

# Sonar RUM Services Terms of Use

By using Constellix Sonar RUM beacon services including the Constellix Sonar web console, API, mobile app, or Sonar Lite browser extension; you agree to the following terms of use and any policies, guidelines, or amendments thereto that may be presented to you from time to time.

## Introduction

Constellix Sonar RUM Beacons are software agents that execute a series of small file requests when you connect and interact with the Internet. When you use the Sonar RUM Beacon services, in say the Sonar Lite extension, it causes your web browser to request certain test files from a variety of different sources that house content or information about your browser's connection to websites you visit. The Sonar Lite extension uses this data to determine how fast a web page and its components load on a client's browser to provide web developers with information to improve speed and reliability, and to detect and fix errors. The following details make up the terms of use of these services, referred to as the "Agreement" or "TOS Agreement" from this point forward.

## Definition of Terms

**"SONAR RUM BEACON"** is a server running a software agent that establishes communication between a customer's web browser or server, executes tests on Internet performance, and collects this data to share with Constellix services. The tests measure network availability and performance to various endpoints.

“**RUM DATA**” defines all information and data collected by, and shared through Constellix to you through the Sonar Lite Extension and other Constellix Sonar RUM services. This includes connection related data, webpage loading statistics and content, and internet performance metrics.

“**SONAR LITE EXTENSION**” is the browser extension tool provided by Constellix that delivers Real-User Monitoring (RUM) data to any customer which has installed the extension in their web browser.

“**SERVICES**” means collectively the Constellix Sonar RUM Beacon services, RUM Data collected, and Sonar Lite web browser extension made available by Constellix.

“**CUSTOMER**” refers to any user of Constellix Sonar RUM services.

“**SITE**” refers to any webpage, mobile application, browser or other internet application under the customer’s control on which the customer has deployed the Sonar RUM Beacon.

“**VISITORS**” refers to other internet consumers which visit any customer sites.

## Ownership; License Grant; Restrictions

As between the parties, Constellix shall own and retain all rights, title and interest in and to the SERVICES.

### Sonar Lite Browser Extension and RUM Beacon License

Subject to the terms and conditions of this Agreement, including the restrictions set forth in the section below, Constellix grants to you a non-exclusive, non-transferable,

non-sublicensable, limited term license to install, copy and use the Sonar Lite Extension and Sonar RUM Beacon solely for internal purposes during the Term.

## RUM Data License

Subject to the terms and conditions of this Agreement, including the restrictions set forth in the sections below, Constellix grants to you a non-exclusive, non-transferable, non-sublicenseable, license to use, copy, or make derivative works of the Sonar RUM Data solely for internal purposes during the Term.

## Restrictions

You agree that you will not: (i) disclose or transmit the Sonar RUM Data, or any derivatives thereof, to third parties without the express written consent of Constellix; (ii) copy, modify, adapt, translate or otherwise create derivative works of the Sonar Lite Extension or the Constellix Sonar RUM Beacon except as expressly provided herein; (iii) reverse engineer the Sonar Lite Extension; (iv) rent, lease, sell, assign or otherwise transfer rights in or to the Sonar Lite Extension or the Sonar RUM Data; (v) use the Services to help develop any products or services, without prior written approval from Constellix; (vi) remove any proprietary notices or labels on the Services; or (vii) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Services. You further agree to use the Services in accordance with Constellix's [Terms of Service](#) policy.

## RUM Data Collection and Updates

You accept and agree that your use of the SERVICES will necessarily result in the creation of information about websites you or a VISITOR have visited, Internet performance information (e.g., performance timing data associated with each page request), and geolocation information (collectively “RUM DATA”). You agree that Constellix will retain and use the RUM DATA in accordance with its [Privacy Policy](#).

CONSTELLIX HAS ESTABLISHED A GLOBAL NETWORK PRESENCE AND MAY PROCESS RUM DATA ON OUR SERVERS IN MANY COUNTRIES AROUND THE WORLD, INCLUDING THE UNITED STATES. YOU AGREE THAT WE MAY PROCESS SONAR RUM DATA ON A SERVER LOCATED OUTSIDE THE COUNTRY WHERE YOU RESIDE.

YOU ADDITIONALLY ACKNOWLEDGE AND AGREE THAT THE SONAR LITE EXTENSION MAY FROM TIME TO TIME AUTOMATICALLY DOWNLOAD AND INSTALL SOFTWARE UPDATES, FIXES, PATCHES AND ENHANCEMENTS.

## Customer Obligations if Deploying Sonar RUM Beacon on Sites

As a CUSTOMER, you agree to comply with all applicable laws, policies, and regulations relating to the collection of RUM DATA from VISITORS, including obtaining any necessary consents from VISITORS, and it will not (nor will it allow any third party to) use the Sonar RUM SERVICES to track or collect any data that personally identifies an individual (such as a name or physical address) unless it has obtained any necessary consents from VISITORS.

The CUSTOMER will institute, publish, and abide by an appropriate privacy policy in connection with its SITES. This privacy policy must adequately disclose to VISITORS

that the CUSTOMER uses SONAR RUM BEACONS in connection with its SITES and how those SONAR RUM BEACONS are used to collect and process RUM DATA. In connection with the privacy policy, the CUSTOMER is encouraged to provide VISITORS with the following link (or any subsequent link(s) that Constellix provides) detailing how Constellix will retain and use the RUM DATA: [Privacy Policy](#)

## DISCLAIMER

TO THE MAXIMUM EXTENT PERMITTED BY LAW, CONSTELLIX HEREBY DISCLAIMS ALL WARRANTIES, BOTH EXPRESSED AND IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CONSTELLIX DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE COMPLETENESS, ACCURACY OR SUITABILITY OF THE SERVICES OR RUM DATA. CONSTELLIX SHALL HAVE NO LIABILITY RESULTING FROM CUSTOMER'S USE OF OR RELIANCE UPON THE SERVICES OR RUM DATA. ANY USE OR RELIANCE BY THE CUSTOMER OF THE SERVICES OR RUM DATA WILL BE AT CUSTOMER'S DISCRETION AND SOLE RISK, AND THE CUSTOMER WILL BE SOLELY RESPONSIBLE FOR THE RESULTS OF SUCH ACTIONS.

## LIMITATION OF REMEDIES

TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL CONSTELLIX, ITS AFFILIATES, OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, REPRESENTATIVES OR AGENTS, OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, HEIRS, OR ESTATES, BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT

LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOST DATA, LOSS OF BUSINESS INFORMATION, HARM TO REPUTATION, AND THE LIKE), OR ENHANCED, EXEMPLARY OR PUNITIVE DAMAGES, ARISING IN ANY WAY OUT OF OR CONNECTED WITH THE SERVICES, OR THE POSSESSION, USE, INABILITY TO USE, OR MALFUNCTION OF THE SERVICES, EVEN IF CONSTELLIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS.

## Termination of Agreement; Withdrawal of Consent

If the CUSTOMER breaches any material term of this Agreement, or no longer agree to the terms of this Agreement, the Agreement shall immediately terminate and You shall immediately, fully, completely and irretrievably remove the Sonar RUM Beacon or Sonar Lite Extension, and any other SERVICES. More information on removing the software can be found at <http://help.constellix.com/>. All provisions relating to confidentiality, proprietary rights, and non-disclosure shall survive the termination of this Agreement.

## Governing Law

This Agreement shall be governed by the laws of the State of Virginia without regard to its conflicts of law provisions. Neither the Uniform Computer Information Transaction Act (“UCITA”) nor the provisions of the United Nations Convention on the International Sale of Goods shall apply to this Agreement. Any dispute arising under this agreement shall be resolved exclusively by the state and federal courts located in the State of Virginia, and as the CUSTOMER, you hereby consent to the exclusive personal jurisdiction of, and venue in, such courts.

## Severability

If any provision of this Agreement are determined by a court to be invalid, illegal or unenforceable, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions of the relevant agreement, and each provision, or portion thereof, is hereby declared to be separate, severable and distinct and the parties shall use their best efforts to agree upon a substitute provision that comports as closely as possible with the intent and effect of the stricken provision, failing which the court shall construe the relevant agreement to as closely as possible achieve the intention of the parties had the stricken provision remained.

## Entire License and Waiver

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be waived or modified except in writing by a duly authorized Constellix representative.