Checkmarx

MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT
Customer: [Customer Name and Address]

This Master Software License and Services Agreement (the "**Agreement**") is made by and between the applicable Checkmarx entity identified in Section 17.18 ("**Checkmarx**"), and the customer entity identified above ("**Customer**") (as defined herein, each a "**Party**", and collectively the "**Parties**").

Accepted and Agreed on the date fully executed by both Parties (the "**Effective Date**"):

Checkmarx

By:_____

Name: _____

Title: _____

Date: _____

Customer

By:_____

Name: _____

Title: _____

Date: _____

1.   **Scope**. Under this Agreement, Customer may order licenses or subscriptions to: (i) Checkmarx's Software products; (ii) related support and maintenance services ("**Support**"); (iii) Hosting Services; (iv) managed services ("**Managed Services**"); (v) consulting services and other professional services (collectively, "**Professional Services**"); and (vi) training, implementation, and other product-related services. Support, Hosting Services, Managed Services, Professional Services, and training, implementation and other product-related services are collectively referred to herein as "**Services**." The specifics of each Customer purchase will be set forth in a Quote that references this Agreement and is executed by Customer. Customer's execution of a Quote that refers to this Agreement constitutes a binding commitment to purchase the items described in the Quote under the terms and conditions of this Agreement.

2.   **Definitions**. The following definitions shall apply to this Agreement:

2.1.   "**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 direct or indirect possession of the power to direct or to cause the direction of the management and policies of the entity.

2.2.   "**Authorized Contractor**" means a contractor who holds a valid Software license purchased by Customer for the purpose of providing services to Customer or an Affiliate.

2.3.   "**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 Software delivered via SaaS or Hosting Services, the first date that the Software is made available for Customer's use by Checkmarx; or (ii) for On Premise Software, the date the Company contacts Customer to deliver the Software license keys.

2.4.   "**Documentation**"   means   the   product   or   service   documentation   located   at https://www.checkmarx.com/documentation, as updated from time to time by Checkmarx.

2.5.   "**Fees**" means the applicable Software license fees and Service fees payable by Customer, as set forth in the Quote.

2.6.   "**Hosting Services**" means Checkmarx's provision of access to the licensed Software via the Internet by way of hosting services.

2.7.   "**License Type**" means the type of Software licenses purchased by Customer, according to the license type definitions and restrictions located at https://www.checkmarx.com/legal/terms.

2.8.   "**Local Country Addendum**" means, if applicable to Customer, the additional country-specific terms located at https://www.checkmarx.com/legal/terms.

2.9.   "**Quote**" means a valid quotation document provided by Checkmarx or an authorized Checkmarx reseller setting out the quantity and type of Software and Services purchased by Customer.

2.10.   "**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.

2.11.   "**Software**" means the object code form of Checkmarx's software programs for which Customer has purchased a license as set out in the Quote, and all Software updates and maintenance releases provided to Customer as part of the Software Support services during the Subscription Term.

3.   **Subscription Term**. The duration of each Software license and Service 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 14.1 (the "**Subscription Term**"). If no term is set forth in the Quote, the Subscription Term shall mean twelve (12) months from the Commencement Date.

4.   **Software License Grants and Restrictions**.

4.1.   **General**. All Software licenses and grants set out in this Agreement are: (a) subject to the terms and conditions of this Agreement and Customer's payment of the Fees; and (b) for Customer's internal business purposes only, subject to the License Type limitations and the type and quantity of licenses purchased, as set out in the Quote. The licenses granted herein do not grant any rights whatsoever to the source code of the Software.

4.2.   **Software Licenses and Usage Rights**. Customer's rights to access and use the Software are defined by the delivery model by which the Software is delivered to Customer by Checkmarx:

4.2.1.   <u>On Premise Software</u>. If Customer has purchased licenses to Checkmarx Software to be downloaded and installed on Customer's servers ("**On Premise**"), Checkmarx grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable license, during the Subscription Term to: (a) access and use the Software and Documentation for Customer's internal business purposes; (b) allow the number of and, if applicable, type of users stated in the Quote to access and use the Software for Customer's internal business purposes in accordance with the Documentation; (c) install one production copy of the Software 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 (d) make a reasonable number of copies of the Software and Documentation for non-production, inactive backup and archival purposes only.

4.2.2.   <u>Software-as-a-Service and Hosted Software</u>. If Customer has purchased licenses to Checkmarx Software products that are: (i) delivered by Checkmarx in a SaaS delivery model, or (ii) deployed via Hosting Services delivered by Checkmarx, then Checkmarx grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable license, during the Subscription Term to: (a) access and use the Software and Documentation for Customer's internal business purposes, and (b) allow the number of and, if applicable, type of users stated in the Quote to access and use the Software for Customer's internal business purposes in accordance with the Documentation.

4.3.   **Use by Authorized Contractors**. Customer shall be allowed to permit use of the Software by Authorized Contractors who have a need to use the Software to fulfill contractual obligations to provide services to Customer. The Software 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) to scan the code of Customer. The Authorized Contractor may not use the Software 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 Software and compliance with all terms and conditions of this Agreement by its Authorized Contractors.

4.4.   **APIs.** To the extent that Checkmarx has authorized Customer to access the Software via the Software application interfaces and workflow methods made generally available by Checkmarx to enable integration, implementation and interoperability of the Software with third party software (the "**API**s"), Customer acknowledges and agrees that the APIs 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 Software, subject to the license grants and restrictions applicable to the Software. Checkmarx reserves the right to restrict API use to prevent abuse, security risks or excessive use.

4.5.   **Evaluation Access**. This Section applies if the Customer has been provided access to the Software 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 Software or features (the "**Evaluation Products**") for Customer's internal, non-production, 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 first delivery of the Software or license keys by Checkmarx, whichever occurs first. This evaluation license does not grant any rights whatsoever to the source code of the Evaluation Products. Title to and ownership of all right, title, and interest in and to the Evaluation Products will at all times be and remain with Checkmarx and its Affiliates and licensors. Evaluation Access is subject to all restrictions set forth in this Agreement. 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 indemnification obligations or liability 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.

5.   **Restrictions; Audit and Enforcement Rights**.

5.1.   **Restrictions**. Customer may not, and may not permit others to: (a) use the Software or Services in excess of the License Type restrictions or quantities purchased; (b) attempt to access the Software 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 Software, Services or Documentation; (d) attempt to derive the source code of the Software; (e) reproduce, publish, distribute, transfer, publicly display, resell, rent, lease, sublicense, loan, or lend the Software, Services or Documentation to any third party; (f) use the Software or Services to provide code or application scanning or audit services to a third party, or make the Software or Services available in a service bureau or any similar commercial time-sharing arrangement; (g) use the Software or Services for the purpose of competitive analysis, competitive benchmarking or to build a competitive software product or service; (h) transfer, assign or permit the sharing of passwords, license keys or Software codes to a third party; (i) make available to any third party any output of the Software 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 Software, Services or Documentation; (k); upload malicious code, files scripts, agents or programs to the Software or Services; (l) use the Software 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 Software or Services. Additional restrictions may be set out in in the Quote.

5.2.   **Audit and Enforcement Rights**. Checkmarx may, at its expense and with reasonable written notice to Customer, perform an audit to verify Customer's compliance with this Agreement and the number and type of Software licenses purchased by Customer. Audits shall be conducted during regular business hours and shall not unreasonably interfere with Customer's business. If an audit reveals that Customer has underpaid Fees to Checkmarx, Customer shall be responsible to pay Checkmarx all Fees for any unauthorized use of the Software or Services detected during the audit. If the audit reveals underpayment of Fees exceeding ten percent (10%), the Customer shall reimburse Checkmarx for the reasonable costs of the audit. Checkmarx shall have the right to conduct an audit up to one time per each twelve (12) month period during the Subscription Term, commencing on the Effective Date, and in the event an audit reveals a material underpayment of fees, Checkmarx shall be permitted to conduct follow-up audits, as necessary.

5.3.   **Excessive Consumption**. If Checkmarx determines that Customer's aggregate activity on the Services or SaaS/Hosted Software imposes an unreasonable load on the bandwidth or infrastructure, Checkmarx may impose controls to keep the usage below excessive levels.

6. <u>**Additional Services.**</u> This Section applies when Customer has purchased Software Support, training, implementation, or other product-related services which are set out in a standardized written services description provided by Checkmarx (a "**Service Description**").

6.1.   **Software Maintenance and Support**. If Customer has purchased an annual term Software subscription or (if applicable) an annual Software Support subscription, Checkmarx will provide Software Support during the relevant Subscription Term in accordance with Checkmarx's support terms located at https://www.checkmarx.com/legal/terms, as updated from time to time by Checkmarx.

6.2.   **Training and Implementation Services**. If Customer purchases training or implementation Services, Checkmarx will provide Customer with the training and implementation services described in the Quote. In the event Customer wishes to receive additional training or implementation services, Customer and Checkmarx shall agree on a Scope of Work and the Services shall be delivered as set out in Section 7. Unless otherwise specified in the Quote, all training and implementation service hours/credits purchased by Customer must be used within twelve (12) months of purchase. At the end of the twelve (12) month period, any unused service hours/credits shall be deemed delivered to Customer.

6.3.   **Other Services**. If Customer purchases other Services that are described in a Service Description, Checkmarx will perform the Services in accordance with the applicable Service Description and this Agreement.

7.   <u>**Software Hosting Services, Managed Services, and Professional Services**</u>. This Section applies when Customer has purchased Software Hosting Services, Managed Services, or Professional Services.

7.1.   **Software Hosting Services**. If Customer purchases Software Hosting Services, Checkmarx will provide the Hosting Services to Customer during the Subscription Term in accordance with the service levels located at https://www.checkmarx.com/legal/terms, as updated from time to time by Checkmarx. Hosting Service orders require a hosting Quote setting out the quantity and type of Hosting Services to be provided.

7.2.   **Performance of the Managed Services or Professional Services**. All Managed Services orders require a Scope of Work executed by the Parties that references this Agreement and defines the Managed Services to be provided by Checkmarx (a "**Scope of Work**"). Checkmarx will perform the Managed Services or Professional Services which are set out in a Scope of Work in accordance with the Scope of Work and this Agreement. All Managed Services and Professional Services are provided remotely unless otherwise specified in writing in the Scope of Work.

7.3.   **Change Orders**. Changes to any agreed scope of Managed Services or Professional Services require 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.

7.4.   **Customer Responsibilities**. Customer acknowledges that Checkmarx's ability to provide the Managed Services and Professional 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 (the "**Customer Materials**"), to the extent such access is necessary for the performance of the Managed Services or Professional Services. Customer retains all right, title and interest in any Customer Materials made available to Checkmarx in connection with the Managed Services or Professional Services.

7.5.   **Scheduling**. Unless specified in the Scope of Work, the Managed Services and Professional Services must be scheduled with reasonable advance notice and are subject to availability. After the scheduling of the services has been agreed by Checkmarx, the services may not be canceled or rescheduled by Customer without Checkmarx's express written agreement and shall be deemed delivered on the agreed delivery date. Checkmarx shall undertake reasonable efforts to accommodate all good faith scheduling requests provided by Customer with reasonable advance notice. For onsite services, Customer agrees to reimburse Checkmarx for pre-approved travel, lodging and meal expenses incurred in the course of performing the services, unless the Scope of Work specifies that such expenses are included in the Fee.

7.6.   **Delivery of Professional Services**. When Professional Services are measured in increments of days, one (1) service day equals eight (8) hours. Unless otherwise defined in the Scope of Work, 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 are provided during normal business hours unless otherwise agreed in writing by the Parties.

8. **Customer Data**. This Section applies when Checkmarx handles Customer data in connection with the Software or Services provided to Customer (the "**Customer Data**"). Customer hereby grants Checkmarx and its Affiliates a limited, non-exclusive license to use the Customer Data as necessary to provide the Software and Services to Customer, to provide technical support and assistance to Customer, to monitor the integrity and functioning of the Software 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:

8.1. **Customer Content**. Customer owns all right, title and interest in the content uploaded by the Customer in connection with its use of the SaaS/Hosted Software 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.

8.2. **Personal Information**. In the event Checkmarx processes the personal information of any individual subject to General Data Protection Regulation (EU) 2016/679 in connection with the SaaS/Hosted Software or Services, Checkmarx is acting as a Processor and shall handle the personal information in accordance with Checkmarx's standard Data Processing Agreement located at https://www.checkmarx.com/legal/terms.

8.3. **Analytics and Service Data**. Checkmarx and its Affiliates may process and use the usage analytics and metadata generated during Customer's use of the SaaS/Hosted Software and Services ("**Usage Analytics**") for statistical purposes, product improvement and other internal business purposes; and may process and use any other data generated during Customer's use of the SaaS/Hosted Software and Services (the "**Service Data**") for statistical and product improvement purposes as long as the Service Data does not contain any Customer Content or personal information of Customer, and as long as the Service Data has been aggregated, anonymized, de-identified, or otherwise rendered not reasonably associated with or linked to an identifiable individual or to Customer.

9. **Title and Ownership; Proprietary Notices**.

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

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

9.3. **Feedback**. In the event Customer provides Checkmarx with feedback regarding possible improvements in the operation, functionality or use of Checkmarx's offerings, including the Software and Services ("**Feedback**"), 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.

10. **Ordering and Payment; Acceptance**.

10.1. **Ordering**. Customer may request the purchase of Software licenses and Service subscriptions by submitting written orders to Checkmarx or an authorized reseller. A Customer Affiliate may request the purchase of Software 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. All approved orders are subject to this Agreement. The Software, Services and Documentation will be delivered by electronic means. All Software and Services are deemed accepted by Customer on the Commencement Date.

10.2. **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:

10.2.1.   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 or Scope of Work. 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.

10.2.2.   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 Software 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.

11.   Warranties.

11.1.   **Limited Warranties**. Checkmarx warrants to Customer that: (a) Checkmarx will provide, or procure the provision of, the Services in a professional and workmanlike manner; and (b) for a period of thirty (30) days after initial delivery to Customer, the Software will operate in substantial conformity with the functional specifications set out in the Documentation.

11.2.   **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) as to the Software, if it is not feasible to offer Customer a workaround or correction within a reasonable timeframe, offer to Customer a similar product with substantially the same functionality as the non-conforming Software. If Checkmarx is unable to remedy the non-conformity as set out above and Customer has ordered the Software licenses or Services and paid the Fees directly to Checkmarx, Customer's sole and exclusive remedy shall be a prorated credit (or prorated refund, if already paid by Customer) of Fees applicable to the non-conforming Service or Software. Alternatively, if Customer has ordered the Software licenses or Services and paid the Fees to an authorized Checkmarx reseller, Customer's sole and exclusive remedy shall be for Checkmarx to assist with coordinating a prorated refund of Fees paid or a prorated credit of Fees applicable to the non-conforming Service or Software from the authorized Checkmarx reseller.

11.3.   **Warranty Limitations**. The limited warranty set forth above in Section 11.1 shall not apply to the extent the Software 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.

11.4.   **Disclaimer of Warranties**. WITH THE SOLE EXCEPTION OF THE LIMITED WARRANTY PROVIDED IN SECTION 11.1, ALL SOFTWARE, 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 SOFTWARE, SERVICES OR DOCUMENTATION WILL MEET THE REQUIREMENTS OF CUSTOMER, THAT THE OPERATION OF THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED AND/OR ERROR FREE, OR THAT THE SOFTWARE WILL DETECT OR RENDER CUSTOMER'S CODE FREE FROM ALL ERRORS, VULNERABILITIES, OR INTRUSIONS.

11.5.   **Exclusive Remedy**. THIS SECTION 11 STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF CHECKMARX FOR BREACH OF WARRANTY.

12.   Infringement Indemnification.

12.1.   **Indemnification**. Checkmarx will, subject to the exclusions set out in Section 12.3, 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 Software 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.

12.2.   **Remedies**. In the event the Software 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 Software so that it is non infringing; (b) obtain a license for Customer to continue to use the Software as provided hereunder; or, if the foregoing options are not commercially feasible, terminate the license for the allegedly infringing Software, have Customer return or destroy such Software, and refund the prorated amount of license fees paid by Customer for such Software, depreciated over the remaining duration of the Subscription Term. Alternatively, if Customer has ordered such Software licenses and paid the Fees to an authorized Checkmarx reseller, Checkmarx shall assist with coordinating a prorated refund of Fees paid or a prorated credit of Fees applicable to such Software from the authorized Checkmarx reseller.

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

12.4.   **No Additional Liability**. THIS SECTION 12 STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF CHECKMARX WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

13.   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 EVENT GIVING RISE TO THE CLAIM.

14.   Term and Termination.

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

14.2.   **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) 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 any 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 Customer becomes a Restricted Party (as defined in Section 15.2).

14.3.   **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 delete all unlicensed copies of the Software and Documentation.

14.4. **Survival of Certain Provisions**. The Parties' rights and obligations contained in Sections 8.3 ("Analytics and Service Data"); 9 ("Title and Ownership; Proprietary Notices"); 13 ("Limitation of Liability"); 14.3 ("Effect of Termination"); 16 ("Governing Law and Dispute Resolution"); and 17 ("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.

15. **Compliance and Regulatory**.

15.1. **Export Law**. Customer acknowledges that the export, re-export or in-country transfer of the Software, Services and Documentation may be subject to laws and regulations promulgated by various governments, which restrict the export, re-export or in-country transfer of certain computer hardware, software media, technical data, and direct products of technical data. Customer agrees to comply with all applicable export laws and regulations as in effect from time to time (including, without limitation, all record-keeping requirements imposed thereunder), and will not export, re-export, transfer or provide access to the Software, Services or Documentation in violation of such laws and regulations.

15.2. **Restricted Parties**. Customer represents and warrants that neither it, nor any person having a controlling interest in it, nor any branch office, Affiliate, or Authorized Contractor is a Restricted Party (as defined below), and that Customer will not distribute, transfer, sublicense, or permit access to or use of any Checkmarx Software, Documentation, or Services by any Restricted Party without prior, express written authorization from Checkmarx and, as appropriate, any relevant government agency. The term "Restricted Party" means any person or entity who/that is: (1) a resident of, or located or incorporated in, a Prohibited Territory (defined below); (2) an official of, or an entity owned or controlled by, or a party acting on behalf of, the government of a Prohibited Territory; (3) subject to financial sanctions imposed by the United Nations, United States, European Union, United Kingdom, or Switzerland (including but not limited to the U.S. Department of the Treasury, Office of Foreign Assets Control's (OFAC) list of Specially Designated Nationals and Blocked Persons, and Sectoral Sanctions Identifications List); (4) a party to which exports of certain goods subject to U.S. export controls would be prohibited by the U.S. Export Administration Regulations, 15 C.F.R. 730-774, including parties enumerated on the Entity List; (5) a party that satisfies the definition of "Military End User" or "Military Intelligence End User" as set out in 15 CFR 744.20-21; or (6) a party that is directly or indirectly owned or controlled by, or acting on behalf of, one or more parties identified in sub-clauses (1)-(5). Prohibited Territory means a country or region with which Checkmarx prohibits dealings as a matter of policy based on a variety of legal and commercial risks, currently: Cuba, Iran, Lebanon, Libya, North Korea, Syria, and the Crimea Region.

15.3. **Anti-Corruption**. Each party shall, and shall require that its officers, employees, and agents: (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.

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

15.5. **Required Disclosures**. Nothing in this Agreement prohibits either Party from making disclosures, if required by law, subpoena, or court order, provided (if permitted by law) it notifies the other party in advance and reasonably cooperates in any effort to coordinate the disclosures.

15.6. **United States Government Rights in Commercial Off-the-Shelf Software**. The Software 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 Software and Documentation are being licensed to U.S. Government end users only as commercial items and pursuant solely to the terms and conditions herein.

16.   Governing Law and Dispute Resolution.

16.1.   **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.

16.2.   **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 according to the following:

16.2.1.   Rules and Place of Arbitration. Unless otherwise designated in a Local Country Addendum, binding arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("**AAA**") and administered by the AAA. The arbitration shall be conducted in the English language in New York, New York, unless otherwise agreed by the Parties.

16.2.2.   General. The foregoing shall apply, unless prohibited by the applicable arbitration rules or otherwise agreed by the Parties: (1) one arbitrator shall decide the arbitration if the total amount in dispute is less than or equal to U.S. $250,000.00 and three arbitrators if the amount in dispute is more than U.S. $250,000.00; (2) arbitrators must have a minimum ten (10) years of experience in the field of law in question; (3) the arbitration proceedings will be confidential, and the arbitrator may issue appropriate protective orders to safeguard each party's confidential information; and (4) the arbitral award will be final and binding upon the Parties, and the party to the award may apply to a court of competent jurisdiction for enforcement of the award.

16.3.   **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.

17.   General Provisions.

17.1.   **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.

17.2.   **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.

17.3.   **No Waiver**. The failure of either Party to enforce at any time, or for any period of time, the provisions 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.

17.4.   **Future Functionality**. Customer agrees that its purchase of the Software 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.

17.5.   **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.

17.6.   **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 (a "Force Majeure Event"). The Party affected by such Force Majeure Event shall take all reasonable actions to minimize the consequences of the Force Majeure Event.

17.7.   **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.

17.8.   **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.

17.9.   **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 fax, email or PDF copy shall be considered binding and deemed the same as an original written signature.

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

17.11.   **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.

17.12.   **Entire Agreement**. This Agreement, including any Exhibits, Quotes and linked online terms incorporated by reference, constitutes the entire agreement between Checkmarx and Customer regarding the Software, 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.

17.13.   **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.

17.14.   **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.

17.15.   **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.

17.16.   **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.

17.17.   **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.

17.18.   **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.