

KADUU TERMS OF USE 2022

1 APPLICATION OF TERMS

- 1.1 These Terms apply to your use of the Service (as that term is defined below). By *accessing and using the Service*:
- a you agree to these Terms; and
 - b where your access and use is on behalf of another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to these Terms on that person's behalf and that, by agreeing to these Terms on that person's behalf, that person is bound by these Terms.
- 1.2 If you do not agree to these Terms, you are not authorised to access and use the Service, and you must immediately stop doing so.

2 CHANGES

- 2.1 We may change these Terms at any time by notifying you of the change by email or by posting a notice that has to be accepted/refused on the login page of the Service. Unless stated otherwise, any change takes effect from the date set out in the notice. You are responsible for ensuring you are familiar with the latest Terms. By continuing to access and use the Service from the date on which the Terms are changed, you agree to be bound by the changed Terms.
- 2.2 These Terms were last updated on May 2022

3 INTERPRETATION

In these Terms:

- *Confidential Information* means any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the provision and use of the Service. Our Confidential Information includes Intellectual Property owned by us (or our licensors), including the Kaduu Software and all its data associated with the service.
- *Kaduu Software* means the software owned by us that is used to provide the Cyber Threat Intelligence Service
- *Data* means all data, content, and information (including personal information) owned, held, used or created by you or on your behalf that is stored using, or inputted into, the Service.
- *Fees* means the applicable fees set out on our pricing page on the Website at www.kaduu.ch or as agreed otherwise in writing between you and us, as may be updated from time to time in accordance with clause 7.5.
- *Permitted Users* means your organization who is authorised to access and use the Service.
- *Service* means the service having the core functionality described on the Website, as the Website is updated from time to time.
- *Start Date* means the date that we set up an account
- *Terms* means these terms titled SaaS terms of use.
- *Underlying Systems* means the Kaduu Software used to provide the Service, including any third party solutions, systems and networks.

- *We, us or our* means Kaduu AG
- *Website* means the internet site at www.kaduu.ch or such other site notified to you by us.
- *Year* means a 12-month period starting on the Start Date or the anniversary of that date.
- *You or your* means you or, if clause 1.1b applies, both you and the other person on whose behalf you are acting.
- Words in the singular include the plural and vice versa.
- A reference to a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them.

4 PROVISION OF THE SERVICE

4.1 We must use reasonable efforts to provide the Service:

- a in accordance with these Terms and Swiss laws;
- b exercising reasonable care, skill and diligence; and
- c using suitably skilled, experienced and qualified personnel.

4.2 Our provision of the Service to you is non-exclusive. Nothing in these Terms prevents us from providing the Service to any other person or organization.

4.3 We must use reasonable efforts to ensure the Service is available *on a 24/7 basis*. However, it is possible that on occasion the Service may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure.

4.4 *Through the use of web services and APIs, the Service interoperates with a range of third party service features. We do not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, we may cease to make available that feature to you. To avoid doubt, if we exercise our right to cease the availability of a third party feature, you are not entitled to any refund, discount or other compensation.*

4.5 The customer gets access to leaked data through Kaduu. Such data may include user accounts and passwords, general documents, databases, user information from social media, technical documents, code from developments, domain details, ransomware attack archives, botnet logs, credit card details, and technical vulnerabilities. The list is not exhaustive. Kaduu collects this data from the Darknet, Internet and Deep Web and makes it available in its service. Kaduu indexes this data, but cannot manually check every record. Kaduu takes technical protection measures and state of the art security precautions to ensure that the platform itself does not contain any malicious code, but we cannot exclude that certain links lead to websites that may contain malicious software and that the hacked data sets (e.g. documents or files) contain malicious software.

5 YOUR OBLIGATIONS

5.1 You and your personnel must:

- a use the Service in accordance with these Terms solely for:
 - i your own internal business purposes; and
 - ii lawful purposes.
- b only resell or make available the Service to any third party upon prior notification to Kaduu

5.2 When accessing the Service, you and your personnel must:

- a** not impersonate another person or misrepresent authorisation to act on behalf of others or us;
- b** make sure that any confidential data retrieved from the service is secured and cannot be exploited by unauthorized third parties
- c** be aware that you are not permitted to use the logins retrieved from Kaduu to access any system without the prior authorisation of the original account owner
- d** be aware that we do not actively exploit system to get access to confidential data and all information displayed in Kaduu is data which is already leaked in the internet or darkweb
- e** not attempt to undermine the security or integrity of the Underlying Systems;
- f** not use, or misuse, the Service in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Service;
- g** not attempt to view, access or copy any material or data other than:
 - i** that which you are authorised to access; and
 - ii** to the extent necessary for you to use the Service in accordance with these Terms; and
- h** neither use the Service in a manner, nor transmit, input or store any Data, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading.

5.3 *The client and all its affiliates may authorise any member of your personnel to be a Permitted User, in which case you must provide us with the Permitted User's name and other information that we reasonably require in relation to the Permitted User. You must procure each Permitted User's compliance with clauses 5.1 and 5.2 and any other reasonable condition notified by us to you. Kaduu access is established for a legal entity. All affiliates belonging to the client are eligible for Kaduu access.*

5.4 A breach of any of these Terms by your personnel *including, to avoid doubt, a Permitted User* is deemed to be a breach of these Terms by you.

5.5 You are responsible for procuring all licences, authorisations and consents required for you and your personnel to use the Service, including to use, store and input Data into, and process and distribute Data through, the Service.

6 DATA & DATA PRIVACY

6.1 You acknowledge that:

- a** In the course of setting up the service, the customer may provide details of employees or internal confidential information, which will be used for the search terms in Kaduu. It is common for customers to provide us with confidential data for the purpose of setting up monitoring (e.g. persons monitored via social media monitoring or e-mail accounts monitored as part of leak monitoring). We may require access to the Data, you might provide in the course of setting up the service, to exercise our rights and perform our obligations under these Terms; and
- b** to the extent that this is necessary but subject to clause 9, we may authorise a member or members of our personnel to access the Data for this purpose.

- 6.2** You must arrange all consents and approvals that are necessary for us to access the Data as described in clause 6.1.
- 6.3** You acknowledge and agree that:
- a** we may:
 - i** use Data *about your and your end users use of the Service* to generate anonymised and aggregated statistical and analytical data (**Analytical Data**); *and*
 - ii** use Analytical Data for our internal research and product development purposes and to conduct statistical analysis and identify trends and insights; *and*
 - b** our rights under clause 6.3a above will survive termination or expiry of these Terms; and
 - c** title to, and all Intellectual Property Rights in, Analytical Data is and remains our property.
- 6.4** You acknowledge and agree that to the extent Data the client provides us in the setup process as described in clause 6.1 may contain personal information, in collecting, holding and processing that information through the Service, we are acting as your agent for the purposes of the Privacy Act 2020 and any other applicable privacy law. You must obtain all necessary consents from the relevant individual to enable us to collect, use, hold and process that information in accordance with these Terms.
- 6.5** We will take standard industry measures to back up all Data stored using the Service
- 6.6** *You agree that we may store Data in secure Kaduu servers in Germany at the provider Hetzner.*

7 FEES

- 7.1** You must pay us the Fees for Kaduu usage (see <https://kaduu.ch/pricing>). The fees are either part of a written agreement (signed contract, confirmed email) or an order on our website www.kaduu.ch.
- 7.2** We will provide you with valid invoices on a regular basis prior to the due date for payment. Our minimum rental is 6 months. Longer periods can be agreed.
- 7.3** You must pay the Fees:
- a** Within 30 days (or what is agreed in the special terms of the offer) and
 - b** electronically in cleared funds without any set off or deduction.
- 7.4** We may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by our primary trading bank as at the due date (or, if our primary trading bank ceases to quote that rate, then the rate which in the opinion of the bank is equivalent to that rate in respect of similar overdraft accommodation expressed as a percentage) plus 2% per annum. The interest may only be charged after the customer has been reminded and after a period of minimum 14 days. This applies only to invoices that have not been objected to by the customer.
- 7.5** We may increase the Fees by giving at least 30 days' notice. If you do not wish to pay the increased Fees, you may terminate these Terms and your right to access and use the Service on no less than 15 working days' notice, provided the notice is received by us before the effective date of the Fee increase. If you do not terminate these Terms and your right to access and use the Service in accordance with this clause, you are deemed to have accepted the increased Fees.

8 INTELLECTUAL PROPERTY

- 8.1** Subject to clause Error: Reference source not found, title to, and all Intellectual Property Rights in, the Service, the Website, and all Underlying Systems is and remains our property (and our licensors' property). You must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.
- 8.2** If you provide us with ideas, comments or suggestions relating to the Service or Underlying Systems (together **feedback**):
- a** all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by us; and
 - b** we may use or disclose the feedback for any purpose.
- 8.3** *You acknowledge that the Service may link to third party websites or feeds that are connected or relevant to the Service. Any link from the Service does not imply that we endorse, approve or recommend, or have responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, we exclude all responsibility or liability for those websites or feeds.*

9 CONFIDENTIALITY

- 9.1** Each party must, unless it has the prior written consent of the other party:
- a** keep confidential at all times the Confidential Information of the other party;
 - b** effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
 - c** disclose the other party's Confidential Information to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, clauses 9.1a and 9.1b.
- 9.2** The obligation of confidentiality in clause 9.1 does not apply to any disclosure or use of Confidential Information:
- a** for the purpose of performing a party's obligations, or exercising a party's rights, under these Terms;
 - b** required by law (including under the rules of any stock exchange);
 - c** which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
 - d** which was rightfully received by a party from a third party without restriction and without breach of any obligation of confidentiality; or
- 9.3** The present agreement shall not constitute any guarantee with regard to correctness, completeness or applicability of the exchanged Confidential Information. Neither party shall be obliged to exchange Confidential Information with the other party. The receiving party has the right to refuse Confidential Information which has not yet been disclosed by the giving party. Subject to written agreements to the contrary, the parties reciprocally did not grant any licence.

- 9.4** In case the receiving party breaches the non-disclosure obligation and restriction of use as per section 9.1 of the present agreement, the giving party shall be allowed to claim damages up to an amount equivalent to the Fee paid by the customer. Any further claim for damages shall be excluded to the extent permitted by applicable law. The party settling compensation shall not be released from the obligations resulting from this agreement.
- 9.5** The duration of the exchange of Confidential Information shall be starting from the beginning of this agreement for the validity of the agreement. In the event of breach of the non-disclosure obligation or restriction of use by either party, the other party shall be entitled to terminate the project cooperation without notice. Termination of the project cooperation shall not release the parties from continuing observing the non-disclosure obligation and restriction of use. The termination of the information exchange shall not result in the termination of the non-disclosure obligation and restriction of use.
- 9.6** The non-disclosure obligation and restriction of use start upon signing of this agreement by both parties and end _2 (two) years after the termination of the agreement.

10 WARRANTIES

- 10.1** Each party warrants that it has full power and authority to enter into, and perform its obligations under, these Terms.
- 10.2** To the maximum extent permitted by law:
- a** our warranties are limited to those set out in these Terms, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under Part 3 of the Contract) are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to the maximum amount of the contract volume; and
 - b** we make no representation concerning the quality of the Service and do not promise that the Service will:
 - i** meet your requirements or be suitable for a particular purpose, *including that the use of the Service will fulfil or meet any statutory role or responsibility you may have*; or
 - ii** be uninterrupted or error free.
- 10.3** You agree and represent that you are acquiring the Service, and accepting these Terms, for the purpose of trade. The parties agree that:
- a** to the maximum extent permissible by law; and
 - b** it is fair and reasonable that the parties are bound by this clause 10.3.

11 LIABILITY

- 11.1** Either party's maximum aggregate liability under or in connection with these Terms or relating to the Service, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any Year exceed *the Fees paid by you relating to the Service in the previous Year*. The cap in this clause 11.1 includes the cap set out in clause 10.2a.
- 11.2** Neither party is liable to the other under or in connection with these Terms or the Service for any:
- a** loss of profit, revenue, savings, business, use, data (including Data), and/or goodwill; or
 - b** consequential, indirect, incidental or special damage or loss of any kind.

- 11.3** Clauses 11.1 and 11.2 do not apply to limit our liability under or in connection with these Terms for:
- a** personal injury or death;
 - b** fraud or wilful misconduct; or
 - c** a breach of clause 9.
- 11.4** Clause 11.2 does not apply to limit your liability:
- a** to pay the Fees;
 - b** for those matters stated in clause 11.3a to 11.3c.
- 11.5** Neither party will be responsible, liable, or held to be in breach of these Terms for any failure to perform its obligations under these Terms or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under these Terms, or by the negligence or misconduct of the other party or its personnel.
- 11.6** Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with these Terms or the Service.

12 TERM, TERMINATION AND SUSPENSION

- 12.1** Unless terminated under this clause 12, these Terms and your right to access and use the Service:
- a** starts on the Start Date; and
 - b** continues until a party sends 30 days notice that these Terms and your access to and use of the Service will terminate on the expiry of that notice.
- 12.2** Either party may, by notice to the other party, immediately terminate these Terms and your right to access and use the Service if the other party:
- a** breaches any material provision of these Terms and the breach is not:
 - i** remedied within 10 days of the receipt of a notice from the first party requiring it to remedy the breach; or
 - ii** capable of being remedied; or
 - b** becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason.
- 12.3** You may terminate these Terms and your right to access and use the Service in accordance with clause 7.5.
- 12.4** Termination of these Terms does not affect either party's rights and obligations that accrued before that termination.
- 12.5** On termination of these Terms, you must pay all Fees for the provision of the Service prior to that termination.
- 12.6** No compensation is payable by us to you as a result of termination of these Terms , and you will not be entitled to a refund of any Fees that you have already paid. Except if we have breached the present Agreement. If we breached the present Agreement we will repay any paid Fee for the ongoing Terms.
- 12.7** Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination of these Terms but subject to clause 12.8, a party must promptly

return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.

12.8 At any time prior to one month after the date of termination, you may request:

- a** a copy of any Data stored using the Service, provided that you pay our reasonable costs of providing that copy. On receipt of that request, we must provide a copy of the Data in a common electronic form. We do not warrant that the format of the Data will be compatible with any software; and/or
- b** deletion of the Data stored using the Service, in which case we must use reasonable efforts to promptly delete that Data.

To avoid doubt, we are not required to comply with clause 12.8a to the extent that you have previously requested deletion of the Data.

12.9 Without limiting any other right or remedy available to us, we may restrict or suspend your access to and use of the Service and/or delete, edit or remove the relevant Data if we consider that you or any of your personnel have:

- a** undermined, or attempted to undermine, the security or integrity of the Service or any Underlying Systems;
- b** used, or attempted to use, the Service:
 - i** for improper purposes; or
 - ii** in a manner, other than for normal operational purposes, that materially reduces the operational performance of the Service;
- c** transmitted, inputted or stored any Data that breaches or may breach these Terms or any third party right (including Intellectual Property Rights and privacy rights), or that is or may be Objectionable, incorrect or misleading; or
- d** otherwise materially breached these Terms.

13 GENERAL

13.1 Neither party is liable to the other for any failure to perform its obligations under these Terms to the extent caused by Force Majeure.

13.2 No person other than you and us has any right to a benefit under, or to enforce, these Terms.

13.3 Subject to clause 6.4, we are your independent contractor, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under these Terms.

13.4 If we need to contact you, we may do so by email. You agree that this satisfies all legal requirements in relation to written communications. You may give notice to us under or in connection with these Terms by emailing us.

13.5 These Terms, and any dispute relating to these Terms or the Service, are governed by and must be interpreted in accordance with the laws of Switzerland. Each party submits to the non-exclusive jurisdiction of the Courts of Switzerland in relation to any dispute connected with these Terms or the Service.

13.6 Clauses which, by their nature, are intended to survive termination of these Terms, including clauses 8, 9, 11, 12.5 to 12.9 and 13.6, continue in force.

- 13.7** If any part or provision of these Terms is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If modification is not possible, the part or provision must be treated for all purposes as severed from these Terms. The remainder of these Terms will be binding on you.
- 13.8** Subject to clauses 2.1 and 7.5, any variation to these Terms must be in writing and signed by both parties.
- 13.9** These Terms set out everything agreed by the parties relating to the Service, and supersede and cancel anything discussed, exchanged or agreed prior to the Start Date.
- 13.10** Neither Party may not assign, novate, subcontract or transfer any right or obligation under these Terms without the other Party's prior written consent, that consent not to be unreasonably withheld. Either Party remain liable for its obligations under these Terms despite any approved assignment, subcontracting or transfer.

14 Technical Documentation

Specifications in Kaduu's brochures, technical documentation and catalogues are not binding. Data contained in technical documents shall only be binding if the binding nature of such data is expressly specified in this offer or in the corresponding technical documents.

Zug, 24.5.2022 Kaduu AG