

# **Attachment B**

## **Red Canary Terms and Conditions**

## Red Canary Terms and Conditions

### 1. Services and Products.

(a) Order Form. One or more quotes or other order forms signed by County of Santa Barbara (“You”) and Red Canary, Inc. (“Red Canary”) or its authorized reseller (“Order Forms”) shall set forth the Red Canary products, software platform, and related services to be provided to You by Red Canary (the “Red Canary Services”), 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”).

(b) Red Canary Services. Subject to the terms of this Agreement and Red Canary’s receipt of full payment, Red Canary grants You a limited, non-exclusive, non-transferable, non-sublicensable license to install (as applicable), access, and use the Red Canary Services for Your internal business purposes during the Term.

(c) Your Responsibilities. You are responsible for:

- (i) installing and/or deploying on Your systems any software required by Red Canary to allow the Red Canary Services to function;
- (ii) obtaining all required rights and authorizations for Red Canary to process the Technical Data (as defined below) and for the Red Canary Services to interact with Your systems, consistent with this Agreement, and
- (iii) all activity occurring under Your user accounts for the Red Canary Services, and You shall promptly notify Red Canary if You have knowledge of any unauthorized use of such user accounts or security credentials.

(d) Resale. If you purchase Red Canary Services through an authorized reseller, these Terms and Conditions 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 and Conditions are solely between you and the authorized reseller. Resellers are not authorized to make any modifications or changes to these Terms and Conditions or bind Red Canary to any additional or different terms or conditions.

(e) Evaluation and Early Access Services. Any Red Canary 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. 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 Red Canary 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 Red Canary Services. For clarification, trial or evaluation purposes do not include situations where Red Canary Services are used in connection with incident response services by a reseller or strategic partner.

### 2. Rights and Ownership.

(a) Technical Data. The Red Canary Services use a crowd-sourced environment for the benefit of all Red Canary customers in support of efforts to identify suspicious and potentially malicious activities. You hereby authorize Red Canary to collect and use, but not distribute except as provided in this Agreement, data collected from Your computing environments via the Red Canary Services, including without limitation technical information about Your devices, files, binaries, user activity, networks, systems, and software, and any other data contained therein (collectively, “Technical Data”), for the purpose of providing Red Canary Services to You and Red Canary’s customers during the Term.

(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 Red Canary Services and Third Party Software, information (other than Technical Data) used to perform or included in the Red Canary Services, and Technical Data and metadata that is anonymized and aggregated by Red Canary that is not identifiable to You or your users (“Anonymized Data”), and any modifications, enhancements, and derivative works of the foregoing (except Technical Data).

(c) Standard License Restrictions. You shall not (x) sublicense, distribute, or otherwise make available the Red Canary Services to any third party other than (i) access by Your IT support service provider(s) in the ordinary course of their IT support services to You, provided that Red Canary’s prior written authorization via email or other means is required for any such provider that offers incident response; endpoint detection and response; managed detection and response; security operations, automation, and response; or security information and event management software and/or services; and/or (ii) access by Your incident response providers, upon Red Canary’s prior written authorization via email or other means, for so long as is reasonably necessary to address security incidents in Your environment; (y) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Red Canary Services, circumvent their functions, or attempt to gain unauthorized access to the Red Canary Services or their related systems or networks; or (z) use the Red Canary Services to circumvent the security of another party’s network or information. You may not access or use the Red Canary Services (i) to perform any competitive analysis on the Red Canary Services, or (ii) to access, use, or reference the Red Canary Services to create any service or other technology that has features of functionality the same as or substantially similar to features or functionality of the Red Canary Services. All rights to the Red Canary Services not granted under this Agreement are reserved to Red Canary.

### 3. Confidentiality.

(a) Confidentiality. To the extent that a party or its affiliate receives non-public, 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 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. Upon Your request, Red Canary shall delete all of Your Confidential Information in Red Canary’s possession, subject to Red Canary’s use of Technical Data pursuant to Section 2(a). Otherwise, all Technical Data in Red Canary’s possession will be deleted within sixty (60) days of the conclusion, expiration, or termination (whichever is earliest) of the Red Canary Services for which it was provided or collected. Any retained Confidential Information will be retained in accordance with this Agreement.

(c) EU Privacy. Red Canary has certified under the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks regarding the collection, use, and retention of personal data from European Union member countries and Switzerland, respectively. Red Canary will also enter into Standard Contractual Clauses (SCC) with regard to the collection use and retention of personal data from EEA member countries.

### 4. Limited Warranty.

(a) Limited Warranty. Red Canary warrants that the Red Canary Services (i) will conform to their descriptions in the Order Form, and (ii) do not and will not contain any malicious computer code, viruses, worms, malware, advanced persistent threats, or targeted attacks. RED CANARY MAKES NO OTHER WARRANTY TO YOU OR ANY OTHER PARTY, AND HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE RED CANARY SERVICES, ANY OTHER SERVICES, OR ANY THIRD PARTY SOFTWARE INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, OF QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ABSENCE OF HIDDEN DEFECTS, AND ANY WARRANTY THAT MAY ARISE FROM COURSE OF PERFORMANCE, BY REASON OF USAGE OR TRADE OR COURSE OF DEALING. THE RED CANARY SERVICES ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN ANY HAZARDOUS ENVIRONMENT REQUIRING FAIL-SAFE PERFORMANCE OR OPERATION. THE RED CANARY SERVICES ARE NOT FOR USE IN THE OPERATION OF AIRCRAFT NAVIGATION, NUCLEAR FACILITIES, OR COMMUNICATION SYSTEMS, WEAPONS SYSTEMS, DIRECT OR INDIRECT LIFE-SUPPORT SYSTEMS, AIR TRAFFIC CONTROL, OR ANY APPLICATION OR INSTALLATION WHERE FAILURE COULD RESULT IN DEATH, PHYSICAL INJURY OR PROPERTY DAMAGE. RED CANARY DOES NOT WARRANT THAT THE RED CANARY SERVICES OR THE THIRD PARTY SOFTWARE WILL OPERATE WITHOUT INTERRUPTION, OR WILL BE FREE OF DEFECTS, OR WILL DETECT OR PREVENT ALL INTRUSIONS, VULNERABILITIES TO INTRUSION OR ATTACK, UNAUTHORIZED ACTIVITY, ERRORS, DATA THEFT OR DESTRUCTION. THE RED CANARY 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. RED CANARY IS NOT RESPONSIBLE FOR TAKING ANY ACTIONS IN YOUR ENVIRONMENT, INCLUDING WITHOUT LIMITATION INCIDENT CONTAINMENT, REMEDIATION, AND RESPONSE, IN RESPONSE TO ALERTS AND OTHER DATA PROVIDED BY THE RED CANARY 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 the portion of any prepaid fees covering the Red Canary Services for the remainder of the Term after the effective date of the termination.

(c) Red Canary Tools. The Red Canary Services may include one or more separately packaged or distributed Red Canary proprietary software tools such as APIs and reporting, deployment, and inventory management software tools (“Red Canary Tools”). THE RED CANARY TOOLS ARE PROVIDED “AS IS” WITHOUT WARRANTY, INDEMNIFICATION, SUPPORT, OR SERVICE LEVEL OBLIGATIONS OF ANY KIND.

### 5. Indemnification.

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

In the event of such a Claim, or if Red Canary reasonably believes the Red Canary Services may be vulnerable to an infringement claim, Red Canary may, in its discretion and at no cost to You (i) modify the Red Canary Services so that they are no longer claimed to infringe, (ii) obtain a license for Your continued use of the Red Canary 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 Red Canary Services for the remainder of the Term after the effective date of termination.

Red Canary shall not defend or indemnify You to the extent such Loss or Claim arises i from (i) Your non-compliance with the terms of this Agreement, (ii) Red Canary's compliance with Your specifications, instructions, or requirements or (iii) the use or combination of the Red Canary Services with software, hardware, data, or processes not provided by Red Canary, if the Red Canary Services or use thereof would not infringe without such combination.

(b) Indemnification by You. You shall defend Red Canary and its employees, officers and directors ("Indemnitees") against any Claim (i) alleging that the Technical Data infringes the intellectual property rights of a third party, (ii) alleging that Red Canary lacks the proper rights or authorizations to process the Technical Data in connection with the delivery of the Red Canary Services to You (but not in connection with any other purpose), and/or (iii) regarding a security event involving Your systems (unless arising from Red Canary's intentional misconduct or breach of this Agreement), and You shall indemnify the Indemnitees for any Losses finally awarded against them as a result of, and for amounts paid by them under a commercially reasonable 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 (c) 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 and be represented by counsel fo the indemnified party's choosing at any proceeding or settlement discussions related to any matter for which the indemnifying party is obligated to indemnify the indemnified party.

(d) Testimony. In the event that Red Canary or any Indemnitees are required to testify in any judicial, administrative or legislative proceeding involving You with respect to the Red Canary Services You shall reimburse Red Canary for its reasonable costs, expenses, and time incurred in that regard, unless the proceeding results from Red Canary's intentional misconduct or breach of this Agreement.

**6. Limitation of Liability.** IN NO EVENT SHALL RED CANARY OR ITS RESELLERS, LICENSORS, OR SUPPLIERS BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES, LOSS OR INTERRUPTION OF BUSINESS OPERATIONS, LOST PROFITS, OR DATA LOSS ARISING OUT OF THIS AGREEMENT OR PROVISION OF THE RED CANARY SERVICES OR THIRD PARTY SOFTWARE. THE TOTAL AGGREGATE LIABILITY OF RED CANARY AND ITS RESELLERS, LICENSORS, AND SUPPLIERS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID BY YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST CLAIM, FOR THE PARTICULAR ORDER FORM UPON WHICH THE CLAIM IS BASED. RED CANARY AND ITS RESELLERS, LICENSORS, AND SUPPLIERS ARE NOT RESPONSIBLE FOR ANY UNAUTHORIZED DESTRUCTION, LOSS, ALTERATION, DISCLOSURE OF, OR ACCESS TO TECHNICAL DATA WHICH IS NOT IN THE POSSESSION AND CONTROL OF RED CANARY, OR WAS OTHERWISE PROVIDED BY OR DISTRIBUTED BY RED CANARY. 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.

## **7. Termination and Suspension.**

(a) Termination. This Agreement (or any Order Form) shall terminate on the expiration of the Statement of Work incorporating this Agreement or the related Order Form, and 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 thirty (30) days following written notice of the breach from the other party. After expiration or termination of a Statement of Work incorporating this Agreement or a related Order Form that provides a subscription to Third Party Software, Red Canary or its authorized reseller may remotely uninstall such Third Party Software from Your environment and shall delete Your Technical Data.

(b) Suspension. Red Canary may suspend Your access to the Red Canary Services and Third Party Software (1) with immediate effect upon written notice to You 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 Red Canary Services poses a security risk or threat to the function of the Red Canary Services, or poses a security or liability risk or threat to Red Canary or its hosting provider; and (3) 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 Red Canary 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, or agreements, written or oral, concerning its subject matter prior to its execution. Any and all terms and conditions in any purchase order or other purchasing document issued by You or Red Canary (other than the Statement of Work incorporating this Agreement and applicable Order Form) (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.

(b) Notices. All notices under this Agreement must be in writing and delivered by hand or sent by registered mail or nationally-recognized next-day courier service addressed to the party at its address indicated on the Order Form, and if to Red Canary, addressed as follows: Red Canary, c/o General Counsel, 1515 Wynkoop Street #390, Denver, CO 80202, with a copy to legal@redcanary.com.

(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. 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.

(e) Survival. Sections 2(b), 3, 5, 6, and 8 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 California 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 located in Los Angeles, California and the County of Santa Barbara, California, respectively, and the parties consent to personal jurisdiction in such courts.

(g) Force Majeure. Except with respect to defense, indemnity, 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, pandemic, 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 and expenses for the Red Canary Services and any Third Party Software as set forth in the Order Form agreed to by the parties. Failure to timely pay any undisputed invoice under this Agreement shall constitute a material breach of this Agreement by You. 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 real or personal property, employment, revenue or income.

(i) Export Controls and Sanctions. You shall not permit any third party to access or use the Red Canary Services in violation of any export or import law or regulation, or export the Red Canary Services except in compliance with all applicable laws and regulations. You shall not permit the Red Canary 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.

**IN WITNESS WHEREOF**, the parties have accepted, agreed, and executed these Terms and Conditions to be effective on the date executed by COUNTY.

**ATTEST:**  
MONA MIYASATO,  
COUNTY EXECUTIVE OFFICER  
CLERK OF THE BOARD

By: \_\_\_\_\_  
Deputy Clerk

**COUNTY**  
**COUNTY OF SANTA BARBARA**

\_\_\_\_\_  
CHAIR, BOARD OF SUPERVISORS

Dated: \_\_\_\_\_

**APPROVED AS TO FORM:**  
RACHEL VAN MULLEM  
COUNTY COUNSEL

By: Jeresa Martinez  
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Deputy County Counsel

**APPROVED AS TO ACCOUNTING FORM:**  
BETSY SCHAFFER, CPA, CPFO AUDITOR-  
CONTROLLER

By: [Signature]  
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**APPROVED AS TO FORM:**  
GREG MILLIGAN, ARM  
RISK MANAGER

By: Greg Milligan  
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**RECOMMENDED FOR APPROVAL:**  
JANETTE D. PELL, DIRECTOR  
GENERAL SERVICES DEPARTMENT

By: Janette D. Pell  
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**RED CANARY, INC.**

DocuSigned by:  
By:   
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Name: Chris Zook

Title: CFO

Date: 6/17/2022