

Terms and Conditions

Latest update: February 2024

These terms and conditions ("**Terms**") entered into hereunder shall govern the relationship between you ("**you**" or "**Customer**") and us, OP Innovate Ltd., with registered address on _____ ("**Company**", "**OP**", "**we**", "**our**" or "**us**"). Each of Company and Customer may be referred to as "**Party**" and together, the "**Parties**".

By accessing the Services, Customer agrees to the Terms and Privacy Policy. If you do not agree to these Terms, you should stop using the Services immediately.

1. Definitions & Interpretation

1.1 In these Terms, words and expressions have the following meanings, unless otherwise stated:

"**Acceptable Use Policy**" shall have the meaning set out under Section 4.

"**Applications**" are the web application owned and operated by the Customer (e.g. websites) which the Services are applied to.

"**Confidential Information**" has the meaning ascribed to it under Section 9.1.

"**Scan**" means the automatic penetration testing solution for Customer's Applications.

"**Purchase Order**" means the Purchase Order entered into between OP and the Customer for the provision of the Services.

"**Services**" means the services described in Section 2.2.

"**Subscription Fee**" means fees payable by Customer to Company in consideration for the Services.

"**Subscription Period**" means the terms of providing the Services as set forth in Section 13.1.

"**User**" means a user authorized by Customer to access the Services.

"**Force Majeure Event**" has the meaning ascribed to it under Section 14.

"**Applicable Laws**" means any applicable statutes, laws, ordinances, orders, judgments, decrees, rules or regulations issued by any government authority, and any judicial or administrative interpretation of any of these;

2. The Services

2.1 These Terms pertain to the content, products and services developed and provided by OP to Customer. The Terms seek to regulate Customer's access to and use of the Services.

2.2 The Services consist of subscription-based access to the Scan. The subscription includes (i) the ability to scan Applications to detect security vulnerabilities; (ii) a vulnerability dashboard; and (iii)

vulnerability reports (collectively, the "**Services**").

- 2.3 Additional features, number of Users and Applications, as well as price, and level of technical support may vary depending on the subscription.
- 2.4 The permitted number of Users and Applications is specified in the Purchase Order and depends on the selected subscription. Additional Users may be added upon written agreement between the Parties.
- 2.5 User subscriptions cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users.
- 2.6 User subscriptions may be assigned to both Customer's employees and third parties such as consultants, outsourcing providers, etc. provided however always that the Services are used for the Customer and in the Customer's own internal business.
- 2.7 Subject to payment of the Subscription Fees, the Company will deliver the Services to the Customer during the Subscription Period.
- 2.8 Customer acknowledges that from time to time, the Company may apply upgrades to the Services and that such upgrades may result in changes to the functionality of the Services. No upgrade shall however disable, delete or impair the functionality provided through the Services.

3. Customer Responsibilities

- 3.1 Customer shall provide Company with all information, access and cooperation reasonably necessary to enable Company to provide the Services, including but not limited to information required to verify the Customer's ownership of the Applications subject to the Services.
- 3.2 Customer is responsible for identifying and authenticating all Users of the Services and to ensure Users' compliance with these Terms.
- 3.3 Customer shall use reasonable efforts to prevent unauthorized access to or use of the Services and notify Company promptly of any such unauthorized access or use.

4. Acceptable Use

- 4.1 When using the Services, Customer agrees to use the Services only for the purposes permitted by (a) these Terms and (b) Applicable Laws. Customer must, in addition, comply with the following restrictions: Save to the extent expressly permitted by Applicable Law, Customer shall not: (i) permit any third party who is not a User to access the Services; (ii) copy, frame or mirror any part or content of the Services, other than for its own internal business purposes; (iii) reverse engineer the Services; or (iv) access the Services in order to build a competitive product or service, (v) sell, resell or sublicense the Services, (vi) scan other Applications than the ones permitted in the Purchase Order, whether that being own or third parties' applications.

5. Fees and Payments

- 5.1 Customer shall pay a Subscription Fee as set out in the Purchase Order. All Subscription Fees are quoted and payable in USD or any currency specified in the Purchase Order. Fees paid are non-refundable.
- 5.2 The Company reserves the right to change current Subscription Fees. Any changes to Subscription Fees will prior hereto be notified to Customer directly and will take effect at the beginning of a new Subscription Period.
- 5.3 All amounts due under these Terms and/or the Purchase Order from Customer to Company shall be paid in full without any set-off, counterclaim, deduction or withholding.
- 5.4 All fees are collected through an invoice as agreed between the Parties in the Purchase Order. The customer must provide the Company with valid and updated invoicing/payment information when signing up for the Services.

6. Free Trial

- 6.1 Customer's first Scan shall be free of charge ("**Free Trial**"). During the Free Trial, the Company will make Services available to Customers on a trial basis free of charge. If Customer does not want to continue the Services after the Free Trial, Customer must cancel the subscription before its expiry. If Customer does not cancel the subscription, OP will continue to provide Services subject to these Terms and charge a Subscription Fee in accordance with the Purchase Order.
- 6.2 During the free trial period, OP has no liability for the Services or Customer's use hereof. Customer must however indemnify OP without any limitation for any damages OP incurs resulting from Customer's use of the Services during the free trial period.

7. Suspension

- 7.1 If Customer does not comply with the Acceptable Use Policy, uses the Services illegally, or fails to pay the Subscription Fee, the Company reserves the right to suspend the Services with a 24-hour notice before suspension. Services will be re-instated, if/when it is documented that breach of the Acceptable Use Policy did not occur, or has been stopped, or payment has been made.

8. Intellectual Property Rights

- 8.1 All content and materials available through the Services, including but not limited to text, graphics, code, images, and logos are the intellectual property of OP and are protected by Applicable copyright and trademark Law.
- 8.2 These Terms do not grant Customer any ownership interest in or to such content or the Services, but only a limited right of use that is revocable in accordance with these Terms. OP does not grant any license or other rights to use any of its trademarks, service marks, copyrightable material or other intellectual property except as expressly provided in these Terms or as agreed to in writing.
- 8.3 In the event that a claim or suit is asserted or brought against the Customer alleging that the

Services infringe proprietary rights of a third party, the Customer shall provide OP written notice hereof. Upon notice, OP will take over the case and any associated costs. OP shall have an irrevocable right to complete the case at its own expense or enter a settlement regarding the alleged infringements.

- 8.4 OP is furthermore entitled to replace any claimed infringed element of the Services with an alternative element of a similar or lesser quality or carve out the alleged infringed element and only proportionately reduce the Subscription Fee, if the element is of a material character.
- 8.5 Except for the limited rights expressly granted to Customer hereunder, OP reserves all intellectual property rights, title and interest in and to the Services.
- 8.6 OP grants Customer a nonexclusive, revocable user right to access and use the Services.

9. Confidentiality

- 9.1 "Confidential Information" means all information disclosed by either Party to the other Party, whether orally or in writing, that is made confidential by law or designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to OP or Customer; (ii) was known to OP or Customer prior to its disclosure without breach of any obligation owed to OP or Customer; (iii) is received from a third party without breach of any obligation owed to OP or Customer.
- 9.2 The Parties shall protect the confidentiality of Confidential Information and not disclose or use any Confidential Information of OP or Customer for any purpose outside the scope of these Terms.
- 9.3 A Party may disclose Confidential Information if it is compelled by law or the regulator, provided the compelled Party gives the other Party prior notice of such compelled disclosure (to the extent legally permitted).

10. Privacy and Security

- 10.1 During the term of engagement between the Parties, the Parties may exchange personal data required to administer the Parties' engagement. Both Parties shall comply with applicable data protection laws.
- 10.2 In the course of providing the Services, OP may see or access Customer's data which may include personal data. Any such access will be purely sporadic and incidental to the Services, and expectedly very limited in scope. OP shall not be allowed to access, collect, retain or process such personal data in any other way or for any other purpose than inherent to the provision of Services. It is the Parties' mutual understanding and intention that in these circumstances, OP is neither a data controller of such personal data that OP may incidentally access, nor a data processor instructed to process such personal data on behalf of the Customer.

11. Warranties, Exclusive Remedies and Disclaimer

- 11.1 OP warrants that: (i) it has validly entered into these Terms and has the legal power to do so; (ii) to its knowledge, the Services do not infringe upon any third party intellectual property rights; and (iii) it shall deliver the Services in accordance with these Terms ("**Service Warranty**").
- 11.2 The Service Warranty shall not apply if the breach has been caused by: (i) any unauthorized amendment to or use of the Services; or (ii) any non-compliance by Customer under these Terms.
- 11.3 OP disclaims any merchantability or fitness for a particular purpose, that the Services are uninterrupted or of satisfactory quality, timely or free from error, in each case to the maximum extent possible and permitted under Applicable Law.
- 11.4 OP disclaims that the Services will detect all web service vulnerability, including but not limited to, existing and/or potential vulnerabilities. The Services are provided on an effort basis and not as a performance commitment.
- 11.5 OP recommends that the Services first be applied in a staging environment. In any event, OP disclaims any losses caused by the Services and/or the Scan, both in the staging and the production environment.
- 11.6 Unless otherwise expressed under these Terms, OP expressly disclaims all warranties, guaranties, and conditions of any kind, whether express or implied.
- 11.7 Customer's exclusive remedy and OP's entire liability for a breach of the Service Warranty shall be re-performance or repair of the Services.
- 11.8 Except as expressly provided herein, each Party excludes all warranties, representations, terms, conditions or other commitments of any kind, whether express or implied, statutory or otherwise.

12. Limitation of Liability

- 12.1 The Parties are not liable for indirect damages under these Terms. Indirect damages are special, indirect, consequential, or incidental damages, including loss of data, loss of goodwill, loss of profit, loss of revenue, interruption of business, or losses resulting from viruses or any other consequence of using or downloading any third-party materials.
- 12.2 OP will not be liable for any damages arising from use of the Services, regardless of whether Services were applied in the production or staging environment.
- 12.3 OP will not be liable for any damages arising from OP being subject to hacking or any other cyberattack or virus.
- 12.4 The Parties' liability is not limited in relation to willful misconduct or gross negligence.
- 12.5 The Parties' maximum liabilities, whether in contract or tort, including indemnifications, shall be limited to the paid Subscription Fees within the last 12 months from the time when the claim arose.

13. Term and Termination

- 13.1 These Terms and Customer's subscription to the Services will be effective from the date set out in the Purchase Order and until termination of the Customer's subscription ("**Subscription Period**").
- 13.2 Customer may terminate this Agreement with one (1) months' notice. Already paid Subscription Fees are non-refundable.
- 13.3 A Party may terminate this Agreement for cause by notice in writing: (i) if the other Party is in material breach of these Terms, including - without limitation - by failing to comply with Applicable Law, and failing to cure such breach within thirty (30) days of receipt of written notice of such material breach from the non-breaching Party; or (ii) if the other Party becomes the subject of an insolvency event.

14. Force Majeure

- 14.1 Neither Party shall be responsible or liable for any failure or delay of performance under these Terms if caused by a force majeure event, such as an act of war, government restrictions or regulations including sanctions and trade embargos or any other event outside the reasonable control of the obligated Party ("**Force Majeure Event**"). If such event continues for more than thirty (30) days, either Party may terminate the Agreement upon written notice to the other Party. A Force Majeure Event shall not excuse a Party from meeting its payment obligations under these Terms.

15. Assignment

- 15.1 A Party may not assign or transfer these Terms without the prior written consent of the other Party, which it cannot unreasonably withhold.

16. Changes to Terms

- 16.1 OP reserves the right to change or update the terms contained in these Terms, or any other of OP's policies or practices, at any time, and will notify Customers via email of any such changes. Any changes or updates will be effective immediately. Customer's continued use of the Services constitutes agreement to abide by the terms as changed.

17. Governing Law; Dispute Resolution

- 17.1 These Terms and the performance under them shall be governed by and construed in accordance with the laws of the state of Israel.
- 17.2 In the event of any dispute or disagreement arising under or in connection with these Terms, such dispute or disagreement shall be resolved by the competent courts of Tel Aviv, Israel.

18. Miscellaneous

- 18.1 Each Party confirms that these Terms represent the entire understanding and constitutes the whole agreement between the Parties.

- 18.2 If any term, provision or part of these Terms is to any extent held invalid, void or unenforceable by a court of competent jurisdiction, the remainder of these Terms, as applicable, will not be impaired or affected thereby, and each term, provision and part will continue in full force and effect, and will be valid and enforceable to the fullest extent permitted by law.
- 18.3 OP may use the Customer's name(s) and logo(s) for publicity and marketing, including but not limited to customer cases on OP's website.
- 18.4 The Parties are independent contractors. These Standard Terms does not create a partnership, franchise, joint venture, agency, and fiduciary or employment relationship between the Parties.