

## RUNDECK GENERAL TERMS AND CONDITIONS OF CONTRACT

PLEASE READ THESE GENERAL TERMS AND CONDITIONS OF CONTRACT (THE "GENERAL TERMS") CAREFULLY BEFORE ACCESSING, DOWNLOADING OR OTHERWISE USING THE SUPPORTED SOFTWARE. BY CLICKING THE "I ACCEPT" BUTTON OR BY DOWNLOADING OR OTHERWISE USING THE SUPPORTED SOFTWARE, YOU, THE CUSTOMER, ACCEPT THESE GENERAL TERMS AND ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THEM. IF YOU ARE AN INDIVIDUAL ACTING ON BEHALF OF CUSTOMER, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THESE GENERAL TERMS ON BEHALF OF COMPANY. IF YOU DO NOT HAVE SUCH AUTHORITY, YOU ARE SOLELY RESPONSIBLE FOR YOUR USE OF THE SUPPORTED SOFTWARE. IF YOU DO NOT ACCEPT THESE GENERAL TERMS, THEN YOU ARE NOT PERMITTED TO ACCESS, DOWNLOAD OR OTHERWISE USE THE SUPPORTED SOFTWARE. EACH ORDERING DOCUMENT AND GENERAL TERMS SHALL BE AN AGREEMENT (THE "AGREEMENT"), AS SUCH, THE PARTIES MAY ENTER INTO MULTIPLE AGREEMENTS FROM TIME TO TIME.

Rundeck and Company may be referred to as "Party" or "Parties".

In consideration of the mutual promises, covenants, and representations herein, and upon the General Terms set forth in the Agreement(s), the Parties agree to the following:

1. **DEFINITIONS**. As used in this Agreement:

1.1 "**Confidential Information**" means any information that is of value to its owner or is required to be kept confidential by contract or otherwise, and is treated as confidential, that is disclosed by or on behalf of the discloser or otherwise directly or indirectly obtained from the discloser. Confidential Information includes, but is not limited to: proprietary information, trade secrets, source code, processes, product designs, sales, cost and other unpublished information, product and business plans and projections. Confidential Information does not include information that is: (i) generally known to the public through no act or omission of recipient; (ii) independently developed by the recipient without use of or reference to the discloser's Confidential Information; or (iii) obtained by recipient from any third party not owing any confidentiality obligation to the discloser.

1.2 "**Documentation**" means the end user or technical documentation provided by Rundeck for use with the Supported Software. Advertising, marketing materials, mailing lists, and other forms of public communication are not "Documentation."

1.3 "**Intellectual Property Rights**" means any and all ownership rights in intangible intellectual property existing from time to time in any jurisdiction, including copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights, confidential information and other proprietary rights, registered or unregistered or similar rights.

1.4 "**Ordering Document(s)**" means Order Form(s), Quote(s), Purchase Order(s), as further defined herein, or any other ordering documents entered into by

and between the Parties. Ordering Documents shall be governed by these General Terms. To be valid and binding upon Rundeck, an Ordering Document must reference these General Terms and the Rundeck Support Policy. An Ordering Document shall contain the specific business terms associated with Customer's right to use the Supported Software, such as Term, Supported Software description, number of Users, and fees and charges.

1.5 “**Order Form**” is an Ordering Document which is contractually binding when signed by both Parties, so long as it references these General Terms.

1.6 “**Purchase Order**” means a document issued by Customer that expressly references and incorporates by reference a valid Quote.

1.7 “**Quote**” is a Rundeck-generated document which contains standard business terms of purchase. A Quote is not a legally binding document unless or until it is expressly referenced by its Quote number in a valid Purchase Order.

1.8 “**Rundeck Server Instance**” means one running copy of the Supported Software installed on Customer-controlled computing infrastructure according to the entitlements detailed in these General Terms and the Ordering Document.

1.9 “**Source Code**” means the human-readable version of a software program.

1.10 “**Supported Software**” means the Software and all updates, libraries, plugins, and any other components of the Software provided by Rundeck to Customer.

1.11 “**Term**” means the period of time specified in the Ordering Document for which Customer has the right to use the Supported Software, subject to the terms and conditions of the Agreement.

1.12 “**Third Party Software**” means components of the Supported Software or any other software distributed by Rundeck that are under license from third parties. The Third Party Software and their applicable third-party license terms are listed at <http://www.rundeck.com/licenses/>.

1.13 “**User**” means any individual who logs into the Supported Software with credentials issued by Customer.

2. **ORDERING PROCESS.** Customer may purchase the right to use the Supported Software during the Term by entering into an Ordering Document(s). In order to be valid, the Order Document(s) must be executed by either: (a) both Customer and Rundeck, or (b) both Customer and Rundeck's reseller that is authorized by Rundeck to sell to customers the right to use the Supported Software (a “Reseller”). These General Terms govern and take precedence over the Ordering Documents; any conflicting or additional terms, conditions, or obligations (including those entered into with a Reseller with regard to the Supported Software only) are of no force or effect unless agreed to in a writing signed by Customer and Rundeck. A Purchase Order may not modify, change or add to the terms of the these General Terms or those contained in a Rundeck-issued Quote. In the event a Purchase Order contains terms or conditions which conflict or add to the Quote or these General

Terms, such different or additional terms, shall not apply to or be binding on Rundeck, regardless of whether such Purchase Order is signed by Rundeck.

3. **PROPRIETARY RIGHTS, OWNERSHIP, LICENSE GRANT AND RESTRICTONS.**

3.1 **Rundeck Property and Ownership.** The Supported Software and Documentation (including any modifications, extensions, or derivative works of either of the foregoing), and all Intellectual Property Rights therein, are the exclusive property of Rundeck or its licensors, including any features of the Supported Software that Rundeck implements at the request or suggestion of Customer. All rights in and to the Supported Software not expressly granted to Customer in these General Terms are reserved by Rundeck. Nothing in these General Terms will be deemed to grant, by implication, estoppel or otherwise, a license under any of Rundeck's existing or future patents; Rundeck agrees that it will not assert any of its rights under such patents against Customer based upon the exercise by Customer of the license granted in Section 3.2 ("License Grant"). Customer will not remove, alter, or obscure any proprietary notices (including copyright notices) of Rundeck or its licensors on the Supported Software or the Documentation.

3.2 **License Grant.** The Supported Software and Documentation are licensed and not sold. Subject always to these General Terms and the Ordering Document(s), Rundeck grants to Customer a worldwide, limited, non-transferable, revocable license to install and execute the Supported Software and use the Documentation during the Term. The license grant is for the number of Rundeck Server Instances and Users specified in a valid Ordering Document.

3.3 **Restrictions on Use.** Customer may only use the Supported Software and Documentation for Customer's internal business purposes. Customer may not modify, adapt, create derivative works of, sublicense, lease, rent, timeshare, loan, distribute, or otherwise transfer or allow a third party to use the Supported Software or Documentation. Customer may not reverse engineer, decompile or disassemble, or otherwise attempt to derive the Source Code for any part of the Supported Software for which Rundeck has not expressly provided the Source Code for Customer's use. Customer will not remove any proprietary notices or trademarks, logos or other branding ("Marks") of Rundeck from the Supported Software or Documentation. These General Terms do not permit Customer to distribute any product or service using Rundeck names or service marks. Rundeck shall retain title to all copies of the Supported Software provided to Customer or made by Customer. There are no implied rights or licenses in this Agreement.

4. **FEES AND CHARGES, PAYMENT TERMS.** Unless otherwise agreed in the Ordering Documents, Rundeck shall invoice Customer for all fees in advance, and Customer shall pay all fees within thirty (30) days after receiving an invoice. Payments shall be made with US dollars. All fees are quoted exclusive of taxes. Customer is responsible for all taxes, including VAT, sales and use taxes. Customer is not responsible for taxes based upon Rundeck's net income. Unless otherwise stated in these General Terms, fees and charges are non-cancelable and non-refundable.

5. **SUPPORT AND MAINTENANCE.** During the Term, Rundeck shall provide support and maintenance for the Supported Software pursuant to the URL stated in a valid Ordering Document. The number of Users eligible to receive Support Services is stated in the Ordering Document. Rundeck is not required to provide any other services.

6. **WARRANTIES AND DISCLAIMERS.**

6.1 **Warranties.** During the Term Rundeck warrants that the Supported Software, when used as permitted under these General Terms and the Documentation, will operate in all material aspects as described in the Documentation under normal reasonable use. The foregoing warranty will not apply to any Supported Software that has been modified or extended by anyone other than Rundeck. Rundeck does not warrant the Customer's use of the Supported Software will be error-free or uninterrupted. Customer's exclusive remedy for a breach of this limited warranty is to return any allegedly defective Supported Software, and Rundeck, at its option, will replace the Supported Software or refund the pro-rata portion of any prepaid fee for the Supported Software for the remainder of the Term.

6.2 **Disclaimer of Warranties.** Except for the express warranties in section 6.1 the supported software is provided "as is" and Rundeck disclaims all other representations or warranties, express, implied or statutory, regarding the Supported Software or other materials or services supplied by Rundeck or its resellers, including any warranties of merchantability, fitness for a particular purpose, title and non-infringement of third party rights or any warranties arising from usage of trade, course of dealing or course of performance. customer acknowledges that it has relied on no warranties other than the express warranties in this agreement.

7. **INDEMNIFICATION.** Rundeck will indemnify, defend and hold harmless, at its own expense, any action against Customer brought by a third party to the extent that the action is based upon a claim that the Supported Software infringes any patents, copyrights or misappropriates any trade secrets recognized as such under the Uniform Trade Secret law or its equivalent. The foregoing obligation is conditioned upon Customer notifying Rundeck promptly in writing of such action, Customer giving Rundeck sole control of the defense thereof and any related settlement negotiations, and Customer cooperating and, at Rundeck's request and expense, assisting in such defense. If the Supported Software becomes, or in Rundeck's opinion is likely to become, the subject of an infringement claim, Rundeck may, at its option and expense, either: (a) procure for Customer the right to continue using the Supported Software; (b) replace or modify the Supported Software so that it becomes non-infringing; or (c) accept return of the Supported Software and give Customer a refund for the license fees paid by Customer during the twelve (12) months prior Customer notifying Rundeck of the claim. Notwithstanding the foregoing, Rundeck will have no obligation under this Article 7 or otherwise with respect to any infringement claim based solely upon: (i) any use of the Supported Software not in accordance with this Agreement or for purposes not intended by Rundeck; (ii) any use of the Supported Software in combination with other products, equipment, software, or data not supplied by Rundeck, where such combined use is not reasonably foreseeable by Rundeck; (iii) any use of any release of the Supported Software other than the most current release made available to Customer; or (iv) any modification of the Supported Software by any person other than Rundeck. **THIS**

**SECTION 7 STATES RUNDECK'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.**

**8. LIMITATION OF LIABILITY. EXCEPT AS OTHERWISE EXPRESSLY PROHIBITED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING ANY LOST DATA OR LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS OTHERWISE PROHIBITED BY LAW, AND EXCLUDING LIABILITIES ARISING OUT OF CUSTOMER'S BREACH OF ARTICLE 3 (PROPRIETARY RIGHTS, OWNERSHIP, LICENSE GRANT AND RESTRICTIONS), ARTICLE 4 (FEES AND CHARGES, PAYMENT TERMS), ARTICLE 9 (CONFIDENTIALITY) OR ARTICLE 11 (GENERAL) RUNDECK'S AND CUSTOMER'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE SUPPORTED SOFTWARE, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF LICENSE FEES PAID BY CUSTOMER TO RUNDECK IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE EXISTENCE OF MULTIPLE CLAIMS WILL NOT EXPAND THE FOREGOING LIMIT. THE PARTIES ACKNOWLEDGE THAT THE LICENSE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT RUNDECK WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON LIABILITY. THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THIS SECTION WILL APPLY EVEN IF AN EXCLUSIVE REMEDY UNDER THIS AGREEMENT HAS FAILED OF ITS ESSENTIAL PURPOSE.**

**9. CONFIDENTIALITY. Obligations of Confidentiality.** By virtue of this Agreement, the Parties may be exposed to or provided with certain Confidential Information of the other Party. Each Party will protect the other's Confidential Information from unauthorized dissemination or use by treating such Confidential Information with the same degree of care that each such Party uses to protect its own Confidential Information of like importance, but in no event less than a reasonable amount of care. Neither Party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement and as may be required to report to its legal and financial advisors, and regulators. Except as otherwise expressly set forth in this Agreement, neither Party will disclose to third parties the other's Confidential Information without prior written consent of the disclosing Party. Each Party shall cause their respective employees and personnel to be bound in writing by obligations of confidentiality at least as restrictive as those set forth in this Agreement. The responsibilities under this Article 9 shall continue during the term of this Agreement and for the longer of (i) with regard to Confidential Information that is entitled to protection as a trade secret under applicable law, for so long as such information remains entitled to such protection, and (ii) with regard to all other Confidential Information, for so long as the disclosing Party continues to use reasonable efforts to maintain the confidentiality of such information in its possession. A Party may seek injunctive relief or specific performance to enforce its rights under this Article 9 (Confidentiality).

**10. TERM AND TERMINATION.**

10.1 **Term.** The Term shall commence on the date stated in an Ordering Document(s) and continue for the period of time, including any renewal term(s), stated in therein.

10.2 **Termination.** Customer's right to use the Supported Software shall terminate upon the termination or expiration of the applicable Ordering Documents. Either Party may terminate this Agreement(s) in the event a Party materially breaches the Agreement and fails to cure within thirty (30) days of the receipt of written notice of such breach, except Customer shall not be entitled to 30 day cure period for any non-remediable breach. Notwithstanding the foregoing, Customer's failure to pay any portion of the fees or charges within fifteen (15) days after such fees or charges are due is a material breach, and Rundeck may, without notice, terminate the Ordering Documents and immediately suspend or terminate Customer's right or access to the Supported Software. Each Ordering Document must be independently terminated in writing.

10.3 **Effects of Termination.** Upon termination or expiration of an Ordering Document and/or Agreement for any reason, any fees and charges owed to Rundeck before such termination or expiration will be immediately due and payable, all license rights granted herein will immediately cease, and Customer must immediately discontinue all use of the Supported Software, remove all Customer data and information from the Supported Software, and erase and remove all copies of the Supported Software from Customer's computers. Upon Rundeck's written request, Customer shall provide in writing to Rundeck an officer certification that it has fully complied with these requirements.

10.4 **Survival.** Article 1 ("Definitions"), Section 3.1 ("Rundeck Property and Ownership"), Section 3.2 ("Restrictions on Use"), Article 4 ("Fees and Charges, Payment Terms"), Section 6.2 ("Disclaimer of Warranties"), Article 7 ("Indemnification"), Article 8 ("Limitation of Liability"), Article 9 ("Confidentiality"), Section 10.2 ("Termination"), Section 10.3 ("Effects of Termination"), Section 10.4 ("Survival") and Article 11 ("General") will survive expiration or termination of this Agreement for any reason.

## 11. **GENERAL.**

11.1 **Compliance with Export Control and Economic Sanctions Laws.** As required by the laws of the United States and other countries, Customer represents and warrants that Customer: (i) understands that the Supported Software and its components may be subject to export controls under the U.S. Commerce Department's Export Administration Regulations ("EAR") and economic sanctions under the regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"); (ii) is not located in a prohibited destination country under the EAR or OFAC regulations; (iii) will not export, re-export, or transfer the Software to any prohibited destination or persons or entities on the U.S. Consolidated Screening List, or any similar lists maintained by other countries, without the necessary export license(s) or authorization(s); (iv) will not use or transfer the Software in connection with any nuclear, chemical or biological weapons, missile technology, or military end-users or end-uses unless authorized by the relevant

government agency by regulation or specific license; (v) understands and agrees that if Customer is in the United States and exports or transfers the Software to eligible end users, Customer will satisfy any applicable reporting requirements under the EAR and OFAC regulations, and (vi) understands that countries including the United States may restrict the import, use, or export of encryption products (which may include the Software and the components) and agrees that Customer shall be solely responsible for compliance with any such import, use, or export restrictions. CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS RUNDECK FROM AND AGAINST ANY VIOLATION OF SUCH LAWS OR REGULATIONS BY CUSTOMER OR ANY OF ITS AGENTS, OFFICERS, DIRECTORS, OR EMPLOYEES.

**11.2 Affirmation of License Compliance, Confirmation of Number of Users and Rundeck Server Instances.** Upon Rundeck request, and prior to any renewal Term, Customer shall certify in writing its compliance with the license grant, including that the number of Rundeck Server Instances and number of authorized Users aligns with the use rights granted in the Ordering Documents. In the event Customers actual use exceeds the use rights granted in the Ordering Document, then the license grant for any renewal Term and the corresponding fees and charges shall be based upon such use certification.

**11.3 U.S. Government End Users.** If Customer is a branch or agency of the United States Government, the following provision applies. The Supported Software contains "commercial computer software" as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.11 (Technical Data) of the Federal Acquisition Regulations and its successors. If acquired by or on behalf of any agency within the Department of Defense, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

**11.4 Governing Law and Venue.** This Agreement will be governed by the laws of the State of California as such laws apply to contracts between California residents performed entirely within California. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act do not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement must be brought in a federal court in the Northern District of California or in state court in San Francisco County, California, and each party irrevocably submits to the jurisdiction and venue of such court in any such action or proceeding.

**11.5 Injunctive Relief, Specific Performance.** The Parties agree that monetary damages may not be an adequate remedy if Customer violates Article 3 (Proprietary Rights, Ownership, License Grant and Restrictions) or either Party violates Article 9 (Confidentiality), and that the non-breaching Party will suffer irreparable damage, and therefore, either Party, in addition to any other legal or equitable remedy, shall be

entitled to seek an injunction or similar relief against such breach or threatened breach.

11.6 **Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of the General Terms or an Ordering Document on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

11.7 **Severability.** If at any time any provision of these General Terms is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity, or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby, and the remainder of the provisions of the General Terms shall remain in full force and effect.

11.8 **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably or untimely withheld). Notwithstanding the foregoing, either party may assign the Ordering Documents and General Terms in their entirety, without consent of the other, to its Affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

11.9 **Construction.** The section headings are for convenience and are not to be used in interpreting the General Terms. As used herein, the word “including” means “including but not limited to”. In constructing the General Terms no presumption shall operate in favor of or against any Party as a result of its counsel’s role in drafting the terms and provisions hereof.

11.10 **Entire Agreement.** These General Terms combined with our without an Ordering Document(s) constitute the entire agreement between the Parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral, relating to such subject matter, other than the Nondisclosure Agreement between the Parties. These General Terms may be amended only by a written document signed by both Parties.

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