

Red Piranha Limited

Product and End User License Agreement

Document Version
2.1.21.0610



Red Piranha

Red Piranha Limited Product and End User License Agreement and Warranty Information

Trademarks and Copyright Statement

Red Piranha® and Crystal Eye® are registered trademarks of Red Piranha Limited (“Red Piranha”) and other Red Piranha names may also be trademarks, registered or otherwise, of Red Piranha.

All other product or company names may be trademarks of their respective owners. Copyright © 2020 Red Piranha Limited, all rights reserved.

Contents and terms are subject to change by Red Piranha without prior notice. No part of this publication may be reproduced in any form or by any means or used to make any derivative such as translation, transformation, or adaptation without permission from Red Piranha in accordance with the relevant provisions of the *Copyright Act 1968* (Cth).

Rights are granted to use of Red Piranha trademarks and trade names only in connection with the promotion and communication of the use of Red Piranha Products and Services. Red Piranha may communicate appropriate guidelines, and preferred artwork for this purpose from time to time.

Product and End User License Agreement

The parties to Red Piranha’s Product and End User License Agreement are You (the Partner and/or End User customer) and Red Piranha.

Carefully read the following legal Agreement (or this “Agreement” or “EULA”). Use or installation of Red Piranha product(s) and any updates thereto, including hardware appliance products, software (“Software”), hardware (“Hardware”) and firmware included therein by Red Piranha, and stand-alone software products sold by Red Piranha (together, the “Products”) constitutes acceptance by you of the terms of this Agreement, as amended or updated from time to time at Red Piranha’s discretion by Red Piranha publishing an amended or updated version.

Red Piranha shall not be bound by any additional and/or conflicting provisions in any order, release, acceptance or other written correspondence or other written or verbal communication unless expressly agreed to in a writing signed by the General Counsel of Red Piranha. If you do not agree to all of the terms of this Agreement, do not under any circumstances commence the installation process or commence use of the Products.

If you do not agree to the terms of this Agreement, you should immediately, and in no event later than seven (7) calendar days after your receipt of the Product, immediately notify the Red Piranha legal team in writing at legal@redpiranha.net of requested changes to this Agreement.

1. License Grant

- 1.1. This is a license, not a sales agreement, between You and Red Piranha. The terms Software and Hardware, firmware and appliance as used throughout this Agreement, includes all Red Piranha and third party



info@redpiranha.net



+61 8 6365 0450



www.redpiranha.net



RedPiranhaSec



RedPiranhaSec



RedPiranha

firmware, hardware and software provided to you with, or incorporated into, Red Piranha appliance, hardware and any stand-alone software provided to you by Red Piranha, with the exception of any open source software contained in Red Piranha's Products which is discussed in detail in clause 16 below, and the terms Software and Hardware include any accompanying documentation, any updates and enhancements of the software, hardware or firmware provided to you by Red Piranha from time to time, at its option.

- 1.2. Red Piranha grants you a non-transferable (except as provided in clause 5 ("Transfer") and clause 16 ("Open Source Software") below), non-exclusive, revocable (in the event of your failure to comply with these terms or in the event Red Piranha is not properly paid for the applicable Product) license to use the Software solely for your internal business purposes (provided, if (a) agreed by Red Piranha in writing, (b) a substantial portion of your business is to provide managed service provided services to your end customers, and (c) you pay for the relevant VAR, Premium or Channel Partner license, then you may use the Software and/or Software embedded in Red Piranha Hardware and supporting hardware appliances to provide those services, subject to the other restrictions in this Agreement), in accordance with the terms set forth in this Agreement and subject to any further restrictions in Red Piranha documentation (including license term restrictions), and solely on the Red Piranha appliance, or, in the case of Hardware, appliances, CPUs or databases, on the Hardware or appliance, CPU or database in which Red Piranha installed the Software or, for stand-alone Software, solely on a single computer running a validly licensed copy of the operating system for which the Software was designed unless and except set forth in the published documentation otherwise, or in the case of Hardware and appliances, CPUs or databases, on Hardware or an appliance, CPU or database.
- 1.3. For clarity, notwithstanding anything to the contrary, all licenses of Software to be installed on Hardware and appliances, CPUs or databases are licensed on a per Hardware or appliance basis, solely for one Hardware or appliance and not for multiple Hardware or appliances that may be installed in a chassis, per single CPU or per single database basis, as applicable.
- 1.4. For the avoidance of doubt, the Hardware, appliances and Software is "in use" on any Red Piranha appliances when it is loaded into temporary memory (i.e. RAM). You agree that, except for the limited, specific license rights granted in this clause 1, you receive no license rights to the Software outside of the scope of this clause 1.

2. Limitation on Use

- 2.1. You may not attempt to, and, if you are a corporation, you are responsible to prevent your employees and contractors from attempting to, (a) modify, translate, reverse engineer, decompile, disassemble, create derivative works based on, sublicense, or distribute the Software, Hardware or appliance; (b) rent or lease any rights in the Software, Hardware or appliance in any form to any third party or make the Software, Hardware or appliance available or accessible to third parties in any other manner; (c) except as provided in clause 5, transfer, assign or sublicense right to any other person or entity; (d) remove any proprietary notice, labels, or marks on the Software, Hardware or appliance, Products, and containers; or (e) use the Software,



Hardware or appliance or Products for third-party training, commercial time-sharing or service bureau use or use the Software, Hardware or appliance or Products to provide services to third parties except as expressly set forth in this Agreement.

- 2.2. If Red Piranha provides You with a Product beta testing purposes as part of a beta testing program ('Beta Product'), You may use the Product for evaluation purposes only for the period specified by Red Piranha ('Beta Testing Period'). You shall test the Beta Product in accordance with any conditions specified in an applicable readme file for the software, and/or any associated documentation and shall gather and report test data and other feedback to Red Piranha. The Beta Product must only be used in a non-production test environment unless expressly approved otherwise by Red Piranha. Your right to use the Beta Product shall terminate upon expiry of the Beta Testing Period. Red Piranha does not warrant that it will release a commercial version of the Beta Product, or that a commercial version will contain the same or similar features as the Beta Product. Any Beta Testing and accompanying documentation shall be considered Red Piranha's confidential information as set forth in Clause 14.

3. Proprietary Rights

- 3.1. All rights, title, interest, and all copyrights to the Software, Hardware and appliances, or Products and any copy made thereof by you and to any Product remain with Red Piranha. You acknowledge that no title to the intellectual property and intellectual property rights in the Software, Hardware and appliances or other Products is transferred to you and you will not acquire any rights to the Software, Hardware or appliances or other Products except for the specific license as expressly set forth in clause 1 ("License Grant") above.
- 3.2. You expressly agree and acknowledge that Red Piranha owns and shall retain all intellectual property and intellectual property rights in and to, and you have no intellectual property rights in and to, the Products, Software, Hardware and appliances other than the License Grant.
- 3.3. You agree to keep confidential all Red Piranha confidential information and only to use such information for the purposes for which Red Piranha disclosed it.
- 3.4. Some material may be licensed from third parties, and such third-party material is also covered by this Agreement. Breach or attempted breach (at the discretion of Red Piranha) will be considered grounds for termination of this Agreement, and termination of service.

4. Term and Termination

- 4.1. Except for (a) evaluation, demonstration ("Demo") and Beta Testing licenses where the term of the license is limited per the evaluation, Demo, Beta Product or other agreement or (b) other licenses, such as subscription or education licenses, where the term of the license is limited per the ordering documents, other Red Piranha documentation or otherwise, the term of the license is for the duration of Red Piranha's copyright in the Software, Hardware and appliances or Products.



info@redpiranha.net



+61 8 6365 0450



www.redpiranha.net



RedPiranhaSec



RedPiranhaSec



RedPiranha

- 4.2. Red Piranha may terminate this Agreement, and the licenses and other rights herein, immediately without notice if you breach or fail to comply with any of the terms and conditions of this Agreement or for other reasons as stated in Red Piranha's other documentation, or you are declared insolvent or bankrupt.
- 4.3. You agree that, upon such termination, you will cease using the Software, Hardware and appliances and any Product and either destroy all copies of the Red Piranha documentation or return all materials to Red Piranha in its opinion as soon as practicable thereafter.
- 4.4. Subject to this clause 4, you may terminate the license for the applicable licensed Product(s) at any time by uninstalling the relevant licensed Product and destroying any relevant documentation and all copies thereof. At such termination of this Agreement, all outstanding fees or costs shall become immediately payable for the remaining duration of the Agreement term unless Red Piranha has materially breached this Agreement.
- 4.5. Within one (1) month after the date of termination of this Agreement or the applicable Product term, or relevant Agreement, upon Red Piranha's request, you will supply Red Piranha with written certification of the destruction of all partial and complete copies of the applicable licensed documentation, and verifying the uninstallation of the Product. In the case of encryption of Software, Hardware and appliances or Products, you shall decrypt all encrypted drives and data prior to uninstalling the Software, Hardware and appliances or Product.
- 4.6. Your rights to use and access the Software, Hardware and appliances or Product(s) will automatically terminate on expiry of the applicable Product term or this Agreement (whichever is earlier) unless and until you renew your license for the Products. You shall remain obligated to pay the fees for all Software, Hardware and appliances or Product(s) shipped or provisioned to you. All sums due to Red Piranha shall become immediately due and payable on the date of termination.
- 4.7. Except as expressly set forth herein, all fees paid or payable are non-refundable to the maximum extent permitted by law.

5. Transfer and Resale

- 5.1. If you are a Red Piranha contracted and authorised reseller or distributed of Software, Hardware and appliances or Products, you may transfer (not rent or lease unless specifically agreed to in writing by Red Piranha or in accordance with Red Piranha's standard "Master Leasing Agreement") the Software, Hardware and appliances or Products to one End User on a permanent basis, provided that:
 - i. You ensure that your customer and the End User receive a copy of this Agreement, is bound by its terms and conditions, and, by selling the Software, Hardware and appliances or Product, you hereby agree to enforce the terms in this Agreement against such End User;
 - ii. You always comply with all applicable Australian export and custom laws and regulations; and
 - iii. You agree to refund any fees paid to you by an end user who purchased the Software, Hardware and appliances or Product(s) from you but does not agree to the terms contained in this Agreement and therefore wishes to return the Software, Hardware and appliances or Product(s) as provided for in this Agreement.



info@redpiranha.net



+61 8 6365 0450



www.redpiranha.net



RedPiranhaSec



RedPiranhaSec



RedPiranha

- 5.2. Further, if you are a non-authorized reseller of Software, Hardware and appliances or Products and Services, you are not authorized to sell Product(s), Software, Hardware and appliances or Services, but, regardless, by selling Software, Hardware and appliances or Product(s) or Services, you hereby agree you are bound by the restrictions and obligations herein and are bound to:
- i. Ensure that your customer and the End User receive a copy of this Agreement and are bound in full by all restrictions and obligations herein;
 - ii. Enforce the restrictions and obligations in this Agreement against such customer and/or End User;
 - iii. Comply with all applicable Australian export and custom laws and regulations and all other applicable laws; and
 - iv. Refund any fees paid to you by a customer and/or End User who purchased Software, Hardware and appliances or Product(s) or Services from you but does not agree to the restrictions and obligations contained in this Agreement and therefore wishes to return the Software, Hardware and appliances or Product(s) or Services as provided for in this Agreement.
- 5.3. Notwithstanding anything to the contrary, distributors, resellers and other Red Piranha partners (a) are not agents of Red Piranha; and (b) are not authorized to bind Red Piranha in any way.
- 5.4. Rental, Demo, Education, Beta Product Testing or other licenses do not include Hardware ownership unless specifically stated within the Agreement.
- 5.5. Red Piranha retains title to the Hardware until such time the End User pays the Hardware Fee to Red Piranha or a Partner, if applicable, and Red Piranha receives the Hardware Fee in full. Unless and until title to the Hardware has been transferred to the End User in accordance with this clause, the End User agrees to keep the Hardware free and clear of all claims, liens, and encumbrances, and any act by Licensee, either voluntary or involuntary, purporting to create a claim, lien or encumbrance on the Hardware shall be void. The End User owns only the Hardware or media, if applicable, on which the Licensed Product is installed. The End User does not own the Licensed Product itself.
- 5.6. In the event the End User fails to pay or Red Piranha does not receive the Fee for the Hardware, the End User shall return the Hardware to the return location indicated by Red Piranha, securely and properly packaged, with carriage (and insurance at the End User's option) pre-paid. If the End User fails to return the Hardware to the indicated location promptly, upon written notice, Red Piranha will be entitled to enter the End User's premises during normal business hours to repossess such Hardware.

6. Limited Warranty

- 6.1. Red Piranha provides this limited warranty for its product only to the single End User person or entity that originally purchased the Product from Red Piranha or its authorized reseller or distributor and paid for such Product or unless otherwise agreed in writing between you and Red Piranha.
- 6.2. The warranty is only valid for Products which are properly registered on Red Piranha's online store, <https://store.redpiranha.net/>, or such other website as provided by Red Piranha, or for which the warranty



info@redpiranha.net



+61 8 6365 0450



www.redpiranha.net



RedPiranhaSec



RedPiranhaSec



RedPiranha

otherwise starts according to Red Piranha's policies, and any support is only valid for products properly purchased through authorised distributors and resellers.

- 6.3. This warranty is offered in addition to your statutory rights and remedies under the Australian Consumer Law ("ACL").
- 6.4. For persons who have purchased the Software, Hardware and appliances, Product or Services in Australia, if a supply under this warranty is a supply of goods or services to the consumer within the meaning of ACL, nothing contained in this warranty excludes, restricts, or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the ACL, provided that, other than as expressly provided under the Product Warranty and the Hardware Warranty, to the extent that the ACL permits Red Piranha to limit its liability, then Red Piranha's liability shall be limited to:
- i. In the case of services, supplying the services again or payment of the cost of having the services supplied again; and
 - ii. In the case of goods, replacing the goods, supplying equivalent goods or repairing the goods, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.
- 6.5. The following text is prescribed under the Australian Consumer Law. It summarises the right that a 'consumer' has against a 'supplier' of goods under the consumer guarantee provisions of that Law. You may have different consumer guarantee rights or remedies under the Australian Consumer Law as against a manufacturer of goods.
- 6.6. Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with service, you are entitled:
- To cancel your service contract with us; and
 - To a refund for the unused portion, or to compensation for its reduced value.
- You are also entitled to choose a refund or replacement for major failure with goods. If a failure with the goods or service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done, you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.
- 6.7. Our warranties are offered in addition to the statutory rights and remedies to which you may be entitled under the *Competition and Consumer Act 2010* (Cth) and other applicable Australian consumer protection laws. See <https://acc.com.au/> for further details.
- 6.8. The warranty periods discussed below will start according to Red Piranha's policies provided to you or posted at our website or such other website as provided by Red Piranha. It is the Red Piranha distributor's and reseller's responsibility to make clear to the End User the date the Product was originally shipped from Red Piranha, and it is the End User's responsibility to understand the original ship date from the party from which the End User purchased the Product.



- 6.9. All warranty claims must be submitted in writing to Red Piranha before the expiration of the warranty term or such claims are waived in full. Red Piranha provides no warranty for any Beta Products, Demo, donation or evaluation Products.
- 6.10. Red Piranha warrants that the Hardware portion of the Products will be free from material defects in workmanship as compared to the functional specifications for the period set forth as follows and applicable to the Product type (“Hardware Warranty Period”): (a) one (1) year limited warranty for the Hardware Products; (b) for the Crystal Eye® Series 10, Series 20, Series 25, Series 40, Series 40, Series 50, Series 60, and Series 80 Hardware Products and any other appliance models or series released in future by Red Piranha, the warranty herein shall last from the start of the warranty period as discussed above, for a period of one (1) year, provided that you have a valid, fully paid-up, unexpired license for such Product.
- 6.11. Red Piranha’s sole obligation shall be to repair or offer replacement Hardware for the defective Hardware at no charge to the original owner. This obligation is exclusive of transport fees, labour, de-installation, installation, reconfiguration, or return shipment and handling fees and costs, and Red Piranha shall have no obligation related thereto.
- 6.12. Such repair or replacement will be rendered by Red Piranha at an authorised Red Piranha service facility as determined by Red Piranha. The replacement Hardware need not be new or of an identical make, model or part; Red Piranha may, in its discretion, replace the defective Hardware (or any part thereof) with any reconditioned Product that Red Piranha reasonably determines is substantially equivalent (or superior) in all material respects to the defective Hardware. The End User acknowledges that the Hardware is sold hereunder solely as the medium for delivery and operation of the Licensed Products. The Hardware Warranty Period for the repaired or replacement Hardware shall be for the greater of the remaining Hardware Warranty Period or ninety (90) days from the delivery of the repaired or replacement Hardware.
- 6.13. If Red Piranha determines in its reasonable discretion that a material defect is incapable of correction or that it is not practical to repair or replace defective Hardware, the price paid by the original purchaser for the defective Hardware will be refunded by Red Piranha upon return to Red Piranha of the defective Hardware. All Hardware (or part thereof) that is replaced by Red Piranha, or for which the purchase price is refunded, shall become the property of Red Piranha upon replacement or refund.
- 6.14. Red Piranha warrants that Software and Hardware as initially shipped by Red Piranha will substantially conform to Red Piranha’s then-current functional specifications for the Software, as set forth in the applicable documentation for a period of ninety (90) days (“Software Warranty Period” and “Hardware Warranty Period”), if the Software and/or Hardware is properly installed on approved Hardware and operated as contemplated in its documentation. Red Piranha’s sole obligation shall be to repair or offer replacement Software and Hardware for the non-conforming Software and Hardware with software that substantially conforms to Red Piranha’s functional specifications.
- 6.15. This obligation is exclusive of transport fees, labour, de-installation, installation, reconfiguration or return shipment and handling fees and costs, and Red Piranha shall have no obligation related thereto. Except as otherwise agreed by Red Piranha in writing, the warranty replacement Software is provided only to the



original Licensee and is subject to the terms and conditions of the license granted by Red Piranha for the Software. The Software Warranty Period shall extend for an additional ninety (90) days after any warranty replacement software is delivered.

- 6.16. If Red Piranha determines in its reasonable discretion that a material non-conformance is incapable of correction or that it is not practical to repair or replace the non-conforming Software, the price paid by the original licensee for the non-conforming Software will be refunded by Red Piranha; provided that the non-conforming Software (and all copies thereof) is first returned to Red Piranha. The license granted respecting any Software for which a refund is given automatically terminates immediately upon refund.
- 6.17. For the purpose of the above Hardware and Software warranties, the term 'functional specifications' means solely those specifications authorised and published by Red Piranha that expressly state in such specifications that they are the functional specifications referred to in this clause 6 of this Agreement, and, in the event no such specifications are provided to you with the Software or Hardware, there shall be no warranty on such Software.
- 6.18. For the full Red Piranha Limited Hardware Warranty Policy, please contact legal@redpiranha.net. This document forms a part of the Red Piranha EULA. Acceptance of this EULA is hereby acceptance of the Red Piranha Limited Hardware Warranty Policy.

7. Disclaimer of Other Warranties and Restrictions

- 7.1. EXCEPT FOR THE LIMITED WARRANTY AS SPECIFIED IN CLAUSE 6 ABOVE, THE PRODUCT AND SOFTWARE ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY OF ANY KIND INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OTHER THAN PRESCRIBED UNDER THE ACL, IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, OR WARRANTY FOR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IF ANY IMPLIED WARRANTY CANNOT BE DISCLAIMED IN ANY OTHER TERRITORY WHERE A PRODUCT IS SOLD, THE DURATION OF SUCH IMPLIED WARRANTY SHALL BE LIMITED TO NINETY (90) DAYS FROM THE DATE OF ORIGINAL SHIPMENT FROM RED PIRANHA. EXCEPT AS EXPRESSLY COVERED UNDER THE LIMITED WARRANTY PROVIDED HEREIN, THE ENTIRE RISK AS TO THE QUALITY, SELECTION AND PERFORMANCE OF THE PRODUCT IS WITH THE PURCHASER OF THE PRODUCT. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE HARDWARE WARRANTY PERIOD DISCUSSED ABOVE DOES NOT APPLY TO CERTAIN RED PIRANHA PRODUCTS WHICH HAVE A 90 DAY WARRANTY FROM THE DATE OF SHIPMENT FROM RED PIRANHA'S FACILITIES, AND THE SOFTWARE WARRANTY DOES NOT APPLY TO CERTAIN RED PIRANHA PRODUCTS, INCLUDING SOFTWARE. YOU HEREBY ACKNOWLEDGE AND AGREE THAT NO VENDOR CAN ASSURE COMPLETE SECURITY AND NOTHING HEREIN OR ELSEWHERE SHALL BE DEEMED TO IMPLY A SECURITY GUARANTEE OR ASSURANCE.
- 7.2. The warranty in clause 6 above does not apply if the Software, Hardware and appliances or Product or any other equipment upon which the Software, Hardware and appliances or is authorised to be used (a) has been altered, except by Red Piranha or its authorised representative; (b) has not been installed, operated,



repaired, updated to the latest version, or maintained in accordance with instructions supplied by Red Piranha; (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; (d) is licensed for Beta Product, demo, evaluation, donation or testing purposes or for which Red Piranha does not charge a purchase price or license fee; (e) is procured from a non-authorized reseller or non-authorized distributor; (f) has been deployed into a network above the recommended number of seats for the appliance; or (g) has been deployed by a non-Crystal Eye® Certified Engineer.

- 7.3. In the case of Demo, Beta Product, testing, Education, evaluation, donation or free Software, Hardware and appliances or Product, the End User acknowledges and agrees that such Software, Hardware and appliances or Product may contain bugs or errors and could cause system failures, data loss and other issues, and may not contain the full suite of software features such as incident response capabilities and other monitored or manual services and capabilities which may otherwise be fulfilled through the Software.
- 7.4. The End User agrees that in the case of Demo, Beta Product, testing, evaluation, donation or free Software, Hardware and appliances or Product, such Software, Hardware and appliances or Product is provided “as-is” without any warranty what-so-ever, and Red Piranha disclaims any warranty or liability whatsoever. An End User’s use of evaluation, demo or Beta Product Software, Hardware and appliances or Product is limited to thirty (60) days from original shipment unless otherwise agreed in writing by Red Piranha.

8. Governing Law

- 8.1. This Agreement will be governed by the laws of the state of New South Wales, without reference to its or any other jurisdiction’s conflict of laws principles. Any action arising out of or relating to this Agreement may be brought exclusively in the appropriate state or court in New South Wales, and Red Piranha and you irrevocably consent to the jurisdiction of such courts and venue New South Wales. However, if you are a consumer and you live in a country where Red Piranha markets or distributes the Software, local law may require that certain consumer protection laws of your country of residence apply to some sections of this Agreement. In addition, Red Piranha may seek injunctive relief in any court having jurisdiction to protect its intellectual property rights.
- 8.2. Each of the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods is hereby expressly excluded and will not apply to this Agreement.

9. Limitation of Liability

- 9.1. TO THE MAXIMUM EXTENT PERMITTED BY LAW AND NOTWITHSTANDING ANYTHING TO THE CONTRARY, RED PIRANHA IS NOT LIABLE UNDER ANY CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, INFRINGEMENT OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY LOSS OF USE OF THE PRODUCT OR SERVICE OR ANY DAMAGES OF ANY KIND WHATSOEVER, WHETHER DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL, (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF GOODWILL, LOSS OF PROFIT, LOSS OF BUSINESS, BUSINESS INTERRUPTION, LOSS OF



info@redpiranha.net



+61 8 6365 0450



www.redpiranha.net



RedPiranhaSec



RedPiranhaSec



RedPiranha

OPPORTUNITY, LOSS OR DAMAGE RELATED TO USE OF THE PRODUCT OR SERVICE IN CONNECTION WITH HIGH RISK ACTIVITIES, DE-INSTALLATION AND INSTALLATION FEES AND COSTS, DAMAGE TO PERSONAL OR REAL PROPERTY, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, COMPUTER SECURITY BREACH, COMPUTER VIRUS INFECTION, LOSS OF INFORMATION OR DATA CONTAINED IN, STORED ON, OR INTEGRATED WITH ANY PRODUCT INCLUDING ANY PRODUCT RETURNED FROM RED PIRANHA FOR WARRANTY SERVICE) RESULTING FROM THE USE OF THE PRODUCT, RELATING TO WARRANTY SERVICE, OR ARISING OUT OF ANY BREACH OF THE LIMITED WARRANTY IN CLAUSES 6 AND 7 ABOVE, EVEN IF RED PIRANHA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE SOLE REMEDY FOR A BREACH OF THE LIMITED WARRANTY IS REPAIR, REPLACEMENT OR REFUND OF THE DEFECTIVE OR NON-CONFORMING PRODUCT AS SPECIFICALLY STATED IN CLAUSE 6 AND 7 ABOVE.

- 9.2. THE LICENSEE ACKNOWLEDGES AND AGREES THAT THE PRODUCT MAY REQUIRE THE COMPLETE ERASURE OF THE HARD DISK OF THE TARGET COMPUTER DURING INSTALLATION, INCLUDING WITHOUT LIMITATION THE OPERATING SYSTEM RESIDENT THEREON. BY INSTALLING THE AFOREMENTIONED PRODUCT, THE LICENSEE EXPRESSLY AGREES THAT IT SHALL ENSURE THAT THE COMPUTER ON WHICH SUCH PRODUCT IS TO BE INSTALLED DOES NOT CONTAIN ANY VALUABLE DATA, THE LOSS OF WHICH WOULD CAUSE DAMAGE TO LICENSEE AND, SUBJECT TO CLAUSE 9, RED PIRANHA EXPRESSLY DISCLAIMS ANY LIABILITY FOR LOSSES OF ANY KIND RELATED TO THE LICENSEE'S FAILURE TO DO SO.

10. Import/Export Requirements; Compliance with Laws

- 10.1. You are advised that the Software, Hardware and appliances or Products may be subject to the Australian Customs and Export regulations and other import and export laws. Diversion contrary to Australian law and regulation is prohibited. You agree to comply with all applicable international and national laws that apply to the Software, Hardware and appliances or Products as well as End User, end-use, and destination restrictions issued by the Australian government and other governments. For additional information on Australian export controls see <https://www.business.gov.au/products-and-services/importing-and-exporting/customs-requirements-for-exports-from-australia/>.
- 10.2. Red Piranha assumes no responsibility or liability for your failure to obtain any necessary import or export approvals and licenses, and Red Piranha reserves the right to terminate or suspend shipments, services and support in the event Red Piranha has a reasonable basis to suspect any import or export violation. You represent that neither the Australian Border Force ("ABF") nor any other Australian or foreign governmental agency has issued sanctions against you or otherwise suspended, revoked or denied your export privileges.
- 10.3. You agree not to use or transfer the Software, Hardware and appliances or Products for any use relating to nuclear, chemical or biological weapons, or missing technology, unless authorised by the Australian Government by regulation or specific written license. Additionally, you agree not to directly or indirectly export, import or transmit the Software, Hardware and appliances or Products contrary to the laws or



info@redpiranha.net



+61 8 6365 0450



www.redpiranha.net



RedPiranhaSec



RedPiranhaSec



RedPiranha

regulations of any other governmental entity that has jurisdiction over such export, import, transmission or use. You agree you and your employees will be responsible to comply, in full, with all laws and policies applicable to any and all dealings with Red Piranha in general and its distributors, resellers and partners.

- 10.4. Furthermore, you represent that you understand, and you hereby agree to comply with, all requirements of the *Customs Act 1901* (Cth) and all other applicable Australian or foreign laws. For Demo, Beta Product, testing, evaluation, Education, donation or free Software, Hardware and appliances or Products and/or related Services, you hereby agree, represent and warrant to Red Piranha that (a) receipt of the Software, Hardware and appliances or Products and/or Services comply with all policies and you have obtained all necessary approvals for such Software, Hardware and appliances or Products and/or Services; (b) the Software, Hardware and appliances or Products and/or Services are not provided in exchange for Red Piranha maintaining current business or for new business opportunities; and (c) the Software, Hardware and appliances or Products and/or Services are not being received for the benefit of, and are not being transferred to, any government entity, representative or affiliate.

11. Tax Liability

- 11.1. Unless expressly stated otherwise, the fees for the Software, Hardware and appliances or Products and Services are exclusive of value added tax and any other federal, state, municipal or other governmental taxes, duties, licenses, fees, excises or tariffs whether in Australia or any other relevant jurisdiction.
- 11.2. You agree to be responsible for payment of any sales or use taxes imposed at any time on this transaction whether in Australia or any other relevant jurisdiction.

12. General Provisions

- 12.1. Except as specifically permitted and required in clause 5 ("Transfer") above, you agree not to assign or novate this Agreement or transfer any of the rights or obligations under this Agreement without the prior written consent of Red Piranha.
- 12.2. This Agreement shall be binding upon, and insure to the benefit of, the successors and permitted assigns of the parties. The United Nations Convention on Contracts for the International Sale of Goods is expressly included.
- 12.3. This Agreement and other Red Piranha agreements may be amended or supplemented only by a writing that refers explicitly to the agreement signed on behalf of both parties, or, for this Agreement, as otherwise expressly provided in the lead-in above clause 1 above, for any amendment or other agreement to be binding on Red Piranha, such amendment or other agreement must be signed by Red Piranha's General Counsel or authorised legal representative.
- 12.4. No waiver will be implied from conduct or failure to enforce rights nor effective unless in a writing signed on behalf of the party against whom the waiver is asserted. If any part of this Agreement is found unenforceable, that part will be enforced to the maximum extent permitted and the remainder shall continue in full force and effect. You acknowledge that you have read this Agreement, understand it, and agree to be



bound by its terms and conditions. Notwithstanding anything to the contrary, this Agreement constitutes the entire agreement between Red Piranha and its end-customers and supersedes any and all conflicting provisions, such as limitations of liability, in any and all purported end customer agreements, whether entered into now or in the future.

- 12.5. In the event of a conflict between this Agreement and another agreement, this Agreement shall prevail unless the conflicting agreement expressly states that it replaces this Agreement, expressly referring to this Agreement, and is agreed to in writing by authorised representatives of the parties (which, in the case of Red Piranha, is Red Piranha's General Counsel or authorised legal representative).

13. Privacy

- 13.1. You agree to Red Piranha's collection, use, disclosure, protection and transfer of your information, as set forth in the Red Piranha Privacy Policy on the Red Piranha website <https://redpiranha.net/red-piranha-privacy-policy/> including (a) Red Piranha's use of the Customer information to send information regarding Red Piranha products and services; and (b) Red Piranha's disclosure of your information to provide assistance to law enforcement, governmental agencies and other authorities or to allow Red Piranha to protect its Customers' and/or End User's rights.

14. Confidentiality

- 14.1. Red Piranha and you may receive or have access to confidential information under or in relation to this Agreement that is secret and valuable to the other party and its licensors. A recipient is not entitled to use, communicate or disclose the other party's confidential information to a third party without the disclosing party's prior, written consent. The recipient will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care).
- 14.2. The Software, Hardware and appliances or Products (including any updates or upgrades) may: (a) cause your device to automatically communicate with Red Piranha's servers to deliver the functionality described in the product description or through new features as they are introduced, and to record usage metrics; and (b) affect preferences or data stored on your device; and (c) collect personal information as set out in our Privacy Policy.
- 14.3. You acknowledge and agree that Red Piranha may directly and remotely communicate with the Product(s) in order to provide maintenance and technical support, and to collect the following types of information: (a) Software, Hardware and appliances or Products, Product versions, Product features and operating systems being used by you; (b) processing times taken by the Software, Hardware and appliances or Product; (c) your customer identification code and company name; and (d) IP address and/or ID of the machine that returns the above listed information. Certain Software, Hardware and appliances or Products may require the collection of additional information as detailed in the Privacy Policy.
- 14.4. The information collected under this section 14 may be used for the purposes of: (a) providing the Software, Hardware and appliances or Products and Services and performing this Agreement; (b) verifying



info@redpiranha.net



+61 8 6365 0450



www.redpiranha.net



RedPiranhaSec



RedPiranhaSec



RedPiranha

your compliance with the license entitlements; (c) evaluating and improving the performance of the Software, Hardware and appliances or Products and Services; (d) preparing statistical analysis (such as malware infection rates and the usage of Software, Hardware and appliances or Products); (e) planning development roadmaps and product lifecycle strategies; (f) issuing alerts and notices to you about incidents and product lifecycle changes that affect the Software, Hardware and appliances or Products being used by you.

- 14.5. Red Piranha may also require identification information from you including, but not limited to, your contact details and (where applicable) payment information for the purposes of (a) providing technical support; (b) billing, (c) verifying your credentials and license entitlements; (d) issuing license expiry and renewal notices; (e) carrying out compliance checks for export and sanction control purposes; and (f) providing account management. You agree to provide complete and accurate identification information to Red Piranha promptly upon Red Piranha's request.
- 14.6. If you elect to send malware samples or any other materials to Red Piranha for review, you shall remove any regulated personally identifiable information, health information, and payment card data prior to submission.
- 14.7. You expressly give Red Piranha permission to: (a) include and publish your name and logo on lists of Red Piranha's customers, where you are not a consumer, and (b) send promotional emails to you to provide about other Red Piranha products and services. If you do not wish to give Red Piranha permission for the uses described under this clause, you shall notify Red Piranha by emailing info@redpiranha.net and specify which permission is not granted.
- 14.8. You may receive certain transactional or informational messages from Red Piranha. You understand and agree that these communications are part of your use of the Software, Hardware and appliances or Products, and that you may not opt out of receiving these communications.
- 14.9. Any communication of such confidential information to outside parties shall be considered a breach of this Agreement.

15. Invoice, Payments and Delivery

- 15.1. Applicable fees will be set forth on the website at the time of purchase or in the applicable invoice. Note, however, that fees which are payable in advance for Software, Hardware and appliances or Products and Services must be reconciled with actual usage at the end of each month or applicable service period. Red Piranha reserves the right to perform true-up reconciliation and charge for any usage above the volume or capacity purchased. Unless you have chosen monthly billing, fees will be due net fourteen (14) days from invoice date.
- 15.2. All sums due and payable that remain unpaid after any applicable period herein will accrue interest at the highest rate permissible by applicable law. Red Piranha reserves the right to assign its right to receive payments hereunder to a third party with notice but without your consent. For the purposes of such assignment, such third party shall be considered a third-party beneficiary of the payment obligation under this Agreement. All fees are non-refundable unless otherwise specified.



- 15.3. All services and products obtained directly from Red Piranha will require your full legal name, address and contact information. All services, including software licenses, are contingent on payment being delivered as agreed. All accounts paid are non-refundable except at the discretion of Red Piranha. Payment terms are at the discretion of Red Piranha, and you accept that additional charges may accrue for late payment and debt recovery. Red Piranha may change its standard terms, including refusing service, if it determines, at its sole discretion, that your credit or credit rating is not sufficient for payment terms. You accept that Red Piranha may seek credit history information.
- 15.4. Nothing in this clause shall limit the rights of Red Piranha to initiate proceedings against you in any court of competent jurisdiction where deemed necessary by Red Piranha to: (a) protect its intellectual property rights; (b) protect its confidential information; and/or (c) recover overdue payments.

16. Source Software Licensing

- 16.1. Red Piranha's Products may include software modules that are licensed (or sublicensed) to the user under the Australian Creative Commons licenses, general open source licenses exclusive to Red Piranha and other members regarding software modules supplied by the Open Information Security Foundation ("OSIF") as a registered member of OSIF or GNU General Public License, Version 2, of June 1991 ("GPL") exempt software modules, or other open source software licenses which, among other rights, permit the user to use, copy, modify and redistribute modules, or portions thereof, and may also require attribution disclosures and access to the source code ("Source Software Licensing").
- 16.2. If any Source Software Licensing licenses require that Red Piranha provides rights to use, copy or modify any Source Software program that are broader than the rights granted in this Agreement, then such rights shall take precedence over the rights and restrictions herein.
- 16.3. Red Piranha will provide, for a charge reflecting our standard distribution costs, the complete machine-readable copy of the modified software modules that fulfil this description only. To obtain a complete machine-readable copy, please send your written request to info@redpiranha.net also include the following information: (a) Name; (b) Address; (c) Telephone number; (d) E-mail address; (e) Product purchased (if applicable); (f) Product Serial Number (if applicable); and (h) Hardware purchased.
- 16.4. All open source software modules are licensed in accordance with their relevant license provisions. There is no warranty for these modules, to the extent permitted by applicable law. The copyright holders provide these software modules "as-is" without warranty of any kind, either expressed or implied. In no event will the copyright holder for the open source software be liable to you for damages, including any special, incidental or consequential damages arising out of the use or inability to use the software modules, even if such holder has been advised of the possibility of such damages. A full copy of this license, including additional open source software license disclosures and third-party license disclosures applicable to certain Red Piranha products, may be obtained by contacting Red Piranha's Legal Department at legal@redpiranha.net.



16.5. The above Source Software Licensing does not include any GPL exempt for proprietary source code and is solely confined to any software that is truly open sourced in accordance with the provisions of this clause 16.

17. Product Changes

17.1. Subject to this Agreement, you are entitled to receive software updates, and may be required to install or allow installation of software updates as a condition of continued use of any licensed Software, Hardware and appliances or Products. You acknowledge and agree that Red Piranha may vary, update or discontinue Software, Hardware and appliances or Products, Product versions, Product features, Product support, Product maintenance, and support for third party products (including without limitation operating systems and platforms) from time to time for reasons including but not limited to changes in demand or enhancing security and technology.

17.2. You consent to receive updates or upgrades to the licensed Software, Hardware and appliances or Products automatically through the internet without obtaining further consent each time. Red Piranha is not responsible if an update or upgrade affects how a licensed Software, Hardware and appliances or Product works if this is caused by your own equipment or device not supporting the update or upgrade. You can withdraw consent at any time under certain conditions by contacting Red Piranha.

17.3. Red Piranha will provide a reasonable amount of advance notice of any planned Software, Hardware and appliances or Product discontinuation of a core Software, Hardware and appliances or Product feature, license to Software, Hardware and appliances or Product, Product maintenance, or Product support, or support for third party products (a "Discontinuation") to you, including without limitation by emailing or publishing the date(s) of each planned Discontinuation at info@redpiranha.net.

17.4. You acknowledge and agree that it is your sole responsibility to review the applicable Red Piranha retirement calendars published online on Red Piranha's partner and End-User dashboards from time-to-time or sent to your nominated email prior to purchasing a licensed Software, Hardware and appliances or Product. Unless otherwise required by applicable law, Red Piranha will not provide a refund of fees paid for a Software, Hardware and appliances or Product or service that is subject to a Discontinuation. Red Piranha may, at its sole discretion, substitute a Product, service, or management platform subject to a Discontinuation with a Product, service, or management platform with substantially equivalent functionality. Red Piranha recommends that you always use the latest version of Software, Hardware and appliances or Product and/or third-party product, as the case may be.

18. Red Piranha Crystal Eye XDR Cloud Products.

18.1. This section 18 only applies to Red Piranha Crystal Eye XDR Cloud Products.

18.2. You acknowledge that Red Piranha has no control over any content stored or transmitted by You, does not monitor such content and accordingly acts as a mere conduit. Red Piranha reserves the right to remove content from the Red Piranha Crystal Eye XDR Cloud Products immediately without prior notice where it



reasonably suspects that such content is Prohibited Content. You shall (to the extent permitted by applicable law, and without waiver of Your constitutional, statutory or other immunities, if any) indemnify and hold Red Piranha harmless from and against all damages, losses and expenses arising as a result of any third-party action or claim relating to Your content.

- 18.3. For the purpose of clause 18.2. 'Prohibited Content' is any content which is (a) unlawful, pornographic, obscene, indecent, harassing, racially or ethnically offensive, harmful, threatening, discriminatory or defamatory, (b) facilitates or promotes illegal activity, (c) infringes any third party intellectual property rights, or (d) is otherwise inappropriate.
- 18.4. Red Piranha's Crystal Eye XDR Cloud Products are not designed for the storage of regulated health or payment card data and You may only store or transmit such information through Red Piranha's Crystal Eye XDR Cloud Products if it has entered into a separate written agreement with Red Piranha expressly permitting such purpose.
- 18.5. Prior to termination or expiry of the Crystal Eye XDR Cloud Product Term, You must (a) remove all Product settings from your servers and computers, and (b) remove all of its custom settings, software and data from the Red Piranha network. For certain Products, Red Piranha may download and return the data upon request for a reasonable fee to be agreed in writing in advance. Subject to applicable laws, Red Piranha reserves the right to delete data that has not been removed after such termination or expiry date.

19. Third Party Software

- 19.1. The Software, Hardware and appliances or Products may operate or interface with software or other technology that is licensed to Red Piranha from third parties.
- 19.2. You agree that: (a) you will use such third party software in accordance with this Agreement; (b) no third-party licensor makes any warranties, conditions, undertakings or representations of any kind, either express or implied, to you concerning such third party software or the Software, Hardware and appliances or Products themselves; (c) no third party licensor will have any obligation or liability to you as a result of this Agreement or your use of such third party software; (d) the third party licensor is a beneficiary of this Agreement and accordingly may enforce the terms and conditions herein to the extent necessary to protect its rights in relation to the third party software; and (e) such third party software may be licensed under license terms that grant you additional rights or contain additional restrictions in relation to such materials, beyond those set forth in this Agreement, and such additional license rights and restrictions are described or linked to in the applicable documentation, the relevant Red Piranha webpage, or within the Software, Hardware and appliances or Product itself.
- 19.3. For the avoidance of any doubt, such additional rights and/or restrictions apply to the third-party software on a standalone basis; nothing in such third-party licenses shall affect your use of the licensed Software, Hardware and appliances or Products in accordance with the terms and conditions of this Agreement.





info@redpiranha.net



+61 8 6365 0450



www.redpiranha.net



RedPiranhaSec



RedPiranhaSec



RedPiranha



Red Piranha



info@redpiranha.net



[RedPiranhaSec](#)



+618 6365 0450



[RedPiranhaSec](#)



www.redpiranha.net



[RedPiranha](#)