

TERM SOFTWARE LICENSE AND SUPPORT AGREEMENT

This Term Software License and Support Agreement (the “**Agreement**”) is made by and between the applicable Checkmarx entity identified below (“**Licensor**”), and the Ordering Activity (the, “**Customer**”) that is authorized to place orders under GSA Schedule contracts identified below (“**Ordering Activity**”). Licensor and Customer are sometimes each defined herein as a “**Party**”, and collectively the “**Parties**”. For clarity, the Customer is the entity authorized to order under GSA Schedule contracts as defined in GSA Order OGP 4800.2I.

1.0 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 direct or indirect possession of the power to direct or to cause the direction of the management and policies of the entity.

1.2 “**Authorized Contractor**” means a contractor who holds valid Named User Licenses purchased pursuant to the Ordering Activity for the purpose of providing services to the Customer or an Affiliate.

1.3 “**Documentation**” means the documentation specified in Exhibit A as updated from time to time by Licensor.

1.4 “**Effective Date**” means the date this Agreement is last signed by either Party.

1.5 “**Fees**” means the Software license fees and any applicable service fees set forth in the governing GSA pricelist (“GSA Pricelist”) charged by Licensor with respect to the Ordering Activity, as set forth in the Quote.

1.6 “**License Term**” means the term of the Software license(s) purchased pursuant to the Ordering Activity, as set forth in the Quote and commencing on the Delivery Date as defined in Section 4.3. If no term is set forth in the Quote, the License Term shall mean twelve (12) months.

1.7 “**License Type**” means the type of licenses purchased pursuant to the Ordering Activity, according to the license type definitions set out in Exhibit B.

1.8 “**Quote**” means a valid quotation document provided by Licensor or an authorized reseller setting out the quantity and type of products and services purchased by pursuant to the Ordering Activity.

1.9 “**Software**” means the object code form of Licensor’s software programs referenced in Exhibit B for which a license was purchased pursuant to the Ordering Activity as set out in the Quote, and all Software updates and maintenance releases provided to pursuant to the Ordering Activity as part of the Software Maintenance and Support services during the License Term.

1.10 “**Software Maintenance and Support**” means the Software maintenance, upgrades and support services, as further described in Section 3.1 and Exhibit A.

1.11 “**Term**” means the term of this Agreement, as further described in Section 9.1.

2.0 GRANT OF LICENSE.

2.1 **Grant.** Subject to the terms and conditions of this Agreement and the payment of the Fees, Licensor grants to the Customer that purchased Licensor’s Software pursuant to the Ordering Activity a limited, non-exclusive, non-transferable, non-sublicensable (except as provided in Section 2.3), revocable license, during the License Term: (a) to use the Software and Documentation, for internal use only and subject to the License Type limitations; (b) to make a reasonable amount of copies of the Documentation required to enable the operation of the Software as authorized by this Agreement; and (c) to make a reasonable number of copies of the Software and Documentation for inactive backup and archival purposes only. The licenses granted herein do not grant any rights whatsoever to the source code of the Software.

2.2 **Restrictions.** The Customer may not, and may not permit others to: (a) use the Software in excess of the License Type restrictions and quantities of Software licenses purchased; (b) attempt to circumvent any license restrictions or License Type limitations; (c) reverse engineer, decompile, disassemble or create derivative works of the Software 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 or Documentation to any third party; (f) use the Software to provide code or application scanning or audit services to a third party, or make the Software available in a service bureau or any similar commercial time-sharing arrangement; (g) transfer, assign or permit the sharing of license keys or product codes to a third party; or (h) make available to any third party any output of the Software, including benchmarking results. Additional restrictions may be set out in Exhibit B depending upon the particular Software product licensed hereunder.

2.3 **Affiliates; Use by Authorized Contractors.** An Affiliate may purchase Software licenses via Ordering Activity by entering into an order document with Licensor or an authorized reseller that incorporates this Agreement, provided that the Affiliate complies with all of the obligations set out in this Agreement. Software purchased pursuant to the Ordering Activity may be used on a Named User basis by Authorized Contractors who have a need to use the Software to fulfill contractual obligations to provide services to Customer or its Affiliates. 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 the Customer or its Affiliates; and (b) to scan the code of the Customer or its Affiliates. The Authorized Contractor may not use the Software for the contractor’s own benefit or for the benefit of any other party. The 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 Affiliates and Authorized Contractors.

2.4 Audit and Enforcement Rights. Licensor may, at its expense and with reasonable written notice to the Customer, perform a Software license audit to verify Customer's compliance with this Agreement and the number and type of licenses purchased. Any such audit shall be subject to Government security requirements and be conducted during regular business hours at Customer's facilities and shall not unreasonably interfere with Customer's business. If an audit reveals that Licensor was underpaid, then Licensor shall be entitled to Fees for any unauthorized use of the Software detected during the audit. Licensor shall have the right to conduct an audit up to one time per each twelve (12) month period during the License Term, commencing on the Effective Date, and in the event an audit reveals a material underpayment of fees, Licensor shall be permitted to conduct follow-up audits as necessary.

3.0 SUPPORT AND TRAINING.

3.1 Description of Software Maintenance and Support. Subject to payment of the Software license Fees made in accordance with the GSA Price List, Licensor will provide Software maintenance, upgrades and support services during the License Term in accordance with the service level agreement attached hereto as Exhibit A.

3.2 Expiration of Service Hours. All training and other professional services hours/credits purchased pursuant to the Ordering Activity must be used within six (6) months of purchase. At the end of the six (6) month period, any unused service hours/credits shall be deemed delivered under the applicable Ordering Activity.

4.0 ORDERING AND PAYMENT; ACCEPTANCE.

4.1 Ordering. Additional Ordering Activity may be used to purchase additional Software licenses by submitting written orders to Licensor or an authorized reseller. All orders are subject to approval by Licensor and must be subject to a valid Quote. Upon order approval, Licensor or its authorized reseller shall deliver the Software by making it available for electronic download (accompanied, as appropriate, by Software access keys) and providing download instructions via email. All approved orders are subject to this Agreement.

4.2 Payment. For orders placed with Licensor, Licensor shall deliver an invoice stating the Fees. The contract price excludes all state and local taxes levied or measured by the contract or sales price of the services or completed supplies furnished under this Agreement. Licensor shall state separately on its invoices that taxes are excluded from (i.e., not embedded within) the fees, shall separately itemize any taxes due, and the Customer agrees to either pay the amount of the taxes to Licensor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. Except as otherwise provided in this Agreement, all amounts are payable in U.S. Dollars unless a different currency is specified in the Quote. Payment is due within thirty (30) days from the invoice receipt date.

4.3 Acceptance. Acceptance of the Software shall occur upon the earlier of: (a) The initial download of the Software and

accompanying license keys from Licensor's servers; or (b) ten (10) days after the date the email providing instructions for download was sent as set forth in Section 4.1 (the "Delivery Date").

5.0 TITLE AND OWNERSHIP; PROPRIETARY NOTICES.

5.1 By Licensor. The Software and Documentation is licensed, not sold, and Licensor retains all right, title and interest in and to the Software and Documentation, and all copies, improvements, enhancements, modifications and derivative works of the Software and Documentation, including, without limitation, all patent, copyright, trade secret, trademarks and other intellectual property rights. All express or implied rights to the Software and Documentation not specifically granted herein are expressly reserved to Licensor.

5.2 Proprietary Notices. Licensor's copyright, trademark and other proprietary notices contained on or in any copy of the Software and the Documentation as delivered may not be removed.

6.0 LIMITED WARRANTY.

6.1 Limited Software Warranty. Licensor warrants that, for a period of sixty (60) days after the Delivery Date, (the "Warranty Period"), the Software, when properly installed and used, will operate in substantial conformity with the functional specifications set out in the Documentation. If, during the Warranty Period, it is determined that the Software does not comply with the above warranty, the Customer shall provide Licensor with written notice documenting each such non-conformity. Within a reasonable time after receipt of notice, Licensor shall, at Licensor's sole discretion and as the Customer's sole and exclusive remedy: (a) deliver a Workaround (as defined in Exhibit A) or correction of the non-conformity; or (b) promptly terminate this Agreement and refund the amount of license fees paid by pursuant to the Ordering Activity for the non-conforming Software, less a reasonable pro-rated amount reflecting any actual use of the Software by Customer prior to the date of refund.

6.2 Warranty Limitations. The limited warranty set forth above in Section 6.1 shall not apply to the extent the Software: (a) is not used in accordance with the Documentation; (b) has been modified without Licensor's express authorization; (c) fails to function due to a malfunction of equipment upon which it is installed or interfaces; or (d) fails to function because third party software and/or hardware that is not provided or approved by Licensor is incorporated, integrated, or used in connection with the Software.

6.3 Disclaimer of Warranties. WITH THE SOLE EXCEPTION OF THE LIMITED WARRANTY PROVIDED IN SECTION 6.1, ALL SOFTWARE AND DOCUMENTATION IS PROVIDED ON AN "AS IS" BASIS AND LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. LICENSOR EXPRESSLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE WILL MEET THE REQUIREMENTS OF CUSTOMER, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED AND/OR ERROR-FREE, OR THAT THE

SOFTWARE WILL DETECT OR RENDER THE CUSTOMER'S CODE FREE FROM ALL ERRORS, VULNERABILITIES OR INTRUSIONS.

6.4 Exclusive Remedy. THIS SECTION 6 STATES THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF LICENSOR FOR BREACH OF WARRANTY.

7.0 INFRINGEMENT INDEMNIFICATION.

7.1 Indemnification. Licensor will, subject to the exclusions set out in Section 7.3, defend at its own expense any action brought against the 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 Licensor shall pay those costs and damages finally awarded in any such action that are specifically attributable to such claim or those costs and damages which have been agreed by Licensor in a monetary settlement of such action. Licensor's indemnification obligations are expressly conditioned upon Licensor receiving prompt written notice of any actual or threatened claim, allowing Licensor control of the defense and all related settlement negotiations, providing full cooperation for the defense of same to Licensor, and not settling or negotiating a settlement of any such claim without Licensor's prior written approval. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516, provided Licensor shall not be required to bear any costs, damages or settlements as result thereof.

7.2 Remedies. In the event the Software is determined to, or is believed by Licensor to, become the subject of an infringement claim, Licensor may, at its sole discretion: (a) modify the Software so that it is non-infringing; (b) replace the Software with a non-infringing Software that is functionally equivalent or superior in performance; (c) obtain a license to allow continued use of the Software as provided hereunder; or (d) immediately terminate the license for the allegedly infringing Software, once the Software is returned or destroyed, refund the prorated amount of license fees paid pursuant to the Ordering Activity for such Software, depreciated over the remaining duration of the License Term.

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

7.4 No Additional Liability. THIS SECTION 7 STATES THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF LICENSOR WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS.

8.0 LIMITATION OF LIABILITY.

8.1 Limitations on Damages. EXCEPT FOR LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, LICENSOR SHALL NOT BE LIABLE OR OBLIGATED IN ANY MANNER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST REVENUE, LOSS OF USE, REMEDIATION COSTS, EXTRA EXPENSE OR LOSS OF GOODWILL, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, 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 AGGREGATE LIABILITY OF LICENSOR AND ITS LICENSORS UNDER, OR FOR BREACH OF, THIS AGREEMENT FOR ANY CAUSE WHATSOEVER, OR OTHERWISE ARISING FROM THE SOFTWARE OR THE USE THEREOF, SHALL NOT EXCEED THE CONTRACT PRICE IN THE QUOTE UNDER WHICH THE CLAIM ARISES. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law

9.0 TERM AND TERMINATION; SURVIVAL.

9.1 Term. The term of this Agreement will begin on the Effective Date and will continue until the first anniversary for which no active Software licenses are in effect, unless this Agreement is earlier terminated in accordance with this Agreement or extended by written agreement of the Parties.

9.2 Termination. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Licensor shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer..

9.3 Effect of Termination. Upon termination of this Agreement: (a) all licenses and rights granted under this Agreement shall immediately terminate; and (b) all unlicensed copies of the Software and Documentation shall be deleted, save for any inactive archival copies required for legal, regulatory or audit purposes.

9.4 Survival of Certain Provisions. The Parties' rights and obligations contained in Sections 5.0 ("Title and Ownership; Proprietary Notices"); 8.0 ("Limitation of Liability"); 9.3 ("Effect of Termination"); 10 ("Publicity"); and 11.0 ("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 of this Agreement.

10.0 PUBLICITY.

10.1 Publicity. If approved in advance in writing, Licensor shall be permitted: (a) to allow Licensor to list Customer as a current customer on its website, in press releases, or other written formats;

(b) to allow Licensor to issue a press release within ninety (90) days after this Agreement is signed indicating that Customer has agreed to purchase Software licenses; (c) to allow Licensor to publish a case study based on the Ordering Activity regarding the Software; and (d) use Government Customer as a reference customer. Licensor acknowledges that the ability to use this Agreement in advertising is limited by GSAR 552.203-71.

11.0 GENERAL PROVISIONS.

11.1 Governing Law and Venue. This Agreement is governed by the substantive and procedural Federal Laws of the United States of America.

11.2 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.

11.3 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.

11.4 Assignment. Neither party may assign this Agreement without the prior written consent of the other party.

11.5 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.

11.6 Partial Invalidation. In the event that 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, the Parties agree to negotiate in good faith a substitute provision that most nearly reflects the intent of the severed provision.

11.7 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.

11.8 No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the Parties. 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.

11.9 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 Licensor shall be sent to the attention of: General Counsel, with a copy to cxlegal@checkmarx.com.

11.10 Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

11.11 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. Electronic signatures transmitted via fax, email or PDF copy shall be considered binding and deemed the same as an original written signature.

11.12 Restricted Parties. The Customer represents and warrants that it is not a "Restricted Party," which shall be deemed to include any person or entity: (a) located in or a national of Iran, Lebanon, Libya, North Korea, Sudan, Syria, or any other countries subject to U.S. or Israeli embargo or trade restrictions; (a "Prohibited Territory") or (b) on the U.S. Department of Commerce Denied Person's List, Entity List, or Unverified List; the U.S. Department of the Treasury's list of Specially Designated Nationals and Blocked Persons; or the U.S. Department of State's List of Debarred Parties. Customer shall not distribute, transfer or permit access to any Licensor Software or Documentation to any Restricted Party or any person or entity in a Prohibited Territory without the prior, express written authorization from Licensor and, as appropriate, any relevant government agency.

11.13 United States Government Rights in Commercial Off-the-Shelf Software. The Software and Documentation (including the Codebashing and OSA Services described in Attachment A) 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, 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.

11.14 Added Services. Licensor or other third parties may make available optional Software add-ons, extensions, and plug-ins intended to enhance the functionality of the Software, or other products and services (the "Added Services"). Such Added Services, if purchased, are subject to additional fees that are levied in accordance with the GSA pricelist and are subject to the applicable Added Services terms and conditions which are attached hereto. Nothing herein shall bind a Party to any added Services terms and conditions unless the terms are provided for review and agreed to in writing by all parties. For clarification purposes, the term "Software" as used in this Agreement does not include Added Services. Added Services are not available for all Software products.

11.15 Entire Agreement. This Agreement, including any Exhibits and Quotes incorporated by reference, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s) constitute the entire agreement between Licensor and Customer, and any and all written or oral agreements relating to the license of Licensor's Software existing between Licensor and Customer, including but not limited to any Software evaluation licenses, are expressly terminated as of the Effective Date. Each Party 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 any additional or conflicting provisions in any other document issued by either Party, which shall be void and of no effect except that a negotiated Government Purchase Order, signed by both Parties, shall supersede the terms of the Agreement.

11.16 **Amendment.** This Agreement may only be modified or

supplemented by a written document executed by an authorized representative of each Party.

11.17 **Contracting Entity.** "Licensor" is defined as Checkmarx, Inc.



EXHIBIT A
Software Maintenance, Upgrades and Support

Subject to payment of applicable fees, Licensor will provide the following software maintenance, upgrades and support services (“**Software Maintenance and Support**”) for the Checkmarx software licensed pursuant to the Ordering Activity (the “**Software**”) during the term set out in the Quote.

Definitions

“**Business Day**” means (local time): 9am - 5pm, during any business day which is not a holiday.

“**Documentation**” means the Software documentation located at: <https://checkmarx.atlassian.net/wiki/spaces/KC/overview>.

“**Error**” means a failure of the Software to operate in material compliance with the Documentation.

“**Workaround**” means a patch, hotfix, temporary error correction or change in operating procedure allowing continued use of the Software.

Support Requests

Customer’s entitled to Software Maintenance and Support services may submit support requests 24 hours per day, 7 days per week via email or telephone. Priority 1 support requests should be submitted via email and telephone.

Email	support@checkmarx.com
Telephone	See: https://www.checkmarx.com/contact-us

Upon receipt of a support request containing an Error report, Licensor shall acknowledge the request within the Initial Response Time set out in the below table, according to priority classification.

Priority / Description	Initial Response Time	Next Steps
Priority 1 (Critical): the Software is not functioning.	4 hours	Each Party will commit the necessary resources until a Workaround or reduction in the severity of the Error is achieved.
Priority 2 (Severe impact): major functions of the Software are disabled or unavailable. The Software is partially inoperative, but some features are still usable.	6 hours	Each Party will commit resources during normal business hours until a Workaround is achieved or a specific action plan for how Licensor will address the Error is provided to the Customer.
Priority 3 (Minor Impact): the Software is usable and the problem consists of inconvenience or minor failures involving individual components of the Software. Errors in the Documentation.	2 Business Days	Licensor shall commit resources to address the Error at Licensor’s discretion.

Additional Terms

- Maintenance releases are updated versions of the Software which are provided to Customer’s entitled to receive Software Maintenance and Support services, Maintenance releases are provided upon general availability of the release. Such releases are subject to the terms and conditions set out in the underlying license agreement governing use of the Software.
- Customer shall designate an individual to serve as the primary point of contact for support requests.
- Licensor is not responsible for issues arising outside of the Software, including but not limited to: database issues, system interfaces, or unsupported third party hardware or software. Licensor is not responsible for issues arising from misuse of the Software, unauthorized modifications of the Software, or use of the Software in a manner other than described in the Documentation.
- Customer is required to provide Licensor with reasonably requested cooperation and assistance. Licensor shall not be responsible for failure to meet its service level obligations to the extent caused by Customer’s failure to provide reasonable support and assistance to Licensor.
- All Software Maintenance and Support is provided remotely unless otherwise agreed by the Parties. Remote support shall be provided via WebEx or other mutually agreed means. If Customer requires the use of specific remote connectivity software, it is Customer’s responsibility to make the software available.
- It is Customer’s responsibility to designate the priority level classification when submitting the initial support request. The final priority classification shall be determined by Licensor based on the criteria set out above.
- Software Maintenance and Support is provided for the current version of the Software and the most recent previous version. Customer acknowledges that some Resolutions (defined above) may require it to update the Software to the current version.

EXHIBIT B
License Types and Restrictions

The License Types and additional license rights and restrictions set forth below are in addition to those set forth in Section 2.0 (“**Grant of License**”) of the Agreement and apply to the specified Software product licensed by Customer as set out below.

Applies to CxSAST:

License Types:

1. “**Node Locked**” means the Software is licensed to install, run and use on a single computer.
2. “**Named User**” means a license is tied to a specific individual named user so that the Software may only be used by that individual named user. A user who uses one of the Software user interfaces (i.e., web interface, IDE plugin, etc.) must be provisioned as a Named User. Any individual who consumes scan data extracted from the Software to review, track, or fix vulnerabilities (i.e., reports generated by the Software, exported scan data) must be provisioned as a Named User. Review of report summaries: (a) by Customer management personnel or (b) for audit purposes, shall not be deemed to consume a Named User license where such users are not using the report summaries to remediate vulnerabilities detected by the Software.
3. A “**Project Based**” license means the licensed Software may be used to scan a single named Project during the license term, where the term “Project” is defined as a single codebase which is maintained over time, and used to build a particular named software module or application.
4. “**Integration License**” means the purchased integration may be used during the term of any active Software license purchased by Customer.

Additional License Restrictions:

In addition to the restrictions set out in Section 2.2 of the Agreement, Customer may not: (1) provide access to the Software to any individual who does not hold a valid Named User License; or (2) distribute the output generated by the Software in violation of the Named User restrictions set out above.

License Transfer Rights:

1. Customer may transfer Named User licenses when an existing Named User resigns, is terminated or permanently no longer requires access to the Software. Such transfer is conditioned upon Customer promptly revoking the credentials of the individual who is no longer an authorized Named User and properly credentialing the individual who is the replacement authorized Named User.
2. Customer may transfer a Node Locked software license to a different machine a reasonable number of times by: (a) sending a written license transfer request to Licensor; (b) obtaining a new license key (HID) from Licensor, which is required to activate the software on the new machine; and (c) promptly deleting the previously installed software upon transfer of the software to the new machine.
3. Licensor reserves the right to limit license transfers if such activity is excessive or constitutes abuse, as determined by Licensor in its reasonable discretion.

Applies to CxIAST:

License Types:

1. “**Node Locked**” means the Software is licensed to install, run and use on a single computer. The server component of the CxIAST Software is Node Locked. Agent components of the CxIAST Software are not Node Locked.
2. An “**Application Based**” license means the licensed Software may be used to scan a single Application during the license term, where the term “Application” is defined as a single executable component of a software application. For clarification purposes, the following are considered as a single Application for licensing purposes: (a) multiple identical copies of a single executable on different instances; and (b) multiple versions of the same Application.

License Transfer Rights:

1. Customer may transfer a Node Locked software license to a different machine a reasonable number of times by: (a) sending a written license transfer request to Licensor; (b) obtaining a new license key from Licensor, which is required to activate the software on the new machine; and (c) promptly deleting the previously installed software upon transfer of the software to the new machine.
2. Licensor reserves the right to limit license transfers if such activity is excessive or constitutes abuse, as determined by Licensor in its reasonable discretion.

Attachment A – Checkmarx

CODEBASHING SERVICES 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 direct or indirect possession of the power to direct or to cause the direction of the management and policies of the entity.
- 1.2. **“Effective Date”** means the date this Agreement is fully executed by both Parties
- 1.3. **“Intellectual Property Rights”** means all intangible legal rights, title and interests including without limitation: all inventions, patents, patent applications, trademarks, service marks, trade dress, logos, trade names, and corporate names, domain names, any work of authorship, copyrights, trade secrets, and all other proprietary rights in whatever form or medium, in each case on a worldwide basis; together with all revisions, extensions, reexaminations, translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith.
- 1.4. **“Fees”** means the Service fees charged by Licensor to Customer, as set forth in the Quote and applicable purchase order in accordance with the GSA Pricelist.
- 1.5. **“Named User”** means a license that permits the Customer to allow a specific number of individually named users to use and access the Services.
- 1.6. **“Quote”** means the quotation document provided by Licensor setting out the quantity and type of Service licenses purchased by Customer.
- 1.7. **“Service”** means the Codebashing e-learning cloud-based interactive application security tutorial service.
- 1.8. **“Term”** means the term of this Agreement, as further forth in Section 6.1.

2. LICENSE GRANTS AND RESTRICTIONS.

- 2.1. **License Grants.** Licensor grants the entity authorized to order under GSA Schedule contracts (“Customer” or “Ordering Activity”) a limited, non-exclusive, non-transferable, non-sublicensable, revocable license during the Term and according to the number of Named User licenses set out in the Quote and applicable purchase order, to permit users to access the Service and to view and use the reports generated by the Service for Customer’s internal business purposes. It is hereby clarified that the license does not grant any rights whatsoever to the source code of the Service. Each account for each Named User is activated upon the first log-in of the specific Named User and such account may not be transferred thereafter to another Named User.
- 2.2. **Title; Intellectual Property Rights.** The Service is licensed, not sold, and this Agreement does not convey any right, title or ownership in the Service to Customer other than the limited rights and licenses set out herein. The Service and its associated documentation shall remain the sole property of Licensor. All Intellectual Property Rights evidenced by or embodied in or related to the Service, and to any customizations, modifications, enhancements or derivatives thereof, are and shall be owned solely by Licensor. Licensor reserves all rights not expressly granted hereunder.
- 2.3. **Restrictions.** Customer may not: (a) use the Service in excess of the number of Named User licenses authorized by Licensor (for paid use, according to the number of Named User licenses purchased, as set out in the purchase order); (b) work around any technical limitations in the Service or attempt to circumvent any licensing restrictions; (c) reverse engineer, decompile, disassemble or create derivative works of the Service; (d) attempt to derive the source code of the Service; (e) reproduce, publish, distribute, transfer, publicly display, resell, rent, lease, sublicense, loan, or lend access to the Service to any third party, including Customer’s Affiliates; (f) transfer, assign or permit the sharing of license keys or product codes to a third party, including Customer’s Affiliates; (g) attempt to access the Service outside of the interfaces provided by Licensor; or (h) provide access to the Service (or any part thereof) or the output generated by the Service to any individual who does not hold a valid license to use the Service.
- 2.4. **Additional Terms and Restrictions.** Customer agrees that: (a) all use of the Service shall be in compliance with all applicable laws; (b) the Service is being supplied only for Customer’s internal use; (c) Customer is prohibited from granting any sublicenses to use the Service; and (d) Customer may not copy, transfer or communicate the Service or any part thereof to any third party, including Customer’s Affiliates, or the public in violation of this Agreement.

3. DATA USAGE.

3.1. **Data Usage.** The Service collects usage data, analytics data, and the usernames and email addresses of the users of the Service (the "Data"). Licensor and its authorized third party service providers will use the Data for the purpose of providing the Service to Customer. Licensor may also use the Data to improve the Service and for the internal business purposes of Licensor and its Affiliates.

4. SUPPORT.

4.1. **Description of Support.** Service availability and uptime is set out in **Exhibit A**. Subject to the payment of applicable fees, Licensor will provide support for the Service during the Term in accordance with the service level agreement attached hereto as **Exhibit B**.

5. **PAYMENT.** Customer's use of the Service is subject to Customer's payment of the relevant fees set out in the Quote (the "Fees"). The contract price excludes all state and local taxes levied or measured by the contract or sales price of the services or completed supplies furnished under this Agreement. Licensor shall state separately on its invoices that taxes are excluded from (i.e., not embedded within) the Fees, shall separately itemize any taxes due, and the Customer agrees to either pay the amount of the taxes to Licensor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. Unless otherwise set out in this Agreement, the Fees are non-refundable, payable in advance, and due thirty (30) days from the date of invoice by Licensor.

6. TERM AND TERMINATION

6.1. **Term.** This Agreement shall be effective during the license term set out in the purchase order, unless renewed by written agreement of the Parties or earlier terminated according to the termination provisions set out in Section 9.2 ("Termination") of the Term Software License and Support Agreement to which this document serves as Attachment A (the, "GSA Schedule Contract.")

6.2. **Reserved.**

6.3. **Effect of Termination.** Customer's access to the Service shall immediately terminate upon expiration of the Service Term or the termination of this Agreement in accordance with the Federal Acquisition Regulation and the Contract Disputes Act, and any reports or data generated in connection with the Service will no longer be available for viewing/downloading. Customer is solely responsible for ensuring that any reports or data have been downloaded prior to termination of the Service. Licensor shall have no liability due to the Customer's inability to access or use the Service after expiration of the Service Term or termination of this Agreement.

6.4. **Survival of Certain Provisions.** The Parties' rights and obligations contained in Sections 2.2 ("Title; Intellectual Property Rights"); 6.3 ("Effect of Termination"); 7.2 ("Limitation of Liability"); and 8.0 ("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 of this Agreement.

7. DISCLAIMER OF WARRANTIES.

7.1. **LIMITED WARRANTY.** Licensor warrants that the Service will, for a period of sixty (60) days from the date Customer is first provided access to the Services, perform substantially in accordance with Service's written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, THE SERVICE IS MADE AVAILABLE BY LICENSOR ON AN "AS IS" AND "AS AVAILABLE" BASIS. ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARE EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED AND/OR ERROR FREE. LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE USE OF THE SERVICE WILL BE FREE FROM ERRORS OR SAFE FROM INTRUSIONS OR ANY OTHER SECURITY EXPOSURES. NOTHING IN THE FOREGOING RESTRICTS THE EFFECT OF WARRANTIES OR CONDITIONS WHICH MAY NOT BE EXCLUDED, RESTRICTED OR MODIFIED AS A MATTER OF LAW.

7.2. **LIMITATION OF LIABILITY.** EXCEPT FOR LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, LICENSOR, ITS AFFILIATES AND SERVICE PROVIDERS SHALL NOT BE LIABLE OR OBLIGATED IN ANY MANNER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST REVENUE, LOSS OF USE, REMEDIATION COSTS, EXTRA EXPENSE OR LOSS OF GOODWILL, REGARDLESS OF THE FORM OF ACTION, ARISING OUT OF OR IN CONNECTION WITH THE SERVICE, WHETHER IN CONTRACT, TORT, 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 LICENSOR, ITS AFFILIATES AND SERVICE PROVIDERS UNDER OR FOR BREACH OF THIS AGREEMENT FOR ANY CAUSE WHATSOEVER RELATED TO THE SERVICE SHALL NOT EXCEED THE FEES PAID TO LICENSOR FOR THE SERVICE by the Ordering Activity. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from the Vendor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

7.3 **EXCLUSIVITY OF WARRANTIES AND LIMITATIONS OF LIABILITY.** CUSTOMER ACKNOWLEDGES THAT THE WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY SET OUT IN THIS SECTION SHALL EXCLUSIVELY GOVERN CUSTOMER'S USE OF THE SERVICE AND ANY CLAIM OR LIABILITY ARISING OUT OF OR IN RELATION TO THIS AGREEMENT.

8. GENERAL PROVISIONS.

8.1. **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.

8.2. **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.

8.3. **Assignment.** This Agreement may not be assigned, delegated or transferred by either party without the other party's written consent, and any attempt to take such action shall be void and without effect.

8.4. **Restricted Parties.** Customer represents and warrants that it is not a "**Restricted Party**," which shall be deemed to include any person or entity: (a) located in or a national of Iran, Lebanon, Libya, North Korea, Sudan, Syria, or any other countries subject to U.S. or Israeli embargo or trade restrictions; (a "**Prohibited Territory**") or (b) on the U.S. Department of Commerce Denied Person's List, Entity List, or Unverified List; the U.S. Department of the Treasury's list of Specially Designated Nationals and Blocked Persons; or the U.S. Department of State's List of Debarred Parties. Customer shall not distribute, transfer or permit access to any Licensor software or service to any Restricted Party or any person or entity in a Prohibited Territory without the prior, express written authorization from Licensor and, as appropriate, any relevant government agency.

8.5. **Entire Agreement.** This Agreement, including any Exhibits, Quotes, and purchase orders incorporated by reference, and the underlying GSA Schedule Contract constitute the entire agreement between Licensor and Customer, and any and all written or oral agreements relating to the license of Licensor's Software existing between Licensor and Customer, including but not limited to any Software evaluation licenses, are expressly terminated as of the Effective Date. 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 any additional or conflicting provisions in any other document issued by either Party, which shall be void and of no effect except that a negotiated Government Purchase Order, signed by both Parties, shall supersede the terms of the Agreement.

8.6. **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.

8.7. **Partial Invalidation.** In the event that 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, Licensor and Customer agree to negotiate in good faith a substitute provision that most nearly reflects the intent of the severed provision.

8.8. **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.

8.9. **No Third Party Beneficiaries.** This Agreement is entered into solely for the benefit of Licensor 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.

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

8.11. **Contracting Entity.** For Customers located in the United States of America, "Licensor" is defined as Checkmarx, Inc.

Exhibit A

SERVICE LEVEL AGREEMENT – UPTIME AND AVAILABILITY

Service Level Standard: Licensor will provide no less than ninety-nine point five percent (99.5%) Services Availability, as calculated on an annual basis, subject to the Exclusions below.

“**Availability**” shall mean the portion (in percentage terms) of Uptime that the Hosted Services are Available for Use (as defined below):

Uptime = (Total Time (24/7)) – (Scheduled Maintenance Windows)

% Availability = (Uptime – Time Unavailable) / Uptime

“**Available for Use**” shall mean that all of the supported functions and features of the Services are capable of sending and receiving data to and from the Internet.

“**Service Level Period**” means 24x7: 24 hours a day, 7 days a week, 365 days a year.

“**Time Unavailable**” shall mean any period of time during the applicable Service Level Period that the Services are not Available for Use, except for the Exclusions set forth below.

Time Unavailable - Exclusions

Time Unavailable shall not include the aggregate amount of time during which the Services are not Available for Use due to:

- 1) Scheduled maintenance, provided that such scheduled maintenance occurs during scheduled maintenance windows, currently between the hours of Friday 10:00 pm and Sunday 11:00 pm, Eastern US Time (the “**Scheduled Maintenance Window**”);
- 2) Emergency maintenance – Licensor may perform any reasonably required, emergency maintenance work outside of the Scheduled Maintenance Window with one (1) hour prior electronic mail or other notice to Customer;
- 3) Interruptions in third party networks that prevent Internet users from accessing the Service, provided that the data center is served by redundant connections to the internet from multiple internet service providers;
- 4) Scheduled or emergency maintenance performed by the infrastructure provider.

For clarity, any time during which the Services are not Available for Use due to interruptions in electric power services serving the Hosting Environment shall not be excluded from Time Unavailable.

“**Scheduled Downtime**” shall mean the total minutes during the year represented by the Scheduled Maintenance Window.

“**Uptime**” shall mean the total minutes during the year less the total minutes represented by the Scheduled Downtime.

Exhibit B
SUPPORT SLA

1. DEFINITIONS.

- (a) **"Bug"** means an error condition that causes the Service to fail to operate.
- (b) **"Normal Business Hours"** means Monday through Friday, 09:00 – 17:00, Customer's local time, excluding public holidays.
- (c) **"Resolution Time"** means the time elapsed until a Workaround or permanent solution to a Bug has been provided in accordance with the resolution timelines set out below, according to the severity classification.
- (d) **"Workaround"** means a temporary error correction or change in operating procedure allowing Customer to continue to use the Service until a long-term solution has been provided.

All capitalized terms not defined above shall have the meaning set forth in the main body of the license Agreement, which is incorporated herein by reference.

2. SUPPORT.

During the Term of the Agreement and subject to Customer's payment of applicable Fees:

- (a) Licensor will provide technical support and assistance with respect to the Service, including: (i) clarification of functions and features; and (ii) technical support and assistance in the operation of the Service.
- (b) Licensor shall provide support during Normal Business Hours via telephone and email to Customer's Support Contact Designee.
- (c) Licensor shall not be responsible for providing support for matters not directly involving problems with the Service, such as Customer network connectivity issues, interfaces with other systems, and third party products (software and/or hardware).

3. RESPONSE AND RESOLUTION SCHEDULE.

Customer will initially classify each Bug in the Service based on the following schedule, and thereafter report such Bug or error to Licensor for correction. Licensor shall perform problem management in accordance with the priority level initially determined by Customer; however, the final classification of the priority level will be determined by Licensor in accordance with the table below:

PRIORITY LEVEL	CRITERIA
Priority 1	<u>Fatal</u> : Bug preventing all use of the Service.
Priority 2	<u>Severe Impact</u> : Bug disabling major functions from being performed. This condition exists when the Service is partially inoperative, but is still usable by Customer and the impact is one of inconvenience.
Priority 3	<u>Minimal Impact</u> : Includes all other Bugs. This condition generally exists when the Service is usable and the problems consist of inconveniences or minor failures involving individual components of the system.

Upon receipt of Customer's service ticket initially classifying the priority of the problem, Licensor shall use commercially reasonable efforts to promptly contact Customer to confirm the priority level of the service call, and shall use commercially reasonable efforts to respond to, restore or resolve Bug related error reports and service calls according to the following schedule:

PRIORITY LEVEL	RESOLUTION TIME
Priority 1	1 to 2 business days
Priority 2	3 to 6 business days
Priority 3	Licensor's discretion

4. CUSTOMER'S OBLIGATIONS DURING THE SERVICE TERM PERIOD.

- (a) Customer shall notify Licensor of any Bugs and errors by sending an email to support@checkmarx.com.
- (b) Customer shall appoint one support contact designee who will be Licensor's single point of contact for support requests.
- (c) Customer shall provide Licensor with all reasonably requested reasonable cooperation and assistance as required to provide support in accordance with the response times set out above. Licensor shall not be responsible for failure to meet its service level obligations to the extent caused by Customer's failure to provide reasonable cooperation, support and assistance to Licensor.
- (d) All support services are provided remotely. If Customer requires the use of specific remote connectivity software, it is customer's responsibility to license and operate such software. Remote Customer support shall be provided via WebEx or other mutually agreed means.

CHECKMARX OPEN SOURCE ANALYSIS (“OSA”) AGREEMENT

This Checkmarx Open Source Analysis Agreement (the “**Agreement**”) is made by and between the applicable Checkmarx entity identified below (“**Licensor**”), and the customer entity identified above (“**Customer**”) (as defined herein, each a “**Party**”, and collectively the “**Parties**”).

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

1.2. “**Intellectual Property Rights**” means all intangible legal rights, title and interests including without limitation: all inventions, patents, patent applications, trademarks, service marks, trade dress, logos, trade names, and corporate names, domain names, any work of authorship, copyrights, trade secrets, and all other proprietary rights in whatever form or medium, in each case on a worldwide basis; together with all revisions, extensions, reexaminations, translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith.

1.3. “**OSA Solution**” means the cloud-based open source management solution provided to users of the licensed Checkmarx software by Licensor and its designated third party service provider(s). Depending on the configuration licensed by Customer, the OSA Solution may consist of a cloud-based open source management solution accessed using the licensed Checkmarx software (“**CxOSA**”), or CxOSA together with a stand-alone solution operated by the OSA Service Provider (“**CxOSA-WS**”).

1.4. “**Quote**” means the quotation document provided by Licensor setting out the quantity and type of OSA Solution licenses purchased by Customer.

2. LICENSE GRANTS AND RESTRICTIONS.

2.1. **License Grants.** Subject to Customer’s payment of applicable fees and compliance with these OSA Terms, Licensor grants Customer a limited, non-exclusive, non-transferable, non-sublicensable, revocable license during the OSA Term and according to the number and type of OSA Solution licenses as set out in the Quote and applicable purchase order, to: (a) for CxOSA, to permit licensed users of the Checkmarx software to access the object code form of the OSA Solution through the applicable Checkmarx software interfaces; (b) for CxOSA-WS, to additionally access the object code form of the OSA Solution through the applicable OSA Service Provider interfaces; and (c) for either CxOSA or CxOSA-WS (as applicable) to view and use the reports generated by the OSA Solution for Customer’s internal business purposes. It is hereby clarified that the license does not grant any rights whatsoever to the OSA Solution source code.

2.2. **Title; Intellectual Property Rights.** The OSA Solution is licensed, not sold, and these OSA Terms do not convey any right, title or ownership in the OSA Solution to Customer other than the limited rights and licenses set out herein. The OSA Solution and documentation shall remain Licensor’s or the OSA Service Provider’s property, as applicable. All Intellectual Property Rights evidenced by or embodied in or related to the OSA Solution, and to any customizations, modifications, enhancements or derivatives thereof, are and shall be owned solely by Licensor and the OSA Service Provider, as applicable. Licensor reserves all rights not expressly granted hereunder.

2.3. **Restrictions.** Customer may not: (a) use the OSA Solution in excess of the number and type of licenses authorized by Licensor (for paid use, as set out in the Quote); (b) work around any technical limitations in the OSA Solution or attempt to circumvent any licensing restrictions; (c) reverse engineer, decompile, disassemble or create derivative works of the OSA Solution; (d) attempt to derive the source code of the OSA Solution; (e) reproduce, publish, distribute, transfer, publicly display, resell, rent, lease, sublicense, loan, or lend access to the OSA Solution to any third party; (f) use the OSA Solution to provide code scanning or audit services to a third party, or make the OSA Solution available in a service bureau or any similar commercial time-sharing arrangement; (g) transfer, assign or permit the sharing of license keys or product codes to a third party; (h) make available to any third party any analysis of the results of the operation of the OSA Solution, including benchmarking results, without the express written consent of Licensor; (i) attempt to access the OSA Solution outside of the software interfaces provided by Licensor and/or the OSA Service Provider; or (j) provide access to the OSA Solution or the output generated by the OSA Solution to any individual who does not hold a valid license to use the OSA Solution.

3. DATA USAGE.

3.1. **Data Usage.** The OSA Solution transmits technical data to the OSA Service Provider as required to provide the OSA Solution to Customer (the “**Data**”). No source code of the Customer is sent to the OSA Service Provider. For CxOSA-WS, Customer must provide a customer ID and email addresses to the OSA Service Provider for authentication purposes.

3.2. **OSA Service Provider.** The cloud-based open-source analysis service powering the OSA Solution is operated by a third party service provider under contract to Licensor (the “**OSA Service Provider**”). The OSA Service Provider is contractually obligated to handle all

Data on a confidential basis and to use the Data only in connection with providing the OSA Solution to Customer. Licensor reserves the right to change OSA Service Providers from time to time.

4. SUPPORT.

4.1. **Description of Support.** Subject to payment of applicable fees, Licensor will assist with basic e-mail (Level 1) support to assist Customer with its use of the OSA Solution. Advanced (Level 2 and Level 3) support for the OSA Solution shall be provided by the OSA Service Provider. All support shall be provided in accordance with the support level agreement entered into between Licensor and the Customer in connection with the licensed Checkmarx software.

5. **PAYMENT.** Customer's use of the OSA Solution is subject to Customer's payment of the OSA Solution fees set out in the Quote (the "OSA Fees"). The contract price excludes all state and local taxes levied or measured by the contract or sales price of the services or completed supplies furnished under this Agreement. Licensor shall state separately on its invoices that taxes are excluded from (i.e., not embedded within) the OSA Fees, shall separately itemize any taxes due, and the Customer agrees to either pay the amount of the taxes to Licensor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. Unless otherwise set out in these OSA Terms, the OSA Fees are non-refundable, payable in advance, and due thirty (30) days from the date of invoice by Licensor.

6. TERM AND TERMINATION.

6.1. **Term.** These OSA Terms shall be effective during the OSA Solution term set out in the Quote and applicable purchase order (the "Term"), unless renewed by agreement of the Parties or earlier terminated according to the termination provisions set out in Section 9.2 ("Termination") of the Term Software License and Support Agreement to which this document serves as Attachment A (the, "GSA Schedule Contract.")

6.2. **Reserved**

6.3. **Effect of Termination.** Customer's access to the OSA Solution shall immediately terminate upon expiration of the Term or the termination of these OSA Terms in accordance with the Contract Disputes Act, and any reports or data generated in connection with the OSA Solution will no longer be available for viewing/downloading. Customer is solely responsible for ensuring that any reports or data have been downloaded prior to termination of the OSA Solution. Licensor shall have no liability due to the Customer's inability to access or use the OSA Solution after termination of these OSA Terms or expiration of the Term. In the event of termination, Customer's sole and exclusive remedy shall be the refund of any unused pre-paid OSA Fees remaining as of the date of termination.

7. DISCLAIMER OF WARRANTIES.

7.1. **WARRANTY DISCLAIMERS.** THE OSA SOLUTION IS MADE AVAILABLE BY LICENSOR ON AN "AS IS" AND "AS AVAILABLE" BASIS. ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARE EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE OSA SOLUTION WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE OPERATION OF THE OSA SOLUTION WILL BE UNINTERRUPTED AND/OR ERROR FREE. LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE USE OF THE OSA SOLUTION WILL BE FREE FROM ERRORS OR SAFE FROM INTRUSIONS OR ANY OTHER SECURITY EXPOSURES. NOTHING IN THE FOREGOING RESTRICTS THE EFFECT OF WARRANTIES OR CONDITIONS WHICH MAY NOT BE EXCLUDED, RESTRICTED OR MODIFIED AS A MATTER OF LAW.

7.2. **LIMITATION OF LIABILITY.** EXCEPT FOR LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, LICENSOR, ITS AFFILIATES AND SERVICE PROVIDERS SHALL NOT BE LIABLE OR OBLIGATED IN ANY MANNER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST REVENUE, LOSS OF USE, REMEDIATION COSTS, EXTRA EXPENSE OR LOSS OF GOODWILL, REGARDLESS OF THE FORM OF ACTION, ARISING OUT OF OR IN CONNECTION WITH THE OSA SOLUTION, WHETHER IN CONTRACT, TORT, 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 LICENSOR, ITS AFFILIATES AND SERVICE PROVIDERS UNDER OR FOR BREACH OF THESE OSA TERMS FOR ANY CAUSE WHATSOEVER RELATED TO THE OSA SOLUTION SHALL NOT EXCEED THE OSA FEES PAID TO LICENSOR by the Ordering activity. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from the Vendor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

7.3. **EXCLUSIVITY OF WARRANTIES AND LIMITATIONS OF LIABILITY.** CUSTOMER ACKNOWLEDGES THAT THE WARRANTY DISCLAIMERS AND LIMITATION OF LIABILITY SET OUT IN THIS SECTION SHALL EXCLUSIVELY GOVERN CUSTOMER'S USE OF THE OSA SOLUTION AND ANY CLAIM OR LIABILITY ARISING OUT OF OR IN RELATION TO THESE OSA TERMS.

8. GENERAL PROVISIONS.

8.1. **Governing Law and Venue.** These OSA Terms shall be governed by and interpreted in accordance with the Federal laws of the United States. 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 these OSA Terms. The Parties expressly agree that the Uniform Computer Information Transactions Act shall not apply to these OSA Terms and, to the extent that it is applicable, the parties agree to opt-out of its applicability pursuant to its provisions.

8.2. **Miscellaneous Terms.** Should any provision of these OSA Terms be held to be invalid, such provision shall be replaced with a valid provision implementing the intent of the parties at the time of the signing of these OSA Terms. These OSA Terms, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s) supersede any previous agreements or representations, either oral or written regarding the OSA Solution. The provisions of this Agreement shall prevail over any additional or conflicting provisions in any other document issued by either Party, which shall be void and of no effect except that a negotiated Government Purchase Order, signed by both Parties, shall supersede the terms of the Agreement. Customer acknowledges that it has not relied upon any representations or warranties other than those expressly contained in these OSA Terms. These OSA Terms may be amended only by an instrument in writing signed by both parties. Customer or Licensor may not transfer or assign its rights or obligations under these OSA Terms to any third party without the prior written approval of the other party, and any such purported assignment shall be null and void. All notices given under these OSA Terms shall be in writing and shall be deemed to have been duly given: when delivered, if delivered by messenger during normal business hours of the recipient; when sent, if transmitted by facsimile transmission (receipt confirmed and with a confirmation copy sent by post) during normal business hours of the recipient; or on the third business day following posting, if posted by international courier service (FedEx, UPS, DHL).

8.3. **Contracting Entity.** For Customers located in the United States of America, "Licensor" is defined as Checkmarx, Inc.