# Red Canary Terms of Service

## 1. Services and Products.

(a) Order Form. One or more quotes or other order forms signed by You and Red Canary, Inc. or its Affiliate, as applicable ("Red Canary") or its authorized reseller ("Order Forms") shall set forth the Red Canary products and related services to be provided (the "Services"), any third-party software Red Canary is distributing to You ("Third-Party Software"), the time period for which they are provided (the "Term"), price, payment terms, and certain other terms and conditions in addition to those set forth herein (collectively, the "Agreement"). "Affiliate" means an entity that, directly or indirectly, owns or controls, is owned or is controlled by, or is under common ownership or control with a party, where "control" means the power to direct the management or affairs of an entity and "ownership" means the beneficial ownership of more than fifty percent (50%) of the voting equity securities or other equivalent voting interests of an entity.

(b) Red Canary Services. Subject to the terms of this Agreement and Red Canary's receipt of full payment, Red Canary grants You and Your Affiliates a limited, non-exclusive, non-transferable, non-sublicensable license to install (as applicable), access, and use the Services for Your and Your Affiliates' internal business purposes during the Term. Subject to the foregoing, Your third-party contractors providing contracted services to You or Your Affiliates ("Contractors") may also install (as applicable), access, and use the Services during the Term only for Your and Your Affiliates' internal business purposes, provided those Contractors are not in the business of providing security products or services substantially similar to or competitive with Red Canary's products or services.

(c) Your Responsibilities. You are responsible for (i) installing and/or deploying on Your systems any software required by Red Canary to allow the Services to function; (ii) obtaining all required rights and authorizations for Red Canary to process the Technical Data (as defined below) and for the Services to interact with Your systems, consistent with this Agreement, (iii) all activity occurring under Your user accounts for the Services, (iv) notifying Red Canary immediately if You have knowledge of any unauthorized use of such user accounts or security credentials, and (v) Your Affiliates' and Contractors' compliance with the terms of this Agreement, such that any act or omission by an Affiliate or Contractor that would constitute a breach of this Agreement if committed by You will be a breach of this Agreement by You.

(d) Resale. If You purchase Services through an authorized reseller, these Terms of Service will govern but Your payment obligations will be with the authorized reseller, not Red Canary. Any terms or conditions agreed to between You and the authorized reseller that are in addition to these Terms of Service are solely between You and the authorized reseller. Resellers are not authorized to make any modifications or changes to these Terms of Service or bind Red Canary to any additional or different terms or conditions.

(e) Evaluation and Early Access Services. Any Services and any Third-Party Software made available to You free of charge or for trial or evaluation purposes, with or without an Order Form ("Evaluation Services") shall be available only for the limited time period that Red Canary designates in its discretion. Red Canary may modify or terminate Your license to use Evaluation Services at any time, without liability. To the extent permitted by law and notwithstanding anything to the contrary in this Agreement, the Evaluation Services are provided "as is," Red Canary shall not have any warranty, indemnification, support, or service level obligations or liability with respect to the Evaluation Services, and Red Canary's maximum aggregate liability with respect to the Evaluation Services shall be $500.00. Any elements of the Services designated as "early access" or "beta" are provided "as is" without any warranty, indemnification, or service level obligations and shall not create any obligation for Red Canary to continue to develop, productize, offer for sale or in any other way continue to provide or develop such elements of the Services.

(f) Third-Party Content and Open Source Tools. The Services may allow You to access content that is not created by Red Canary ("Third-Party Content"). Any Third-Party Content You choose to access via the Services is governed exclusively by the terms published by the third-party provider of such Third-Party Content. Any open-source tools made available by Red Canary independent of the Services are governed exclusively by their embedded licenses.

(g) Service Levels. Red Canary shall provide the Services per the Service Level Agreement available at https://redcanary.com/support-and-service-levels.

## 2. Rights and Ownership.

(a) Technical Data. You hereby authorize Red Canary to collect and use data collected from Your computing environments via the Red Canary Services ("Technical Data") (i) for the purpose of providing Services to You during the Term and (ii) with Your prior permission, as necessary for onboarding after an Order Form is signed but before the Term begins.

(b) Ownership. You own all right, title, and interest in the Technical Data. Red Canary or its licensors, as applicable, own all right, title, and interest in the Services and Third-Party Software, information (other than Technical Data) used to perform or included in the Services, anonymized and aggregated metadata and Technical Data that is not identifiable to You or Your users ("Anonymized Data"), and any modifications, enhancements, and derivative works of any of the foregoing.

(c) Standard License Restrictions. Except to the extent expressly permitted by applicable law, You shall not (i) sublicense, distribute, or otherwise make available the Services to any third party; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Services, circumvent their functions, or attempt to gain unauthorized access to the Services or their related systems or networks; (iii) use the Services to circumvent the security of another party's network or information, or (iv) access or use the

Services to create any service or other technology that has features or functionality the same as or similar to the features or functionality of the Services. All rights not granted under this Agreement are reserved to Red Canary.

**3. Confidentiality and Security.**

(a) Mutual Confidentiality. To the extent that a party or its affiliate receives confidential or proprietary information from the other party or its affiliate, including without limitation Technical Data, during the Term of this Agreement ("Confidential Information"), the receiving party shall employ reasonable measures to ensure the Confidential Information is not used, disclosed, sold, licensed, distributed, or otherwise made available to third parties except in the performance of, or as authorized by, this Agreement. "Confidential Information" does not include: (i) Anonymized Data, (ii) information that was publicly available at the time of disclosure or that subsequently becomes publicly available other than by a breach of this provision, (iii) information previously known by or developed by the receiving party independent of and without reference to the Confidential Information, or (iv) information that the receiving party rightfully obtains without restrictions on use and disclosure. The receiving party may disclose Confidential Information as required by the rules of any national stock exchange, applicable law or by proper legal or governmental authority, provided it uses reasonable efforts to give the disclosing party prompt notice of any such legal or governmental demand and cooperate with the disclosing party in any effort to seek a protective order or otherwise to contest such required disclosure, at the disclosing party's expense.

(b) Deletion of Confidential Data. Within 30 days after termination of this Agreement for any reason, Red Canary shall delete all of Your Technical Data in Red Canary's possession.

(c) Security. Upon Your request, Red Canary shall provide the most recently completed SOC 2 Type 2 audit report and ISO 27001 certification or comparable industry-standard successor reports or certifications prepared by Red Canary's independent third-party auditors, which shall be treated as Red Canary's Confidential Information.

**4. Limited Warranty.**

(a) Limited Warranty. Red Canary warrants that (i) the Services will materially conform to their descriptions in the Order Form, (ii) the functionality of the Services will not be materially decreased during the Term, and (iii) the Services do not and will not contain any malicious computer code, viruses, worms, malware, advanced persistent threats, or targeted attacks. TO THE EXTENT PERMITTED BY LAW, RED CANARY MAKES NO OTHER WARRANTY TO YOU OR ANY OTHER PARTY, AND HEREBY DISCLAIMS ALL OTHER WARRANTIES (EXPRESS OR IMPLIED) REGARDING THE SERVICES, ANY OTHER SERVICES, OR ANY THIRD-PARTY SOFTWARE INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ABSENCE OF HIDDEN DEFECTS, AND ANY WARRANTY THAT MAY ARISE FROM COURSE OF PERFORMANCE, USAGE OF TRADE, OR COURSE OF DEALING. THE SERVICES ARE NOT FAULT-TOLERANT AND ARE NOT INTENDED FOR USE IN ANY HAZARDOUS ENVIRONMENT REQUIRING FAIL-SAFE PERFORMANCE OR OPERATION. RED CANARY DOES NOT WARRANT THAT THE SERVICES OR THE THIRD-PARTY SOFTWARE WILL OPERATE WITHOUT INTERRUPTION, WILL BE FREE OF DEFECTS, OR WILL DETECT OR PREVENT ALL INTRUSIONS, VULNERABILITIES TO INTRUSION OR ATTACK, UNAUTHORIZED ACTIVITY, ERRORS, OR DATA THEFT OR DESTRUCTION. THE SERVICES AND THE THIRD-PARTY SOFTWARE DO NOT PROVIDE A GUARANTEE OR WARRANTY OF PROTECTION, DETECTION, OR ACCURATE ANALYSIS OF SECURITY THREATS, AS NO THREAT DETECTION IS FAIL SAFE. EXCEPT TO THE EXTENT AN ORDER FORM INCLUDES A SUBSCRIPTION TO RED CANARY ACTIVE REMEDIATION, RED CANARY IS NOT RESPONSIBLE FOR TAKING ANY ACTIONS IN YOUR ENVIRONMENT, INCLUDING WITHOUT LIMITATION INCIDENT CONTAINMENT, REMEDIATION, OR RESPONSE, IN RESPONSE TO ALERTS AND OTHER DATA PROVIDED BY THE SERVICES.

(b) Remedy. You shall promptly notify Red Canary in writing of any breach of the foregoing warranties. As Your sole remedy and Red Canary's sole obligation for any breach of the warranties provided herein, Red Canary shall, at its option and expense, (i) use good faith efforts to attempt to correct any such non-conformity; or (ii) terminate this Agreement and promptly refund You any prepaid fees covering the remainder of the Term after the effective date of the termination.

**5. Indemnification.**

(a) Indemnification by Red Canary. Red Canary shall defend You and Your Affiliates ("Your Indemnitees") against any claim, demand, assessment, action, suit, or proceeding brought by a third party ("Claim") alleging that Your Indemnitees' authorized use of the Services infringes the intellectual property rights of a third party, and shall indemnify Your Indemnitees for any damages, reasonable attorneys' fees, and costs ("Losses") finally awarded against Your Indemnitees as a result of, and for amounts paid by Your Indemnitees under a settlement of, such a Claim.

In the event of such a Claim, or if Red Canary reasonably believes the Services may be vulnerable to an infringement claim, Red Canary may, in its discretion and at no cost to Your Indemnitees (i) modify the Services so that they are no longer claimed to infringe, (ii) obtain a license for Your Indemnitees' continued use of the Services in accordance with this Agreement, or (iii) terminate this Agreement upon 30 days' written notice and refund to You any prepaid fees covering the remainder of the Term after the effective date of termination.

Red Canary shall not defend or indemnify Your Indemnitees where such Loss or Claim arises in whole or in part from (i) Your Indemnitees' non-compliance with the terms of this Agreement, (ii) Red Canary's compliance with Your Indemnitees' specifications, instructions, or

requirements, or (iii) the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by Red Canary, if the Services or use thereof would not infringe without such combination.

(b) Indemnification by You. You shall defend Red Canary and its Affiliates and agents ("Red Canary Indemnitees") against any Claim (i) alleging that the Technical Data infringes the intellectual property rights of a third party, and/or (ii) alleging that Red Canary lacks the proper rights or authorizations to process the Technical Data, and You shall indemnify the Red Canary Indemnitees for any Losses finally awarded against them as a result of, and for amounts paid by them under a settlement of, such a Claim.

(c) Procedure. The party seeking defense and indemnity hereunder shall (i) give the indemnifying party prompt written notice of such Claim, (ii) permit the indemnifying party to solely control and direct the defense or settlement of the Claim, provided the indemnifying party will not settle any Claim in a manner that requires the indemnified party to admit liability without the indemnified party's prior written consent, and (iii) provide all reasonable assistance in connection with the defense or settlement of such Claim, at the indemnifying party's cost and expense. The indemnified party may, at its own expense, participate in defense of any Claim.

**6. Mutual Limitation of Liability.**

(a) DISCLAIMER. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES AND THEIR AFFILIATES, LICENSORS, AND SUPPLIERS AND SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE, OR INDIRECT DAMAGES, LOSS OR INTERRUPTION OF BUSINESS OPERATIONS, LOST PROFITS, LOSS OF USE, OR DATA LOSS ARISING OUT OF THIS AGREEMENT OR PROVISION OF THE SERVICES OR THIRD-PARTY SOFTWARE. RED CANARY AND ITS AFFILIATES AND LICENSORS ARE NOT RESPONSIBLE FOR ANY UNAUTHORIZED DESTRUCTION, LOSS, ALTERATION, DISCLOSURE OF, OR ACCESS TO TECHNICAL DATA WHICH IS NOT IN THEIR POSSESSION AND CONTROL.

(b) LIABILITY CAP. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF THE PARTIES AND THEIR AFFILIATES, LICENSORS, AND SUPPLIERS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID BY YOU IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST CLAIM FOR THE PARTICULAR ORDER FORM UPON WHICH THE CLAIM IS BASED, EXCEPT THAT THE TOTAL AGGREGATE LIABILITY OF THE PARTIES AND THEIR AFFILIATES, LICENSORS, AND SUPPLIERS UNDER THIS AGREEMENT FOR BREACH OF SECTION 3 (CONFIDENTIALITY AND SECURITY) SHALL BE LIMITED TO TWICE THE FEES PAID BY YOU IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST CLAIM FOR THE PARTICULAR ORDER FORM UPON WHICH THE CLAIM IS BASED. THE FOREGOING PROVISIONS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND ANY MODIFICATION OF SUCH PROVISIONS WOULD SUBSTANTIALLY AFFECT THE FEES CHARGED.

(c) EXCLUSIONS. THE LIMITATIONS OF LIABILITY IN THIS SECTION (MUTUAL LIMITATION OF LIABILITY) SHALL NOT APPLY TO: (I) YOUR PAYMENT OBLIGATIONS; (II) THE PARTIES' DEFENSE AND INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT; (III) VIOLATION OF SECTION 2(c) (STANDARD LICENSE RESTRICTIONS); (IV) FRAUDULENT OR INTENTIONAL MISCONDUCT; OR (V) ANY LIABILITY THAT MAY NOT BE LIMITED BY LAW.

**7. Termination and Suspension.**

(a) Termination. This Agreement (or any Order Form) may be terminated at any time by either party upon written notice if the other party materially breaches this Agreement and such breach remains uncorrected for 30 days following written notice of the breach from the other party.

(b) Suspension. Red Canary may suspend Your access to the Services and Third-Party Software (1) with immediate effect upon written notice if Red Canary reasonably determines that You are in breach of Section 2(c) (Standard License Restrictions); (2) with immediate effect upon written notice if Red Canary reasonably determines that Your use of the Services poses a security risk or threat to the function of the Services, or poses a security or liability risk or threat to Red Canary or its hosting provider; (3) upon at least five (5) days' prior notice in the event of Your breach of Your payment obligations under this Agreement; and (4) immediately upon the end of the Term if not renewed. Unless this Agreement is terminated per the preceding section, Red Canary shall restore access promptly upon its reasonable satisfaction that the cause for suspension has been cured. Suspension of the Services does not limit Red Canary's other rights and remedies, and will have no impact on the duration of the Term, any service levels, or the associated fees owed.

**8. Miscellaneous.**

(a) Entire Agreement. This Agreement shall be the entire agreement between the parties and supersedes all prior or present proposals, representations, undertakings, agreements or warranties, expressed or implied, written or oral, concerning its subject matter. You agree that in entering into this agreement You have not relied on any promises, warranties, or representations except those expressed in this agreement. Any and all terms and conditions in any purchase order or other purchasing document issued by You or on Your behalf (including without limitation any pre-printed terms and conditions) are rejected and shall be null and void. This Agreement may be amended only by a written instrument executed by both parties. In the event of a conflict between the Order Form and these Terms of Service, the Order Form shall control.

(b) Notices. All notices under this Agreement must be in writing and (i) sent by email to legal@redcanary.com or to Your representative appearing in an Order Form, (ii) delivered by hand, or (iii) sent by registered mail or nationally-recognized next-day courier service addressed to the party at its address indicated on the Order Form.

(c) Waiver; Severability. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. If a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable the remaining provisions of will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law. The headings of this Agreement are for convenience only. In case of any difficulty in the interpretation of one or more of the headings, the headings shall have no meaning and no effect.

(d) Independent Contractor; Third-Party Beneficiaries; Language. Red Canary is an independent contractor, 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 Agreement. All Services shall be provided in the English language.

(e) Survival. Sections 2(b) (Ownership), 3(a) & (b) (Confidentiality and Security), 5 (Indemnification), 6 (Mutual Limitation of Liability), and 8 (Miscellaneous) shall survive termination of this Agreement.

(f) Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado without regard to the application of conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The exclusive venue for any dispute relating to or arising out of this Agreement, including without limitation its construction, effect, the performance, breach, rescission or termination, shall be in the federal or state courts for Denver, Colorado, and the parties consent to personal jurisdiction in such courts.

(g) Force Majeure. Except with respect to indemnity, defense, or monetary obligations, neither party shall be responsible for any failure to perform due to unforeseen circumstances or to causes beyond its reasonable control, including but not limited to acts of God, changes in governmental laws, rules, taxes, regulations or orders, war, terrorist acts, insurrection, riot, embargoes, supplier stoppages or delays, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor, or materials.

(h) Fees, Taxes. You will pay the fees for the Services and any Third-Party Software as set forth in the Order Form. You will be responsible for sales and other taxes arising out of this Agreement, except for taxes imposed on Red Canary's or its reseller's property, employees, or income.

(i) Export Controls and Sanctions. You shall not permit any third party to access or use the Services in violation of any export or import law or regulation, or export the Services except in compliance with all applicable laws and regulations. You shall not permit the Services to be accessed or used by anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals, or by anyone in a country subject to a United States embargo.

(j) US Government Rights. Each of the software components that constitute the Services is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 48 C.F.R. § 12.212. Accordingly, if You are an agency of the US Government or any contractor therefor, You receive only those rights with respect to the Services as are customarily granted to Red Canary customers, in accordance with (i) 48 C.F.R. § 227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (ii) 48 C.F.R. § 12.212, with respect to all other US Government customers and their contractors.