

# Terms of Service

These Quokka Terms of Service (“Agreement”) are between Kryptowire, Inc., dba Quokka, or one of its affiliates (together, “Quokka,” “Our,” “We,” “Us” or similar terms) and the customer (“Customer,” “You,” or “Your”) who accepts this Agreement, or accesses and/or uses the Services (as defined below). This Agreement governs Customer’s subscription to the Services described in the Order and constitutes a binding contract in connection with any paid or evaluation use of the Quokka Services.

IF YOU DO NOT AGREE WITH ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT AND DO NOT WISH TO BE BOUND BY THIS AGREEMENT, YOU CANNOT ACCESS OR USE THE SERVICES. IF YOU ARE ACTING ON BEHALF OF YOUR EMPLOYER OR COMPANY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND YOUR EMPLOYER OR COMPANY TO THIS AGREEMENT.

## ARTICLE I DEFINITIONS

1.1 “Customer Application” means the application submitted by Customer for evaluation by Quokka using the Services, whether a third-party application or an application developed or owned by Customer.

1.2 “Derivative Work” means a new or modified work that is based on or derived from a preexisting work, including, without limitation, a work that, in the absence of a license, would infringe the copyright in such preexisting work or that uses trade secrets or other proprietary information with respect to such preexisting work.

1.3 “Documentation” means the user guides for use of the Services that Quokka makes generally available in connection with the Services.

1.4 “Personal Data” any data relating to an identified or identifiable individual.

1.5 “Quokka Portal” means the online portal through which Quokka provides the Services.

1.6 “Order” means either the quote provided by Quokka and signed by Customer or the purchase order or written confirmation provided by Customer and signed by Quokka that describes the Services and forms a part of this Agreement.

1.7 “Service(s)” means the Quokka applications for security and privacy analysis of software applications and device management as described in the Order, including, if specified, Q-Scout, Q-Mast or Q-Vet and any support services provided under the Support Terms. Services may be provided as a software service platform that is accessed through the Quokka Portal.

1.8 “User” means any employee, contractor or agent who is authorized by Customer to utilize the Services in accordance with the terms and conditions of this Agreement and applicable Order.

## ARTICLE II RIGHT TO USE

2.1 Right to Use Services. If Customer has purchased the Services as set forth in an Order, then, subject to the terms and conditions of this Agreement, Quokka (a) will use commercially reasonable efforts to make the Services available to Customer and its Users in accordance with the Documentation and this Agreement; and (b) hereby grants to Customer a limited, non-exclusive, non-transferable right: (i) to have Users access and use the Services solely for Customer’s internal business operations, consistent with this Agreement and the limitations specified or referenced in the Documentation and the Order; and (ii) to use the Documentation in support of Customer’s authorized access to or use of the Services.

2.2 Evaluation Offering. Upon written approval of Quokka, which it may grant or deny in its sole discretion, You may use the Services for Your own internal evaluation purposes only (“Evaluation”) for a period of up to thirty (30) days from the start date of the Evaluation (the “Evaluation Period”). During Evaluation Period, You: (i) may have one User access and use, solely during the Evaluation Period, the Services to evaluate one Customer Application; and (ii) shall comply with the use restrictions in Section 2.3. Upon conclusion of the Evaluation Period, unless You have placed an Order for the Services, You and Your Users shall cease access and use of the Services and return all Documentation in Your or Your Users’ possession to Us, and confirm to Us in writing (email accepted) of such deletion and uninstallation. You agree to provide Us Your evaluation and feedback on Your use of the Services during the Evaluation Period (collectively “Feedback”); such Feedback shall be deemed Our confidential information subject to Article VII of this Agreement and shall not be disclosed or published by You. You understand and agree that the Services provided during the Evaluation Period may be a limited version and may not offer all features or functionality. You grant Us the irrevocable, worldwide, perpetual, royalty-free and exclusive right to use the Feedback for any purpose, including improving and developing new features for the Services.

2.3 Restrictions. Customer will not, and will not permit its Users or any third party to: (a) access, use or copy the Services (including the Documentation) except as expressly permitted by this Agreement; (b) relicense, sublicense, rent or lease the Services or use the Services for third-party training, commercial time-sharing or service bureau use; (c) copy, modify, translate, reverse engineer, disassemble or decompile the Services, attempt to determine source code or protocols from the executable code of the Services or create any Derivative Works based upon the Services, except to the extent expressly permitted by applicable law, and then only after Customer has notified Quokka in writing of Customer’s intended activities; (d) access or use the Services for any unlawful or tortious purpose; (e) use the Services to store or transmit any viruses, software routines or other code designed to permit unauthorized access, disable, erase or otherwise harm software, hardware or data, or to perform any other harmful actions; (f) take

any action that may impose an unreasonable or disproportionately large load on the infrastructure of the Services or our systems or networks connected to the Services or otherwise interfere with or disrupt the operation of any of the Services, or the servers or networks that host them or make them available, or disobey any requirements, procedures, policies or regulations of such servers or networks; or (g) probe, scan or test (except for the limited Evaluation of the Services under Section 2.2 during the Evaluation Period) the efficacy or vulnerability of the Services, or take any action in an effort to circumvent or undermine the Services.

2.4 Users. Customer shall ensure that all Users of the Services comply with the terms and conditions of this Agreement, any applicable End User License Agreement and all applicable laws and regulations. Customer shall be responsible for compliance with this Agreement by each User and shall monitor and manage all Users in connection with the use of the Services under this Agreement. Customer is liable for its Users' use of the Services and any breach of this Agreement or applicable laws or regulations by its Users.

2.5 Ownership. As between Quokka and You, Quokka retains all right, title and interest, including, without limitation, all patent rights, copyrights, trademarks, trade secrets and other intellectual property rights in and to the Services (or any portion thereof) including, without limitation, any copy or Derivative Work or Update (as defined below) of the Services (or any portion thereof). You agree to take any action reasonably requested by Quokka to evidence, maintain, enforce or defend the foregoing. You shall not take any action to jeopardize, limit or interfere in any manner with Quokka's ownership of and rights with respect to the Services, or any Derivative Work thereof. You shall have only those rights in or to the Services and any Derivative Work thereof granted to You pursuant to this Agreement.

2.6 Uploading of Customer Application to the Services. If Customer is uploading a Customer Application for analysis by the Services (such as Q-Mast or Q-Vet), then Customer represents and warrants that it has the right to provide the Customer Application to Quokka for use and analysis in connection with the Services, that the Customer Application does not violate the copyright, patent, trademark, trade secret or other intellectual property right, or any privacy or other rights, of any third party, and that the Customer Application does not contain any viruses, malware, ransomware or any other destructive computer program or application.

2.7 Q-Scout. Q-Scout is a Service that allows the Customer to monitor the security and privacy posture of a mobile device, that has the Q-Scout mobile application installed. The Order will specify the number of devices that the Company can monitor using this Service. Customer represents and warrants that it has provided all notices and obtained all consents necessary to use this Service to monitor the devices and that such monitoring will not violate any copyright, patent, trademark, trade secret or other intellectual property right, or any privacy or other rights of any employee, contractor or any third party whose device is monitored by this Service.

2.8 Data. You will retain all right, title and interest in and to data specific to the Customer Applications created by Your use of the Services ("Your Data") and Quokka will retain all right, title and interest in and to the results of the analysis of Your Customer Application generated through Your use of the Services ("Quokka Data"), provided that Quokka will not disclose to third parties (except Our subcontractors under an obligation of confidentiality) or make publicly

available Quokka Data specific to Your Customer Application, except in connection with a Quokka certification program. You grant Quokka and its affiliates the worldwide right to use Your Data to test, improve and develop new features and refine the Services. Quokka shall not use Your Data to train Artificial Intelligence/Machine Learning models without your prior written consent. Quokka hereby grants and will grant to You a limited, non-exclusive, non-transferable license (without the right to sublicense) to use the Quokka Data for Your internal business purposes only, in accordance with the terms and conditions of this Agreement, provided that You will not disclose to third parties (except Your subcontractors under an obligation of confidentiality) or make publicly available Quokka Data specific to Your Customer Application and You will maintain the Quokka Data as confidential under Article VII. For the avoidance of doubt, Quokka will retain all right, title and interest in and to all anonymized crash reporting data generated by the Services and Quokka shall automatically have a right to access and use such data for any purpose, including commercial purpose.

2.9 Support. Quokka will provide support to You and the Users in accordance with its support terms ("Support Terms"). Except as set forth in the Support Terms or as may otherwise be provided under a written support agreement entered into by Quokka and You, Quokka is under no obligation to provide engineering support services or otherwise to support the Service in any way, nor to provide any modification, error correction, bug fix, new release or other update (each an "Update") to or for the Services. In the event Quokka, in its sole discretion, supplies or makes available any Update to You, such Update shall be deemed to be part of the Services hereunder, as applicable, and shall be subject to the terms and conditions of this Agreement.

2.10 Modification. Quokka may modify the Services from time to time in its sole discretion, provided that no such modification shall materially reduce the functionality of the Services subject to any Order then in effect. If such modification materially reduces the functionality of the Services, then You may terminate this Agreement with thirty (30) days' prior written notice to Quokka, provided that if Quokka provides a workaround or other resolution that mitigates such material reduction of functionality during such thirty (30) day period, then no such right of termination shall arise.

2.11 Subcontractors. Quokka may from time to time engage consultants, independent contractors or subcontractors to assist Quokka in providing the Services under this Agreement provided that Quokka shall at all times remain liable for the actions of such consultants, independent contractors and subcontractors.

2.12 Reserved. In addition to any other remedies available to Quokka, subject to determination in accordance with the Contract Disputes Act, Quokka may suspend Your or any User's access to and use of the Services if You or any such User fails to comply with the terms of this Agreement or if Quokka reasonably suspects such failure to comply. Quokka shall not be deemed to be in breach of this Agreement solely as a result of such suspension.

### ARTICLE III ORDERING OF SERVICES

3.1 Order. The Services provided to Customer will be set forth in an Order agreed to in writing by Customer and Quokka, in each case covering Customer's subscription to the applicable Services. For an Order to be valid, it must be executed by both the Customer and Quokka. Unless otherwise expressly specified in the Order executed by Quokka, the terms of this Agreement shall supersede any conflicting terms in an Order. Any form or writing submitted by Customer that is not accepted in writing by Quokka is expressly rejected.

3.2 Charges. The total, non-refundable fees for use of the Services shall be set forth in Your Order and shall be payable in accordance with the terms and conditions of Your Order and the GSA Schedule Contract. If Customer has purchased a recurring subscription to the Services, then Customer shall either pay or provide a payment method (such as credit card) to pay the subscription fees on the first day of each subscription period.

3.3 Failure to Pay Fees. Quokka shall have the right to terminate this Agreement in accordance with the Disputes Clause (Contract Disputes Act) if Customer fails to timely pay fees when due. In addition, Quokka shall have the right to charge interest on any past due amount at the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

#### ARTICLE IV WARRANTIES AND REMEDIES

4.1 Disclaimer. QUOKKA WARRANTS THAT THE SERVICES WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH SERVICES WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, QUOKKA PROVIDES THE SERVICES ON AN AS-IS BASIS WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED. QUOKKA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY, TITLE AND NON-INFRINGEMENT, ANY WARRANTIES THAT MAY ARISE OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. Quokka does not warrant that the Services will operate in combination with hardware, software, systems or data not provided by Quokka, except as expressly specified in the Documentation, or that the operation of the Services will be uninterrupted or error-free. You are responsible for the initial determination of whether a problem is caused by an error in the Services. Except as provided in Section 2.9, Quokka does not provide assistance on the general use of the Services or problem diagnosis to customers that have not ordered support services from Quokka. Quokka shall have no liability for Your specific use of the Services.

#### ARTICLE V INDEMNIFICATION

5.1 By Quokka. Quokka shall have the right to intervene to defend, indemnify and hold You harmless from and against any loss, liability, damage or cost (including reasonable attorneys'

fees) in connection with any third-party claim of United States copyright infringement or trade secret misappropriation relating to Your access to or use of the Services in accordance with the terms and conditions set forth in this Agreement and the Documentation, provided that You promptly notify Quokka in writing of any such claim and allow Quokka to control, and fully cooperate with Quokka in, the defense of any such claim and all related settlement negotiations. In the event an injunction is sought or obtained against Your access to or use of the Services as a result of any such infringement claim, Quokka may, at its sole option and expense, (a) procure for You the right to continue using the Services or (b) replace or modify the Services so that it does not infringe. Quokka shall have no liability for and to the extent permissible under applicable law, You shall indemnify and hold Quokka harmless from and against any loss, liability, damage or cost (including reasonable attorneys' fees) in connection with any third-party claim based upon: (i) the Customer Application; (ii) Your use of other than the then-current, unaltered version of the Services, unless the infringing portion is also in the then-current, unaltered release; (iii) Your use, modification, operation or combination of the Services with non-Quokka programs, data, equipment or documentation if such infringement would have been avoided but for such use, modification, operation or combination; (iv) compliance with Your designs, specifications or instructions; or (v) any third-party software. THE FOREGOING CONSTITUTES THE ENTIRE LIABILITY OF QUOKKA, AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY RIGHTS. NOTHING CONTAINED HEREIN SHALL BE CONSTRUED IN DEROGATION OF THE U.S. DEPARTMENT OF JUSTICE'S RIGHT TO DEFEND ANY CLAIM OR ACTION BROUGHT AGAINST THE U.S., PURSUANT TO ITS JURISDICTIONAL STATUTE 28 U.S.C. §516.

5.2 Reserved.

## ARTICLE VI TERMINATION

6.1 Term. This Agreement is effective as of the date of Your Order until the expiration date set forth in Your Order or until terminated in accordance with Sections 2.2, 3.3 or 6. Subscriptions may be renewed for each successive subscription period on the same terms as set forth in the Order, subject to any price increases applicable to the Services, by executing a written order.

6.2 Termination for Breach. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Quokka shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

6.3 Reserved Suspension of Services. In addition to any other remedies, subject to determination in accordance with the Contract Disputes Act, Quokka may suspend access to the Services if You fail to pay the charges due under any Orders within thirty (30) days after the applicable due date. Quokka shall not be deemed to be in breach of this Agreement solely as a result of such suspension

6.4 Effect of Termination. Upon expiration or termination of this Agreement, (a) the provisions of Sections 2.2 (with respect to the license to Feedback only), 2.3, 2.5, 2.8 (with respect to the license to Your Data), and 6.4, and Articles IV, V, VII, VIII, IX and X shall survive; and (b) You will cease all use of the Services, remove any Quokka applications from Your User Devices, return to Quokka or destroy all Documentation and related materials in Your possession, and so certify to Quokka in writing.

## ARTICLE VII CONFIDENTIAL INFORMATION AND PRIVACY

7.1 You shall treat and hold the Services, Quokka Data and any other confidential information provided by Quokka to You in connection herewith in strict confidence and shall restrict access to the Services to Users. To the extent the performance of its obligations under this Agreement requires Quokka to be exposed to any information that is identified prior to disclosure by You as being confidential or proprietary, Quokka shall not disclose such information to any third parties and shall use such information only to the extent necessary to perform under this Agreement; provided, however, no such obligations shall apply to information in the public domain, received from third parties under no obligation of confidentiality or previously known by the applicable party. Quokka recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor.

7.2 Any personal information or personal data of any User or provided by Customer under this Agreement shall be used by Quokka in accordance with its Privacy Policy, which is incorporated herein by reference. Customer represents and warrants that it has provided all notices and obtained all consents necessary to provide the personal data of any User, employee or contractor to Quokka for purposes of administering this Agreement or providing the Services. Each party shall be responsible for complying with applicable laws with respect to its use of personal information. To the extent required by law, we will process such personal information in accordance with our then applicable data protection agreement, which You accept as a condition to using our Services.

## ARTICLE VIII LIMITATION OF LIABILITY

8.1 To the extent allowed by applicable law, Quokka’s entire liability to You for damages concerning performance or nonperformance by Quokka or in any way related to the Services or the subject matter of this Agreement, regardless of whether the claim for such damages is based in contract, tort, strict liability, or otherwise, shall not exceed the amounts received by Quokka under this Agreement.

## ARTICLE IX CONSEQUENTIAL DAMAGES WAIVER

9.1 TO THE EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT SHALL QUOKKA BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES,

DAMAGES FOR LOST PROFITS, LOST DATA OR LOST BUSINESS, OR ANY OTHER INDIRECT DAMAGES, EVEN IF QUOKKA HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. Quokka shall have no liability with respect to claims relating to or arising from the use of non-Quokka products and services, even if Quokka has recommended, referred or introduced You to such products and services. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Quokka's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

## ARTICLE X GENERAL TERMS

10.1 Governing Law/Jury Trial Waiver. This Agreement and all matters arising out of or relating to this Agreement will be governed by the Federal laws of the United States, without giving effect to any choice of law rule. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sales of Goods, the application of which is expressly excluded.

10.2 Severability and Waiver. If any provision of this Agreement is held to be illegal, invalid or otherwise unenforceable, such provision will be enforced to the extent possible consistent with the stated intention of the parties or, if incapable of such enforcement, will be deemed to be severed and deleted from this Agreement, while the remainder of this Agreement will continue in full force and effect. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.

10.3 No Assignment. You may not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law, merger, change in control or otherwise, this Agreement or any rights or obligations under this Agreement without the prior written consent of Quokka. Quokka may freely assign, sell, transfer, delegate or otherwise dispose of this Agreement or any rights or obligations under this Agreement. Any purported assignment, transfer or delegation by You will be null and void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

10.4 Export Administration and Compliance with Laws. You will comply fully with all relevant export laws and regulations of the United States, including, without limitation, the U.S. Export Administration Regulations (collectively "Export Controls") with respect to any use of the Services. Without limiting the generality of the foregoing, You will not, and You will require Your representatives not to, export, direct or transfer the Services, or any direct product thereof, to any destination, person or entity restricted or prohibited by the Export Controls. You agree not to export the Services, directly or indirectly, separately or as part of a system, without first obtaining proper authority to do so from the appropriate governmental agencies or entities, as may be required by law.

10.5 Government End-User Rights. You agree that the Services (and Derivative Works thereof) are "Commercial Items" as defined in 48 C.F.R. 2.101, and Your use, duplication, reproduction, release, modification, disclosure or transfer of this commercial product and software is restricted

in accordance with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-2, and 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-1 through 48 C.F.R. §227.7102-3, and 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, this commercial product and software are licensed to U.S. federal government end users (i) only as Commercial Items, and (ii) with only those rights as are granted to all other users pursuant to this Agreement.

**10.6 Relationship of the Parties.** This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties, and the parties shall at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

**10.7 Use of Logo.** Customer authorizes Quokka to use its name, without notice to or consent by Customer, in connection with certain promotional materials that Quokka may disseminate to the public to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71. The promotional materials may include, but are not limited to, brochures, internet website, press releases, advertising and any other materials relating the fact that Quokka has a customer relationship with Customer and such materials may be developed, disseminated and used without Customer's review. Nothing herein obligates Quokka to use a Customer's name, logo and/or trademark, in any promotional materials of Quokka.

**10.8 Notices.** Any notice, request, demand or other communication required or permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed to be properly given: (a) when delivered personally; (b) when sent by facsimile, with written confirmation of receipt by the sending facsimile machine; (c) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) two (2) business days after deposit with an express courier, with written confirmation of receipt. All notices to You shall be sent to the address specified on Your Order (or to such other address as may be designated by You by giving written notice to Us pursuant to this Section). All notices to Quokka shall be sent to 800 N Glebe Rd, STE 720C, Arlington, VA 22203 US. (or to such other address as may be designated by Us by giving notice to You pursuant to this Section).

**10.9 Entire Agreement.** This Agreement and the Order constitute the entire agreement between the parties and supersede all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party; no other act, document, usage or custom will be deemed to amend or modify this Agreement. It is expressly agreed that the terms of this Agreement and the Order will supersede the terms in any of Your purchase orders or other ordering documents.