

RUNDECK PRO MASTER SOFTWARE LICENSE AGREEMENT

THIS AGREEMENT IS BETWEEN YOU ("CUSTOMER") AND RUNDECK, INC. ("RUNDECK"). THIS AGREEMENT IS EFFECTIVE ("EFFECTIVE DATE") THE EARLIER OF THE DATE THAT CUSTOMER ACCEPTS THIS AGREEMENT OR THE DATE THAT CUSTOMER BEGINS USING THE SOFTWARE.

PLEASE READ THIS SOFTWARE AGREEMENT ("AGREEMENT") CAREFULLY BEFORE ACCESSING, DOWNLOADING OR OTHERWISE USING RUNDECK PRO ("SOFTWARE"). BY CLICKING THE "I ACCEPT" BUTTON OR BY DOWNLOADING OR OTHERWISE USING THE SOFTWARE, YOU ACCEPT THIS AGREEMENT AND ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY ITS TERMS. IF YOU ARE AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, YOU ARE SOLELY RESPONSIBLE FOR YOUR USE OF THE SOFTWARE. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN YOU ARE NOT PERMITTED TO ACCESS, DOWNLOAD OR OTHERWISE USE THE SOFTWARE.

1. DEFINITIONS. As used in this Agreement:

1.1. "Documentation" means the end user or technical documentation provided by Rundeck for use with the Supported Software. Advertising, marketing materials, mailing lists, and other forms of public communication are not "Documentation."

1.2. "Intellectual Property Rights" means all worldwide copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights, confidential information and other proprietary rights, registered or unregistered.

1.3. "Supported Software" means the Software and all updates, libraries, plugins, and any other components of the Software provided by Rundeck to Customer.

1.4. "Source Code" means the human-readable version of a software program.

1.5. "Rundeck Pro Server Instance" means one copy of the Supported Software installed on Customer-controlled computing infrastructure according to the entitlements detailed in this Agreement and the Order Form.

1.6. "Third Party Software" means components of the Supported Software or any other software distributed by Rundeck that are under license from third parties. The Third Party Software and their applicable third-party license terms are listed at <http://www.rundeck.com/licenses/>.

2. RUNDECK PRO ORDER. Customer may purchase license subscriptions to the Software by entering into ordering documents that reference this Agreement ("Order Form"). Specific business terms associated with Customer's subscription to the Software will be on the Order Form. In order to be valid, the Order Form must be executed by either (a) both Customer and Rundeck, or (b) both Customer and Rundeck's reseller that is authorized to sell subscriptions to the Software ("Reseller"). This Agreement governs all Order Forms; any conflicting or additional terms, conditions, or obligations (including those entered into with a Reseller with respect to the Software subscription only) are of no force or effect unless agreed to in a writing signed by Customer and Rundeck. Customer's own purchase order may not modify, change or add to the terms of this Agreement. Rundeck may decide not to accept an Order Form for any reason.

3. LICENSE GRANT. Subject to the terms and conditions of this Agreement (including Customer's obligation to pay the License Fees), Rundeck grants to Customer a worldwide, limited, non-transferable, revocable license to install and execute the Supported Software.

4. RESTRICTIONS ON USE. The Supported Software is licensed, not sold. Customer may only use the Supported Software for Customer's internal business purposes. Customers may not modify, adapt, create derivative works of, sublicense, lease, rent, timeshare, loan, or otherwise transfer or allow a third party to use the Supported Software. Customer may not reverse engineer, decompile or disassemble, or otherwise attempt to derive the Source Code for any part of the Supported Software for which Rundeck has not expressly provided the Source Code for Customer's use. Customer will not remove any proprietary notices or trademarks, logos or other branding ("Marks") of Rundeck from the Supported Software. Rundeck and its licensors retain all worldwide rights, title and interest in and to the Supported Software, including all Intellectual Property Rights. This Agreement does not permit Customer to distribute any product or service using Rundeck names or service marks. Rundeck shall retain title to all copies of the Supported Software provided to Customer or made by Customer. There are no implied rights or licenses in this Agreement.

5. ACCEPTANCE. The Software shall be deemed accepted upon download by Customer.

6. LICENSE SUBSCRIPTION AND FEES. Customer will pay Rundeck a fee for a license subscription based on the number of Rundeck Pro Server instances. The fee, number of Rundeck Pro Server instances, support entitlements, and subscription period will be stated in Customer's Order Form and in a license file that accompanies the Software. The default subscription period is one (1) year. Unless otherwise stated in the Order Form, the subscription will automatically renew unless either party elects to not renew it upon at least 30 days' notice prior to the end of the then-current subscription period. All fees are non-refundable and are not subject to pro-ration.
7. PAYMENT TERMS. IF Customer has executed an Order Form with a Reseller, Customer shall pay Reseller in accordance with the terms of such Order Form and the terms of this Section 7 shall have no force or effect. Notwithstanding the foregoing, Customer understands and agrees that if Customer does not pay Reseller in accordance with such Order Form, Rundeck reserves the right to suspend Customer's access to or use of the Software and/or terminate this Agreement. Customer agrees to pay Rundeck all fees as specified in the Order Form. Except as otherwise provided in this Agreement, fees are non-cancellable and non-refundable. Unless specified otherwise in the Order Form, all fees shall be paid by Customer within 30 days of invoice date. All payments shall be made in currently available funds payable at the address set forth on the invoice. All amounts payable shall be in the currency of the United States. Customer is responsible for any and all applicable sales, use and any taxes other than taxes based on Rundeck's income. If payment is more than fifteen (15) calendar days past due, interest at a rate of 1.5% of the balance per month or the maximum allowable by law, whichever is less, will be assessed on the total amount of the late payment, and the entire amount of unpaid charges or other outstanding balance (if any), plus this assessment, will become immediately due and payable. Customer shall pay all costs of collection, including any legal fees and costs incurred by Rundeck in connection with enforcing this Agreement. Without limitation to any other remedy that may be available to Rundeck, Rundeck reserves the right to either suspend or terminate this Agreement without further notice if payment on account is more than fifteen (15) calendar days late.
8. SUPPORT AND MAINTENANCE. Customers with current and paid license subscriptions are eligible for the support and maintenance services described in the Rundeck Pro Support Policy at <http://www.rundec.com/support-policy/> ("Support Services"). The number of Customer employees eligible to receive Support Services is stated in the Order Form for the license subscription.
9. WARRANTIES.

9.1 Performance. For a period of thirty (30) days after Customer's initial receipt or access to the Supported Software, Rundeck warrants that the Supported Software, when used as permitted under this Agreement and in accordance with the instructions in the Documentation, will operate in all material aspects as described in the Documentation under normal reasonable use. The foregoing warranty will not apply to any Supported Software that has been modified or extended by anyone other than Rundeck. Rundeck does not warrant the Customer's use of the Supported Software will be error-free or uninterrupted. Customer's exclusive remedy for a breach of this limited warranty is to return any allegedly defective Supported Software and Rundeck, at its option, will replace the Supported Software or refund any fee paid for the Supported Software. This warranty applies to Third Party Software only to the extent its failure to operate causes the Supported Software to fail to conform to this warranty.

9.2 Disclaimers. EXCEPT FOR THE EXPRESS WARRANTIES IN SECTION 9.1, THE SUPPORTED SOFTWARE IS PROVIDED "AS IS" AND RUNDECK DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SUPPORTED SOFTWARE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR ANY WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS AGREEMENT.

10. INFRINGEMENT CLAIMS. Rundeck will defend and settle, at its own expense, any action against Customer brought by a third party to the extent that the action is based upon a claim that the Supported Software infringes any patents, copyrights or misappropriates any trade secrets recognized as such under the Uniform Trade Secret law or its equivalent, and Rundeck will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a settlement agreed to in writing by an officer of Rundeck. The foregoing obligations are conditioned on Customer notifying Rundeck promptly in writing of such action, Customer giving Rundeck sole control of the defense thereof and any related settlement negotiations, and Customer cooperating and, at Rundeck's request and expense, assisting in such defense. If the Supported Software becomes, or in Rundeck's opinion is likely to become, the subject of an infringement claim, Rundeck may, at its option and expense, either (a) procure for Customer the right to continue using the Supported Software, (b) replace or modify the Supported Software so that it becomes non-infringing, or (c) accept return of the Supported Software and give Customer a refund for the License Fees paid by Customer less a reasonable allowance for the period of time Customer has used the Supported Software. Notwithstanding the foregoing, Rundeck will have no obligation under this Section 10 or otherwise with respect to any infringement claim based solely upon (i) any use of the Supported Software not in accordance with this Agreement or for purposes not intended by Rundeck, (ii) any use of the Supported Software in combination with other products, equipment, software, or data not supplied by Rundeck, where such combined use is not reasonably foreseeable by Rundeck, (iii) any use of any release of the Supported Software other than the most current release made available to Customer, or (iv) any

modification of the Supported Software by any person other than Rundeck. THIS SECTION 10 STATES RUNDECK'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.

11. **LIMITATION OF LIABILITY.** IN NO EVENT WILL RUNDECK BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT, EVEN IF RUNDECK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. RUNDECK'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE SUPPORTED SOFTWARE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF LICENSE FEES PAID TO RUNDECK IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE EXISTENCE OF MULTIPLE CLAIMS WILL NOT EXPAND THE FOREGOING LIMIT. CUSTOMER ACKNOWLEDGES THAT THE LICENSE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT RUNDECK WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THIS SECTION WILL APPLY EVEN IF AN EXCLUSIVE REMEDY UNDER THIS AGREEMENT HAS FAILED OF ITS ESSENTIAL PURPOSE.

12. **CONFIDENTIAL INFORMATION.**

12.1 "Confidential Information" means all information disclosed to by a party (including prior to the date of this Agreement) directly or indirectly in any form, relating to the business, business relationships, methods of transacting business, operations, suppliers or customers of such party, or any other information which may be reasonably regarded as confidential information, whether or not such information is marked as confidential. Neither party shall disclose or use such Confidential Information except as necessary in connection with this Agreement. The Recipient shall notify the Disclosing Party as soon as possible of any misuse or unauthorized access to Confidential Information. Recipient may disclose Confidential Information if required to be disclosed by a court order or operation of law but must disclose any request for such Confidential Information and afford the Disclosing Party reasonable notice and an opportunity to object or limit such disclosure.

12.2 "Pre-Existing Materials" means the Supported Software and all of Rundeck's pre-existing materials, proprietary software, documentation, templates, charts, updates, upgrades, processes, techniques, and know-how developed by Rundeck. All of Rundeck's Pre-Existing Materials are Rundeck Confidential Information.

12.3 Ownership and Return of Confidential Information and Other Materials. All Customer Confidential Information and Customer Intellectual Property Rights shall remain Customer's property. Except as expressly provided in this Agreement, no license or other rights in Customer Confidential Information or Customer Intellectual Property are granted or implied.

13. **TERM AND TERMINATION.**

13.1 Term. This Agreement begins on the Effective Date and continues in force until terminated pursuant to Section 13.2 ("Termination").

13.2 Termination. If Customer elects to not renew the license subscription under an Order Form for the Supported Software pursuant to Section 6 ("License Subscription and Fees") this Agreement will terminate at the end of the then current subscription period. Rundeck may terminate this Agreement, effective immediately, upon written notice to Customer, if (a) Customer breaches any provision in Section 4 ("Restrictions on Use"), (b) Customer fails to pay any portion of the License Fees within fifteen (15) days after it is due, or (c) Customer breaches any other provision of this Agreement and does not cure the breach (provided such breach is curable) within thirty (30) days after receiving written notice thereof from Rundeck.

13.3 Effects of Termination. Upon termination or expiration of this Agreement for any reason, any amounts owed to Rundeck under this Agreement before such termination or expiration will be immediately due and payable, all licensed rights granted in this Agreement will immediately cease to exist, and Customer must promptly discontinue all use of the Supported Software, erase all copies of the Supported Software from Customer's computers, and, at Rundeck's election, return to Rundeck or destroy all copies of the Supported Software and Documentation on tangible media in Customer's possession or control and provide an officer certification in writing to Rundeck that it has fully complied with these requirements.

13.4 Survival. Sections 1 ("Definitions"), 4 ("Restrictions on Use"), 6 ("License Fees and Payment"), 9 ("Warranties"), 10 ("Infringement Claims"), 11 ("Limitation of Liability"), 12 ("Confidential Information"), 13.3 ("Effects of Termination"), and 14 ("General") will survive expiration or termination of this Agreement for any reason.

14. **GENERAL.**

14.1 Proprietary Rights. The Supported Software and Documentation (including any modifications, extensions, or derivative works of either of the foregoing), and all worldwide Intellectual Property Rights therein, are the exclusive

property of Rundeck, including any features of the Supported Software that Rundeck implements at the request or suggestion of Customer. All rights in and to the Supported Software not expressly granted to Customer in this Agreement are reserved by Rundeck. Nothing in this Agreement will be deemed to grant, by implication, estoppel or otherwise, a license under any of Rundeck's existing or future patents; Rundeck agrees that it will not assert any of its rights under such patents against Customer based upon the exercise by Customer of the license granted in Section 3 ("License Grant"). Customer will not remove, alter, or obscure any proprietary notices (including copyright notices) of Rundeck or its suppliers on the Supported Software or the Documentation.

14.2 No Services. Except for the Support Services described in Section 8 ("Support and Maintenance"), Rundeck is not required to provide any services with respect to the Supported Software under this Agreement. If Customer wishes to purchase and receive other services, such as professional services, if available, this shall be under a separate agreement executed by the parties.

14.3 Compliance with Export Laws. As required by the laws of the United States and other countries, Customer represents and warrants that Customer: (a) understands that the Software and its components may be subject to export controls under the U.S. Commerce Department's Export Administration Regulations ("EAR"); (b) is not located in a prohibited destination country under the EAR or U.S. sanctions regulations; (c) will not export, re-export, or transfer the Software to any prohibited destination or persons or entities on the U.S. Bureau of Industry and Security Denied Parties List or Entity List, or the U.S. Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, or any similar lists maintained by other countries, without the necessary export license(s) or authorization(s); (d) will not use or transfer the Software in connection with any nuclear, chemical or biological weapons, missile technology, or military end-uses where prohibited by an applicable arms embargo, unless authorized by the relevant government agency by regulation or specific license; (e) understands and agrees that if Customer is in the United States and exports or transfers the Software to eligible end users, Customer will, to the extent required by EAR Section 740.17(e), submit semi-annual reports to the Commerce Department's Bureau of Industry and Security, which include the name and address (including country) of each transferee; and (f) understands that countries including the United States may restrict the import, use, or export of encryption products (which may include the Software and the components) and agrees that Customer shall be solely responsible for compliance with any such import, use, or export restrictions. CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS RUNDECK FROM AND AGAINST ANY VIOLATION OF SUCH LAWS OR REGULATIONS BY CUSTOMER OR ANY OF ITS AGENTS, OFFICERS, DIRECTORS, OR EMPLOYEES.

14.4 Inspections. Customer will permit Rundeck or its representatives to review Customer's relevant records and inspect Customer's facilities (including all relevant computer systems) to ensure compliance with this Agreement. Rundeck will give Customer at least ten (10) days advance notice of any such inspection and will conduct the same during normal business hours in a manner that does not unreasonably interfere with Customer's normal operations.

14.5 U.S. Government End Users. If Customer is a branch or agency of the United States Government, the following provision applies. The Supported Software contains "commercial computer software" as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.11 (Technical Data) of the Federal Acquisition Regulations and its successors. If acquired by or on behalf of any agency within the Department of Defense, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

14.6 Governing Law and Venue. This Agreement will be governed by the laws of the State of California as such laws apply to contracts between California residents performed entirely within California. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act do not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement must be brought in a federal court in the Northern District of California or in state court in San Francisco County, California, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

14.7 Remedies. Except as otherwise provided herein, the parties' rights and remedies under this Agreement are cumulative. Without limiting Rundeck's remedies, Customer acknowledges that the Supported Software contains valuable trade secrets and proprietary information of Rundeck and that any actual or threatened breach of Sections 4 ("Restrictions on Use") or infringement of Rundeck's Intellectual Property Rights will constitute immediate, irreparable harm to Rundeck for which monetary damages would be an inadequate remedy. Rundeck may apply to any court of law or equity of competent jurisdiction for specific performance or injunctive relief (without posting a bond or other security or showing irreparable harm) to enforce or prevent any violation of such provisions or an infringement of Intellectual Property Rights, notwithstanding the exclusive jurisdiction and venue provisions of Section 14.6 ("Governing Law and Venue"). If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs and other collection expenses, in addition to any other relief it may receive and notwithstanding the limitation of liability in Section 11 ("Limitation of Liability").

14.8 Waivers. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

14.9 Severability. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity, or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby, and the remainder of the provisions of this Agreement shall remain in full force and effect. The parties shall endeavor in good faith negotiations to replace any illegal, invalid or unenforceable provision with a valid, legal and enforceable provision, the economic effect of which comes as close as possible to the illegal, invalid or unenforceable provision.

14.10 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 or untimely withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without consent of the other, to its Affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. A merger (whether forward, reverse or triangular) shall constitute an assignment for purposes of this agreement.

14.11 Construction. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word “including” means “including but not limited to”. In constructing the terms of this Agreement, no presumption shall operate in favor of or against any party as a result of its counsel’s role in drafting the terms and provisions hereof.

14.12 Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral, relating to such subject matter, other than the Nondisclosure Agreement between the parties. This Agreement may be amended only by a written document signed by both parties.

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