Darktrace Connector for Splunk - End User Licence Agreement

**WE DO NOT OFFER THE APP WHICH IS THE SUBJECT OF THIS AGREEMENT ON ANY OTHER TERMS. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, YOU MAY NOT USE THE APP.**

**YOUR ATTENTION IS DRAWN TO CLAUSE** 5**, WHICH CONTAINS LIMITATIONS ON AND EXCLUSIONS OF OUR LIABILITY.**

This end user licence agreement (this **Agreement**) sets out the terms of the legal agreement between you and Darktrace Limited, a company registered in England with registered number 8562035 (**we** or **us**), in respect of the Darktrace Connector for Splunk (the **App**).

Our principle place of business is Platinum Building, Cowley Road, Cambridge, England, CB4 0DS. Our VAT registration number is GB187 3066 85. You can contact us by email at support@darktrace.com.

1. Our assumptions about you
   1. You acknowledge that this Agreement is entered into remotely, and we have no opportunity to conduct any pre-contract diligence on you. Therefore, you agree that we may make the following assumptions about you, and proceed as if those assumptions are true:
      1. we assume that you are not a consumer, because we do not provide any products or services suitable for consumers; and
      2. if you are a company or other legal entity, we assume that the natural person who indicates his or her acceptance of this Agreement on your behalf has all the required powers, authorities and consents to bind you to this Agreement.
2. Grant of licence
   1. Subject to prior authorisation by us and your compliance with the terms of this Agreement, we grant to you a revocable, non-exclusive, royalty-free, non sub-licensable, non-transferable licence to do only the following:
      1. install, store, load, execute and operate (together, **Use**) the App:
         1. only in conjunction with your validly licensed and supported Darktrace Enterprise Immune System, in accordance with the terms of your agreement with us governing its use (your **Darktrace Customer Agreement**), and only for so long as your Darktrace Customer Agreement subsists;
         2. only in conjunction with your validly licensed Splunk environment, in accordance with the terms of your agreement with Splunk Inc. and/or its affiliates (**Splunk**), and only for so long as that agreement subsists; and
         3. only for your own internal business purposes,

(the restrictions in this clause 2.1.1, together, being the **Licence Scope**); and

* + 1. make a reasonable number of copies of the App for the purposes of internal testing, business continuity and/or disaster recovery only, and only in support of Use within the Licence Scope.
  1. Save for the express grant of licence in clause 2.1, you will not have any right to load, execute, store, copy, distribute, modify, create derivative works from, sublicense or otherwise enjoy, derive benefit from or exploit the App or any part of it, or permit any other person to do so, and all of our rights in the App are fully reserved.
  2. As a particular condition of the licence granted in clause 2.1, you will not (and you will not allow any other person to):
     1. Use the App other than within the Licence Scope;
     2. distribute any part of the App to any third party unless (and solely to the extent) permitted under your Darktrace Customer Agreement;
     3. remove or alter any copyright or “Read Me” notice appearing in or with the App, or fail to include any such notice in any copy which you may make of the App or any part of it;
     4. use the App or its corresponding documentation and support materials to develop or market any software which competes with the App, except to the extent explicitly allowed under applicable mandatory law without possibility of contractual waiver;
     5. resell the App, or make the App available to any third party in the course of providing a service bureau or an outsourced or cloud service, or otherwise on a commercial or “for hire” basis; or
     6. Use the App in a manner or for a purpose which is unlawful in any relevant jurisdiction, or which breaches any regulatory guidance or industry code of practice applicable to you.

1. Relationship to Splunk
   1. Your use of the App is governed by this Agreement, but your use of the Splunk products or services with which it interfaces will continue to be governed by the relevant agreement between you and Splunk. You must not use the App in a way that breaches that agreement, and you represent, warrant and undertake to us that you will not do so and will not permit or suffer any other person to do so. You will indemnify us and hold us harmless from and against any and all losses, damages, costs and expenses (including reasonable legal fees) arising out of or in connection with your breach of this clause 3.1.
   2. As between you and us, we are solely responsible for the App, including, without limitation, for any warranties, maintenance and support, notices and consents to be given to users. You agree that Splunk does not in any way warrant the accuracy, reliability, completeness, usefulness, non-infringement, or quality of the App and that Splunk shall not be liable or responsible in any way for any losses or damage of any kind, including lost profits or other indirect or consequential damages, relating to your use of or reliance upon the App.
2. Warranty and support
   1. We give no warranty in relation to the App, which is provided “as is”. All warranties and other terms implied by law or custom are hereby excluded to the fullest permissible extent. In particular, without limiting the generality of the foregoing, you acknowledge that the App is an off-the-shelf product which has not been tailored to your particular needs, and that you are solely responsible for assessing its fitness for your intended purpose.
   2. Notwithstanding the above, we will use our reasonable endeavours to support your Use of the App with your validly licensed and supported Darktrace Enterprise Immune System, in accordance with your Darktrace Customer Agreement.
   3. You acknowledge that the limited warranty and support provided in this clause 4 is reflective of the absence of a separate licence fee for the App, and that offering greater levels of support or warranty protection would require us to charge a significant additional licence fee for it. If you require a greater level of support or assistance, please contact us to discuss an appropriate professional services engagement or retainer.
3. Liability
   1. Nothing in this clause 5 will limit or exclude our liability for death or personal injury caused by our negligence, or for our fraud or fraudulent misrepresentation.
   2. We will have no liability arising under or in connection with the App or this Agreement for: any loss of profits or revenue; any account of our profits; any increased or accelerated costs or goodwill payments; any loss of anticipated savings; any loss of contract or opportunity; any loss of goodwill or reputation; any loss of management time; any loss, destruction, corruption or irretrievability of data; or any indirect or consequential loss.
   3. We are not responsible for the security, accuracy or integrity of any data or information which is loaded into your Splunk environment using the App, nor for any effects which the App may produce or cause in your Splunk environment. Your use of Splunk products or services with data transferred to it or them from the Darktrace Enterprise Immune System is entirely at your own risk, and Darktrace will have no liability whatsoever to you arising out of or in connection with your use of Splunk products or services.
   4. Subject to clauses 5.1, 5.2 and 5.3, our total aggregate liability to you arising under or in connection with this Agreement will be limited to a sum equal to the lesser of: (i) 5% of the fees paid to us by you under your Darktrace Customer Agreement in the preceding 12 months; and (ii) £5,000.
4. Termination
   1. We may terminate this Agreement (and the licences granted by it) immediately by written notice to you (including by email) if you commit any material breach of this Agreement, your Darktrace Customer Agreement or your agreement(s) with Splunk, or if we otherwise become entitled to terminate your Darktrace Customer Agreement, or it expires.
   2. Any breach by you of clauses 2 or 3 will be deemed to be a material breach for the purposes of this clause 6.1.
   3. This Agreement will terminate automatically if Splunk removes or delists the App from the Splunk App marketplace.
5. General
   1. You may not assign, subcontract or otherwise deal in any of your rights or obligations under this Agreement without our prior written consent, which we will not unreasonably withhold. We may assign our rights or subcontract our obligations under this Agreement.
   2. This Agreement contains the whole agreement between you and us, and supersedes all prior agreements, arrangements and understandings between you and us, relating to its subject matter. Each of you and us acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this agreement or not) (each, a **Representation**) other than as expressly set out in this agreement. Nothing in this clause 7.2 will limit or exclude any liability for any fraudulent Representation.
   3. Except to the extent that this Agreement expressly provides otherwise, a person who is not a party to this Agreement will have no right to enforce any term of it.
   4. If any provision of this Agreement is held to be invalid or unenforceable for any reason, that provision will, if possible, be adjusted rather than voided, in order to achieve a result which corresponds to the fullest possible extent to the intention of the parties. The nullity or adjustment of any provision of this Agreement will not affect the validity and enforceability of any other provision of this Agreement.
   5. The failure of a party to enforce a provision of this Agreement or any rights with respect thereto (or any delay in so doing) will not be a waiver of that provision or right, or in any way affect the validity of this Agreement. A waiver of any claim for a breach of this Agreement will not operate to waive any claims in respect of any other breach.
   6. This Agreement and all non-contractual obligations arising out of or in connection with it are governed by English law and subject to the exclusive jurisdiction of the English courts.