



CHECKMARX OPEN SOURCE ANALYSIS ("OSA") AGREEMENT

Customer: [Customer Name and Address]

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").

Accepted and Agreed as of the Effective Date between:

Licensor

Customer

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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 the OSA 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, 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 Customer's payment of the OSA 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.

5.1. **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"). Customer shall be responsible for the payment of all taxes and duties, however designated, which are paid or payable, based on the OSA Fees or on Customer's use of the OSA Solution under this Agreement, except for taxes based

on Licensor's net income. If Customer is required to withhold or deduct any amount from the OSA Fees on account of taxes, Customer shall pay Licensor the additional amount necessary to ensure that the net amount received by the Licensor after withholding or deduction of such taxes is equal to the gross amount of the OSA Fees in the absence of any such withholding or deduction. 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. Failure to pay the OSA Fees when due may result in interruption, cancellation or suspension of the OSA Solution, at Licensor's discretion.

### 6. TERM, TERMINATION, AND SUSPENSION.

6.1. **Term.** These OSA Terms shall be effective during the OSA Solution term set out in the Quote (the "Term"), unless renewed by agreement of the Parties or earlier terminated according to the termination provisions set out herein.

6.2. **Termination.** Either Party may terminate these OSA Terms: (a) upon fifteen (15) days written notice in the event of a material breach of these OSA Terms 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 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) if the OSA Service Provider ceases operation of the OSA Solution or materially fails to provide support for the OSA Solution during a continuous period of no less than thirty (30) days.

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, 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 under Section 6.2, 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 AND LIMITATION OF LIABILITY.

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, 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 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 DURING THE PREVIOUS TWELVE (12) MONTHS PRECEDING ANY CLAIM HEREUNDER.

**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 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.** For Customers located in the United Kingdom, these OSA Terms shall be governed by and interpreted in accordance with the laws of England and Wales, excluding its choice of law rules. For such Customers, the courts in London, England shall have exclusive jurisdiction with respect to any matters arising out of these OSA Terms. For all other Customers, these OSA Terms shall be governed by the laws of the State of New York, USA, and these OSA Terms shall be deemed to have been executed and performed in the State of New York. For such Customers, disputes arising out of or relating to these OSA Terms shall be governed by and interpreted in accordance with the laws of the State of New York, excluding its choice of law rules, and the courts in the Borough of Manhattan, New York shall have exclusive jurisdiction with respect to any matters arising out of these OSA Terms. 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. Force Majeure.** Neither Party shall be held responsible for any delay or failure in performance under these OSA Terms to the extent such delay or failure is caused by fire, flood, strike, civil, governmental or military authority, 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.

**8.3. Conflict.** These OSA Terms are the sole and exclusive terms between Customer and Licensor governing Customer's use of the OSA Solution. To the extent that any of these OSA Terms conflict with the terms and conditions set out in any other agreement between Customer and Licensor, these OSA Terms control Customer's use of the OSA Solution.

**8.4. 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 supersede any previous agreements or representations, either oral or written regarding the OSA Solution. Customer acknowledges that it has not relied upon any representations or warranties other than those expressly contained in these OSA Terms. Any additional or conflicting terms in any purchase order, acceptance notice or other document issued by Customer shall be void and of no effect. These OSA Terms may be amended only by an instrument in writing signed by both parties. Customer may not transfer or assign its rights or obligations under these OSA Terms to any third party without the prior written approval of Licensor, and any such purported assignment shall be null and void, except for an assignment to an affiliated company or to a successor in interest via a merger or acquisition of substantially all assets of Customer. Licensor may transfer or assign its rights or obligations under these OSA Terms to any third party without notice to Customer. 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).

**8.5. Contracting Entity.** For Customers located in the United States of America, "Licensor" is defined as Checkmarx, Inc. For Customers located in the United Kingdom, "Licensor" is defined as Checkmarx UK Ltd. For Customers located outside of the United States of America and the United Kingdom, "Licensor" is



defined as Checkmarx Ltd.