

# BugDigger End User License Agreement

Version 1.1, January 2011

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## 1. Definitions

**BugsIO** means BugsIO Solutions, Inc (a Delaware corporation, EIN 42-1771789) of 2885 Sanford Ave SW #13603, Grandville, MI 49418, USA.

**Authorized Machine** means a single installation of a copy of the Product on a single physical computer.

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**Authorized Use** means the defined number of copies or instances of the Product that may be used by Licensee, and where applicable, limited to the number of Authorized Machines, as designated in the Quote/Receipt/Invoice issued by BugsIO.

**Authorized User** means a person or user account who is licensed to use the Product, regardless of whether that person is an employee, contractor, subcontractor, vendor, partner or customer of the Licensee.

**Commencement Date** means the date that BugsIO processes payment of the License or Maintenance Fees from Licensee.

**License** means the right to use the Product as defined by Authorized Use.

**Licensee** means the individual or entity (inclusive of affiliates and subsidiaries) that has licensed the Product under the terms and conditions of this Agreement.

**Plug-in Version** means a version of the Product that works as a plug-in to another web application, such as BugDigger for JIRA.

**Product** means the BugDigger product defined in the Quote/Receipt/Invoice delivered by BugsIO to Licensee, including any documentation and updates provided under the terms of this Agreement in accordance with Clause 5.

**Protected Code** means source code contained within the Product that is protected against access by BugsIO.

## **2. License Fee**

A one-time fee paid by Licensee to BugsIO, as designated by Product, in consideration for the Authorized Use of the Product. License fee is non-refundable and payable upon acceptance of the terms and conditions set out herein.

## **3. Grant of License**

Subject to the terms of this Agreement, including limitations defined by the License, BugsIO hereby grants to Licensee, and Licensee accepts from BugsIO, a perpetual, irrevocable (except pursuant to Clause 12 below), fully-paid, worldwide, non-exclusive, non-transferable (except pursuant to Clause 18 below), non-sublicensable (except to Licensee's related entities) License to use the Product as defined by Authorized Use.

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## **4. No Warranty**

Except as described in this Agreement, the Product is provided on an "as is" and "as available" basis without warranty, express or implied, of any kind or nature, including, but not limited to, any warranties of performance or merchantability or fitness for a particular purpose, including without limitation that BugsIO does not warranty that the Product will be error-free, complete, or correct. BugsIO provides evaluation copies of the Product so that customers can assess the Product.

## **5. BugsIO's Obligations**

Upon receipt of Licensee Fee from Licensee, BugsIO will (a) supply the Licensee with the Product via electronic download; and (b) provide Software Maintenance as defined in Clause 6 below.

## **6. Software Maintenance**

Software Maintenance includes BugsIO's provisioning to Licensee Product updates and/or enhancements made generally available to customers from time to time, and online technical support (and where applicable, phone support) to one Licensee-designated technical contact for the sole purpose of addressing technical issues relating to the use of the Product, for a

period of twelve (12) months from the Commencement Date (the "Maintenance Period"). The Maintenance Period may be renewed for additional twelve (12) month periods ("Renewal Period") at Licensee's sole and absolute discretion at the then-current rate for Software Maintenance (or 3% above the previous Renewal Period's fee paid by Licensee, whichever is less). Subsequent Renewal Periods commence upon the expiration of the prior Software Maintenance regardless of when it is purchased.

## **7. Licensee Obligations**

The Licensee must at all times: (a) ensure that only an Authorized User may use the Product and only for Authorized Use in accordance with the terms and conditions of this Agreement; (b) promptly advise BugsIO, including in writing, if the Licensee becomes aware of any unauthorized use or distribution of the Product by any person.

## **8. Unauthorized Use or Distribution**

Licensee may not, whether through deliberate or negligent act or act of omission, distribute or cause the distribution of the Product to any third party other than an Authorized User.

## **9. Licensee's Restrictions**

Licensee will not, without the prior written consent of BugsIO, which may be withheld in BugsIO's sole discretion and which may include certain conditions:

- (a) decompile, reverse engineer, disassemble, analyze, modify, adapt, convert, create derivative works from, or otherwise attempt to derive, the Protected Code;
- (b) sell, sublicense, redistribute, reproduce, transmit, circulate, disseminate, translate or reduce to or from any electronic medium or machine readable form the Product or any data/information provided to the Licensee through the Product to a person (except that nothing in Clause 9(b) is intended to prevent an Authorized Person undertaking Authorized Use);
- (c) vary or amend the Authorized Use without BugsIO's prior written approval;
- (d) except as otherwise permitted in this EULA, publish, promote, broadcast, circulate or refer publicly to the BugsIO name, trade name, trademark, service mark or logo
- (e) commit any act or omission the likely result of which is that BugsIO's reputation will be brought into disrepute or which act or omission could reasonably be expected to have or does have a material and adverse effect on BugsIO's interests.

In addition, the Product includes license protection mechanisms that are designed to manage and protect the intellectual property rights of BugsIO. Licensee must not modify or alter those features to try to defeat the Product use rules that the license protection mechanisms are designed to enforce.

## **10. Term**

The term of this Agreement begins on the Commencement Date and will continue in full force and effect unless terminated in accordance with Clause 11 below.

## **11. Termination**

Licensee may terminate this Agreement at any time by destroying all copies of the Product in its possession. Either party hereto may terminate this Agreement if the other party commits a material breach and such party does not cure such material breach within thirty (30) days of written notice of such breach. Licensee agrees upon termination of this License to destroy all copies of the Product in its possession. Clauses 1, 4, 8, 9, 12 – 23 shall survive any termination of this Agreement.

## **12. Infringement Indemnification**

If the Product becomes, or in the opinion of BugsIO may become, the subject of a claim of infringement of any third party's intellectual property rights, BugsIO may, at its option and in its discretion: (i) procure for Licensee the right to use the Product free of any liability; (ii) replace or modify the Product to make it non-infringing; or (iii) refund any License Fees related to this Product paid by Licensee. The foregoing states the sole liability of BugsIO and the exclusive remedy of Licensee for any infringement of intellectual property rights by the Product or any other items provided by BugsIO under this EULA.

BugsIO assumes no liability hereunder for, and shall have no obligation to defend Licensee or to pay costs, damages or attorney's fees for, any claim based upon any modifications to any of the Product not approved by BugsIO or at BugsIO's direction or combination of any of the Product with products not approved by BugsIO or at BugsIO's direction.

## **13. Limitation of Liability**

Excluding breaches of BugsIO's indemnification obligations described in Clause 12 hereof, neither party hereto will be liable to any third-party for any loss, damage, cost, expense or other claim (including consequential, directly, indirect, special, punitive or other damages and loss of data or profits) in relation to this Agreement or the Product including, without limitation: (a) any use or reliance on a Product by the third-party (including the form and content of errors in and/or omissions from any information contained in a Product); (b) any delay, interruption or other failure in the provision of the Product; or (c) any change in the form or content of the Product. Excluding breaches of BugsIO's indemnification obligations described in Clause 12 hereof, in no event will either party's liability under any claims arising out of this Agreement exceed the fees paid by licensee under this Agreement. Except for each party's indemnification obligations or breach of Clauses 2 ("Licensee Fee"), 8 ("Unauthorized Use or Distribution"), or 9 ("Licensee's Restrictions"), neither party will be liable for lost profits or for special, indirect, incidental or consequential damages, regardless of the form of action, even if such party is advised of or aware of the possibility of such damages. The foregoing liability limitations shall apply to the maximum extent allowed by applicable law. To the extent the foregoing liability limitations or the warranty disclaimers of Clause 4 are not allowed by applicable law, then the liability of BugsIO, and the remedy of Licensee, shall be limited to the prompt: (d) re-supply of any defective Product; or (e) refund of any license fees paid by Licensee for such defective Product.

## **14. Ownership / Intellectual Property**

This Agreement only confers the right to use the Product and does not convey any rights of ownership in or to the Product. The Licensee acknowledges that the Product and all intellectual property rights in relation to the Product are the property of BugsIO and BugsIO is entitled to take whatever action it may decide in order to protect its intellectual property rights in the Product.

## **15. Open Source Code**

With respect to open source software, BugsIO hereby represents and warrants: (a) that the Licensee's use thereof does not create, or purport to create, obligations on the Licensee to grant licenses or usage rights to the general public to any source or object code, whether such code is embedded in the Product or any other software provided under this Agreement or used in conjunction therewith; (b) that in no event shall the Licensee be liable for any damages whatsoever, whether direct or indirect, and whether experienced by BugsIO or a third party, which are related to a loss of BugsIO or any third party resulting from such use of Open Source Software hereunder; and (c) to, and hereby does, waive any claims it may have against the Licensee in relation to The Licensee's use of such open source software.

All open source software included in BugsIO Product is listed on Exhibit A attached to this Agreement.

## **16. Publicity Rights**

(a) The Licensee grants BugsIO the right to include the Licensee as a customer in Product promotional material.

(b) Licensee can deny BugsIO this right by submitting a written request via email to sales@bugσιο.com, requesting to be excluded from Product promotional material. Confirmation of such denial (via reply email) must be received prior to purchasing for this exclusion to be effective.

(c) Should the Licensee come to be or already be included in Product promotional material, as a result of any prior purchases where the Licensee did not request exclusion from Product promotional material, the Licensee can at any point in time, submit a written request via email to sales@bugσιο.com to have BugsIO remove the Licensee's name from Product promotional material. Upon receipt of such request, BugsIO will remove any reference to the Licensee from such promotional material within 30 days and make no further reference to the Licensee.

## **17. No Assignment or Amendment**

Licensee may not amend this Agreement without prior written consent of BugsIO. Licensee may assign this Agreement to succeeding parties in the case of a merger, acquisition or change of control so long as in doing so, BugsIO is notified in writing within ninety (90) days of the closure of such transaction. If Licensee merges into or with a direct competitor of BugsIO, as

determined in BugsIO's sole discretion, then this Agreement will automatically terminate as of the effective date of such merger. BugsIO may assign its rights and obligation under this Agreement without consent of Licensee.

## **18. Tax**

Payments made by the Licensee under this Agreement exclude any taxes or duties payable in respect of the goods or services supplied in the jurisdiction where the payment is made or received. To the extent that any such taxes or duties are payable by BugsIO, the Licensee must pay to BugsIO the amount of such taxes or duties in addition to the license fee under this Agreement unless Licensee is exempt from paying such taxes or duties at the time such taxes or duties are levied or assessed. BugsIO will provide the Licensee with documents requested by Licensee necessary to enable the Licensee to obtain a tax or duty refund or credit.

## **19. Governing Law**

This Agreement is governed by the laws of the State of Delaware, USA, regardless of conflict of law provisions, and the parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the courts in Dover, Delaware, USA.

## **20. Attorneys Fees**

The prevailing party in any legal action or arbitration relating to this Agreement will be entitled to recover its attorneys' fees and litigation costs and expenses incurred in connection with such action or arbitration as part of the same proceeding.

## **21. Counterparts/Faxed Signatures**

This Agreement may be executed in any number of counterparts, each of which will be an original and all of which will constitute together one and the same document. Signatures transmitted by telecopier or electronically will be deemed originals.

## **22. No Waiver**

The failure of either party hereto to prosecute its rights with respect to a breach hereunder will not constitute a waiver of the right to enforce its rights with respect to the same or any other breach.

## **23. Notices**

BugsIO may give notice by means of a general notice on the BugsIO website, electronic mail to your e-mail address on record with BugsIO, or by written communication sent by first class mail or pre-paid post to your address on record. Such notice will be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to BugsIO at any time by any of the following: letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to BugsIO's addresses on its website.

Licensee agrees that the Product will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations.

# Exhibit A – Open Source Components

## BugDigger for JIRA

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