

## TERMS OF SERVICE

RAPID7 LLC ("RAPID7") IS WILLING TO PROVIDE CERTAIN SERVICES TO YOU AS THE INDIVIDUAL, THE COMPANY, OR THE LEGAL ENTITY (REFERENCED BELOW AS "YOU" OR "YOUR" OR "CUSTOMER") THAT ENTERS INTO A WRITTEN QUOTATION, WORK ORDER, STATEMENT OF WORK OR SIMILAR DOCUMENT WITH RAPID7 THAT REFERENCES THESE TERMS AND CONDITIONS (HEREINAFTER, THIS "AGREEMENT") ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS OF THIS AGREEMENT. READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE PURCHASING ANY SERVICES FROM RAPID7. THIS IS A LEGAL AND ENFORCEABLE CONTRACT BETWEEN YOU AND RAPID7. BY ENTERING INTO A WRITTEN QUOTATION, STATEMENT OF WORK OR SIMILAR DOCUMENT WITH RAPID7 THAT REFERENCES THE AGREEMENT BELOW, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ENTER INTO A SEPARATE WRITTEN AGREEMENT WITH RAPID7 FOR THE SERVICES, THEN THE TERMS OF THAT SEPARATE WRITTEN AGREEMENT SHALL APPLY AND THIS AGREEMENT SHALL HAVE NO EFFECT.

### 1. DEFINITIONS

1.1 Order Schedule means each Rapid7 ordering document signed by the duly authorized representative of Customer which identifies the Services ordered by Customer from Rapid7 and which references this Agreement.

1.2 Services means those engineering, consulting, training, implementation or other services provided by Rapid7 pursuant to Section 2.1 hereof. Customer may order Services from Rapid7 by executing a mutually agreed upon Order Schedule, SOW or both.

1.3 SOW means a Statement of Work or Scope of Work that sets forth and describes Services to be provided hereunder, the fees to be paid, delivery schedules, timelines, specifications and any other terms agreed upon by the parties.

1.4 Work Product means information, documentation, computer programs (and all configurations and set-ups of any such program and all templates reflecting same), and developments and all intermediate and partial versions thereof, including all source code and object code with respect thereto, and all designs, specifications, inventions, discoveries, improvements, materials, program materials, software, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, templates of configurations, other creations, and the like, whether or not patented or patentable or subject to copyright, or otherwise protectable by law, created, invented, or conceived for the use or benefit of Customer in connection with this Agreement. Work Product shall not include residuals or any Customer data.

### 2. SERVICES

2.1 Services. Rapid7 shall provide Customer the Services as specified in an Order Schedule or an SOW. All changes to an SOW

or Order Schedule must be approved by both parties in writing. Rapid7 will not bill Customer for any Services beyond those contained in the SOW and/or Order Schedule without the prior consent of Customer.

2.2. Rescheduling. The following section 2.2 applies to Services that occur on specific dates and times scheduled in advance, and does not apply to retainer or incident response Services. Once Customer schedules dates and times for any ordered Services (if applicable), Rapid7 will allocate resources accordingly. Customer may reschedule Services after they have been scheduled by providing no less than ten (10) business days' notice to Rapid7 or as otherwise specifically set forth in an SOW at no cost for a future date within twelve (12) months of the original order date. If Customer cancels any portion of the Services before they have begun with less than ten (10) business days' notice, Customer will only be able to reschedule the portion of the scheduled Services that were canceled with ten (10) days' notice, and will forfeit any fees paid or payable for the portion of the Services that were canceled without the required notice. In the event Customer finds it necessary to halt the Services once they have begun but before Rapid7 has completed the Services, Customer will notify Rapid7 in writing and Customer will remain responsible for all Services completed through date of cancellation plus five (5) business days, as well as all expenses already reasonably incurred in connection with the Services prior to cancellation.

2.3. Delays. Customer acknowledges and agrees that if any phase of Rapid7's scheduled Services as set forth in an SOW or Order Schedule is delayed by more than 48 hours by any act or omission of Customer, including but not limited to Customer's failure to make payments as set forth in Section 3, the scheduled completion of the Services or individual phases of the Services as set forth in the SOW or Order Schedule may be delayed. Customer agrees that any such delays will count against Customer's available bank of Services time. Customer will not be responsible for any extension period that is caused by circumstances within Rapid7's control.

2.4. Work Product. Customer will have a perpetual, non-exclusive, non-transferable license to use any Work Product developed by Rapid7 in the performance of the Services and delivered to Customer, for Customer's internal business purposes only, upon Customer's payment in full of all amounts due hereunder. Rapid7 retains ownership of all information, software and other property owned by it prior to this Agreement or which it develops independently of this Agreement and all Work Product compiled or developed by Rapid7 in the performance of this Agreement. Rapid7 may utilize any and all methods, computer software, know-how or techniques related to programming and processing of data, developed by it while providing the Services and may incorporate the Work Product in future releases of any of its products or services.

2.5. Staffing, Designated Contact and Cooperation. Rapid7 shall have sole discretion in staffing the Services and may assign the performance of any portion of the Services to any subcontractor; provided that Rapid7 shall be fully responsible for the performance of any such subcontractor. Customer shall designate at least one employee with knowledge of Customer's business and Rapid7's technology and services as its primary contact to be available for communication with Rapid7 in providing the Services. Customer will cooperate with Rapid7, will provide Rapid7 with accurate and complete information, will provide Rapid7 with such assistance and access as Rapid7 may reasonably request, and will fulfill its responsibilities as set forth in this Agreement and the SOW or Order Schedule, as the case may be. If Rapid7 personnel are required to be present on a Customer site, Customer will provide adequate workspace and may provide reasonable worksite safety

and security rules to which such personnel are to conform. All resources and information that are required for Rapid7 to perform the Services shall be provided at Customer's expense.

**2.6. Customer Systems.** Customer warrants and represents that it is the owner of any network, systems, IP addresses, and/or computers upon which Rapid7 performs the Services ("Customer Systems"), or that Customer is authorized to instruct Rapid7 to perform Services on such Customer Systems.

### **3. FEES; PAYMENT TERMS**

3.1 Customer shall pay Rapid7 the fees, charges and other amounts specified in an SOW within thirty (30) days of the date of invoice or as otherwise specifically set forth in an SOW. Unless otherwise set forth in an SOW, Rapid7 is expressly authorized by Customer to invoice in advance for the provision of Services. Services fees are non-refundable and will expire within twelve (12) months of the date of such order. In addition to paying the applicable fees, Customer shall also pay all reasonable travel and out-of-pocket expenses incurred by Rapid7 in connection with any Services rendered. Overdue balances are subject to a service charge equal to the lesser of 1.5% per month or the maximum legal interest rate allowed by law. Customer shall be responsible for taxes levied on any transaction under this Agreement, including all federal, state, and local taxes, levies and assessments and local withholding taxes in Customer's jurisdiction, if any, excluding any tax based on Rapid7's income. In the event Customer is required to withhold taxes from its payment to Rapid7 or withholding taxes are subsequently required to be paid to a local taxing jurisdiction, Customer is obligated to pay such tax, and Rapid7 will receive the full payment, net of any such taxes, as agreed on the applicable SOW or Order Schedule.

### **4. CONFIDENTIALITY**

4.1. **Confidential Information.** During the term of this Agreement, each party will regard any information provided to it by the other party and designated in writing as proprietary or confidential to be confidential ("Confidential Information"). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing party's business and the industry in which it operates, is of a confidential or proprietary nature. A party will not disclose the other party's Confidential Information to any third party without the prior written consent of the other party, nor make use of any of the other party's Confidential Information except in its performance under this Agreement. Each party accepts responsibility for the actions of its agents or employees and shall protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. The parties expressly agree that the terms and pricing of this Agreement are the Confidential Information of Rapid7. A receiving party shall promptly notify the disclosing party upon becoming aware of a breach or threatened breach hereunder, and shall cooperate with any reasonable request of the disclosing party in enforcing its rights.

4.2. **Exclusions.** Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing party, without any obligation of confidentiality; (ii) becomes known to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving party. The receiving party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that it gives the disclosing party reasonable prior written notice to permit the disclosing party to

contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

### **5. LIMITED WARRANTY**

5.1. **Warranty and Remedy.** Rapid7 warrants that Services will be provided with reasonable skill and care conforming to generally accepted industry standards. Customer must report any deficiency in Services to Rapid7 in writing within fifteen (15) days of completion of such Services. For any breach of the above warranty, Rapid7 will, at its option and at no cost to Customer, provide remedial services necessary to enable the Services to conform to the warranty or, if such remedial services are unsuccessful, refund amounts paid solely in respect of the defective Services. Customer will provide Rapid7 with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. The remedies set out in this subsection are Customer's sole remedies for breach of the above warranty.

5.2. **No Other Warranty.** THE ABOVE WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, TITLE, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE. RAPID7 MAKES NO WARRANTIES OF ANY KIND THAT ALL VULNERABILITIES WILL BE DETECTED, ALL ATTACKS WILL BE PREVENTED, OR THAT FALSE POSITIVES WILL NOT BE FOUND. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT NO VENDOR CAN GUARANTEE ABSOLUTE SECURITY OR THAT A SECURITY INCIDENT WILL NOT OCCUR.

### **6. LIMITATION OF LIABILITY.**

6.1. **CONSEQUENTIAL DAMAGE WAIVER.** NEITHER PARTY WILL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR LOSS OF PROFITS, OR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING COSTS, IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES, OR THE PERFORMANCE OF ANY OTHER OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF IT IS AWARE OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES.

6.2. **Limitation of Liability** Except as may arise out of Rapid7's breach of Section 4 (Confidentiality), the total liability of Rapid7 to Customer for any and all claims and damages under this Agreement, whether arising by statute, contract tort or otherwise, will not exceed the amounts paid by (and not otherwise refunded to) Customer to Rapid7 under any SOW or Order Schedule for the Services which form the subject of the claim. This Agreement allocates risks between the parties. The pricing set forth in each SOW or Order Schedule reflects this allocation of risk and the limitation of liability specified herein.

### **7. TERM**

Subject to earlier termination as provided herein, this Agreement shall have an initial term of one (1) year beginning upon the Effective Date and shall automatically renew for additional periods of one (1) year at the expiration of the initial term or any renewal term, unless a party hereto provides written notification of termination of this Agreement to the other party not later than thirty (30) days immediately preceding the date on which this Agreement would otherwise renew. Either party may terminate this Agreement or any SOW or Order Schedule (i) immediately in the event of a material breach of this Agreement or any such SOW or Order Schedule by the other party that is not cured within thirty (30) days of written notice thereof from the other party, or (ii) immediately if the other party ceases doing business is the subject

of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty (60) days of filing. The parties' rights and obligations under Sections 2, 3, 4, 5, 6, 7, 8 and 9 will survive termination or expiration of this Agreement.

## **8. INDEMNIFICATION.**

8.1 *Indemnification by Rapid7.* Subject to Section 8.3 below, Rapid7 will indemnify Customer from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Customer alleging that the use of the Services as permitted hereunder infringes any United States patent, copyright or trademark, or constitutes a misappropriation of a trade secret of a third party. The foregoing obligations will not apply to the extent the claim arises as a result of (a) any use of the Services in a manner other than as specified in this Agreement; (b) any use of the Services in combination with other products, equipment, devices, software, systems or data not supplied by Rapid7 to the extent such claim is caused by such combination; or (c) any alteration, modification or customization of the Services or any software made by any party other than Rapid7 or Rapid7's authorized representatives if such infringement would not have occurred without such alteration, modification or customization.

8.2 *Indemnification by Customer.* Subject to Section 8.3 below, Customer will indemnify Rapid7 from and against any and all Losses arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Rapid7 as a result of Customer's breach of any representation or warranty made under this Agreement.

8.3 *Procedure.* The indemnified party shall (i) promptly notify Rapid7 in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement. The indemnified party shall also provide the other party with reasonable cooperation and assistance in defending such claim (at the indemnifying party's cost.)

## **9. GENERAL PROVISIONS**

9.1 *Entire Agreement and Controlling Documents.* This Agreement, including any SOWs and Order Schedules, contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the parties relating thereto and is binding upon the parties and their permitted successors and assigns. Only a written instrument that refers to this Agreement or the applicable SOW/Order Schedule and is duly signed by the authorized representatives of both parties may amend this Agreement or such SOW or Order Schedule. Boilerplate terms and conditions contained in any purchase order issued by Customer shall be of no force or effect, even if the order is accepted by Rapid7. This Agreement shall apply to all Services ordered by Customer or delivered to Customer by Rapid7. *Any conflict between the terms and conditions set forth in this Agreement and any SOW or Order Schedule shall be resolved in favor of this Agreement unless such SOW or Order Schedule expressly references the conflicting provision that it is intended to control and states that it is to control.*

9.2 *Assignment.* This Agreement shall be binding upon and for the benefit of Rapid7, Customer and their permitted successors and assigns. Either party may assign this Agreement in whole as part of a corporate reorganization, consolidation, merger, or sale

of substantially all of its assets. Except as expressly stated in this Agreement, neither party may otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other party, and any attempted assignment or delegation without such consent will be void.

9.3 *Governing Law; Jurisdiction.* This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, USA without regard to its conflict of law provisions. Each party consents to, and agrees that each party is subject to, the exclusive jurisdiction of the state and federal courts of the Commonwealth of Massachusetts with respect to any actions for enforcement of or breach of this Agreement.

9.4 *Headings; Counterparts.* The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be an original instrument. Once signed, any reproduction of this Agreement made by reliable means (e.g., photocopy, facsimile) shall be considered an original.

9.5 *Relationship of the Parties.* Rapid7 and Customer are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other party's name or on its behalf.

9.6 *Force Majeure.* Except for the obligation to make payments, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing party.

9.7 *Notices.* Any demand, notice, consent, or other communication required by this Agreement must be given in writing and shall be deemed delivered upon receipt when delivered personally or upon confirmation of receipt following delivery by internationally recognized overnight courier service, in each case addressed to the receiving party at its address set forth on an SOW or Order Schedule at the address first listed above for each party. Either party may change its address by giving written notice of such change to the other party.

9.8 *Publicity.* Customer acknowledges that Rapid7 may use Customer's name and logo for the purposes of identifying Customer as a customer of Rapid7 products and/or services, including in Rapid7's quarterly press releases highlighting new customer engagements.

9.9 *Waiver and Severability.* Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described therein. The failure of either party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.

**THE CITY OF BROKEN ARROW ADDENDUM TO THE RAPID7 LLC AGREEMENT  
BETWEEN RAPID7 LLC AND THE CITY OF BROKEN ARROW**

Notwithstanding anything contained in the Agreement to which this Addendum is attached, the following definitions, terms and conditions, including any other provisions listed in the Addendum, shall control to the exclusion of any different or contrary statement contained anywhere else in the Agreement.

**Term**

The term of this Agreement shall be 12 months from the Effective Date.

**Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma without regard to the conflicts of laws or rules of any jurisdiction. The proper venue for any disputes arising hereunder shall be Tulsa County, Oklahoma.

**Attorney Fees**

Parties hereby agree that that each party is responsible for their respective attorney fees and costs for any action that may arise from this agreement.

**Indemnification**

The Indemnity provisions of this Agreement shall not be construed to require the Broken Arrow Municipal Authority to budget funds to cover the contingent liability set out in the agreement.

Dated this 10th day of August, 2016.

**RAPID7 LLC**



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Signature

Stephanie Phillips

Printed Name

Counsel and Director, Contracts

Title

APPROVED AS TO FORM:

\_\_\_\_\_  
Kimberly Slinkard, Assistant City Attorney

**CITY OF BROKEN ARROW**

\_\_\_\_\_  
Signature: Mayor

\_\_\_\_\_  
Printed Name