this Agreement or applicable Order and refund any prepaid but unused Fees applicable to the non-compliant On-Premise Software Product (if any).

**Updates and Upgrades.** Carbon Black may release patches, bug fixes, updates, upgrades, maintenance and/or service packs (“Updates”) for the On-Premise Software from time to time, which may be necessary to ensure the proper function and security of the Products. Carbon Black is not responsible for performance, security, warranty breaches, support or issues encountered in connection with the Products that result from Customer’s failure to accept and apply Updates within a reasonable timeframe.