

END USER TECHNICAL SERVICES AGREEMENT

This End User **Technical Services Agreement** is entered into this _____ day of _____, (hereinafter referred to as the Effective Date of the agreement), by and between _____, a _____ corporation with offices at _____ (hereinafter referred to as “Service Provider”) and _____, a _____ corporation, with offices at _____, (hereinafter referred to as “Client”) (hereinafter individually referred to as “Party” and collectively referred to as “Parties”).

1. Term. The term (“Term”) of this Agreement will begin on the Effective Date and continue until the later of termination as provided in Section 6 herein.

2. Statements of Work. During the Term, Service Provider and Client may agree upon statements of work hereunder (each, an “SOW”) defining the Managed Threat Detection Services and Managed Threat Detection Services Deliverables (“Deliverables” or “Managed Threat Detection Services Deliverables”) (collectively “Services” or “Managed Threat Detection Services”) to be provided by the Service Provider, Service Provider's compensation, the period during which the Services will be provided (if applicable) (the “Service Period”), and any additional terms and conditions. Each SOW shall be incorporated into and governed by this Agreement. Any changes to a SOW shall be agreed upon in writing by the parties. The parties agree that this Agreement and the applicable SOW(s) for Services shall govern and supersede any terms and conditions stated on any purchase order submitted by Client for such Services. In the event of any conflict between this Agreement and an SOW, the Agreement will control.

3. Services. Client hereby agrees that Service Provider may collect and use but not distribute, technical information about Client's devices, files, networks, systems, software, and peripherals (“Technical Data”), for the purpose of exclusively supporting Client's use of the Third Party Software and the Managed Threat Detection Services, and (b) binaries and binary metadata, and other related data (“Binary Data”), for purposes of the Managed Threat Detection Services provided to Service Provider's customer base, provided that with respect to Technical Data, aggregated and anonymized Technical Data may be used for other purposes or distributed to third parties. In the course of accessing, obtaining and otherwise using the Managed Threat Detection Services and Deliverables, Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use and transferability to Service Provider of all such data, and Service Provider shall not be responsible or liable for Client's or Service Provider's deletion, correction, destruction, failure to protect, damage, loss or failure to store any such data. Service Provider reserves the right to establish or modify its general practices and limits relating to storage of such data, and/or to delete or destroy any or all such data periodically.

Client shall protect, defend, indemnify, and hold harmless Service Provider, its officers, directors, employees, contractors, and agents, from and against any and all liabilities, claims, losses, damages, expenses (including reasonable attorney's fees and costs), judgments, and causes of action arising from or related to any claim for use of the Service, issues relating to the Data or Devices, whether made by any of Client's customers, invitees, employees, agents or end users.

4. Fees; Payment; Taxes. Client shall pay Service Provider the fees and expenses for the Services as set forth in the fee schedule contained in the applicable SOW. Client shall pay invoiced amounts within 30 days of the invoice date. Client shall also be responsible for taxes (including sales, value-added tax, turnover tax, gross receipts tax or franchise tax arising out of this Agreement, except for taxes imposed on Service Provider's income. Failure to timely pay any invoice under this Agreement shall constitute a material breach of this Agreement by Client. If Client fails to timely pay any amount due to Service Provider, Client agrees to pay late charges on outstanding amounts equal to one and one-half percent (1.5%) per month, or the highest interest rate permitted by law, whichever is greater.

5. Confidentiality/Ownership.

(a). To the extent that confidential and proprietary information of each party (“Confidential Information”) is exchanged and received in connection with the Services, each party agrees not to use the other party’s Confidential Information except in the performance of, or as authorized by, this Agreement, and not to disclose, sell, license, distribute or otherwise make available such information to third parties. “Confidential Information” does not include: (i) information that was publicly available at the time of disclosure or that subsequently becomes publicly available other than by a breach of this provision, (ii) information previously known by or developed by the receiving party independent of the Confidential Information or independent of Service Provider Information obtained from any client or (iii) information that the receiving party rightfully obtains without restrictions on use and disclosure except where such is obtained from the client.

(b) Any Managed Threat Detection Services, Managed Threat Detection Services Deliverables, Technical Data, and information used to perform the Services, or included in any Deliverable or Services, and any derivative works thereof, including but not limited to monitoring and analysis methodologies and tools, software, appliances, methodologies, code, customer, sender and recipient commercial and personal information, templates, service bureaus, tools, policies, records, working papers, knowledge, data or other intellectual property, written or otherwise and data, testing, analysis, evaluations and conclusions resulting from the disclosures herein shall remain the exclusive property of Service Provider.

(c) Client represents and warrants that it has been authorized to disclose Technical Data to Service Provider, and to permit Service Provider to perform the Services under the SOW with respect to the Technical Data and Nodes listed in the SOW.

6. Termination.

The term of this Agreement expires on the later of one (1) year after the Effective Date of this Agreement or upon completion of all SOWs; provided that the Agreement and any SOWs hereunder shall automatically renew for additional one year terms unless either party shall, no earlier than 90 days and no later the 30 days before the end of such term, provide written notice to the other party of its intention to terminate the Agreement. This Agreement or SOW may be terminated at any time by either party upon written notice if the other party breaches any material term of this Agreement and such breach remains uncorrected for 30 days following written notice from the other party. Upon any termination, Service Provider shall be entitled to be paid for all work performed up to the effective date of termination.

7. Limited Warranty.

(a) SERVICE PROVIDER AND RED CANARY MAKES NO WARRANTY TO CLIENT, OR ANY OTHER PARTY, AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE THIRD PARTY SOFTWARE, MANAGED THREAT DETECTION SERVICES DELIVERABLES, MANAGED THREAT DETECTION SERVICES OR MAINTENANCE AND SUPPORT SERVICES, 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 Managed Threat Detection Services Deliverables are not fault-tolerant and are not designed, manufactured or intended for use or resale in hazardous environments requiring fail-safe performance, where any failure of the Managed Threat Detection Services Deliverables could lead directly to significant property or data loss or disclosure, breach of security, death, personal injury, or property damage ("High Risk Activities"). IN NO EVENT DOES SERVICE PROVIDER OR RED CANARY WARRANT THAT MANAGED THREAT DETECTION SERVICES DELIVERABLES WILL OPERATE OR BE USEFUL WITHOUT INTERRUPTION, OR WILL BE FREE OF DEFECTS, OR

NOT VULNERABLE TO INTRUSION OR ATTACK OR THAT THE MANAGED THREAT DETECTION SERVICE OR MANAGED THREAT DETECTION SERVICE DELIVERABLES WILL DETECT OR PREVENT ALL BUGS, VIRUSES, INTERRUPTIONS, INTRUSIONS, UNAUTHORIZED ACTIVITY, ERRORS, DATATHEFT OR DESTRUCTION AND DISCLAIM ALL WARRANTIES RELATING THERETO. Client acknowledges and agrees that Managed Threat Detection Service and Managed Threat Detection Service Deliverables do not provide guarantee or warrant of protection or detection and that neither Service Provider nor Red Canary shall be held liable in the event of security breach, attack, unintended release of sensitive information or other such event and that Client has responsibilities referenced in the SOW. Any service level agreements are goals and there is no guarantee or warranty they can be accomplished as no threat detection service is fail safe. The Client agrees that neither Service Provider nor Red Canary shall be held liable in the event of security breach, attack, unintended release of sensitive information or other such event while using Service. As Client's sole remedy and Service Provider's and Red Canary's sole obligation hereunder where there is material non-conformity in any Services, Work Product or Deliverable, Service Provider shall use good faith efforts to attempt to remedy any such non-conformity.

8. Indemnification.

Client shall indemnify, defend and hold Service Provider and Red Canary and their employees, directors, shareholders, agents, and consultants harmless against any costs, liabilities or damages (including attorney's fees) arising based on or in any way arising from any Client of the Third Party Software, or use or reliance on the Managed Threat Detection Services, Managed Threat Detection Services Deliverables or any third party action. In the event that Service Provider, Red Canary or any of its employees, directors, shareholders, agents, or consultants are required to testify in any judicial, administrative or legislative proceeding with respect to its Services hereunder, Client shall reimburse Service Provider and Red Canary from any and all costs, expenses, and time incurred in that regard.

9. Limitation of Liability. In no event shall Service Provider or Red Canary be liable for any incidental, consequential, special, exemplary or indirect damages, lost business profits or lost Technical Data arising out of this Agreement or use of the Services or Deliverables. Service Provider's total liability under this Agreement shall be limited to the fees paid by Client to Service Provider for the six (6) month period immediately preceding the claim, for the particular SOW upon which the claim is based. Service Provider and its suppliers will not be responsible for any damages Service Provider losses, expenses or costs that Client or any third party incurs or suffers as a result of any loss or theft of Technical Data. No licensor of Service Provider (including Red Canary) shall be liable for any damages.

11. Miscellaneous.

(a) This Agreement shall be the entire agreement between the parties to the exclusion of all antecedent or present representations, undertakings, agreements or warranties, expressed or implied and annuls, supersedes and replaces any and every other representation, warranty and agreement which may have existed between the parties. This Agreement may be amended only by a written instrument that has been similarly executed by both parties.

(b) 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.

(c) All notices required under the Agreement to be given to a party must be in writing and delivered by hand or sent by registered post or facsimile transmission addressed to the party at its address indicated below or at such other address as may be subsequently notified:

To Client to:

Attention

And

To Service Provider to: 46040 Center Oak Plaza, Suite 165, Sterling VA 20166
C/O Allison Hammer

Written notices required under the Agreement will be deemed valid if delivered by hand or sent by registered post and shall be effective on date of receipt.

Notices sent by facsimile transmission shall be effective upon transmission provided that if transmitted after the close of normal business hours in the place of receipt, or on a Saturday, Sunday or public holiday in that place, then the notice shall be effective on the opening of business on the next business day of the recipient party.

(d) It is acknowledged that it is the intent of the parties that the provisions contained in this Agreement should be enforced. Therefore, if any part of this Agreement shall be held unenforceable or invalid, it is the intent of the parties that such provision shall not be wholly invalid but shall be deemed to be the maximum restriction for time, geographics and restriction in activities, which a court of competent jurisdiction deems reasonable and enforceable in any jurisdiction in which such court is convened. If any part, provision or paragraph of this Agreement shall be held unenforceable or invalid, the remaining part, provision or paragraph shall continue to be valid and enforceable as though the invalid portions were not a part thereof.

(e) Service Provider is an independent contractor and shall not be deemed an employee or agent of Client. This Agreement, including all exhibits and any SOWs, contains the complete agreement between the parties relating to the Services. Sections 5 through 10 shall survive termination of this Agreement and any SOW.

(f) The Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia without regard to the application of conflict of laws or principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. For any disputes arising under this Agreement, the Parties hereby consent to the personal and exclusive jurisdiction of, and venue in, the state and federal courts within Loudon County, Virginia.

(g) Service Provider shall not be responsible for any failure to perform due to unforeseen circumstances or to causes beyond such party's 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) This Agreement may be executed in several counterparts, all of which taken together shall constitute one single Agreement between the parties. This Agreement may be executed by facsimile signature(s).

IN WITNESS WHEREOF, the parties have executed this Master Services Agreement by their duly authorized representatives as of the date set forth above.

CLIENT:

[].

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

STATEMENT OF WORK (SOW)

All Services performed by Service Provider in accordance with this Statement of Work shall be performed in accordance with the Professional Services Agreement (“Agreement”), the terms of which are incorporated herein by reference.

Managed Threat Detection Services and Managed Threat Services Deliverables Description:

1. Third Party Software server architecture design, Third Party Software server management, and implementation.
2. Access to Service Provider Managed Threat Detection Services portal through which the Client can access data and alerts. Alerts will be ranked based on Service Provider’s proprietary analysis of severity/danger to the Client’s enterprise.

-Service Level:

- Service Provider Portal Automation - 24x7x365
- Analyst-related support is currently available between the hours of 08:00 and 17:00 Eastern US, Monday through Friday (Client will be notified when coverage is increased).

3. Analyst-vetted alerts on malicious activity detected on Client hosts by Third Party Software. The alerts are fully actionable, supporting an actual, realized threat on a Client host. Each alert will include information for partners or Client describing the background of the problem related to the alert. Email alerts to Client technical staff after threats have been vetted. These alerts will contain information, and will be sent to Client technical staff listed with Service Provider Operations. The alerts can assist in Client’s remediation efforts where possible. These alerts will contain information that is known to Service Provider about the threat at the time, which usually includes but is not limited to:

- Summary of the detected threat
- Name of machine(s) infected
- Artifacts such as file names, Internet Protocol (IP) addresses, domain names and registry keys that support both Client remediation efforts as well as identification of similar threats.

Third Party Software: Carbon Black

Number of Nodes (minimum): []

Client Responsibilities:

The client will be responsible for the following tasks during the course of using the Service Provider service:

- Installing Third Party Software on client systems
- Performing remediation and incident response actions. These remediation efforts may consist of deleting specified files, processes, registry keys OR wiping the hard drive and rebuilding the node from trusted media. Remediation actions should be performed in accordance with client’s own information security practices and policies.
- Obtaining all required authorizations to perform the Managed Threat Detection Service and any data or information required thereby. Client shall obtain consents and authorizes for Service Provider and its employees and agents to gain access and retrieve and analyze data (and incorporate the data into Managed Threat Detection Service Deliverables (collectively “Retrieved Information”).

Pricing: See Exhibit 1 or other agreement.

Payment is due within 30 days of invoice. Invoicing will occur quarterly in advance. Payments are non-refundable and term is non-cancelable. In the event that during the Term, the number of Nodes increases, Client will be invoiced for the additional Nodes on implementation of each added Node, at the price above per Node per year. Incremental nodes will be billed on the next billing cycle immediately subsequent to the increase in Nodes and be pro-rated retroactively from date of implementation. The year will be measured from the date of implementation for each added Node.

“Node” means any kind of computing device that is capable of processing data and including but not limited to any of the following: personal computer workstations, laptops, mobile/smart phones, tablets, file and print servers, e-mail servers, Internet gateway devices, storage area network servers (SANS), terminal servers. For purposes of further clarification, a blade server is defined as a single blade computing system inserted into a blade chassis. In the case of a virtual system, a hypervisor is not considered to be a single node. For clarification, a hypervisor operating on a physical server has a node count based on the number of virtual hosts running on the hypervisor.¹

IN WITNESS WHEREOF, the parties hereto have executed this Statement of Work as of the Effective Date.

Client: _____ [_____]

By: _____ By: _____

Name: _____ Name: _____

Date: _____ Date: _____

¹ Current capabilities are limited to nodes that run the Microsoft Windows, Apple OS X, and CentOS operating systems. As the underlying technology of the service allows, the service will be expanded to include nodes that run other operating systems.