

## CHECKMARX TERMS OF SERVICE

PLEASE READ THESE TERMS OF SERVICE (THE "AGREEMENT") CAREFULLY BEFORE ACCESSING OR USING THE SOFTWARE OR SERVICES. UNLESS YOU HAVE A SEPARATE WRITTEN AGREEMENT WITH CHECKMARX GOVERNING YOUR USE OF THE SOFTWARE OR SERVICES, THIS AGREEMENT, WHICH INCLUDES A BINDING ARBITRATION CLAUSE THAT IMPACTS YOUR DISPUTE RESOLUTION RIGHTS, REPRESENTS A BINDING LEGAL AGREEMENT BETWEEN YOU AS THE INDIVIDUAL, THE COMPANY, OR THE LEGAL ENTITY THAT WILL BE UTILIZING THE SOFTWARE OR SERVICES ("YOU" OR "CUSTOMER") AND THE CHECKMARX ENTITY IDENTIFIED BELOW ("CHECKMARX").

IF YOU ARE ACCESSING OR USING THE SOFTWARE OR SERVICES, OR ANY PART THEREOF, ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU HEREBY ACCEPT THIS AGREEMENT ON BEHALF OF SUCH COMPANY OR ENTITY, YOU ACKNOWLEDGE THAT SUCH COMPANY OR ENTITY IS LEGALLY BOUND BY THIS AGREEMENT, AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER AND AUTHORITY TO ACT ON BEHALF OF AND BIND SUCH COMPANY OR ENTITY. YOU MAY NOT ACCEPT THIS AGREEMENT ON BEHALF OF A COMPANY OR ENTITY UNLESS YOU ARE AN EMPLOYEE OR OTHER AUTHORIZED AGENT OF SUCH COMPANY OR ENTITY WITH THE RIGHT, POWER AND AUTHORITY TO BIND AND ACT ON BEHALF OF SUCH COMPANY OR ENTITY.

IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU ARE NOT AUTHORIZED TO ACCESS OR USE THE SOFTWARE OR SERVICES OR ANY PART THEREOF. BY CLICKING "I ACCEPT," "I AGREE," OR SIMILAR ACCEPTANCE TEXT, BY EXECUTING A DOCUMENT INCORPORATING THIS AGREEMENT BY REFERENCE, OR BY ACCESSING OR USING THE SOFTWARE OR SERVICES, YOU HEREBY AGREE TO THIS AGREEMENT.

1. **Definitions.**

- 1.1. **"Affiliate"** means, with respect to a Party, any entity that, directly or indirectly, controls, is controlled by, or is under common control with such Party, and "control" means the power to direct the management and policies of the controlled entity.
- 1.2. **"Authorized Contractor"** means a contractor who holds a valid Solution license purchased by Customer for the purpose of providing services to Customer.
- 1.3. **"Commencement Date"** means, unless otherwise agreed in writing by the Parties, the start date set out in the Quote, or if no date is set in the Quote: (i) for Solutions and Solutions delivered via SaaS or Hosting Services, the date that the Service or Solution is first made available to Customer; or (ii) for On Premises Software, the date the Software license keys are first made available to Customer by Checkmarx.
- 1.4. **"Data Product"** means the Checkmarx vulnerability data, threat information data or other application security data feed or database product.
- 1.5. **"Documentation"** means the current Solution documentation located at <https://www.checkmarx.com/documentation>.
- 1.6. **"Fees"** means the Solution and/or Service fees payable by Customer, as set out in the Quote.
- 1.7. **"Hosting Services"** means Checkmarx's provision of access to the Software by way of Internet hosting services.
- 1.8. **"License Type"** means the current Solution license type definitions and restrictions located at <https://www.checkmarx.com/legal/terms>.
- 1.9. **"Local Country Addendum"** means, if applicable to Customer, the current additional country-specific terms located at <https://www.checkmarx.com/legal/terms>.
- 1.10. **"On Premises"** means the delivery model where Checkmarx offers the Solution for download and installation on servers owned or controlled by Customer.
- 1.11. **"Quote"** means a valid quotation document provided by Checkmarx or an authorized Checkmarx reseller setting out the quantity and type of Solution licenses and Services purchased by Customer.
- 1.12. **"SaaS"** means software-as-a-service, a software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted.
- 1.13. **"Service(s)"** means the Support, Hosting Services, managed services, professional services, and other Solution-related services purchased by Customer, as set out in a Quote.
- 1.14. **"Software"** means the object code form of Checkmarx's software programs, and all Software updates and maintenance releases provided as part of the Support services during the Subscription Term.
- 1.15. **"Solution"** means the Software or Data Product license purchased by Customer, as set out in the Quote.

1.16. **“Support”** means the current Software maintenance and Solution support services that are described in the support SLA located at: <https://www.checkmarx.com/legal/terms>.

2. **Subscription Term.** The duration of each Solution license and Service subscription purchased in accordance with this Agreement will begin on the Commencement Date and will continue during the time period set forth in the Quote, including any renewal term(s) under Section 11.1 (the **“Subscription Term”**). If no term is set forth in the Quote, the Subscription Term shall mean twelve (12) months from the Commencement Date.

3. **Solution License Grants and Restrictions.** This Section applies when Customer has purchased Solution licenses, as set out in a Quote.

3.1. **Licenses and Usage Rights.** Subject to this Agreement and Customer’s payment of the Fees, Checkmarx grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable license, during the Subscription Term: (a) to access and use the Solution and Documentation for Customer’s internal business purposes, subject to the License Type restrictions and the quantity and type of licenses purchased; and (b) to allow the number of and, if applicable, type of users stated in the Quote to access and use the Solution and Documentation for Customer’s internal business purposes. If Customer has purchased On Premises Software licenses, Customer may additionally: (i) install one production copy of the Solution on a server owned or managed by Customer, or if Customer has purchased multiple server licenses, the number of servers set out in the Quote; and (ii) retain a backup copy of the Solution and Documentation for non-production, inactive backup and archival purposes only.

3.2. **Use by Authorized Contractors.** Customer may grant access to the Solution by Authorized Contractors who have a need to use the Solution to fulfill contractual obligations to provide services to Customer. The Solution may only be used by the Authorized Contractor in accordance with the terms and conditions set out in this Agreement: (a) for the benefit of Customer; and (b) only to the extent required to provide the services to the Customer. The Authorized Contractor may not use the Solution for the Authorized Contractor’s own benefit or for the benefit of any party other than Customer. Customer shall remain responsible at all times for the use of the Solution and compliance with all terms and conditions of this Agreement by its Authorized Contractors.

3.3. **APIs.** To the extent that Checkmarx has authorized Customer to access the Solution via application programming interfaces (**“APIs”**), Customer acknowledges and agrees that the APIs, the API access credentials, and any API-related documentation and material: (a) are confidential and proprietary to Checkmarx; (b) may not be distributed, disclosed or otherwise provided to third parties; (c) may be used only for Customer’s internal use, solely to enable Customer’s use of the Solution, subject to the license grants and restrictions applicable to the Solution. Checkmarx reserves the right to restrict API use to prevent abuse, security risks or excessive use.

3.4. **Evaluation Access.** This Section applies if the Customer has been provided access to the Solution or any features thereof by Checkmarx for trial use and evaluation purposes, or as a beta or prerelease offering (**“Evaluation Access”**). Customer hereby accepts this Agreement by accepting Evaluation Access to the Evaluation Products (defined below). In the event Customer has been granted Evaluation Access by Checkmarx, Checkmarx hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to access and use the evaluation, beta or prerelease Solution or features (the **“Evaluation Products”**) for Customer’s internal evaluation purposes only, during the evaluation period designated by Checkmarx (the **“Evaluation Period”**). If no Evaluation Period is specified in writing by Checkmarx, the Evaluation Period shall be fourteen (14) days from Customer’s first access of the Evaluation Product. Evaluation Access is subject to all restrictions set forth in this Agreement, and all rights not expressly granted herein are reserved by Checkmarx. All Evaluation Products are offered on an **“AS-IS”** basis without any warranty, and Checkmarx shall have no liability or obligations with respect to the Evaluation Products. Customer assumes all risks and all costs associated with its use of the Evaluation Products. Customer acknowledges that Checkmarx may choose not to release any beta or prerelease features or functionality as part of any future general release versions. At the end of the Evaluation Period, if Customer chooses not to enter into a definitive agreement with Checkmarx with respect to the Evaluation Products, Customer will promptly cease use of the Evaluation Products and shall, as applicable, destroy all copies of the Evaluation Products and related documentation.

3.5. **Usage Restrictions.** Customer may not, and may not permit others to: (a) use the Solution or Services in excess of the License Type restrictions or quantities purchased; (b) attempt to access the Solution or Services by unauthorized means or circumvent any License Type limitations or usage restrictions; (c) reverse engineer, decompile, disassemble, modify or create derivative works of the Solution, Services or Documentation; (d) attempt to derive the source code of the Solution; (e)

reproduce, publish, distribute, transfer, publicly display, resell, rent, lease, sublicense, loan, or lend the Solution, Services or Documentation to any third party; (f) use the Solution or Services to provide application security services to a third party, or make the Solution or Services available for use by a third party; (g) use the Solution or Services for the purpose of competitive analysis, competitive benchmarking or to build a competitive product or service; (h) transfer, assign or permit the sharing of passwords, license keys, access credentials, API keys or access codes to a third party; (i) make available to any third party any content from, or output of, the Solution or Services, including but not limited to benchmarking results; (j) use any robot, spider, data scraping or content extraction tool or similar mechanism with respect to the Solution, Services or Documentation; (k); upload malicious code, files scripts, agents or programs to the Solution or Services; (l) use the Solution or Services in violation of third party rights or applicable laws and regulations; or (m) infiltrate, hack, or attempt to circumvent or interfere with any authentication or security measures of the Solution or Services.

3.6. **Recordkeeping.** This section applies when the Solution has been delivered in an On Premises delivery model and is not hosted or managed by Checkmarx. Customer agrees, upon written request by Checkmarx no more than once per year, to furnish Checkmarx with records demonstrating Customer's compliance with this Agreement and the number and type of Solution licenses purchased by Customer. In the event the records reveal use of the Solution in excess of the quantity and type of licenses purchased, Customer shall be responsible to pay Checkmarx the unpaid Fees corresponding to the excess usage. In the event an audit reveals a material underpayment of Fees, Checkmarx shall be permitted to conduct reasonable follow-up audits to confirm Customer's use of the Solution is within the license types and quantities purchased by Customer.

4. **Support and Additional Services.** This Section applies when Customer has purchased Services to be performed by Checkmarx, including Solution Support. All Services are provided remotely unless otherwise agreed by the Parties.

4.1. **Maintenance and Support.** If Customer has purchased an annual term license subscription or (if applicable) an annual Software maintenance subscription, Checkmarx will provide Support services during the relevant Subscription Term in accordance with the support SLA located at <https://www.checkmarx.com/legal/terms>.

4.2. **Training and Implementation Services.** If Customer has purchased training or implementation Services, Checkmarx will provide Customer with the training and implementation services described in the Quote.

4.3. **Hosting Services and Uptime.** Hosting Service orders require a hosting Quote setting out the quantity and type of Hosting Services to be provided (a "Hosting Quote"). If Customer purchases Software Hosting Services, Checkmarx will provide the Hosting Services to Customer during the Subscription Term as set out in the Hosting Quote. Hosting Services and SaaS Solutions will be provided in accordance with the service levels located at <https://www.checkmarx.com/legal/terms>.

4.4. **Managed Services.** All managed services orders require a scope of work executed by the Parties that references this Agreement and that defines the managed services to be provided by Checkmarx (a "Statement of Work"). If purchased by Customer, Checkmarx will perform the managed services in accordance with the Statement of Work and this Agreement.

4.5. **Professional Services.** All professional services shall be defined in a scope of work, Checkmarx professional services catalog, or the Quote (a "Work Description"). If purchased by Customer, Checkmarx will perform the professional services in accordance with the Work Description and this Agreement. Unless specified in the Work Description, the professional services must be scheduled with reasonable advance notice and are subject to availability. After the scheduling of the professional services has been agreed by Checkmarx, the professional services may not be unilaterally canceled or rescheduled by Customer and shall be deemed delivered on the agreed delivery date.

4.6. **Delivery of Services.** When Services are measured in increments of days, one (1) service day equals eight (8) hours. Unless otherwise defined in the Work Description, all service hours/credits ordered by Customer must be used within twelve (12) months of purchase, and at the end of the twelve (12) month period, any unused service hours/credits shall be deemed delivered to Customers. Professional services and managed services are provided during normal business hours unless otherwise agreed in writing by the Parties.

4.7. **Change Orders.** Changes to any agreed scope of work requires a written change order signed by the Parties prior to implementation of the changes. Change orders shall not be effective until mutually agreed by the Parties and executed by an authorized representative of each Party.

4.8. **Customer Responsibilities.** Customer acknowledges that Checkmarx's ability to provide Services to Customer in a timely manner depends on Customer's reasonable cooperation and assistance. Customer agrees to provide Checkmarx with reasonable cooperation and access to Customer's materials, to the extent such access is necessary for the performance of the Services. Checkmarx shall not be responsible for delays or other issues caused by Customer's failure to provide reasonable cooperation and assistance.

5. **Customer Data.** This Section applies when Checkmarx handles Customer data in connection with the Solutions provided to Customer. Customer hereby grants Checkmarx and its Affiliates a limited, non-exclusive license to use the data uploaded by Customer during use of the Solutions or Services (the “**Customer Data**”) as necessary to provide the Solution and Services to Customer, to provide technical support and assistance to Customer, to monitor the integrity and functioning of the Solution and Services, and to perform and administer the Agreement. Without limiting the foregoing, additional rights in specific types of Customer Data are set out in the following subsections:

5.1. **Customer Content.** Customer owns all right, title and interest in the content uploaded by the Customer in connection with its use of the Solution or Services (the “**Customer Content**”). The Customer Content shall be handled on a confidential basis by Checkmarx and its Affiliates, exercising the same degree of care and protection that Checkmarx takes to safeguard its own confidential information, but no less than reasonable care.

5.2. **Personal Information.** In the event Checkmarx processes the personal information of any individual subject to General Data Protection Regulation (EU) 2016/679 during provision of the Solution or Services, Checkmarx is acting as a Processor and shall handle the personal information in accordance with Checkmarx’s Data Processing Agreement located at <https://www.checkmarx.com/legal/terms>.

5.3. **Analytics and Service Data.** Checkmarx and its Affiliates may process and use the usage analytics and metadata generated during Customer’s use of the Solution and Services for statistical purposes, product improvement and other internal business purposes. Checkmarx and its Affiliates may process and use any other data generated during Customer’s use of the Solutions and Services for statistical and product improvement purposes as long as the data does not contain any Customer Content or personal information of Customer, and as long as the data has been aggregated, anonymized, de-identified, or otherwise rendered not reasonably associated with or linked to an identifiable individual or to Customer.

## 6. **Title and Ownership; Proprietary Notices.**

6.1. **Proprietary Rights.** The Solutions, Services and Documentation are licensed, not sold, and Checkmarx, its Affiliates and licensors retain all right, title, and interest in and to the Solutions, Services and Documentation, and all copies, improvements, enhancements, modifications, and derivative works of the Solutions, Services and Documentation, including, without limitation, all patent, copyright, trade secret, trademarks, and other intellectual property rights. Any Software licenses granted in this Agreement do not grant any rights whatsoever to the source code of the Software. All express or implied rights to the Solutions, Services and Documentation not specifically granted herein are expressly reserved to Checkmarx, its Affiliates and licensors.

6.2. **Proprietary Notices.** Customer acknowledges that Checkmarx, its Affiliates and licensors own the copyright and other intellectual property rights in the Solutions, Services and Documentation. Customer will not remove the copyright, trademark and other proprietary notices contained on or in the Solutions, Services Documentation and any materials provided by Checkmarx under this Agreement.

6.3. **Feedback.** In the event Customer provides Checkmarx with feedback regarding the operation, functionality or use of Checkmarx’s offerings Customer hereby grants Checkmarx and its Affiliates a perpetual, irrevocable, worldwide, sub-licensable, royalty-free license to use, modify, create derivative works, distribute, and otherwise exploit the feedback without further compensation to Customer.

## 7. **Ordering and Payment; Acceptance.**

7.1. **Ordering.** Customer may request the purchase of Solution licenses and Service subscriptions by submitting written orders to Checkmarx or an authorized reseller. A Customer Affiliate may request the purchase of Solution licenses by submitting a written order to Checkmarx or an authorized reseller that incorporates and is subject to this Agreement, provided that the Customer Affiliate complies with all the Customer’s obligations set out in this Agreement. All orders are subject to approval by Checkmarx and must be subject to a valid Quote. Once approved by Checkmarx, all orders are firm and non-cancelable by Customer. All approved orders are subject to this Agreement. The Services and Solutions will be delivered by electronic means and are deemed accepted by Customer on the Commencement Date.

7.2. **Payment.** All license grants set out in this Agreement, and all obligations of Checkmarx to provide the Services or perform its obligations under this Agreement, are subject to Customer’s timely payment of the Fees. For orders placed with an authorized reseller, the payment terms will be defined in the agreement between Customer and the authorized reseller. For orders placed directly with Checkmarx:

7.2.1. Checkmarx shall deliver an invoice stating the Fees and, where applicable, sales, use, value-added or other taxes. Except as otherwise provided in this Agreement, all amounts are non-refundable and are payable in the currency specified in the Quote. All Fees are billed upfront and in advance unless otherwise specified in the Quote, Statement of Work or Work Description. All invoices are due thirty (30) days from the invoice date unless an earlier payment term is set out in the Quote. Checkmarx may charge interest on any overdue Fees that are not subject to good faith dispute at a rate of 1.5% per month, or the maximum rate permitted by applicable law, whichever is lower.

7.2.2. Customer shall be responsible for the payment of all taxes and duties, however designated, which are paid or payable, based on the Fees, the Services, or Customer's use or possession of the Solution under this Agreement. If Customer is required to withhold or deduct any amount from the Fees on account of taxes, Customer shall pay Checkmarx the additional amount necessary to ensure that the net amount received by Checkmarx after withholding or deduction of such taxes is equal to the gross amount of the Fees in the absence of any such withholding or deduction.

## **8. Warranties.**

8.1. **Limited Warranties.** Checkmarx warrants to Customer that: (a) Checkmarx will provide, or procure the provision of, the Services in a professional and workmanlike manner; (b) the SaaS Solutions shall operate in substantial conformity with the functional specifications set out in the Documentation during the Solution Subscription Term; and (c) the On Premises Solutions will operate in substantial conformity with the functional specifications set out in the Documentation for a period of thirty (30) days after initial delivery to Customer.

8.2. **Remedies.** If Customer determines that the above-referenced warranties have been breached, Customer shall provide Checkmarx with prompt written notice documenting each such non-conformity. Within a reasonable time after receipt of Customer's notice, Checkmarx shall, at Checkmarx's sole discretion and as Customer's sole and exclusive remedy: (a) deliver to Customer a workaround or correction of the non-conformity within a commercially reasonable time; or (b) if the foregoing is not feasible, re-perform the service or provide Customer with a reasonably comparable alternative Solution; or (c) if Checkmarx is unable to remedy the non-conformity as set out above, Checkmarx may terminate the relevant subscription and refund (or for purchases made via an authorized reseller, assist in coordinating a refund of) any pre-paid, unused Fees.

8.3. **Warranty Limitations.** The limited warranties set out above shall not apply to the extent the Solution or Service: (a) is not used in accordance with the Documentation; (b) has been modified without Checkmarx's express authorization; (c) fails to function due to a malfunction of Customer's equipment or IT infrastructure; or (d) fails to function due to third party software and/or hardware that is not provided or approved by Checkmarx.

8.4. **Disclaimer of Warranties.** WITH THE SOLE EXCEPTION OF THE LIMITED WARRANTIES PROVIDED IN SECTION 8.1, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL SOLUTIONS, SERVICES AND DOCUMENTATION ARE PROVIDED ON AN "AS IS" BASIS AND CHECKMARX DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. CHECKMARX EXPRESSLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. CHECKMARX DOES NOT REPRESENT OR WARRANT THAT THE SOLUTION, SERVICES OR DOCUMENTATION WILL MEET THE REQUIREMENTS OF CUSTOMER, THAT THE OPERATION OF THE SOLUTION OR SERVICES WILL BE UNINTERRUPTED AND/OR ERROR FREE, OR THAT THE SOLUTIONS OR SERVICES WILL DETECT OR RENDER CUSTOMER'S CODE FREE FROM ALL ERRORS, VULNERABILITIES, OR INTRUSIONS.

8.5. **Exclusive Remedy.** THIS SECTION 8 STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF CHECKMARX FOR BREACH OF WARRANTY.

## **9. Infringement Indemnification.**

9.1. **Indemnification.** Checkmarx will, subject to the exclusions set out in Section 9.3, defend at its own expense any action brought against Customer by a third party to the extent that the action is based on a claim that the Solution infringes any validly registered intellectual property right, and Checkmarx shall pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages which have been agreed by Checkmarx in a monetary settlement of such action. Checkmarx's indemnification obligations are expressly conditioned upon Customer giving Checkmarx prompt written notice of any actual or threatened claim, allowing Checkmarx sole control of the defense and all related settlement negotiations, providing full cooperation for the defense of same to Checkmarx, and not settling or negotiating a settlement of any such claim without Checkmarx's prior written approval.

9.2. **Remedies.** In the event the Solution is determined to, or is believed by Checkmarx to, become the subject of an infringement claim, Checkmarx may, at its sole discretion: (a) modify the Solution so that it is non infringing; (b) obtain a license for Customer to continue to use the Solution as provided hereunder; or, if the foregoing options are not commercially feasible, terminate Customer's license for the allegedly infringing Solution, have Customer return or destroy such Solution, and refund (or for purchases made via an authorized reseller, assist in coordinating a refund of) the prorated amount of license Fees paid by Customer for such Solution, depreciated over the remaining duration of the Subscription Term.

9.3. **Exclusions.** Checkmarx shall have no obligation or liability for any claim of infringement based on the: (a) use of the Solutions in combination with other items (e.g., hardware, software, operating environments or data) not provided by Checkmarx where infringement would not have resulted but for such combination; (b) modification of the Solution by anyone other than Checkmarx where infringement would not have resulted but for such modification; or (c) use of the Solution after a non-infringing Solution has been made available to Customer by Checkmarx.

9.4. **No Additional Liability.** THIS SECTION 9 STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF CHECKMARX WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

10. **Limitation of Liability.** EXCEPT FOR LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, CHECKMARX AND ITS AFFILIATES SHALL NOT BE LIABLE OR OBLIGATED IN ANY MANNER FOR ANY LOST PROFITS, LOST REVENUE, LOSS OF USE, LOSS OR DAMAGE TO DATA, REMEDIATION COSTS, LOSS OF GOODWILL, OR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. EXCEPT FOR LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, THE MAXIMUM AGGREGATE LIABILITY OF CHECKMARX AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID TO CHECKMARX UNDER THIS AGREEMENT DURING THE PREVIOUS TWELVE (12) MONTHS PRECEDING THE FIRST EVENT GIVING RISE TO A CLAIM.

## 11. **Term and Termination.**

11.1. **Term.** The term of this Agreement will begin on the date it is accepted by both Parties and will continue until no active annual Subscription Term is in effect unless this Agreement is earlier terminated in accordance with this Agreement or extended by written agreement of the Parties.

11.2. **Termination.** Either Party may terminate this Agreement: (a) upon written notice in the event of a material breach of this Agreement by the other Party which has not been cured after the expiration of thirty (30) days from the breaching Party's receipt of written notice of the breach; (b) to the extent permitted by applicable law, if the other Party becomes the subject of any voluntary or involuntary petition pursuant to applicable bankruptcy or insolvency laws, or a request for receivership, liquidation, or composition for the benefit of creditors and such petition, request or proceeding is not dismissed within sixty (60) days of filing; or (c) immediately upon written notice in the event that either Party reasonably believes that this Agreement or a Party's performance thereunder will result in a material violation of applicable law, and such violation cannot be promptly corrected to the Party's reasonable satisfaction despite commercially reasonable measures, or is incurable as a matter of law. Without limiting the foregoing, this Agreement shall automatically terminate in the event of a breach of Section 12.

11.3. **Effect of Termination.** Upon termination of this Agreement: (a) all licenses and rights granted to Customer under this Agreement shall immediately terminate; and (b) Customer shall promptly delete all unlicensed copies of the Solution and Documentation.

11.4. **Survival of Certain Provisions.** The Parties' rights and obligations contained in Sections 5.3 ("Analytics and Service Data"); 6 ("Title and Ownership; Proprietary Notices"); 10 ("Limitation of Liability"); 11.3 ("Effect of Termination"); 13 ("Governing Law and Dispute Resolution"); and 14 ("General Provisions"); as well as any obligations to make payments of Fees or other amounts accrued or due hereunder prior to termination, shall survive any termination or expiration of this Agreement.

## 12. **Compliance and Regulatory.**

12.1. **Export Law.** To the extent consistent with applicable local law, Customer agrees to comply with applicable anti-corruption, export control, and financial sanctions laws in connection with the Solution, Services, and Documentation

(collectively, “the Products”), including, but not limited to, the United States Export Administration Regulations, 15 CFR 730 et seq (“EAR”) and the United States Foreign Assets Control Regulations, 31 CFR 500 et seq (“OFAC Regulations”) (collectively “Trade Controls”). Customer represents and warrants that it is not, and that, absent an appropriate license obtained from the appropriate government authority, it will not export, re-export or transfer in-country to, or permit access to the Products by: (1) any party that is a citizen of, ordinarily resident in, organized under the laws of, or owned or controlled by the government of, any country or region to which the EAR prohibits exports of EAR99 items without a license (see 15 C.F.R. 746) or with which Checkmarx or its financial institutions prohibit dealings as a matter of policy based on a variety of legal and commercial risks (collectively currently Cuba, Iran, Lebanon, Libya, North Korea, Syria, the Crimea Region, and the self-proclaimed the Donetsk People’s Republic and Luhansk People’s Republic); or (2) any party or end use subject to license requirements imposed by Trade Controls, including but not limited to parties enumerated on, or directly or indirectly owned 50 percent or more by parties enumerated on, the Specially Designated Nationals and Blocked Persons list administered by the United States Department of Treasury, any party enumerated on the Entity List or subject to a Denial Order maintained by the United States Department of Commerce, any party or end use otherwise described Parts 744 or 746 of the EAR (15 CFR 744-746), and any party acting on behalf of any such party.

**12.2. Anti-Corruption.** Each Party shall, and shall require that its officers, employees, and agents, in connection with their rights and undertakings relating to this Agreement: (a) comply with all applicable anti-corruption and anti-bribery laws, including but not limited to the U.S. Foreign Corrupt Practices Act of 1997 and the U.K. Bribery Act 2010, each as amended and including any rules or regulations thereunder; (b) not directly or indirectly offer, promise, or give any person working for or engaged by the other party a financial or other advantage to induce that person to perform improperly a relevant function or activity or reward that person for improper performance of a relevant function or activity; and (c) not directly or indirectly request, agree to receive, or accept any financial or other advantage as an inducement or reward for improper performance of a relevant function or activity in connection with this Agreement.

**12.3. Compliance with Laws.** Customer shall comply with all relevant laws and regulations applicable to its use of the Checkmarx Solutions and Services. Customer is solely responsible for determining whether the use of the Solutions or Services by Customer and its end users is appropriate and permitted by relevant laws in the jurisdiction(s) where such Solutions or Services originate or will be accessed and used.

**12.4. United States Government Rights in Commercial Off-the-Shelf Software.** The Solutions and Documentation constitute “commercial computer software,” and “commercial computer software documentation” and “technical data” as defined in FAR Section 12.212. Consistent with the applicable provisions of the applicable federal acquisition regulations, including but not limited to 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Solutions and Documentation are being licensed to U.S. Government end users only as commercial items and pursuant solely to the terms and conditions herein.

### **13. Governing Law and Dispute Resolution.**

**13.1. Governing Law.** Unless otherwise designated in a Local Country Addendum, this Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, United States of America.

**13.2. Dispute Resolution.** In the event of any controversy or claim arising out of or relating to this Agreement, the Parties shall consult and negotiate with each other and attempt to reach a solution satisfactory to both Parties. If the Parties do not reach a settlement within sixty (60) days, any unresolved controversy or claim arising out of or relating to this Agreement shall be resolved by binding arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) and administered by the AAA, unless otherwise designated in a Local Country Addendum. The arbitration shall be conducted in the English language in New York, New York, unless otherwise agreed by the Parties.

**13.3. Litigation Rights.** Notwithstanding any other provision of this Agreement, and regardless of the dispute resolution provisions and arbitration requirements set out herein, Checkmarx may, without waiving any remedy under this Agreement, seek relief from any court of competent jurisdiction to: (a) protect its confidential information or Intellectual Property Rights; or (b) pursue collections activity or compel the payment of Fees due hereunder.

### **14. General Provisions.**

**14.1. Exclusions.** The United Nations Convention Relating to a Uniform Law on the International Sale of Goods, or any similar or successor convention or law, shall not apply to this Agreement. The Parties expressly agree that the Uniform

Computer Information Transactions Act shall not apply to this Agreement and, to the extent that it is applicable, the Parties agree to opt-out of its applicability pursuant to its provisions.

14.2. **Assignment.** This Agreement may not be assigned, delegated, or transferred by Customer without Checkmarx's written consent, and any attempt to take such action shall be void and without effect. Checkmarx may assign this Agreement, or any rights or obligations found therein, including but not limited to its Affiliates, or to an entity which purchases all or substantially all of its assets, or acquires control of Checkmarx by reason of a merger or acquisition, sale of stock, or otherwise.

14.3. **No Waiver.** The failure of either Party to enforce any provision of this Agreement shall not be interpreted to be a waiver of such provisions or of the right of such Party to enforce each and every such provision.

14.4. **Future Functionality.** Customer agrees that its purchase of the Solution licenses or Services is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Checkmarx regarding future functionality or features.

14.5. **Add-Ons and Third-Party Integrations.** Checkmarx may make available certain optional add-ons or integrations (a "Solution Add-On") intended to enable the Solutions to access, integrate with, or be interoperable with other third-party platforms, products or services (a "Third-Party Application"). All use of the Solution Add-Ons by Customer is at Customer's own risk, and Checkmarx does not guarantee the continued availability of the Solution Add-Ons, which Checkmarx may discontinue at its discretion. Any use by Customer of the Third-Party Applications, and any exchange of data between Customer and any third-party provider, is solely between Customer and the applicable third-party provider. Checkmarx does not warrant or support Third Party Applications, and Checkmarx is not responsible for any disclosure, modification or deletion of Customer Data by the Third-Party Applications or third-party providers.

14.6. **Notices.** All notices or demands hereunder shall be by traceable express courier service or certified or registered mail, return receipt requested, sent to the address of the receiving party, and shall be deemed complete ten (10) days after mailing. Notices to Checkmarx shall be sent to the attention of: General Counsel, with a copy to [cxlegal@checkmarx.com](mailto:cxlegal@checkmarx.com).

14.7. **Force Majeure.** Except for a Party's payment obligations, neither Party shall be held responsible for any delay or failure in performance under this Agreement to the extent such delay or failure is caused by fire, flood, strike, civil, governmental or military authority, act of God, labor conditions, earthquakes, or any other cause beyond its control and without the fault or negligence of the delayed or nonperforming Party. The Party affected by such force majeure event shall take all reasonable actions to minimize the consequences of the event.

14.8. **Authorized Signatory.** Each Party represents and warrants to the other party that its signatory is duly authorized to enter into this Agreement on behalf of its respective Party and to bind such party to the terms of this Agreement.

14.9. **Electronic Signatures.** The Parties agree that this Agreement may be signed via electronic signature. Whenever a Party executes an electronic signature on this Agreement, such Party represents and agrees that: (a) the Party's electronic signature has the same validity as a handwritten signature and shall be a legally binding equivalent; (b) the Party's electronic signature meets the requirements of an original signature as if actually signed by the Party in writing; and (c) no certification authority or other third-party verification is necessary for the enforceability of the Party's signature. A Party who executes this Agreement by electronic signature expressly waives the use of an electronic signature as a defense to the enforcement of this Agreement, to the maximum extent permitted by applicable law.

14.10. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same agreement. Signatures transmitted via electronic means shall be considered binding and deemed the same as an original written signature.

14.11. **Amendment.** This Agreement may only be modified or supplemented by a written document executed by an authorized representative of each Party.

14.12. **Partial Invalidation.** If any provision of this Agreement shall be held by law or found by a court or other tribunal of competent jurisdiction to be unenforceable, the unenforceable provision shall be severed, and the remaining provisions of this Agreement shall remain in full force and effect. In such an event, Checkmarx and Customer agree to negotiate in good faith a substitute provision that most nearly reflects the intent of the severed provision.

14.13. **Entire Agreement.** This Agreement, including any Exhibits, Quotes and linked online terms incorporated herein by reference, constitutes the entire agreement between Checkmarx and Customer regarding the Solution, Services and Documentation. In the event a Local Country Addendum is applicable to Customer, such addendum is incorporated herein by reference and made a part of this Agreement. In the event of a contradiction or discrepancy between the terms of a Local Country Addendum and this Agreement, the terms of the Local Country Addendum shall prevail. Customer acknowledges that it is not entering into this Agreement on the basis of, and has not relied on, any representations not expressly contained

in this Agreement. The provisions of this Agreement shall prevail over, and Checkmarx specifically objects to, any additional or conflicting provisions in any purchase order, acceptance notice, or other document issued by Customer, which shall be void and of no effect.

14.14. **Headings and Wording.** Section and/or paragraph headings used in this Agreement are for reference purposes only and shall not be used in the interpretation hereof. No provision of this Agreement shall be construed against either Party as the drafter thereof.

14.15. **Publicity.** Checkmarx shall be permitted to mention Customer as a current customer on Checkmarx's website(s) and in customer lists. If approved in advance by Customer in writing, Checkmarx shall be permitted to (a) issue a press release indicating that Customer has purchased Checkmarx Software or Services; (b) to publish a case study based on Customer's use of the Checkmarx Software or Services; and/or (c) use Customer as a reference customer.

14.16. **No Third-Party Beneficiaries.** This Agreement is entered into solely for the benefit of Checkmarx and Customer. No third party shall be deemed to be a beneficiary of this Agreement, and no third party shall have the right to make any claim or assert any right under this Agreement.

14.17. **Relationship of Parties.** The Parties hereto are independent contractors. Nothing contained herein or done in pursuance of this Agreement shall create a principal-agent, partner, or other relationship between the Parties for any purpose or in any sense whatsoever or create any form of joint enterprise whatsoever between the Parties.

14.18. **Subcontracting.** Checkmarx may subcontract a portion of the Services to a third-party contractor provided that Checkmarx remains responsible for compliance of any such subcontractor with this Agreement and for its overall performance under this Agreement.

14.19. **Contracting Entity.** For Customers in the United States of America or Canada, the Checkmarx contracting entity is defined as Checkmarx, Inc. For Customers outside the United States of America or Canada, the Checkmarx contracting entity is Checkmarx Ltd., unless a different Checkmarx contracting entity is specified in the Quote or designated in a Local Country Addendum.