

SmartBear Services Terms of Use

These SmartBear Services Terms of Use, which are applicable to any Services (as defined below), together with the SmartBear Data Processing Addendum set forth in Exhibit A and the SmartBear Privacy Policy set forth in Exhibit D is a legal agreement between AppDynamics LLC, on behalf of itself and its Affiliates (“You” or “Company”) and SmartBear (as defined below) that governs Your access to, and use of, our Services and/or Software, whether purchased directly from SmartBear or a Reseller (collectively, the “EULA” or the “Agreement”). Any updates to the Privacy Policy set forth at <https://www.smartbear.com/privacy/> shall be incorporated into the Agreement provided that such updates do not materially diminish the obligations set forth in Exhibit D unless such updates are made to comply with applicable privacy laws.

1. Definitions.

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity; for purposes hereof, "control" means possession, directly or indirectly, of the power to direct or cause the direction of the activities, management or policies of an entity, whether through the ownership of voting securities, by contract or otherwise. Without limiting the foregoing, control will be presumed to exist when an entity (a) owns or directly or indirectly controls fifty percent (50%) or more of the outstanding voting stock or other ownership interest of the applicable entity or (b) possesses, directly or indirectly, the power to elect or appoint fifty percent (50%) or more of the members of the applicable entity's governing body.

"Data" means (i) content, materials, or other information You post or otherwise submit to the Services; (ii) metadata or other information that is collected by virtue of your interaction with the Services; (iii) information You provide to SmartBear in connection with Maintenance and Support, including file or screen sharing; and (iv) license and/or product usage data transmitted to, or collected by, SmartBear at the time of registration, use or update.

"Documentation" means the published and generally available on-line user and administrator materials, available at <https://app.swaggerhub.com/help/index>, SmartBear delivers or makes available to its Hosted Services customers with the Services, including on-line help, as updated from time to time.

"Hosted Services" means the services provided by SmartBear through which it makes the Software available to you as a service (SaaS) and hosted by SmartBear or its authorized third-party provider(s).

"Maintenance and Support" mean those technical support and related services provided by SmartBear as set forth in Exhibit B (Maintenance and Support). The terms at <https://support.smartbear.com/support/media/pdf/SSG.pdf> shall govern so long as it does not materially such terms do not materially diminish the maintenance and support obligations set forth in Exhibit B.

"Order" means SmartBear's online purchase order, quote or other document for placing orders entered into between You and SmartBear, which identifies the applicable Hosted Services ordered by You and any required access, usage or other licensing parameter information, such as the Hosted Services and, as applicable, the maximum number of Users, Subscription Term, storage capacity or limits. Any Order that has been executed by the parties shall be deemed incorporated herein by reference.

"Reseller" means an authorized reseller or distributor who may sell the Services to You.

"Software" means the SmartBear proprietary software provided to you as part of the Hosted Services pursuant to the applicable Order, and all Updates, in each case, access to which is provided by SmartBear.

"Services" means the Hosted Services, together with Maintenance and Support, as provided to you during the Subscription Term based on the applicable Order.

“Subscription” means Our grant of the right to access and use the Software through the Hosted Services for the Subscription Term, usage-based limit or other licensing parameter, in each case, as set forth in the applicable Order.

“Subscription Term” means, for all Subscriptions that are provided for a finite period of time, such period as is set forth in the applicable Order.

“Update” means any subsequent release of the Software that SmartBear generally makes available to its Hosted Services customers as part of the Services; Updates do not include any Software that is marketed and priced separately by SmartBear.

“User” means an individual who is authorized by You to use the Services in accordance with this Agreement, the services types, and the applicable Order and who has been supplied usage credentials. A User may include, but is not limited to, Your authorized employee, consultant, contractor and any agent with which You transact business.

“You” or “Company” means AppDynamics LLC, a Delaware limited liability company with its principal place of business at 303 Second Street, North Tower, 8th Floor, San Francisco, CA 94107, on behalf of itself and its Affiliates.

“Your Data” is a subset of “Data” and means any data, content, code, video, images or other materials of any type that you submit to SmartBear. In this context, “submit” includes submitting, uploading, transmitting or otherwise making available Your Data either through the Service or in connection with Maintenance and Support.

2. Who We Are.

If You acquire access to, and use, the Services from in the United States or Canada, “We”, “Us”, “Our” or “SmartBear” means SmartBear Software Inc., a Delaware corporation with its principal place of business at 450 Artisan Way, Somerville, MA 02145 or the Affiliate listed in the applicable Order.

If You acquire access to, and use, the Services from outside of the United States or Canada, “We”, “Us”, “Our” or “SmartBear” means SmartBear (Ireland) Limited with its principal place of business at Mayoralty House, Flood Street, Galway, Ireland or the Affiliate listed in the applicable Order.

3. Reserved.

4. Services Grants.

Upon the terms, and subject to the conditions of this Agreement and the applicable Order, You may access and use the Services, Documentation, and, if any, associated media and materials, for your internal business purposes. The rights granted to You in this Section are revocable, limited, non-exclusive, non-sublicensable and non-transferable.

5. Services Types.

The Services granted in Section 4 are subject to all terms and conditions set forth in this Agreement, including the applicable license and/or services types and its relevant terms, which shall be specified in the applicable Order.

6. Services, Licensing Parameters and Restrictions.

Your use of the Services is limited to the number of units, number of Users, Subscription Term, storage capacity or limits, or such other licensing parameters as are set forth in the applicable Order. SmartBear and its licensors and suppliers reserve any and all rights, implied or otherwise, in and to the Services which are not expressly granted to You hereunder, and retain all rights, title and interest in and to the Services. You shall not (i) modify, adapt, distribute, resell, rent, lease or loan the Services or create or prepare derivative works based upon the Services or any part thereof; (ii) use the Services in a service bureau, or application service provider environment, or in any commercial timeshare arrangement; (iii) attempt to decompile, disassemble or otherwise reverse engineer the Services or any part thereof; (iv) use the Services in contravention of any applicable laws or government regulations; (v) access the Services for the purpose of building a competitive product or service; (vi) copy any features, functions or graphics of the Services; (vii) create duplicate accounts or make the Services available to anyone other than Users; (viii) use the Services to knowingly store

or transmit infringing, libelous, or otherwise unlawful or tortious material, or to knowingly store or transmit material in violation of third-party privacy rights; (viii) use the Services in violation of this Agreement or (ix) load test systems that You do not own or control, unless express consent is given to You by the legal owner. To the extent the Services are used to monitor websites or devices You do not own or control, then You shall not publish or otherwise disclose data acquired about such websites or devices unless express consent is given to You by the website or device owner; further you shall not (1) intentionally disrupt the integrity or performance of the Services or third-party data contained therein, or (2) attempt to gain unauthorized access to the Services or their related systems or networks.

If the restriction set forth in clause (iii) above is prohibited by applicable law, You shall provide SmartBear with a detailed prior written notice of any such intention to reverse engineer the Services and shall provide SmartBear with a right of first refusal to perform such work at rates equal to those proposed by a recognized third-party software services provider for such work. You shall take all reasonable precautions to prevent unauthorized or improper use or disclosure of the Services.

Age Requirement for Users. The Services are not intended for, and should not be, used by anyone under the age of 16. You are responsible for ensuring that all Users are at least 16 years old.

7. Export.

The parties may not provide to the other party or any other person (through the Services), or export or re-export, or allow the export or re-export of the Services, any data or information, or any Software or any direct product thereof (collectively “Controlled Subject Matter”), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing, the parties acknowledge and agree that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, “Embargoed Countries”), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury’s List of Specially Designated Nationals or the U.S. Department of Commerce’s Table of Denial Orders (collectively, “Designated Nationals”). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Services is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations and SmartBear shall obtain appropriate licenses and disclose such licenses to You.

Domain Name Ownership. Where You are required to specify a domain for the operation of a Hosted Services, we may verify that You own or control that domain. If You do not own or control the domain You specify, then we will have no obligation to provide You with the Hosted Services.

8. Term.

The duration this Agreement shall be determined based on the licensing parameters set forth in the applicable Order (the “Term”).

9. Termination.

Notwithstanding anything contained herein to the contrary, this Agreement, an Order or the applicable Services access and use of which has been granted hereunder may be terminated (a) by mutual written agreement of SmartBear and You, (b) upon written notice by either party if the other party is adjudicated as bankrupt, or if a petition in bankruptcy is filed against the other party and such petition is not discharged within sixty (60) days of such filing, or (c) for all material breaches that are remediable, by either party if the other party materially breaches this Agreement and fails to cure such breach to the non-breaching party’s reasonable satisfaction within thirty (30) days following receipt of the non-breaching party’s written notice thereof or (d) for all breaches that are not remediable within the cure period specified

in 9(c), immediately by delivery of written notice thereof to the other party. Upon any termination of this Agreement, an Order or a Service granted hereunder, all applicable Services are revoked and You shall immediately cease use of the Services. Termination of this Agreement, an Order or access granted hereunder shall not limit either party from pursuing any remedies available to it, including injunctive relief, or relieve You of your obligation to pay all fees that have accrued or become payable hereunder.

10. Your Responsibilities; Login Credentials.

You shall (i) be responsible for each User's compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, (iv) use the Services in compliance with the Documentation and all applicable laws and government regulations in connection with the ordering, use and payment of the Services, including any applicable data privacy or data protection legislation, (v) be responsible for obtaining and maintaining any reasonable equipment or services not included in Services that are needed to access and use the Services and costs and fees associated therewith.

You agree and acknowledge that You are solely responsible for: (i) ensuring that Your use of the Services, and sharing of any data with SmartBear in connection therewith, complies with all applicable data protection laws and regulations worldwide, including the European Union General Data Protection Regulation ("GDPR"); and (ii) sending, receiving or processing only lawful content, data and information, to which You have appropriate legal rights, through the Services.

Your Data Responsibility. You are responsible for (a) Your Data, (b) the accuracy, quality, and legality of Your Data, (c) the means by which You acquired Your Data, including ensuring that Your Data does not infringe upon or violate the rights of any person or entity, (d) third party IP infringement claims solely based on Your Data, and (e) responding to any person claiming Your Data violates such persons rights, including notices pursuant to the Digital Millennium Copyright Act.

SmartBear's Data Responsibility. SmartBear will ensure that all individuals with access to Your Data are subject to written obligations of confidentiality.

Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing, SmartBear shall implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk.

In assessing the appropriate level of security, SmartBear shall take account in particular of the risks that are presented by processing, in particular from a Security Breach. A Security Breach is a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Your Data transmitted, stored or otherwise processed.

If SmartBear knows of a Security Breach, SmartBear shall, in accordance with applicable law (i) promptly, and without undue delay following SmartBear's discovery thereof, notify You of such Security Breach, (ii) investigate, remediate, and mitigate the effects of the Security Breach, (iii) reasonably cooperate with Your investigation of the Security Breach to the extent that such cooperation does not compromise SmartBear's security, (iv) take any additional actions and provide any additional cooperation with You as may be required under applicable Data Protection Laws and Regulations, and (v) upon resolution, provide You with a written incident report, if required under applicable law describing the breach, actions taken during the response, and plans for future actions to prevent a similar breach from occurring in the future.

Login Credentials. SmartBear will provide You with credentials to assign usernames and passwords to each User ("Login Credentials") in order to access and use the Services. In connection with the foregoing, You agree to (i) maintain as confidential all Login Credentials and not distribute or disclose any such Login Credentials and (ii) use the administrator account to assign the authorized number of Login Credentials to each User. You shall promptly terminate

Login Credentials upon knowledge or reasonable belief that any User is subject to a breach of this Agreement. You agree not to bypass or circumvent any access controls or Services licensing parameters in violation of this Agreement.

11. Reserved.

You agree not to develop, support or use software, devices, scripts, robots, or any other means or processes (including crawlers, browser plug-ins and add-ons, or any other technology or manual work) to scrape the Services or extract data (other than Your Data) from the Services.

12. Usage Verification.

At SmartBear's written request, and no more than once every twelve (12) months, You will permit SmartBear to review your deployment and use of the Services in order to verify your compliance with the terms and conditions of this Agreement through reasonable written questions or a script-generated report. Any such review shall be scheduled at least ten (10) days in advance and shall not unreasonably interfere with your business activities.

13. Maintenance and Support.

Your Subscription includes Maintenance and Support. Any Maintenance and Support purchased through a Reseller shall be subject to this Agreement. During the Subscription, SmartBear will provide you with Maintenance and Support, including Updates, all in accordance with SmartBear's Product Support Manual attached hereto as Exhibit A (Maintenance and Support). The current version of the SmartBear Product Support Manual is located at <https://support.smartbear.com/support/media/pdf/SSG.pdf>, or as otherwise may be made available, and shall govern so long as it does not materially such terms do not materially diminish the maintenance and support obligations set forth in Exhibit A. In addition, as part of Maintenance and Support, SmartBear may make available bug lists, planned feature lists, and other supplemental materials. SmartBear makes no representations or warranties of any kind for these materials.

14. Fees and Payments.

Fees. You shall pay all fees specified in an Order. Fees are based on the Services purchased and, as applicable, the licensing parameters set forth in the applicable Order; all payment obligations are non-cancelable, and fees paid are non-refundable and You will not, except as expressly provided herein, be entitled to a refund of amounts paid for the Services. The licensing parameters provided in the applicable Order cannot be decreased during the Term. Unless otherwise stated by and mutually agreed upon in an applicable Order, payment is due sixty (60) days from the date of invoice. You shall provide a purchase order or notice that a purchase order is not required for purchase or payment prior to the date on which SmartBear provides you access to the Services. Such charges shall be paid in advance, in accordance with this Agreement. **Taxes.** You shall be responsible for taxes levied on any transaction under this Agreement, including all federal, state, and local taxes, levies and assessments, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"), excluding any tax based on SmartBear's income. Unless otherwise stated, Our fees do not include any Taxes. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. We are solely responsible for taxes assessable against Us based on Our income, property and employees.

15. Confidentiality and Data Privacy

Confidential Information. Each party will regard any information provided to it by the other party and designated in writing as proprietary or confidential to be confidential ("Confidential Information"). Confidential Information shall also include information which, to a reasonable person taking into consideration due the nature of the information and the circumstances surrounding the disclosure, is of a confidential or proprietary nature. A party will not disclose the other

party's Confidential Information to any third party without the prior written consent of the disclosing party, nor make use of any of the disclosing party's Confidential Information except in its performance under this Agreement. Each party accepts responsibility for the actions of its agents or employees (including, in Your case, all Users) and shall protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. The parties expressly agree that the Services are the Confidential Information of SmartBear and the terms and pricing of this Agreement are the Confidential Information of You and SmartBear. You will not remove or destroy any proprietary markings or restrictive legends placed upon or contained in the Services. A receiving party shall promptly notify the disclosing party upon becoming aware of a breach or threatened breach hereunder and shall cooperate with any reasonable request of the disclosing party in enforcing its rights.

Exclusions. Information will not be deemed Confidential Information hereunder if such information: (i) is known to the receiving party prior to receipt from the disclosing party, without any obligation of confidentiality; (ii) becomes known to the receiving party directly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving party without use of or access to the Confidential Information. The receiving party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that it (to the extent permitted) gives the disclosing party reasonable prior written notice to permit the disclosing party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

Data Privacy: The terms and conditions of SmartBear's Privacy Policy set forth in Exhibit D and the SmartBear Data Processing Addendum below in Exhibit A, as such policy and addendum may be revised and updated by SmartBear from time to time via <https://www.smartbear.com/privacy/> subject to the conditions below, are incorporated by reference into this Agreement. By executing the terms of this Agreement, You authorize the collection, use and disclosure of information collected by SmartBear for the purposes provided for in this Agreement in accordance with the Privacy Policy and SmartBear Data Processing Addendum as revised from time to time as necessary to comply with applicable law and regulations and provided there is no material diminution in the obligations therein. You represent and warrant to SmartBear that You comply with all applicable Data Protection Laws and Regulations (as such term is defined in the SmartBear Data Processing Addendum) and that Processing by SmartBear, on your behalf and pursuant to your use of the Services, of all Data you provide to SmartBear directly or through use of the Services, is not prohibited by any Data Protection Laws and Regulations. The SmartBear Services may be provided using resources and servers located in various countries around the world, including the United States and other countries. Therefore, personal information about individuals or customers may be transferred, processed and stored outside the country where the SmartBear Services are used, including to countries outside the European Union ("EU"), European Economic Area ("EEA") or Switzerland, where the level of data protection may not be deemed adequate by the European Commission. International users understand and consent to the processing of Data, including personal data as defined under applicable law, in the United States and outside of their country of residence for the purposes described herein in accordance with this Agreement. You are responsible for your Data, including personal data. You shall only share Data with SmartBear that You have the right to share, and only in the manner and to the extent consistent with such right. SmartBear offers general purpose, content-neutral Services and is not responsible for being aware of whether or not You are using the Services in connection with personal data or sensitive data. Generally, SmartBear will have no reason to know the actual content of your Data.

In addition to any other information transmitted as specified in the Privacy Policy and SmartBear Data Processing Addendum, the Services may transmit license and/or product usage data at the time of registration, use or update in order to activate your access rights and provide You with update notifications, protect You and SmartBear against unauthorized or illegal use of the Services, and improve customer service and the Services. By accessing the Services, You authorize SmartBear to create aggregated anonymous, pseudonymous or de-identified data based on activities and use of all Users. Upon creation, SmartBear will be deemed to be the owner of such aggregated data and may use and copy such data, in our discretion, for any lawful purpose, including but not limited to analytics. SmartBear may elect to

provide the User with the ability to disable the collection of certain license and/or product usage data through the settings menu in the Services.

Feedback. You may provide feedback (which may be oral or written) to Us including on the functions, operation, and utility of the Services and are encouraged to provide prompt reports of any issues, bugs or service errors, feature suggestions and corrections to problems in the Services and/or Documentation (collectively "Feedback"). You agree that Feedback provided by You shall be licensed perpetually to Us and that We may use or exploit the same without any accounting or payment to You. You will not include in Feedback any third party proprietary or confidential information.

16. Ownership.

You retain all right, title and interest, including all copyright and intellectual property rights, in and to, Your developed applications ("Your Applications") provided Your Applications are an independent work and will not utilize, or are a derivative work of, or integrate, or infringe upon the copyright or intellectual property rights of SmartBear or SmartBear Services ("SmartBear Technology"). SmartBear and its licensors, where applicable, shall retain all right, title and interest, including all copyright and intellectual property rights, in and to, the SmartBear Technology as an independent work and as an underlying work serving as a basis for any improvements, modifications, derivative works, and applications, You may develop, and all copies thereof.

All rights with respect to the SmartBear Technology and Services not specifically granted in this Agreement, including U.S. and international copyrights, are reserved by SmartBear and its suppliers.

SmartBear and other trademarks contained in the Services are trademarks or registered trademarks of SmartBear Software Inc. in the United States or other countries. You may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Services.

We acquire no right, title or interest from You or Your licensors hereunder in or to Your data, including any intellectual property rights therein. For clarity, You and Your licensors, where applicable, retain all right, title and interest, including all copyright and intellectual property rights, in and to, Your Applications and no rights in or to Your Applications are granted or assigned to SmartBear under this Agreement.

The Software may contain or otherwise make use of software, code or related materials from third parties, including, without limitation, "open source" or "freeware" software ("Third Party Components"). Third Party Components may be licensed under additional or other license terms that accompany such Third Party Components, and you acknowledge and agree that these accompanying license terms govern their use. Nothing in this Agreement limits your rights under, or grants you rights that supersede, the license terms that accompany any Third Party Components. For your convenience, we provide you with a list of the Third party Components that may be contained in the Software on our website at <https://smartbear.com/legal/third-party-software-license-information/general/>. If required by any license for a particular Third Party Component, SmartBear makes the source code of such Third Party Component, and any of SmartBear's modifications to such Third Party Component as required, available by written request to SmartBear at the following address: support@smartbear.com.

17. Limited Warranty; Remedies.

SmartBear warrants that (a) it has the necessary corporate power and authority and has taken required corporate action on its part necessary to permit it to execute and deliver You this Agreement; (b) it has taken commercially reasonable steps to provide the Services free from any virus at the time of Your initial access following a purchase under an Order and during any Subscription Term; (c) for a period of one (1) year following the initial grant of access to You to the Services (the "Warranty Period"), the Services will perform in substantial conformity with the Documentation; and (d) the Services will be provided with reasonable skill and care conforming to generally accepted software industry standards and in accordance with any specifications set forth in the Order in all material respects. Your exclusive remedy and SmartBear's sole obligation for SmartBear's breach of 17(c), is that SmartBear will, at its option, and at no cost, to (a) provide remedial services necessary to enable the Services to conform to the warranty, or (b) replace any defective

Services to enable the Services to conform to the warranty without loss of any material functionality, or in the event that SmartBear determines that neither of the foregoing are reasonably practicable, (c) terminate this Agreement and refund amounts paid in respect of the defective Services for the balance of the then-current Subscription Term. SmartBear's warranty obligations will only extend (i) to material errors that can be demonstrated to exist in an unmodified version of the Services except where the modifications were carried out by SmartBear or with its written approval and (ii) in respect of alleged breaches for which SmartBear has received written notice within the Warranty Period, if applicable. You will provide SmartBear with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects, such as submitting a support ticket or answering reasonable questions by SmartBear as it troubleshoots the defect. For clarity, Your failure in providing such assistance does not relieve SmartBear of its obligations herein.

EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY, SMARTBEAR AND ITS SUPPLIERS AND LICENSORS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE OR QUIET ENJOYMENT. SMARTBEAR DOES NOT WARRANT THAT THE SERVICES ARE ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. IN ADDITION, ALL THIRD PARTY COMPONENTS USED INDEPENDENTLY OF THE SOFTWARE AND SERVICES ARE PROVIDED "AS IS," "WHERE IS," "AS AVAILABLE," "WITH ALL FAULTS" AND, TO THE FULLEST EXTENT PERMITTED BY LAW, WITHOUT WARRANTY OF ANY KIND. SMARTBEAR AND ITS LICENSORS DISCLAIM ALL WARRANTIES WITH RESPECT TO THE THIRD PARTY COMPONENTS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND TITLE, AND ANY WARRANTIES REGARDING THE SECURITY, QUIET ENJOYMENT, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE SERVICES. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UCC WILL BE CONFERRED ON YOU UNLESS EXPRESSLY GRANTED HEREIN. THE SERVICES ARE NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. SMARTBEAR SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

No oral or written information or advice given by SmartBear, its Resellers, dealers, distributors, agents, representatives or employees shall create any warranty or in any way increase any warranty provided herein.

If applicable law requires any warranties other than the foregoing, all such warranties are limited in duration to three hundred and sixty-five (365) days from the date of grant of initial access to the Services to You. Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to You. The warranties provided herein give You specific legal rights and You may also have other legal rights that vary from jurisdiction to jurisdiction. The limitations or exclusions of warranties, remedies or liability contained in this EULA shall apply to You only to the extent such limitations or exclusions are permitted under the laws of the jurisdiction where You are located.

18. Indemnification.

SmartBear will (a) defend indemnify and hold You harmless from and against all any claims and causes of action brought against You by a third party arising out of an allegation that the Services as provided to You by SmartBear, standing alone and not in combination with any other products or services, solely to the extent that the infringement claim is based on the combination of the Services with another product or service, and as used in their intended manner, infringes any third party's intellectual property rights enforceable under United States law or international copyright treaty and (b) pay any accrued costs and damages against You or the amount stated in a written settlement signed by SmartBear, provided You: (a) promptly notify SmartBear after learning of the suit or claim (provided, however, that SmartBear's obligations under this Section 18 shall only be mitigated to the extent that it is prejudiced by a delay in receipt of such notification); (b) give SmartBear the authority to defend or settle the suit or claim (provided that SmartBear does not agree to any settlement that requires You to pay money or make any admissions); and (c) give

SmartBear all available non-privileged information and assistance reasonably requested by SmartBear, at SmartBear's expense, concerning the suit or claim.

19. Remediation.

If the Services are held or is reasonably believed by SmartBear to be held to infringe any third party rights described in Section 18 above, SmartBear may, at its expense, modify or replace the applicable Services to be non-infringing with similar functionality, or obtain permission for You to continue using the Services as permitted under the Agreement, or if neither option is commercially feasible, then to terminate this Agreement upon notice to You and refund that portion of the fees paid in respect of the applicable Services, which portion is equal to the amount of pre-paid fees for the balance of the then-current Subscription Term.

20. Limitations of Liability.

NEITHER PARTY NOR ITS SUPPLIERS, LICENSORS, SUCCESSORS OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, LOST DATA, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SERVICES AND BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, OR TORT (INCLUDING NEGLIGENCE BUT EXCLUDING FRAUD OR MISREPRESENTATIONS), EVEN IF THE PARTIES OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SMARTBEAR'S, SUPPLIERS', AND LICENSORS' TOTAL AGGREGATE LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT PAID (AND FEES PAYABLE) BY YOU OR RESELLER, IF ORDERED THROUGH A RESELLER, FOR THE SERVICES THAT CAUSED SUCH DAMAGE IN THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE APPLICABLE CLAIM. NOTWITHSTANDING THE FOREGOING, SMARTBEAR'S LIABILITY FOR BREACH OF SECTION 15 (CONFIDENTIALITY AND DATA PRIVACY) IS LIMITED TO FIVE (5) TIMES THE AMOUNT PAID (AND FEES PAYABLE) BY YOU AND SMARTBEAR'S OBLIGATIONS IN SECTION 18 (INDEMNIFICATION) ARE NOT SUBJECT TO THE AFOREMENTIONED CAP ON LIABILITY.

21. Reserved.

22. General.

Headings. The headings to the clauses in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Governing Law and Venue. If the access to the Services was acquired in the United States or Canada, this Agreement shall be governed by the internal law of the State of New York, U.S.A., without giving effect to principles of conflict of laws. In each case this EULA shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

If You acquire access to, and use, the Services from outside the United States or Canada, this Agreement shall be governed by and construed in accordance with the laws of England, without giving effect to principles of conflict of laws.

Notice. Except as otherwise specified in this EULA, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) five (5) business days after being sent by certified mail return receipt requested, or (iii) the first business day after sending by a generally recognized national or international guaranteed overnight delivery service. Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant system administrator designated by You. You shall send all notices, demands, requests or other communications which may be or are required to be given hereunder to SmartBear at the address set forth above. SmartBear shall send all notices, demands, requests or other communications which may be or are required to be given hereunder to You at in the address set forth in the applicable Order, as You may update such information from time to time.

If You acquire access to and use the Services from in the United States or Canada, You shall address all such notices, permissions and approvals to the Legal Department, 450 Artisan Way, Somerville, MA 02145.

If You acquire access to and use the Services from outside the United States or Canada, You shall address all such notices, permissions and approvals to the Legal Department, Mayoralty House, Flood Street, Galway, Ireland.

Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Orders, without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets), provided always that the assignee is in a position to discharge the obligations of the assignor. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect.

Waiver. The failure or delay of a party to exercise any of its rights under this EULA or upon any breach of this EULA shall not be deemed a waiver of those rights or of the breach. A waiver by either party of any term or condition of this EULA or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof.

Force Majeure. Except for failure to make payments when due, neither party shall be liable to the other by reason of any failure in performance of this Agreement by either party if the failure arises out of any cause beyond the reasonable control of that party, including, but not limited to, the unavailability or faulty performance of communication networks or energy sources, any act of God, any act or omission of governmental or other competent authority, fires, strikes, industrial dispute, riots, war, inability to obtain materials, embargo, refusal of license, theft, destruction, denial of service attacks, unauthorized access to computer systems or records, programs, equipment, data, or services.

Anti-Bribery. You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of SmartBear's employees or agents in connection with this EULA. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify SmartBear's Legal Department.

Independent Contractors. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. There are no third-party beneficiaries to this EULA.

Entire Agreement. This Agreement, together with all applicable Orders and the Maintenance and Support terms contain the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. You agree that any varying or additional terms contained in any purchase order or other written notification or document issued by You in relation to the Services ordered hereunder, and not agreed to by SmartBear in an Order or an amendment to this Agreement, shall be of no effect. No Reseller is authorized to make any amendment to this EULA.

Survival. All provisions of this Agreement which by their nature are intended to survive the expiration or termination of this Agreement (including, without limitation, the following Sections: Termination, Usage Verification, Fees and Payment, Confidentiality and Data Privacy, Ownership, Intellectual Property, Limited Warranty; Remedies, Indemnification, Disclaimers, Limitations of Liability and General).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by its duly authorized representative as of the last date written below.

SMARTBEAR

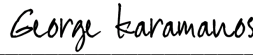
DocuSigned by:
By:  _____
4572B1A1775C43F...

Print Name: Lance Levy

Title: SVP, General Counsel and HR

Date: March 24, 2020

AppDynamics LLC

DocuSigned by:
By:  _____
EADD3AC1FF6B486...

Print Name: George Karamanos

Title: General Counsel

Date: March 24, 2020

EXHIBIT A (SMARTBEAR DATA PROCESSING ADDENDUM)

This SmartBear Data Processing Addendum, together with the Services Terms of Use that have been agreed upon between You and SmartBear, and the SmartBear Privacy Policy, is a legal agreement between You and SmartBear that governs your access to, and use of, our Services and Software, whether purchased directly from SmartBear or a Reseller (collectively, the “Agreement”).

1. Definitions

Capitalized terms used herein that are not otherwise defined shall have the meanings set forth in the Terms of Use or the Privacy Policy, as applicable.

1.1 In these Data Processing Addendum, the following terms shall have the meanings set out below:

1.1.2 “Controller” means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law. For the purposes of these Data Processing Addendum, Company shall be considered the Controller. SmartBear, however, reserves the right to Process as a Controller anonymized, de-identified, or otherwise obfuscated information, including metadata and aggregated data, for research and analytics and to support and improve the Services or Software.

1.1.3 “Data Protection Laws and Regulations” means laws and regulations applicable to the Processing of Personal Data under the Agreement, including applicable laws and regulations of the European Union, the European Economic Area and their member states, Switzerland, and the United Kingdom, including without limitation Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (“General Data Protection Regulation” or “GDPR”) and EU Directive 2002/58/EC on Privacy and Electronic Communications (“e-Privacy Directive”) or, the superseding Regulation on Privacy and Electronic Communications (“e-Privacy Regulation”), once effective.

1.1.4 “Personal Data” means any information relating to an identified or identifiable natural person (also referred to herein as a “Data Subject”) that is Processed by SmartBear on behalf of Company pursuant to the terms of the Agreement. For the avoidance of doubt, Personal Data shall have the same meaning as Personal Data under GDPR.

1.1.6 “Personal Data Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed.

1.1.7 “Process” “Processed” or “Processing” means any operation or set of operations performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

1.1.8 “Processor” means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the Controller. For the purposes of this Agreement, SmartBear shall be considered a Processor for Data of the Company (except as to aggregated, hashed, anonymized, encrypted or otherwise obfuscated or de-identified data that SmartBear uses to monitor the use and performance of the Services or Software, or for analytics, in which case SmartBear shall be a Controller).

1.1.9 “Sensitive Data”: Company is solely responsible for obtaining all required consents for Processing any special categories of data or sensitive data. The SmartBear Services and Software are designed to be for general use. They are content-neutral and are not designed to meet the requirements for sensitive data such as classified military or defense

information, law enforcement data, racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data, data concerning health or data concerning a natural person's sex life or sexual orientation or any other data deemed to be sensitive by Company or applicable law.

1.1.10 "Subprocessor" means any Processor engaged by SmartBear in the provision of the SmartBear Services or Software to Company.

2. Protection of Personal Data

2.1 Processing by SmartBear: SmartBear shall Process Personal Data of Company: (i) to perform SmartBear's obligations and as otherwise permitted under the Agreement and Data Protection Laws and Regulations, and (ii) as a Processor, in compliance with all applicable Data Protection Laws and Regulations.

2.2 Notices and Consents: Company shall comply with all applicable Data Protection Laws and Regulations, including: (i) providing all required notices and appropriate disclosures to all Data Subjects regarding Company's, SmartBear's, and any third parties acting on Company's behalf, collection, use, Processing and transfer of Personal Data, (ii) obtaining all necessary rights and valid consents from the Data Subjects to permit Processing by SmartBear of Personal Data for the purposes of fulfilling SmartBear's obligations, or as otherwise permitted, under the Agreement, and (iii) obtaining express consents from Data Subjects and complying with all applicable Data Protection Laws and Regulations, including GDPR Article 9, if the Company collects any Sensitive Data.

2.3 European Data: If Personal Data is transferred under the Agreement from the European Economic Area or Switzerland by Company as controller to SmartBear as Processor, or otherwise by SmartBear as Processor, to a jurisdiction which the European Commission or, where relevant, the Swiss Federal Data Protection and Information Commissioner, has determined does not ensure an adequate level of protection of Personal Data, then SmartBear will subscribe to an appropriate legal instrument for the international transfer of data (such as the EU-U.S. Privacy Shield Framework) or take such other measures as may be required under applicable Data Protection Laws and Regulations.

2.4 Subprocessors:

2.4.1 Company acknowledges and agrees that SmartBear may engage Subprocessors worldwide in connection with the provision of the SmartBear Services or Software. However, personnel of SmartBear, whether employees or contractors, shall not be deemed to be "Subprocessors" for purposes of the following subsections in this Agreement (2.4.2 and subsequent sections).

2.4.2 Upon Company's request or as otherwise required by applicable Data Protection Laws and Regulations, SmartBear shall make available information about Subprocessors who, to SmartBear's actual knowledge, will Process Personal Data of Company, including their functions relevant to the performance of SmartBear Services or Software and locations. This information is made available by SmartBear online at <https://smartbear.com/legal/smartbear-subprocessors/> and may be updated by SmartBear from time to time.

2.4.3 When engaging any new Subprocessor, SmartBear will enter into a written agreement with each Subprocessor containing data protection obligations no less protective than those in these Data Processing Addendum or as may otherwise be required by applicable Data Protection Laws and Regulations. For the avoidance of doubt, SmartBear may continue to use those Subprocessors already engaged by SmartBear as at the date of this Agreement.

2.4.4 SmartBear will inform Company of any new Subprocessor who will be Processing Personal Data of Company and who is engaged during the term of the Agreement by updating the URL at <https://smartbear.com/legal/smartbear-subprocessors/> or Customer portal or account information or by email before the new Subprocessor processes Company Personal Data. A list of the current Subprocessors at the time of this Agreement is set forth in Exhibit C. Such Subprocessors shall be engaged and onboarded using SmartBear's vendor management policies. Company must promptly notify SmartBear in writing within fifteen (15) business days thereafter of its reasonable basis for objection to the use of a new Subprocessor. Upon receipt of Company's written objection Company and SmartBear will work together without unreasonable delay to recommend an alternative arrangement. If the following conditions apply: a) a

mutually acceptable and reasonable alternative arrangement is not found and b) Company has provided prompt written notice under this Section, then Company may terminate the Agreement only with respect to those services that cannot be provided by SmartBear without the use of the new Subprocessor. Unless prohibited by applicable Data Protection Laws and Regulations, in the event of such early termination by Company, SmartBear can retain or require payment for Services or Software through the end of Company's current contract term for the terminated services.

2.5 Children; Sensitive Data: Company is responsible for compliance with all applicable Data Protection Laws and Regulations regarding its content, including without limitation those that regulate content directed toward children (as defined under applicable Data Protection Laws and Regulations; for example, under 13 years old in the United States or under 16 years old in certain other countries in accordance with applicable laws).

3. Data Integrity

3.1 To the extent Company does not have the ability to access Personal Data to correct, amend, delete it, refrain from Processing it, or provide it in portable form, upon request from a Data Subject (to the extent that such Data Subject is entitled to such rights under applicable Data Protection Laws and Regulations) in connection with the SmartBear Service, SmartBear will assist Company with any reasonable request to do so. If a Data Subject should apply directly to SmartBear to request access to, correction or deletion of Personal Data in connection with the Services provided to Company by SmartBear, SmartBear will promptly notify Company of the request and will provide Company with reasonable assistance in processing any such request.

4. Investigations and Audits

4.1 SmartBear shall reasonably assist and support Company in the event of an investigation by a data protection regulator or similar authority, if and to the extent that such investigation relates to the collection, maintenance, use, processing, or transfer of Personal Data under this Agreement.

4.2 If required by applicable Data Protection Laws and Regulations, then, upon reasonable notice (not less than thirty (30) days in advance) and at mutually agreed times no more than once per year, SmartBear shall provide to Company, its authorized representatives, and/or independent inspection body designated by Company (i) access to records of SmartBear's Processing of Personal Data; and (ii) reasonable assistance and cooperation of SmartBear's relevant staff for the purpose of auditing SmartBear's compliance with its obligations under this Agreement. SmartBear reserves the right, in its sole discretion, to restrict access to its proprietary information, including but not limited to its network architecture, internal and external test procedures, results and remediation plans. Company will use best efforts to minimize disruption to the SmartBear Service or business operations. Company further agrees that (i) personnel (or designated third parties) performing said audits will be bound by confidentiality obligations; (ii) all findings will be deemed SmartBear's Confidential Information; (iii) Company will share all findings with SmartBear; and (iv) SmartBear will classify and remediate findings in accordance with its risk management program.

4.3 Taking into account the nature of the Processing and the information available to SmartBear, SmartBear shall, upon Company's written request, provide Company with reasonable cooperation and assistance needed to fulfil Company's obligations under applicable Data Protection Laws and Regulations to carry out a data protection impact assessment related to Company's use of the SmartBear Services or Software. Such cooperation and assistance is provided to the extent Company does not otherwise have access to the relevant information, to the extent such information is available to SmartBear, and that it will not compromise the security of SmartBear's systems or the data of other SmartBear customers. To the extent required by applicable Data Protection Laws and Regulations, SmartBear shall provide reasonable assistance to Company in respect of Company's prior consultations with the supervisory authority.

5. Notice of Non-Compliance

5.1 If required by applicable Data Protection Laws and Regulations, in the event that SmartBear is unable to comply with its obligations stated in these Data Processing Addendum, SmartBear shall promptly notify Company, and Company may take any one or more of the following actions: (i) suspend the transfer of Personal Data to SmartBear; (ii) require

SmartBear to cease Processing Personal Data; or (iii) demand the return or destruction of Personal Data. Unless Company has additional rights or remedies under applicable law, this is the full extent of Company's remedies.

6. Security

6.1 SmartBear will ensure that all individuals with access to Personal Data are subject to written obligations of confidentiality.

6.2 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, SmartBear shall in relation to the Company Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

6.3 In assessing the appropriate level of security, SmartBear shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.


6.4 If SmartBear knows of a Personal Data Breach, SmartBear shall (i) promptly, and without undue delay following SmartBear's discovery thereof, notify Company of such Personal Data Breach, (ii) investigate, remediate, and mitigate the effects of the Personal Data Breach, (iii) reasonably cooperate with Company's investigation of the Personal Data Breach to the extent that such cooperation does not compromise SmartBear's security, (iv) take any additional actions and provide any additional cooperation with Company as may be required under applicable Data Protection Laws and Regulations, and (v) upon resolution, provide Company with a written incident report describing the breach, actions taken during the response, and plans for future actions to prevent a similar breach from occurring in the future.

7. Legal Effect and Termination

7.1 Upon termination or expiration of the Agreement or these Data Processing Addendum, or at any time at Company's reasonable written request, SmartBear shall: return to Company or destroy all Personal Data, except that, to the extent permitted by applicable Data Protection Laws and Regulations, SmartBear may retain a copy of any Personal Data (or permitted portion thereof) for SmartBear's business records (including for billing and auditing purposes) for research, analysis and support purposes and as otherwise required for compliance with applicable Data Protection Laws and Regulations.

7.2 Unless earlier terminated by either party in accordance with the Agreement, these Data Processing Addendum will terminate automatically when the Agreement terminates or expires, without further action required by either party.

EXHIBIT B (MAINTENANCE AND SUPPORT)



SmartBear Product Support Manual



Introduction

This document describes SmartBear Software's support services, their availability and response times, so that customers can obtain effective and timely solutions.

Document Version

SmartBear updated this document on November 18, 2019. This update supersedes the previous versions of the document. The company may update the document in the future. You can get the latest version any time at <https://support.smartbear.com/support/media/pdf/SSG.pdf>.

Audience

This document is for –

- SmartBear customers
- SmartBear employees

Table of Contents

SmartBear Product Support Procedures 4

Contacting Support 4

Product Support Services – Access and Availability 5

Product Support Definitions 7

 Initial Response, Follow-Up and Escalation..... 7

 Priority Definitions Table 8

 Response Time 9

Update Policy..... 10

 Enhancements 10

 Defects..... 10

 Defect/Enhancement Priorities 10

Zephyr Standalone Platinum Support..... 11

provide an answer on *our initial response*. Our goal is to

SmartBear Product Support Procedures

SmartBear provides assistance in several ways:

- * Our customers or trial prospects can access online information via our SmartBear website, smartbear.com. Our website contains online documentation, troubleshooting, and many other tools that will help you get the most out of our products.
- * We also have several community forums for SmartBear products in which you can find responses to various questions asked from other customers. This is also where you can post your own question. Both our customers and SmartBear monitor these forums and provide answers.
- * Finally, if you cannot find an answer to your question via our website, you can also submit a ticket to our Customer Care team via our website by selecting the “Contact Support” button on the Support Portal page (<https://support.smartbear.com>).
- * For some of the products, we also provide live chat and telephone support. Please see more detail regarding this below.
- * Support Services will be available to individuals who have been named, in writing, by customers or prospects eligible to receive support. Support eligibility requires an active maintenance contract, current product subscription, or a valid trial license.

Contacting Support

SmartBear offers general-purpose, content-neutral Support Services and is not responsible for being aware of whether or not you are using the Support Services in connection with personal data or sensitive data. Generally, SmartBear will have no reason to know the actual content of your data. In connection with the foregoing, you agree that you shall not provide access to SmartBear, whether electronically (including during any technical support sessions) or otherwise, to any personal or sensitive data.

When our support teams receive your ticket, an individual will review the information you provide with the objective to

etc.). If we are unable to reproduce the situation, then we sometimes will not be able to provide a resolution.

respond in the time frames mentioned below.

This will be based on the urgency of the situation and product.

Sometimes we do not have all of the information to provide an answer or we may need to perform more research before providing an answer. In these scenarios our initial response will be to let you know we have reviewed the information and what our next steps will be.

We will also *provide updates on a regular basis*.

The time frames of these updates are documented below.

Our team also tracks our dialogue with you as well as captures and tracks any information you have provided us such as log files, screen captures, etc. This information is tracked in our ticketing system. Consequently, you'll be able *to find out the status of your ticket* simply via our updates or by contacting us.

If the support engineer who initially took your issue requires assistance from someone, he/she will either consult with a colleague or *escalate your issue* to a more skilled engineer, e.g. senior technical support engineer, developer, etc. The timeframe of these escalation goals are driven by the severity of the issue and are listed below.

If you feel you are not receiving the appropriate response for an issue, please check to make sure we understand the urgency of the situation properly. You can also contact your Account Manager or Customer Success Manager who will ensure the appropriate manager is aware of your situation.

Your customer Care Engineer will make every reasonable attempt to understand your issue and help with a resolution. This may involve requests for you to provide additional information (access to applications, environments, systems, etc.) so that the support engineer can reproduce the issue and convey the situation to those that can help address it (product owners, developers, QA,

Product Support Services – Access and Availability

SmartBear Support Services are accessible via the telephone, chat, our web form, website and forums. Access, availability, response time, escalation time and follow-up time is product-dependent.

The following table describes the access venue and availability times for each product area.

For Zephyr users: the table below lists regular support services. Zephyr Standalone users with Platinum Support get extended services. See page 11 for details.

Enterprise Products

Products	Telephone / Live Chat	Email / Web form	Web site (self-help tools and forums)
AQTime Pro Bitbar Capture for Jira Collaborator HipTest LoadComplete LoadNinja LoadUI Pro QAComplete ReadyAPI Secure Pro ServiceV Pro SoapUI Pro SwaggerHub TestComplete TestEngine TestExecute TestLeft Zephyr for Jira Zephyr Standalone	HipTest A dedicated Slack channel is created on request. Other Products Not available.	All Products M-F, 12:00am–8:00pm EST excluding US National Holidays support.smartbear.com/product-list HipTest M-F, 9:00am-11pm CEST excluding French National Holidays hptest.com/contact/ support@hptest.com	All Products Always available (24x7x365) support.smartbear.com HipTest hptest.com/contact/ Zephyr getzephyr.com/support

SaaS Products

Products	Telephone / Live Chat	Email / Web form	Web site (self-help tools and forums)
AlertSite Bitbar CrossBrowserTesting HipTest QAComplete SwaggerHub Zephyr for Jira Zephyr Standalone	<p>All Products</p> <p>After Hours is available for emergency issues only.</p> <p>US: 1 877 30ALERT (1 877 302 5378)</p> <p>International: 1 954 312 0188</p> <p>AlertSite UXM</p> <p>M-F, 8:00am – 8:00pm EST excluding US National Holidays</p> <p>CrossBrowserTesting</p> <p>* Phone: 1-888-927-6973</p> <p>* In-product chat is available</p> <p>HipTest</p> <p>In-product chat (from the user account page).</p> <p>SwaggerHub</p> <p>In-product chat for users with maintenance subscription</p>	<p>All Products</p> <p>M-F, 12:00am – 8:00pm EST excluding US National Holidays</p> <p>support.smartbear.com/product-list</p> <p>CrossBrowserTesting</p> <p>crossbrowsertesting.com/contact</p> <p>support@crossbrowsertesting.com</p> <p>HipTest</p> <p>M-F, 9:00am-11pm CEST excluding French National Holidays</p> <p>hiptest.com/contact/</p> <p>support@hiptest.com</p>	<p>All Products</p> <p>Always available (24x7x365)</p> <p>support.smartbear.com</p> <p>CrossBrowserTesting</p> <p>help.crossbrowsertesting.com</p> <p>HipTest</p> <p>hiptest.com/contact/</p> <p>Zephyr</p> <p>getzephyr.com/support</p> <p>Zephyr for Jira: we may forward Jira-related issues to Atlassian.</p>

Product Support Definitions

Initial Response, Follow-Up and Escalation

The SmartBear Software Product Support organization has established service-level objectives regarding the timing of the Initial Response provided to our Customers when a new support case is received as well as for Follow Up communication regarding the status of open cases.

Initial Response

Initial Response is defined as the first communication from Product Support acknowledging receipt and review of a support request or in-product chat.

New tickets will be created either automatically by a web-form or manually by a Technical Support team member.

When a ticket is created automatically, the submitter will receive an automatic response which will include the ticket number which we use for tracking purposes. This is part of the initial response.

The initial response is completed when a Product Support team member acknowledges receipt of the ticket or responds to an in-product chat. This can be a follow-up from an automatic submission or initial entry of the ticket when submitted via phone or chat.

During the initial response, the support engineer may request additional information or may communicate that additional research is required. The support engineer may also escalate to a more skilled engineer if required.

The Initial Response may be provided in various forms including:

- * Via a support ticket response from Product Support, which would include the assigned case number, status, and next steps
- * If applicable via a customer's first telephone or chat contact with the Product Support organization during which the issue was discussed with a Support Representative.

Follow-Up Communications

SmartBear Software Product Support defines Follow-up as communication between the assigned Support Representative and the Customer. This may include a status update, additional information exchange and/or next steps. Communication may be in many forms such as the telephone, chat (if applicable), email or directly updating the case information if it is available to the customer on-line.

Escalation

SmartBear Software Product Support defines Escalation as the protocol under which Product Support will escalate a case to higher skilled individuals in which their assistance is required to move a case forward. For example, when an issue needs additional help from development, the support representative will escalate to the development manager.

Priority Definitions

SmartBear will commit to initial response, follow-up and escalation times based on the severity of an issue. These severities are defined by product state or behavior so we can be as transparent as possible and set the proper expectations with you, our customer. The table below lists these severity definitions.

Priority Definitions Table

Products	Urgent/Sev 1	High	Standard
SaaSProducts AlertSite Bitbar CrossBrowserTesting HipTest QAComplete SwaggerHub Zephyr for Jira Zephyr Standalone	A significant number of customers are impacted by the service, product, or major feature being unavailable. No reasonable workaround is available.	Service Behaviors defined under urgent, but is impacting a moderate number of customers. <ul style="list-style-type: none"> * Is reproducible. * A work around is available that is reasonable in the short-term, but not in the long-term. 	Minimal operational impact: <ul style="list-style-type: none"> * Cosmetic issue. * Efficiency issue. * Convenience issue. * Operational workaround is available. * Usage clarification that does not impact work performance.
Enterprise AQTime Pro Bitbar Capture for Jira Collaborator HipTest LoadComplete LoadNinja LoadUI Pro QAComplete ReadyAPI Secure Pro ServiceV Pro SoapUI Pro SwaggerHub TestComplete TestEngine TestExecute TestLeft Zephyr for Jira Zephyr Standalone			

Response Time

The following matrix describes our response time, escalation time and follow-up time for each product and priority area. When reporting a case (see product support procedures above) it is imperative that you, the customer, provide us with enough information so we can determine the proper severity. Incorrect severity assignment can lead to improper response on our part which could impact your ability to get the most out of our products.

If you feel an issue is of an urgent nature, please use the most expeditious reporting mechanism available to ensure proper response.

The table includes First Response, Follow-up and Escalation based on business hours (one day is defined as one business day). Please note that response times and escalation times only apply to phone, chat and web form.

Products	Urgent/Sev 1	High	Standard
SaaS Products AlertSite Bitbar CrossBrowserTesting HipTest QAComplete SwaggerHub Zephyr for Jira Zephyr Standalone	All products * First Response: 30 minutes * Follow-up: 1 hour or agreed upon time between customer and representative. * Escalation: 2 hours Bitbar * Enterprise support: 8 hours * Standard support: N/A	All products * First Response: 4 hours * Follow-up: 8 hours or agreed upon time between customer and representative * Escalation: 2 hours Bitbar * Enterprise support: 8 hours * Standard support: N/A	All products * First Response: 1 day * Follow-up: 2 days or agreed upon time between customer and representative * Escalation: 5 days Bitbar * Enterprise support: 1 day * Standard support: 2 days
Enterprise AQTime Pro Bitbar Capture for Jira Collaborator HipTest LoadComplete LoadNinja LoadUI Pro QAComplete ReadyAPI Secure Pro ServiceV Pro SoapUI Pro SwaggerHub TestComplete TestEngine TestExecute TestLeft Zephyr Standalone	All products * First Response: 2 hours * Follow-up: 4 hours or agreed upon time between customer and representative * Escalation: 1 day Bitbar * Enterprise support: 8 hours * Standard support: N/A	All products * First Response: 1 day * Follow-up: 1 day or agreed upon time between customer and representative * Escalation: 2 days Bitbar * Enterprise support: 8 hours * Standard support: N/A	All products * First Response: 2 days * Follow-up: 2 days or agreed upon time between customer and representative * Escalation: 5 days Bitbar * Enterprise support: 1 day * Standard support: 2 days

Update Policy

Product defects and enhancement requests are reviewed regularly by the SmartBear Software Product Management and Development organizations to assess whether the request represents an enhancement or defect and if it is assigned the appropriate priority. Product Management will determine, based upon the assigned priority, whether a patch will be made available for the current generally available release or whether an issue will be addressed in a future release through an update.

All defects and enhancements must be reported using the instructions provided in the Product Support Procedures at the beginning of this document.

Enhancements

An enhancement is any additional feature or function that would make the product easier to use, improves workflow or end-user experience, embeds new technology, or provides easier integration with other application or databases. An enhancement is not of an urgent nature, but is an improvement on the current product. Enhancements are therefore handled as a standard priority matter.

Defects

A software defect is a flaw in the product that is not working as designed or documented and impedes the workflow of a client.

Defect/Enhancement Priorities

Product Management determines the priority of reported defects. The priority drives when a fix will be available. Refer to the Severity Definitions for an explanation of each priority.

- * *Urgent/Sev 1 Priority*— SmartBear Software will work to provide a patch or work around that can be applied to the current generally available product release.
- * *High Priority*— SmartBear Software will consider a patch or work around for the current generally available product release or will work to provide the fix in a future maintenance release.
- * *Standard Priority*— SmartBear Software will consider a patch or work around for the current generally available product release or will work to provide the fix in a future maintenance release.

Zephyr Standalone Platinum Support

Zephyr Standalone users entitled for Platinum Support get extended support services:

First technical response time by defect priority * Technical Response provided during business hours 24x5 **.	Cloud Urgent: 30 minutes High: 2 hours Standard: 12 hours	On-Premise Urgent: 1 hour High: 12 hours Standard: 1 day
Extended support hours for urgent cases to support your global team Urgent / Production Down Phone Support: Emergency phone number will be provided.	24 x 7	
Scheduled Upgrade Assistance Online calendar scheduling provided for guidance/assistance with a support engineer for Standalone upgrades.	Yes	
Scheduled Technical Consultation Pre-Sales Systems Engineer/Senior Support Engineer can be scheduled for technical discussions for up to 4 hours per quarter for training, help with configuration and implementation, best practices, upgrade and backup planning, and so on.	4 hours / quarter	
Check-in calls with your Technical Account Manager Includes review of all support interactions from previous month, technical consultation on plans, such as upgrades, expansions, feature requests, etc.	Monthly	
Participation in our Customer Advisory Board	Yes	

* For information on priority types, see *Defect/Enhancement Priorities* on page 10.

** All time reflect Eastern Standard Time.

EXHIBIT C (SMARTBEAR SUBPROCESSORS)*Current as of September 19, 2019*

Third Party Service/Vendor	Purpose	Entity Headquarters	Website
Marketo	Marketing Automation Software	USA	https://www.marketo.com/
LearnUpon	Learning Management System	Ireland	https://www.learnupon.com/
SalesForce	Customer Relationship Management Software	USA	https://www.salesforce.com/
AWS Amazon	Data Hosting	USA, Ireland	https://aws.amazon.com/
Microsoft Azure	Data Hosting	USA	https://azure.microsoft.com/
NetSuite	Enterprise Resource Planning Software	USA	https://www.netsuite.com/
MixPanel	Product and Usage Analytics	USA	https://mixpanel.com/
Atlassian	Project Tracking Software	USA, Australia	https://www.atlassian.com/
Drift	Chat Service	USA	https://www.drift.com/
Intercom	Customer Relationship Management Software	USA	https://www.intercom.com/
Lithium	Community Platform	USA	https://www.lithium.com/
Google, Inc.	Product, Marketing, and Usage Analytics	USA	https://www.google.com/
Sisense, Inc.	Business Intelligence Software & Analytics Platform	USA	https://www.sisense.com/
Slack Technologies, Inc.	Instant Messaging Software	USA	https://www.slack.com/
LifeBoat Distribution	Value-Added Distributor	USA	https://www.lifeboatdistribution.com/
Sigstr, Inc.	Email Signature Marketing	USA	https://www.sigstr.com/
SaaS Consulting Group	SalesForce and NetSuite Consulting	USA	https://www.saascg.com/
Pendo.io, Inc.	Product Engagement Software for Analytics and Messaging	USA	https://www.p

EXHIBIT D (PRIVACY POLICY)

SmartBear Privacy Policy

LAST UPDATED: February 21, 2020

SmartBear Software, Inc. and its affiliates (collectively, “SmartBear”, “we”, “us”) is a global organization offering software tools used by developers, testers and operations team members to deliver high quality software and applications. We offer products for code review, API and UI development, testing, and operations and end user experience monitoring across desktop, web, mobile, Internet of things devices, and cloud platforms (“Services”).

This Privacy Policy (“Privacy Policy”) is intended to describe our practices regarding personal information collected through our websites products, and services. Please visit smartbear.com/product for the list of sites, products, and services covered by this Privacy Policy (collectively, the “Sites”).

Due to the global nature of the SmartBear Sites and Services, our data processing practices may vary among the jurisdictions in which we operate in order to comply with applicable legal requirements. Please note that certain rights, requirements, and disclosures in this Privacy Policy may be subject to exemption or otherwise may not apply to you based, for example, on applicable law or regulations. If you reside in a relevant geographic location, please see the Region Specific Disclosures section for more information.

1. INFORMATION WE MAY COLLECT AND FROM WHOM

As described in this Privacy Policy, we may collect personal information from or about you in order to provide, enhance, market, and offer our Sites and Services. This section describes the categories of personal information we may collect, including personal information we have collected in the past twelve months. You are not required to give us all the personal information identified in this Privacy Policy; however, if you do not provide requested personal information, we may not be able to provide you with some or all of the Services.

We may collect the following categories of personal information about you:

- Identifiers, which includes name; address (including billing and shipping address); telephone number; email address; fax number; screen name; user ID and password; IP address or MAC address;
- Commercial information, which includes payment or financial information;
- Information relating to Internet activity or other electronic network activity, which includes operating system type and version; web server type and version; PHP version; database type and version; cookie information; device information; browsing activities, and platform or mobile application use data; referring domain; destination domain and destination path; performance, security, software configuration and availability of our software on your servers and network; website user statistics and website and portal use and viewing activity records; communication preferences
- Educational information, which includes your education history; grades
- Professional information, such as employer or organizational affiliation for a customer or partner; the contents of your resume;

- Geolocation data, which includes geographic information derived from a customer's IP address or MAC address; latitudinal and longitudinal data
- Audio, electronic, or visual information, which includes screen sharing views; any data in any files uploaded, emailed or otherwise provided by customers;
- Characteristics of protected classifications under California or federal law, such as financial information (such as credit card number, expiration date), and other; and
- Other information, including the contents of your communications with us, whether via email, social media, telephone or otherwise., and inferences we may make from other personal information we collect

We collect personal information from the following categories of sources:

- **Directly from You.** For example, (i) if you visit our websites, respond to a survey, participate in a telephone interaction, fill out a registration form or otherwise agree to use our software (ii) if you fill out a form or communicate with us through one of our websites to receive information about our business to business services or to schedule a demonstration of our online, media, marketing, or data services products or programs, and (iii) if you expressed interest in being contacted by us at a trade show in which we participated or hosted.
- **Directly from our customers or their agents.** For example, from documents or files that our customers provide to us including, but not limited to, suppression lists/do not call lists and IP addresses corresponding to individuals who have either opted-out of Client communications or who have visited customer's websites, or related to the products or services our customers are purchasing from us.
- **Indirectly from our customers or their agents.** For example, through information we collect from our customers in the course of providing services to them.
- **Directly and indirectly from activity on our websites.** For example, from observing your actions on our websites or through your submission of an online form requesting a demonstration or walkthrough for one of our products or services.
- **From Third Parties that contract with us or interact with us in connection with the services we perform.** For example, from (i) vendors and partners that help us to build contact lists, supplement or update your information in our database, or confirm/verify our records and information are accurate and up to date, (ii) third parties that may contact you, on our behalf, to provide you relevant content and/or to become a member, or (iii) third parties (including, other B2B contact providers) that integrate their services with ours or provide us access to their services

Mobile Devices

When you use your mobile device to interact with us or use the Services, we may receive information about your mobile device, including, as noted above, a unique identifier for your device. We and our service providers and third parties we collaborate with, including ad networks, may use cross-device/cross-context tracking. For example, you might use multiple

browsers on a single device, or use various devices (such as desktops, smartphones, and tablets), which can result in your having multiple accounts or profiles across these various contexts and devices. Cross-device/cross-context technology may be used to connect these various accounts or profiles and the corresponding data from the different contexts and devices.

2. USE OF INFORMATION

To the extent permitted by applicable law, we may use personal information collected in connection with our Services, including:

- To operate the SmartBear Products and Services and provide support .our business functions;
- To fulfill customer requests, such as to create a SmartBear Products and Services account or complete customer purchases.;
- To protect against criminal activity, claims and other liabilities;
- To send customers information regarding the SmartBear Products and Services and issues specifically affecting SmartBear Products and Services.;
- To respond to reviews, comments, or other feedback provided to us.;
- To support and personalize our Services, websites, mobile services, and advertising.;
- To protect the security and integrity of our Services, content, and our business.;
- To provide customer support.;
- For benchmarking, data analysis, audits, developing new products, enhancing the SmartBear Products and Services, facilitating product, software and applications development, improving our services, conducting research, analysis, studies or surveys, identifying usage trends, as well as for other analytics purposes.;
- To meet our contractual requirements;
- To comply with applicable legal or regulatory requirements and our policies;
- To communicate with our customers; to inform customers and users of products, programs, services and promotions;
- To market, advertise, and provide our Services; and
- For any other lawful purpose for which the information is collected.

Aggregated and Anonymized Personal Information

To the extent permitted by applicable law, we may use, process, transfer, and store data about individuals and customers or partners in an anonymous (or pseudonymous) and aggregated manner. We may combine such aggregated personal information with other information, collected online and offline, including information from third party sources. We may also use information in other ways with consent or as permitted by applicable law. for benchmarking, analytics, A/B testing, metrics, research, reporting, machine learning and other business purposes, as permitted by applicable law.

3. SHARING OF INFORMATION

To the extent permitted by applicable law, SmartBear may share and disclose information, including personal information, as set forth below:

- Customers. We may share personal information with our customers and their service providers and other platforms that may assist those customers.
- Affiliates and Agents. We may share personal information with our affiliates or any business partners or agents acting on our behalf.
- Service Providers. We may share personal information with our service providers, agents, vendors and other third parties we use to support and advertise the SmartBear Services and our business. We share personal information with such third parties to provide services to us. A listing of our subprocessors, service providers that may receive access to and process personal information of our customers, may be found at: <https://smartbear.com/legal/smartbear-subprocessors/>.

- **Advertising and Marketing.** To the extent permitted by applicable law, we may share personal information with third parties for marketing, advertising, promotions, contests, or other similar purposes.
- **Mergers, Acquisitions, Divestitures.** We may share, disclose or transfer personal information to a buyer, investor, new affiliate, or other successor in the event SmartBear, or any affiliate, portion, group or business unit thereof, undergoes a business transition, such as a merger, acquisition, consolidation, reorganization, divestiture, liquidation or dissolution (including bankruptcy), or a sale or other transfer of all or a portion of any assets of SmartBear or any affiliates or during steps in contemplation of such activities (e.g., negotiations and due diligence).
- **Law Enforcement and National Security.** We may share personal information with legal, governmental, or judicial authorities, as instructed or required by those authorities or applicable laws, or to comply with any law or directive, judicial or administrative order, legal process or investigation, warrant, subpoena, government request, regulatory request, law enforcement or national security investigation, or as otherwise required or authorized by law.
- **Protection of Rights, Property or Safety.** We may also share personal information if, in our sole discretion, we believe disclosure is necessary or appropriate to protect the rights, property or safety of any person, or to protect against fraud or other illegal activity,.

SmartBear may also disclose personal information for other purposes or to other third parties when an individual has consented to or requested such disclosure, or where a customer has obtained permission from such individual, or where such disclosure is otherwise legally permitted for legitimate business purposes, and, for customer data, with such customer's authorization or otherwise in accordance with SmartBear's agreement with such customer and pursuant to applicable law.

4. COOKIES AND SIMILAR TECHNOLOGIES

We may use cookies and similar technologies to operate and improve the SmartBear Products and Services, as well as to simplify our interaction with you. A "cookie" is a unique numeric code that we transfer to your computer so that we can keep track of your interests and/or preferences and recognize you as a return visitor to the websites. We may use cookies, log files, pixel tags, web bugs, web beacons, clear GIFs, Local Storage Objects (LSOs) such as HTML5 and Flash or other similar technologies to collect information about the ways you interact with and use the SmartBear Products and Services, to support and enhance features and functionality, to monitor performance, to personalize content and experiences, for marketing and analytics, and for other lawful purposes. We may also engage third party service providers to provide advertisements and promotions on our behalf, or authorize third parties to advertise and market products and services via the SmartBear Products and Services.

We may use the following types of cookies and similar technologies:

- **Strictly necessary cookies** required for the operation of the SmartBear Products and Services. They include, for example, cookies that enable you to log into secure areas.
- **Analytical/performance cookies** that collect information about how you use the SmartBear Products and Services. They allow us to recognize and count the number of visitors and to see how visitors move around our website. This helps us to improve the way our website works. These cookies are sometimes placed by third party providers of web traffic analysis services.
- **Functionality cookies** that remember choices you make and recognize you when you return. This enables us to personalize our content, greet you by name and remember your preferences (for example, your choice of language or region).

- Targeting cookies that collect information about your browsing habits such as the pages you have visited and the links you have followed. We use this information to make our website more relevant to your interests, and, if we enable advertising, to make advertising more relevant to you, as well as to limit the number of times you see an ad. These cookies are usually placed by third-party advertising networks. They remember the other websites that you visit and this information is shared with third-party organizations, for example, advertisers.

Most internet browsers accept cookies by default. You can block cookies by activating the setting on your browser that allows you to reject all or some cookies. The help and support area on your internet browser should have instructions on how to block or delete cookies. Some web browsers (including some mobile web browsers) provide settings that allow you to control or reject cookies or to alert you to when a cookie is placed on your computer, tablet or mobile device. Although you are not required to accept cookies, if you block or reject them, you may not have access to all of the features available through the SmartBear Products and Services.

For more information, visit the help page for your web browser or see <http://www.allaboutcookies.org> or visit www.youronlinechoices.com which has further information about behavioral advertising and online privacy.

We may use third party analytics such as Google Analytics or similar analytics services. For information on how Google processes and collects your information regarding Google Analytics and how you can opt-out, please see <https://tools.google.com/dlpage/gaoptout>.

We may use third-party advertisers to serve or track advertisements on or relating to the SmartBear Products and Services. These third parties may use cookies and other tracking and analytical technologies to, among other things, record which ads your browser has loaded and which pages you were viewing when ads were delivered or accessed. Information so collected is subject to the privacy policies of those third parties, which you should carefully review. We have limited or no control over third party use of cookies.

5. CHOICES AND OPT-OUT

To the extent required by applicable law, or in our discretion otherwise, you can limit certain uses of personal information. Where consent is the basis of processing, you may at any time withdraw the consent you provided for the processing of your personal information for the purposes set forth in this Privacy Policy by contacting us as set forth below, provided that we are not required by applicable law or professional standards to retain such information.

If you would like to stop receiving newsletters or other marketing or promotional messages, notifications, or updates, you may do so by following the unsubscribe instructions that appear in these e-mail communications, by going to our [Unsubscribe Page](#), or by mail at 450 Artisan Way, Somerville, MA, 02145 USA; Attn: General Counsel, Legal Dept. to opt-out of direct marketing. Please be advised that you may not be able to opt-out of receiving certain service or transactional messages from us, including legal notices.

Please note that if you do not provide consent, if you withdraw your consent or object to processing, or if you choose not to provide certain personal information, we may be unable to provide some or all of the services to you.

6. THIRD PARTY SITES

The SmartBear Products and Services may provide links to other websites, mobile applications, resources, or Internet locations over which SmartBear does not have control (“External Web Sites”). Such links do not constitute an endorsement by SmartBear of those External Web Sites. SmartBear is providing these links to you only as a convenience. We have no control over and are not responsible for External Web Sites, their content, or any goods or services available through the External Web Sites. Our Privacy Policy does not apply to External Web Sites. Your use of External Web Sites is subject to the terms of use and privacy policies located on the External Web Sites., and we encourage you to read the privacy policies of any External Web Sites with which you choose to interact.

7. DATA SECURITY

We implement technical and organizational security measures designed to secure and protect personal information. Please note, however, we cannot fully eliminate security risks associated with the storage and transmission of personal information.

8. REGION SPECIFIC DISCLOSURES

8.1 Notice to Individuals in the EEA

PRIVACY SHIELD NOTICE: We have certified our compliance with the EU-U.S. and Swiss- U.S. Privacy Shield with regards to the personal information of users of the SmartBear Products and Services who are residents of the European Union (“EU”), European Economic Area (“EEA”) and Switzerland that we receive and process through the SmartBear Products and Services. We certify that we adhere to the Privacy Shield Principles of notice, choice, onward transfer, security, data integrity, access, liability, and enforcement (“Privacy Shield Principles”) for Personal Data of users of the SmartBear Products and Services in the countries participating in the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks. Our certification is available [here](#). We may also process Personal Data submitted relating to individuals in Europe via other compliance mechanisms, including use of the European Union Standard Contractual Clauses or Binding Corporate Rules. We are responsible for the processing of Personal Data we receive under the Privacy Shield Framework and subsequently transfer to a third-party agent, and may be liable for onward transfers in violation of the Privacy Shield Principles. If there is any conflict between the terms in this Privacy Policy and the Privacy Shield Principles, the Privacy Shield Principles shall govern.

Our legal bases for processing personal information are:

- To comply with legal obligations;
- To perform contracts;
- To pursue our legitimate interests, including:
 - engaging in commerce,
 - offering the SmartBear Products and Services,
 - preventing fraud,
 - correcting and addressing technical, service or security problems, or ensuring information and network security,
 - direct marketing and advertising, and
 - complying with industry practices.
- Your consent (for example, when you sign up to our mailing list).

Data Retention

We retain personal information pursuant to our records retention program, for as long as is necessary for the purposes set out in this Policy, unless a longer period is permitted or required under applicable law or is needed to resolve disputes or protect our legal rights, in accordance with the principles set forth in Article 5(1) of the GDPR. We may retain anonymized, aggregated data indefinitely, to the extent permitted under applicable law.

The criteria used to determine the period for which personal information about you will be stored varies depending on the legal basis under which we process such personal information:

Legitimate Interests	For a reasonable period of time based on the particular interest, taking into account the fundamental interests and the rights and freedoms of the data subjects.
Contractual Necessity	For the duration of the contract plus some additional limited period of time that is necessary to comply with law or that represents the limitation period for legal claims that could arise from the contractual relationship.
Legal Obligation	For the duration of time we are legally obligated to keep the information.
Consent	For the period of time necessary to fulfill the underlying agreement with you, subject to your right, under certain circumstances, to have certain personal information about you erased (see Data Subject Rights below).

Automated Decisions

To the extent permitted by applicable law, we may collect data in an automated manner and make automated decisions, including using machine learning algorithms, about individual users of the SmartBear Products and Services in order to provide or optimize the SmartBear Products and Services offered and/or delivered, for security or analytics purposes, and for any other lawful purpose. To the extent permitted by applicable law, we may use automated decisions, for example, to display advertisements and offers based on the individual’s preferences.

International Data Transfers

The SmartBear Sites and Services may be provided using resources and servers located in various countries around the world, including the United States and other countries. Therefore, personal information about individuals or customers may be transferred, processed and stored outside the country where the SmartBear Sites and Services are used, including to countries outside the European Union (“EU”), European Economic Area (“EEA”) or Switzerland, where the level of data protection may not be deemed adequate by the European Commission. If you are located outside of these jurisdictions, the transfer of personal information may be necessary to provide you with the requested information, products, and services and/or to perform any requested transaction. By using any portion of the Sites or Services, you acknowledge and consent to the transfer of your information as set forth herein.

Data Subject Rights

Individuals from the EEA whose personal information we process subject to the GDPR have certain rights as required by law, including the right of access, erasure and data portability, as well as the right to rectification, to restrict processing, to withdraw consent, and to object to processing as follows.

- **Access:** Individuals have the right to know if we are processing personal information about them and, if so, to access and obtain a copy of personal information about them, as well as information relating to the processing of that data.
- **Rectification:** Individuals have the right to have us correct or update any personal information about them that is inaccurate or incomplete without undue delay.
- **Restriction:** Individuals have the right to restrict or limit the ways in which we process personal information about them where the accuracy of the personal information is contested by them, where data has been obtained by us unlawfully, where the individual has objected to our processing of the data (see right of objection below) and we are considering whether to cease processing, or where we no longer need to process the personal information.
- **Objection:** Individuals have the right to object to our processing of their personal information where we are relying on legitimate interests as our legal basis and their rights override our legitimate interests in processing their personal information. Individuals also have the right to object to our processing of their personal information for direct marketing purposes.
- **Withdrawal of Consent:** Where we rely on consent as the basis for processing personal information, individuals have the right to withdraw their consent.
- **Erasement:** Individuals have the right to request deletion or erasure of their personal information in a number of circumstances where required by law. These include where we no longer require the personal information for the purposes for which it was collected, the individual has withdrawn consent or, where we are relying on legitimate interests as a legal basis, and the individual's rights override our legitimate interests.
- **Portability:** Individuals have the right to obtain a copy of the personal information we hold about you in a structured machine-readable format and to have it transmitted to another controller. This right only occurs where we are relying on your consent or performance of a contract as our legal basis and the processing is carried out automatically.
- **Make a Complaint:** Individuals also have the right to make a complaint about our personal information handling practices to their local data protection authority.

To assert one of your legal rights described in this Section 12.1, or if you have questions about this Section or our data handling practices, please contact us per the details provided below and provide sufficient details so that we can respond appropriately. We will process any requests in accordance with applicable law and within a reasonable period of time. We may need to verify the identity of the individual submitting a request before we can address such request. If the request relates to data our customers collect and process through the SmartBear Sites and Services, we will refer the request to that customer and will support them in responding to the request. For SmartBear customers, certain information may be reviewed, corrected and updated by logging into the SmartBear Sites and Services account and editing the profile information.

In compliance with the Privacy Shield Principles, SmartBear commits to resolve complaints about our collection or use of your Personal Data. Residents of a country participating in the Privacy Shield Framework may direct any questions or complaints concerning our Privacy Shield compliance to our Privacy Shield and Data Protection Contact. We will work with you to resolve your issue.

If we have not responded to a concern relating to data processed under the Privacy Shield Framework in a timely manner, or we have not addressed the concern satisfactorily, you may contact our U.S.-based dispute resolution provider, at no cost, at <https://www.jamsadr.com/file-an-eu-us-privacy-shield-or-safe-harbor-claim>. If neither SmartBear nor our independent dispute resolution provider resolve your complaint, you may have the possibility to invoke binding arbitration through the Privacy Shield Panel.

However, prior to initiating such arbitration, a resident of a country participating in the Privacy Shield Framework must first: (1) contact us and afford us the opportunity to resolve the issue; (2) seek assistance from our designated independent dispute resolution provider; and (3) contact the U.S. Department of Commerce (either directly or through a European DPA) and afford the Department of Commerce time to attempt to resolve the issue. If such a resident invokes binding arbitration, each party shall be responsible for its own attorney's fees. Pursuant to the Privacy Shield, the arbitrator(s) may only impose individual-specific, non-monetary, equitable relief necessary to remedy any violation of the Privacy Shield Principles with respect to the resident.

U.S. Federal Trade Commission Enforcement. SmartBear's commitments under the Privacy Shield are subject to the investigatory and enforcement powers of the United States Federal Trade Commission.

Compelled Disclosures. SmartBear may be required to disclose Personal Data in response to lawful requests by public authorities, including to meet national security or law enforcement requirements.

Privacy Shield and Data Protection Contact. Unless otherwise specified, the data controller of personal information uploaded to the SmartBear Products and Services is the SmartBear customer for whom such Services are provided and SmartBear is the processor of such data for such customer. In certain cases, SmartBear may also be the controller of aggregated, anonymous or pseudonymous data relating to the SmartBear Products and Services. Our Privacy Shield and Data Protection Contact for the personal information collected in connection with the SmartBear Products and Services is:

Attn: General Counsel, Legal Dept. SmartBear Software Inc.
450 Artisan Way
Somerville, MA 02145

Phone: +1 (617) 684-2600

8.2. California Privacy Rights

To help you further understand what we do with the above categories of personal information, we have provided you with the a matrix detailing the sources, purposes, and any sharing related to each category. You may review that matrix by scrolling down to "Table 1" of this Privacy Policy.

We do not sell personal information, or otherwise provide personal information to third parties, other than service providers receiving information to perform services for us on our behalf.

We disclose the following categories of personal information for a business purpose:

- Identifiers;
- Commercial information;
- Information relating to Internet activity or other electronic network activity;
- Educational information;
- Professional information;
- Geolocation data;
- Audio, electronic, or visual information;
- Characteristics of protected classifications under California or federal law; and
- Other information.

Your Rights Under California Law

If you are a California resident, subject to applicable law, you have the following rights under California law with respect to your personal information:

- **Right to Know.** You have the right to request what personal information we collect, use, disclose, and/or sell, as applicable.
- **Right to Delete.** You have the right to request the deletion of your personal information that is collected or maintained by us.
- **Right to Non-Discrimination.** You have the right not to receive discriminatory treatment by us for the exercise of the privacy rights described above.

You may also authorize someone to exercise the above rights on your behalf. In order to authorize another person to exercise your rights under California law, with respect to your personal information, you must (i) provide written permission to the person acting on your behalf, and (2) you must verify your identity directly with SmartBear by emailing Privacy@smartbear.com. If we have collected information on your minor child, you may exercise the above rights on behalf of your minor child.

The above rights are subject to our being able to reasonably verify your identity and authority to make these requests. These rights are also subject to various exclusions and exceptions under applicable laws. The process used to verify requests, including any information that must be provided, is that the applicable individual is required to email Privacy@smartbear.com, from the email address that we have on file for the person making the request, and state in writing that they are the correct individual and are making the request.

If you are a California resident and wish to seek to exercise these rights, please reach us in one of the following ways:

- [Interactive webform](#)
- Email: Privacy@smartbear.com
- Mail:
 - General Counsel, Legal Dept.
 - SmartBear Software
 - 450 Artisan Way
 - Somerville, MA 02145

For more information regarding this Privacy Policy, or if you have any questions or concerns, you may contact us in the following ways:

- Email: Privacy@smartbear.com
- Phone: +1 (617) 684-2600
- Mail:
 - General Counsel, Legal Dept.
 - SmartBear Software
 - 450 Artisan Way
 - Somerville, MA 02145

- Please consult the other sections of our Privacy Policy for further information on our practices regarding your personal information.

Shine the Light Law

Under California's "Shine the Light" law, California residents who provide personal information in obtaining products or services for personal, family or household use may be entitled to request and obtain from us, once per calendar year, information about customer information we have shared, if any, with other businesses for such other businesses' own direct marketing uses. If applicable, this information would include the categories of resident information and the names and addresses of those businesses with which we shared such resident information for the immediately prior calendar year. To obtain this information, please contact us as indicated below. Please include sufficient personal identification information so that we can process the request, including that you are a California resident.

8.3 Canadian Residents

Canadian residents may have additional rights under Canadian law. Please see the information provided by the Office of the Privacy Commissioner of Canada for additional details. You, and we, confirm that it is our wish that this document and all other related documents be drawn up in English.

Vous reconnaissez avoir exigé la rédaction en anglais du présent document ainsi que tous les documents qui s'y rattachent.

9. SMARTBEAR PRODUCTS AND SERVICES OBTAINED THROUGH THE ATLASSIAN MARKETPLACE

For all authorized SmartBear Services which are obtained through the Atlassian Marketplace, meaning <http://marketplace.atlassian.com> or any other webpage, application, interface, service or in-product experience at which Atlassian Pty Ltd ("Atlassian") makes available cloud and downloadable applications, plug-ins or extensions that are designed to interoperate with

Atlassian's own software and cloud offerings ("Atlassian Marketplace"), Atlassian is not responsible for the privacy, security or integrity of Your data collected or processed by SmartBear or by the SmartBear Products and Services through the Atlassian Marketplace.

10. QUESTIONS, COMPLAINTS AND DISPUTES

If you have any questions about this Privacy Policy, or our collection, use, sharing or storage of information about you, you can contact us by email at privacy@smartbear.com, or write to the following address:

Attn: General Counsel, Legal Dept. SmartBear Software
450 Artisan Way
Somerville, MA 02145

Phone: +1 (617) 684-2600

11. PRIVACY POLICY UPDATES

SmartBear may update this Privacy Policy from time to time in our sole discretion to reflect changes to our information and privacy practices. SmartBear will post any updated Privacy Policy on this page at <https://smartbear.com/privacy/> or in the SmartBear Products and Services, or with any notice to individual users if required by applicable law. SmartBear encourages you to review this Privacy Policy regularly for any changes. The date of last revision is shown at the “Last Updated” legend at the top of this page