

Terms and Conditions

1 Definitions

1.1 In this Agreement, the following words will have the following meanings:

“Business Day” means any day which is not a Saturday, a Sunday or a bank or public holiday in England;

“Confidential Information” means the provisions of this Agreement and in relation to either Party, all information, in any form or medium, which is secret or otherwise not publicly available (either in its entirety or in the precise configuration or assembly of its components), including commercial, financial, marketing or technical information, accounts, business plans, business methods, strategies and financial forecasts, tax records, correspondence, designs, drawings, manuals, specifications, customer or sales or supplier information, technical or commercial expertise, software, formulae, processes, methods, knowledge, know-how and trade secrets, whether disclosed orally, in writing or by electronic means, before or after the date of this Agreement;

“Customer User” means any employee, agent and/or consultant of the Customer who is authorised by the Customer to access and use the Service;

“Force Majeure” means any event outside the reasonable control of either Party affecting that Party’s ability to perform any of its obligations (other than payment) under this Agreement including act of God, fire, flood, lightning, illegality, compliance with any law or governmental order, rule, regulation or direction, war, revolution, act of terrorism, riot or civil commotion, strikes, lock outs and industrial action, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services including telecommunications and internet services;

“Intellectual Property Rights” means any and all rights in and to any patent, copyright, database, design, trade mark, service mark, domain name, know-how, utility model, business method or process, whether such right is registered or not, or where relevant, any application for any such right, or other industrial or intellectual property right anywhere in the world;

“Okeva Portal” means the online platform (as may be modified by Okeva from time to time) through which Customer Users can access their metrics/reporting data and manage their cyber security strategy;

“Party” or “Parties” means Okeva and/or the Customer as the context may require;

“Service Specification” means the specification set out as updated and amended from time to time by Okeva to reflect changes, enhancements and improvements that it makes to the Okeva portal and technology;

“System” means an internet-accessible computer system as identified by the IP address or hostname assigned to it.

“Weakness” means a particular configuration, software patch level, or application code deployment which is perceived as likely to, or can be demonstrated to reduce or undermine the security of a System, or the information stored, processed or transmitted by it;

“Year” means each period of 12 months from the commencement date.

1.2 Drafting Conventions

(a) The headings in this Agreement are inserted for convenience only and shall not affect the interpretation or construction of this Agreement.

(b) Words expressed in the singular shall include the plural and vice versa. Words referring to a particular gender include every gender. References to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity.

(c) The words “other”, “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

(d) All references in this Agreement to Clauses are to the Clauses in these Terms and Conditions unless otherwise stated.

2 The Service

2.1 In consideration of and subject to the payment in full by the Customer of the Monthly Fee based on a 12 or 24 month agreement and subject to compliance by the Customer with the provisions of this Agreement, Okeva agrees to provide the Customer with the Services.

2.2 The Customer may only allow the permitted number of Customer Users set out in the Commercial Terms (as amended by the Parties from time to time in writing) to access and use the Service and the Customer must ensure that at no time during this Agreement is this maximum number of permitted Customer Users exceeded;

2.3 The Customer is responsible for ensuring that only employees, agents and consultants authorised and permitted by the Customer can access and use the Service. Only employees, agents and consultants of the Customer are entitled to be Customer Users.

2.4 The Customer shall be responsible for all access to and use of (whether authorised or otherwise) the Service.

3 Customer systems and customer responsibilities

3.1 In order for Okeva to provide the Services it will use penetration testing techniques on the Systems in accordance with the Service Specification to try and identify Weaknesses.

3.2 The Customer shall perform or comply with the Customer Responsibilities and agrees that Okeva's provision of the Service is dependent on the Customer performing or complying with the Customer Responsibilities.

3.3 The Customer permits Okeva to scan the Customer's systems and networks (including without limitation the Systems and any applications or data held on such network and systems) for the purposes of the Computer Misuse Act 1990 (as updated, replaced and amended from time to time) and represents it has authority and will have authority at all times during this Agreement, to give such permission.

3.4 The Customer undertakes that it has and will have at all times during this Agreement, all necessary permissions, authorisations and consents from the owners or licensors of the Customer's systems and networks (including without limitation the Systems) to enable the Services to be provided to the Customer.

3.5 The Customer undertakes that where it uses the Service in any jurisdiction or territory other than the UK, it shall be wholly responsible for ensuring that the use of the Service in that jurisdiction or territory complies with applicable laws or regulation.

3.6 The Customer shall indemnify and keep indemnified Okeva against all losses, costs, claims, demands, damages and expenses (each whether direct or indirect) arising out of or in connection with a breach of any of the provisions of this Clause 3.

4 Intellectual Property

4.1 Okeva has, at its sole cost, created, licensed and developed the Services and the technology and systems that form part of the Services.

4.2 As between the Parties, all Intellectual Property Rights in the Services and the technology and systems forming part of the Services belong to Okeva.

4.3 This Agreement shall not constitute a transfer of any Intellectual Property Rights in the Services or technology or systems that form part of the Services to the Customer, nor grant the Customer any rights to the Services or technology or systems that form part of the Services, (including any Intellectual Property Rights in the same) other than as set out in Clause 2.

5 Payment terms

5.1 The Monthly Fee under this Agreement is payable by the Customer in full and cleared funds on the Commencement Date and on the first day of each Month thereafter, in advance of any access to the Services.

5.2 The Monthly Fee payable under this Agreement is exclusive of value added, sales, withholding or any similar tax, import or customs duties.

5.4 If any sum payable under this Agreement is not paid when due then until payment is made in full Okeva shall be entitled to:

(a) suspend access to the Services

6 Confidentiality

6.1 Each Party shall keep and procure to be kept secret and confidential all Confidential Information of the other Party disclosed or obtained as a result of the relationship of the Parties under this Agreement and shall not use nor disclose the same except in accordance with Clause 2 or with the prior written consent of the other Party. Where disclosure is made by a Party of the other Party's Confidential Information, to any employee, agent or consultant, it shall be done subject to obligations equivalent to those set out in this Agreement. Each Party agrees to use its best endeavours to procure that any such employee, agent or consultant complies with such obligations provided that each Party shall continue to be responsible to the other Party in respect of any disclosure or use of such Confidential Information by a person to whom disclosure is made.

6.2 The obligations of confidentiality in this Clause 6 shall not extend to any information which the other Party can show:

(a) is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement; or

(b) was in its written records prior to the date of this Agreement and not subject to any confidentiality obligations; or

(c) was independently disclosed to it by a third party entitled to disclose the same; or

(d) is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.

6.3 The Customer shall ensure that the Customer Users are aware of and undertake to comply with the obligations of confidentiality set out in this Clause 6.

6.4 During this Agreement, Okeva shall be entitled to describe the Customer as a customer of this Service and include its name on marketing and promotional materials. In addition and on reasonable notice the Customer may be requested to act as a referee for Okeva in respect of prospective customers of Okeva for the Service.

6.5 This Clause 6 shall survive termination of this Agreement.

7 Warranties

7.1 Subject to Clauses 7.2 and 7.3 Okeva warrants that the Service shall comply in all material respects with the Service Specification.

7.2 Okeva does not warrant that use of or access to the Services will be uninterrupted or error free or that it will be continuously available.

7.3 The Customer acknowledges that the Service may not identify all Weaknesses that can impact or affect systems. Okeva shall not be responsible for any damage or loss that the Customer or any Customer User may suffer, whether directly or indirectly as a result of a Weakness that is not identified by the Service.

8 Limitation of Liability

8.1 Nothing in this Agreement shall exclude or limit:

(a) either Party's liability for death or personal injury caused by that Party's negligence, fraud or fraudulent misrepresentation, or any liability which cannot be legally excluded or limited;

(b) either Party's liability in respect of any breach of Clause 6; or

(c) the Customer's liability for a breach of Clause 2 or to pay the Monthly Fee.

8.2 Subject to Clause 8.1, Okeva shall not be liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise for any:

(a) loss of profit;

(b) loss of data;

(c) loss of revenue,

(d) loss of connectivity or degradation of network bandwidth;

(e) loss of system availability or access to systems;

(f) claims by any third party licensors of the Customer's systems and networks (including without limitation the Systems);

in each case whether direct or indirect, or for any indirect, special or consequential loss or damage, howsoever arising in connection with this Agreement.

8.3 Subject to Clauses 8.1 and 8.2, the maximum aggregate liability of Okeva to the Customer for all claims arising in connection with this Agreement in each Year whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise shall be limited to 125% of the total sum of the Annual Fees paid during the Year in which the claim arose.

9 Term, Termination And Suspension

9.1 Subject to Clause 9.2, either Party may terminate this Agreement if the other party commits a material breach of this Agreement that is capable of remedy and which the party in breach has not remedied within 30 days of a receipt of a written notice identifying the breach.

9.2 Okeva may terminate this Agreement immediately and/or suspend the Service without notice if the Monthly Fee has not been received by the due date or if the provision of the Service is found to be unlawful in the jurisdiction or territory in which it is used.

9.4 Upon termination of this Agreement for any reason whatsoever:

(a) the relationship of the Parties shall cease and all rights granted under this Agreement to access and use the Service shall cease immediately;

(b) any provision which is expressly or by implication intended to come into force or remain in force on or after termination will continue in full force and effect.

9.5 The termination of this Agreement shall be without prejudice to the rights and remedies of either Party which may have accrued up to the date of termination.

10 Force Majeure

10.1 A Party will not be in breach of this Agreement nor liable for any failure or delay in performance of any obligations (except for those in relation to payment) under this Agreement, and the date for performance of the obligations affected will be extended accordingly, as a result of Force Majeure, provided that such Party shall:

(a) promptly notify the other Party in writing of the matters constituting the Force Majeure and shall keep that Party fully informed of their continuance and of any relevant change of circumstances whilst such Force Majeure continues; and

(b) take all reasonable steps available to it to minimise its effects on the performance of its obligations under this Agreement.

10.2 If Force Majeure continues for longer than 30 days' either Party may, whilst the Force Majeure continues, immediately terminate this Agreement by notice in writing to the other.

11 Parties

11.1 The Customer may not assign, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement.

11.2 A person who is not a Party to this Agreement has no rights (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of this Agreement.

11.3 Neither Party may pledge the credit of the other Party nor represent itself as being the other Party nor an agent, partner, employee or representative of the other Party and neither Party may hold itself out as such nor as having any power or authority to incur any obligation of any nature, express or implied, on behalf of the other.

11.4 Nothing in this Agreement, and no action taken by the Parties pursuant to this Agreement creates, or is deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties.

12 Construction

12.1 Entire Agreement

(a) This Agreement contains the entire agreement between the Parties in relation to its subject matter and supersedes any prior arrangement, understanding written or oral agreements between the Parties in relation to such subject matter.

(b) The Parties acknowledge that this Agreement has not been entered into wholly or partly in reliance on, nor has either Party been given, any warranty, statement, promise or representation by the other or on its behalf other than as expressly set out in this Agreement.

(c) Each Party agrees that the only rights and remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for

breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind this Agreement which it might otherwise have had in relation to them.

(d) All warranties, conditions, terms and representations not set out in this Agreement whether implied by statute or otherwise are excluded to the extent permitted by law.

(e) Nothing in this Clause 12.1 will exclude any liability in respect of misrepresentations made fraudulently.

12.2 Severability of provisions

(a) If at any time any part of this Agreement is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.

(b) If any void or unenforceable part of this Agreement would be valid and enforceable if some part of it were deleted, the part shall apply with the minimum modification necessary to make it valid and enforceable.

12.3 Waiver. The rights and remedies of either Party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by that Party to the other nor by any failure of, or delay in ascertaining or exercising any such rights or remedies. Any waiver of any breach of this Agreement shall be in writing. The waiver by either Party of any breach of this Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

13 Contract Administration

13.1 Variation. No purported alteration or variation of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is executed by each of the Parties to this Agreement.

13.2 Language. This Agreement is entered into in the English language. All amendments or correspondence concerning or relating to this Agreement and all notices given and all documentation to be delivered by either Party to the other under this Agreement shall be written in the English language or shall be accompanied by an English translation prepared by such person or body as the Parties shall have approved in advance. If there is

any conflict in meaning between the English language version and any version or translation of this Agreement in any other language the English version shall prevail.

13.3 Notices

(a) Any notices sent under this Agreement must be in writing, sent and delivered by email to hello@okeva.co.uk

(b) Notices shall be served to the addresses set out above or to such other email address and/or address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement. The deemed time of delivery of notice by email shall be 9:00am recipient's time on the first Business Day after sending and proof of service of email despatched in a legible and complete form to the correct email address without any error message.

14 Applicable law and jurisdiction

14.1 This Agreement and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature) shall be governed by, and construed in accordance with, the laws of England.

All disputes or claims arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the English Courts to which the Parties irrevocably submit.