



## CODESECURE TERMS OF SERVICE

Version 2023.8.0

These Terms of Service (“**Terms**”) apply to the CodeSecure, Inc. (“**CodeSecure**”) code scanning and analysis platform (“**Platform**”).

By agreeing to these Terms you are entering into a binding legal agreement between you or, if you are accessing the Platform and Services on behalf of another individual, organization, or entity, that individual, organization, or entity (in each case, the “**Customer**”) and CodeSecure (the “**Agreement**”) governing the Customer’s access to and use of the Platform and Services.

The Customer enters into the Agreement on the earlier of the date you or any other individual acting on behalf of the Customer first accepts these Terms (such date the “**Effective Date**”) by: (1) clicking the “Accept” button presented with these Terms to gain initial access to or use of the Services; (2) agreeing to an Order Form referencing these Terms; or (3) accessing or using the Platform or Services.

By accepting these Terms and entering into the Agreement you represent and warrant that: (1) you have read and understand these Terms; (2) you are authorized to accept these Terms and enter the Agreement on behalf of Customer; and (3) by accepting these Terms you are legally binding the Customer to the Agreement without the need for further action on behalf of the Customer. If you are not able to make the foregoing representations and warranties, then you are not permitted to access or use the Platform or Services.

1 **Definitions.** In addition to the capitalized terms defined throughout the Agreement, the following defined terms will have the meanings set forth below:

1.1 “**Affiliate**” means with respect to any person or entity, all persons or entities, directly or indirectly, through one or more intermediaries (i) controlled by the person or entity, (ii) that control the person or entity, or (iii) that are under common control with the person or entity, and all directors, managers, members, shareholders, officers, and partners of any such entity.

1.2 “**Authorized Users**” means Customer’s employees, consultants, contractors, and agents that Customer authorizes to access and use the Services, as well as third-parties requiring access to the Services for Customer’s benefit. Authorized Users shall not include any person or entity engaged in the research, development, or sale of products or services similar to the Services.

1.3 “**Confidential Information**” means any and all technical and non-technical information or know-how of a proprietary, confidential, or trade secret nature owned by a disclosing party, in whatever form, including but not limited to, techniques, sketches, drawings, models, inventions, processes, apparatus, equipment, algorithms, software programs, software source documents, manuals and documentation related to the software programs, license keys, user logins, or passwords, methods and concepts embodied in such software of the Services, and formulae related to current and future proposed products and services of each of the parties, including, without limitation, information concerning research, experimental work, development, design details and specifications, engineering, pricing, including that contained in any quotation or invoice, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising, marketing plans, regardless of whether it has been marked or designated as confidential

and, in addition, any other information not covered by one of the aforementioned categories that is designated as proprietary, confidential, or trade secret, that is disclosed to the receiving party in any form, including, but not limited to in writing, electronically, visually, or orally. The Platform, Services, CodeSecure Technology, and Output are the Confidential Information of CodeSecure and the Customer Content is the Confidential Information of Customer.

1.4 “**Customer Content**” means all information, in any form, provided by or on behalf of Customer to CodeSecure through the Services, including but not limited to Customer’s code and any Account information.

1.5 “**Documentation**” means any customer manuals and other documentation for the Services provided to Customer by CodeSecure.

1.6 “**Fees**” means those fees or other amounts due or payable in connection with the Services, as set forth in the Purchase Documents.

1.7 “**Order Form**” is a transactional document exchanged between the parties that includes information such as the Services being purchased, term of the subscription, price, and other applicable transactional details.

1.8 “**Output**” means all results and output generated through the use of Services or Platform, whether based on Customer Content or any other information made available through Services or Platform.

1.9 “**Permitted Use**” means the permitted scope of use of the Services under Customer’s Subscription.

1.9.1 Paid Subscriptions. For Services under a Paid Subscription, the Permitted Use is limited to access and use the Services by Authorized Users solely to analyze Customer’s or third-party code for the purpose of assessing, correcting, or improving such code.

1.9.2 Evaluation Subscriptions. For Services under an Evaluation Subscription, the Permitted Use is limited to access and use the Services by Authorized Users solely to assess the feasibility and utility of the Services.

1.10 “**Purchase Documents**” means any quotation, order, and/or invoice document(s) referencing these Terms that CodeSecure, or from an authorized CodeSecure distributor, provides to Customer.

1.11 “**Services**” means the services identified in the applicable Purchase Documents.

1.12 “**Subscription**” means a subscription to access and use the Services, either (1) on a paid basis for a fee or charge (a “**Paid Subscription**”), or (2) on an unpaid or evaluation basis for no fee (an “**Evaluation Subscription**”), each as indicated in the applicable Purchase Document.

1.13 “**Term**” means (1) for an Evaluation Subscription, no more than fifteen (15) days from the Effective Date, and (2) for a Paid Subscription period, twelve (12) months from the Effective Date, unless otherwise specified in the Purchase Documents applicable to the Subscription.

2 **Scope.** The Agreement applies only to the Customer. The Agreement does not extend to or include any parent, subsidiary, or Affiliate. What Customer may do with the Services, and the applicability of certain terms thereof, depends on whether Customer has paid for a Paid Subscription or an Evaluation Subscription. If CodeSecure has not provided Customer with access to the Services, then Customer is not permitted to use the Services in any manner.

3 **Access and Use.** During the Term, subject to compliance by Customer with these Terms and, if applicable, Customer's payment of all applicable Fees, CodeSecure will provide Customer with a limited, non-exclusive, revocable, non-transferable, non-sublicensable right to allow Authorized Users to access and use the Services solely for Customer's own internal business operations for the applicable Permitted Use.

4 **Documentation License.** During the Term, subject to compliance with the Terms and, if applicable, Customer's payment of all applicable Fees, CodeSecure will grant to Customer a limited, non-exclusive, revocable, non-transferable, non-sublicensable license to use the Documentation solely for Customer's own internal business operations to support Customer's Permitted Use of the Services.

5 **Output License.** Except in connection with Customer providing the output of the scans to its customers and/or suppliers as part of a risk assessment, subject to compliance with the Terms and, if applicable, Customer's payment of all applicable Fees, CodeSecure will grant to Customer a limited, non-exclusive, revocable, non-transferable, non-sublicensable license (1) to evaluate any Output generated through the Services under an Evaluation Subscription during the Term of such Evaluation Subscription solely on an internal basis as part of Customer's decision to purchase a Paid Subscription to the Services, and in no case in connection with the development or production of any software or any other business activity, and (2) to use any Output generated through the Services under a Paid Subscription on a perpetual basis solely for Customer's own internal business purposes.

6 **Restrictions on Use.** Customer agrees that the Platform and Services, including all software, hardware, and other technology used by or on behalf of CodeSecure to provide the Platform and Services (collectively, "CodeSecure Technology") constitute the valuable intellectual property of CodeSecure and its licensors and providers. As an express condition on the rights granted herein, Customer shall not, directly or indirectly, and shall not permit any Authorized User or other third party to:

6.1 rent, lease, sell, lend, license, transfer, or otherwise permit or enable any person or entity other than Customer or Authorized Users to access or use the Services in any manner;

6.2 Except in connection with Customer providing the output of the scans to its customers and/or suppliers as part of a risk assessment, disclose the Output or the results of any benchmarking or other testing performed on the Services or Platform, including any Documentation, to any third-party without CodeSecure's prior written approval;

6.3 use the Services as part of a service business in which Customer reviews code for the benefit of third-parties;

6.4 alter, obscure, or remove any proprietary notices in or on the Services, including any copyright, any other intellectual property notices, or any other restrictive legends;

6.5 except as may be permitted by applicable law, reverse engineer, decompile, disassemble, decipher, modify, attempt to derive the method of operation of any CodeSecure Technology;

- 6.6 build any products or services competitive or substantially similar to the Platform or Services;
- 6.7 modify, adapt, alter, translate, or create derivative works from the Services or any CodeSecure Technology;
- 6.8 circumvent or overcome (or attempt to circumvent or overcome) any security or technological protection measures, including those intended to restrict access to any portion of the Services or CodeSecure Technology
- 6.9 in any manner interfere with or disrupt the operation of the Services or any CodeSecure Technology, or any license management, user authentication, or security functionality or configuration of the Services or any CodeSecure Technology
- 6.10 take or permit any action that could damage, disable, overburden, or impair the Services, CodeSecure Technology, or any network through which the Services are accessed; or
- 6.11 use the Services in any manner for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person or third-party, or that violates any applicable law or regulation.

7 **Authorized Users.** Customer may provide access to the Services solely to Authorized Users. Authorized Users may access the Services solely on behalf of Customer and only for the Permitted Use of the Services. Before providing any Authorized User with access to or use of the Services, Customer will ensure that such Authorized User is legally obligated to strictly comply with these Terms. Without limiting the foregoing, Customer shall remain solely responsible and liable for all acts and omissions of all Authorized Users with respect to the Services, whether or not such act or omission is in breach of the Agreement. Customer shall immediately suspend access to the Services by any Authorized User upon completion of such Authorized User's services to Customer or if such Authorized User at any time ceases to be an Authorized User of Customer. Customer shall ensure that no Authorized User is permitted to retain access to any copies of any Documentation following any such suspension.

8 **Customer Account.** All access to the Services will be through Customer's account on the Platform ("**Account**"). Approval of Customer's Account will be at the sole discretion of CodeSecure. Customer will only access the Services through Customer's own Account and may not distribute or provide access to Customer's Account (or the username or password for Customer's Account) to any third party or allow a third party to access Customer's Account. Customer agrees to maintain and promptly update all Account information to keep it accurate, truthful, and complete. Customer is solely responsible for safeguarding the username and password for Customer's Account and for all use of the Services that occurs through Customer's Account, including any liabilities and damages incurred through the use of Customer's Account. CodeSecure cannot and will not be liable for any loss or damage arising from any unauthorized use of Customer's Account. Customer will notify CodeSecure immediately at of any breach of security or unauthorized use of Customer's Account.

9 **Customer Content.**

9.1 As between CodeSecure and Customer, Customer retains all right, title, and interest in and to the Customer Content. Customer grants to CodeSecure all rights in any Customer Content necessary or required

for CodeSecure to access, use, process, and disclose the Customer Content: (1) for purposes of providing the Services and enabling the operation of the Platform, (2) to perform its obligations and exercise and enforce its rights under the Agreement, and (3) as otherwise required by applicable law. Customer will obtain and maintain all consents, permissions, and rights necessary for: (a) Customer to provide, disclose, and otherwise make available all Customer Content to CodeSecure; and (b) all use and processing of all Customer Content as permitted or required by this Agreement.

9.2 Customer is solely responsible for all Customer Content, including the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Content. CodeSecure is not responsible or liable for any deletion or loss of any Customer Content. CodeSecure is under no obligation to review any Customer Content for accuracy or potential liability. Customer assumes all risks associated with the use of any Customer Content in connection with any Services, including any reliance on any Customer Content or the accuracy or completeness thereof.

9.3 Customer will ensure that none of the Customer Content or the use by CodeSecure to provide the Services: (1) constitutes an infringement or misappropriation of the intellectual property rights or other rights of any third party; (2) contains any viruses, Trojan horses, and other elements which could interrupt or harm the Services or CodeSecure Technology; or (3) violates the Agreement or any applicable laws or causes CodeSecure to violate any applicable laws. CodeSecure may remove any of Customer Content from the Services at any time, with or without notice, if CodeSecure reasonably believes that such Customer Content violates the Agreement or to prevent damage, injury, or harm to CodeSecure, the Services or Platform, or any other customer of CodeSecure or other third party.

10 **Privacy.** Any personal information provided or made available to CodeSecure, including as part of any Customer Content or otherwise in connection with the Services, is subject to CodeSecure's privacy policy located at [<https://www.codesecure.com/privacy-policy>] or any successor website ("**Privacy Policy**"). By providing Customer Content to CodeSecure, Customer consents to CodeSecure's data collection, use, and disclosure practices outlined in the Privacy Policy.

## 11 **Confidential Information.**

11.1 Confidential Information does not include that which: (i) is, at the time of disclosure, generally known to the public, or subsequently becomes generally known to the public without restriction by the disclosing party; (ii) the recipient can demonstrate was known to the recipient at the time of disclosure without restrictions on its use; (iii) is independently developed by the recipient without reference to or use of the Confidential Information of the disclosing party; (iv) is disclosed without restriction to the recipient from a source other than the disclosing party who is not under any obligation of confidentiality with respect to such information; or (v) disclosing party notifies recipient in writing that it may disclose.

11.2 During the Term, each party (the "**disclosing party**") may disclose or make available the Confidential Information of such party to the other party (the "**recipient**"). The recipient will hold the Confidential Information of the disclosing party in strict confidence and, except as otherwise permitted herein, the recipient will not disclose or make available any Confidential Information of the disclosing party to any third-party. The recipient shall not use any Confidential Information of the disclosing party except as necessary to

exercise the rights granted herein or perform its obligations hereunder. The recipient agrees not to disclose the Confidential Information of the disclosing party to any person or entity, except to the recipient's employees or Authorized Users who have a need to know such Confidential Information and who signed a confidentiality agreement, or are otherwise obligated to maintain the confidentiality of the Confidential Information in a manner, at least as restrictive as the terms in this Agreement. The recipient agrees that it shall treat the Confidential Information of the disclosing party with the same degree of care as it accords to its own Confidential Information, but no less than reasonable care.

11.3 Without limiting the foregoing, Customer shall not use or disclose CodeSecure's Confidential Information and/or the Services, in whole or in part, to produce or have produced for Customer products similar to, derived from, or a replacement for the Services.

11.4 Notwithstanding the foregoing, the recipient is permitted to disclose Confidential Information of the disclosing party if required to do so under any governmental or judicial order, provided that the recipient shall first promptly notify the disclosing party of such obligation sufficiently in advance of the disclosure, if not prohibited from doing so by said order, so that the disclosing party has the opportunity to take steps to protect the Confidential Information with a confidentiality order or other treatment prior to the disclosure. Recipient shall only disclose such portion of such Confidential Information as is necessary to comply with the order. Notwithstanding disclosure as permitted in this subsection, the disclosing party's Confidential Information shall remain Confidential Information to the extent not entered into the public record.

11.5 Customer agrees that CodeSecure, its authorized distributors, or third-party service providers may monitor and collect information gathered as part of Customer's access or use of the Services and the support services, if any, provided to Customer. In addition, Customer may provide CodeSecure with observations, comments, suggestions, improvements and other feedback and information regarding the Services. Such information will not constitute the Confidential Information of Customer and CodeSecure will have the right to use any such information for any purpose at CodeSecure's sole discretion, including incorporating such information into the Services or Platform, improving the Services or Platform, or developing new or additional services or offerings, in each case without notice to, payment to, consent from, or other obligation to Customer, provided only that such information is in a form that does not identify Customer.

**12 Fees and Payment.** Customer agrees to pay CodeSecure all Fees when due. Unless otherwise specified in an applicable Purchase Document, CodeSecure will invoice Customer for all Fees and each CodeSecure invoice will be due and payable by Customer thirty (30) days following the date of such invoice. If Customer has specified credit card or direct withdrawal from a bank account as an applicable payment mechanism under the Agreement, Customer grants CodeSecure the right to charge the credit card or debit the bank account provided to CodeSecure for all Fees. CodeSecure, in its sole discretion and at any time, may modify the Fees. Any such modification will become effective upon the renewal of the then-current Term. Except as required by law or otherwise provided in the Agreement, all Fees are non-refundable once paid. Any unpaid Fees are subject to a finance charge of one and a half percent (1.5%) per month, or the maximum permitted by law, whichever is lower, plus all expenses of collection, including reasonable attorney's fees. Fees are exclusive of any and all taxes or withholdings of any kind, and Customer is responsible for all payment of, any applicable taxes, fees, value-added surcharges, import and export duties, and other assessments or duties, levied or

assessed against Customer or CodeSecure by any governmental entity in connection with your access to or use of the Services or Platform.

### 13 **Term and Termination.**

13.1 This Agreement will begin on the Effective Date and will continue for the applicable Term, unless earlier terminated in accordance with this Section. Upon completion, the Term may be renewed for a period, agreed upon by the parties, by Customer's payment of an invoice, within thirty (30) days of issuance by CodeSecure to Customer, referencing the Services. This Agreement shall automatically terminate upon the end of the then-current Term unless the parties enter into such renewal.

13.2 CodeSecure may terminate this Agreement immediately upon notice to Customer if (1) Customer becomes insolvent or makes an assignment for the benefit of creditors, (2) a trustee or receiver is appointed for Customer or for a substantial part of Customer's assets, or (3) bankruptcy, reorganization or insolvency proceedings shall be instituted by or against Customer.

13.3 Without prejudice to any other rights, CodeSecure may terminate this Agreement at any time during any Evaluation Subscription.

13.4 CodeSecure may also terminate this Agreement at any time if Customer fails to comply with any provision of the Agreement and such failure is not cured by Customer within thirty (30) days following written notice to Customer. Notwithstanding the foregoing, CodeSecure may terminate this Agreement immediately upon notice to Customer in the instance of any breach of the confidentiality obligations of the Agreement by Customer.

13.5 In addition to any right of termination, CodeSecure reserves the right to suspend Customer's access to the Services at any time, with or without notice, if CodeSecure reasonably believes: (1) Customer has breached the Agreement; (2) Customer exceeds any usage limits; (3) CodeSecure reasonably believes that requests or usage deemed malicious in nature or illegal in any manner may have occurred through Customer's Account or any use of the Services by or on behalf of Customer; or (4) the provision of Services is prohibited by applicable law.

13.6 Upon termination of the Agreement for any reason, (1) Customer and Authorized Users are no longer authorized to access or use the Services, (2) all Fees will become immediately due and payable, (3) Customer will cease using the Services, (4) Customer will destroy or erase all copies of all Documentation (or any portions thereof), in Customer's possession, custody, or control and that of any Authorized User, and (5) each party will return to the other party or (if so notified by the other party) destroy, all copies of any Confidential Information of the other party in such party's possession or control. Upon the request of CodeSecure, Customer will certify in writing to its compliance with the terms of this Section. Notwithstanding, upon termination of the Agreement upon a non-renewal of the Term of a Paid Subscription, Customer may retain and use the Output that has been exported from the Services as permitted hereunder.

13.7 Except in the case of a termination of the Agreement under Section 13.1, CodeSecure has no obligation or responsibility to retain or maintain any Output following any termination of the Agreement. In the case of a termination under Section 13.1, Output will be maintained, as it is in the ordinary operation of the Services,

for at least thirty (30) days following the end of the Term. During that period, Customer, in coordination with CodeSecure, may access the Services on a limited basis to retrieve such Output from the Services; provided, that Customer pays CodeSecure for the reasonable cost of such access and any media used to retrieve and deliver the Output to Customer and any other expenses incurred by CodeSecure in providing such access. Any post-termination services by CodeSecure at the request of Customer are subject to the mutual agreement of the Parties, including, but not limited to Customer's agreement to pay any and all of applicable fees, costs, and expenses associated therewith. Except as provided in this Section (e.g., the thirty (30) day period), CodeSecure will have no obligation to continue to store or permit Customer to retrieve any Output following any termination of the Agreement.

13.8 Notwithstanding the termination of this Agreement, Sections 1, 6, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 31, and 32 shall survive termination of the Agreement.

14 **Ownership/Proprietary Rights.** CodeSecure retains all right, title, and interest in and to the following ("**CodeSecure Property**"): (1) the Services, Platform and all CodeSecure Technology; (2) the Output, excluding any Customer Content included in any Output; (3) any updates, upgrades, enhancements, modifications and improvements to the foregoing, created by either party, either alone or with the other party or any third party ("**Improvements**"); and (4) all intellectual property and proprietary rights throughout the world in or to the foregoing. For the avoidance of doubt, Customer receives no ownership interest in or to any CodeSecure Property, and no rights or licenses are granted to Customer to access or use any CodeSecure Property, except for the rights expressly granted under this Agreement to access and use the Services. Customer agrees to and hereby does assign to CodeSecure any and all right, title or interest in or to any Improvements, and all intellectual property rights therein or relating thereto, that Customer may acquire at any time. CodeSonar®, CodeSurfer®, CodeSentry® and the other names and logos of CodeSecure and its providers and licensors are trademarks of CodeSecure or such providers or licensors, as applicable, and no right or license is granted to you to use them.

15 **Representations and Warranties.**

15.1 Customer represents, warrants, and covenants to CodeSecure that: (1) Customer has and will maintain all rights, power, and authority necessary to enter into this Agreement and perform all of its obligations under this Agreement; (2) Customer's use of the Services and Platform will not violate and will not cause CodeSecure to violate any laws, rules, or regulations or the rights of any third party; and (3) Customer has and will maintain all rights, licenses, permits, and other approvals and authorizations required for its use of the Services and Platform and its performance under this Agreement. Without limiting the foregoing, Customer represents, warrants, and covenants to CodeSecure that Customer has all right, title, and interest in and to all Customer Content necessary and required to provide such Customer Content to CodeSecure for analysis, modification, and/or use through the Services and the use of the Customer Content by CodeSecure in performing the Services will not cause CodeSecure to violate any laws, rules, or regulations or the rights of any third party.

15.2 All evaluation Subscriptions are provided as-is, without warranty or representation of any kind. If Customer has purchased a Paid Subscription, solely as to such Paid Subscription CodeSecure warrants to Customer and to Customer only, that (1) the Services will perform substantially in conformance with the



description in the applicable Documentation, and (2) the applicable Documentation will be substantially accurate. CodeSecure's sole obligation and liability, and Customer's sole remedy, under the foregoing warranty is that CodeSecure will undertake reasonable efforts to correct (1) any failure of the Services to perform substantially in conformance with the foregoing warranty ("**Services Error**") and (2) any material errors in the Documentation ("**Documentation Error**") (collectively "**Errors**"), within a reasonable period of time, as determined by CodeSecure, following notice by Customer of such failure or error. CodeSecure does not warrant that all Errors will be corrected. If, within the above noted period, CodeSecure is unable to provide corrected Services or Documentation, CodeSecure will, at its sole and exclusive option, either replace the Services with a functionally-equivalent services at no charge to Customer or refund to Customer a prorated portion of the Fee paid for the Services affected by the Error (any refund will not exceed the amount of Fees paid during the 3-month period prior to the date the Services were affected). The foregoing warranty will not apply if the Error is caused by: (a) any unauthorized access to or use of the Services or use of the Services in a manner that is in breach of or prohibited by this Agreement or any Documentation or any requirements provided by CodeSecure; (b) Customer Content, faulty internet connection, systems or hardware supplied by or any customizations to the Services; or (c) circumstances outside of the control of CodeSecure.

## **16     Disclaimers.**

16.1     THE WARRANTIES OF CODESECURE IN SECTION 15 ARE THE SOLE AND EXCLUSIVE WARRANTIES UNDER THIS AGREEMENT OR RELATING TO THE SERVICES OR PLATFORM AND ARE IN LIEU OF ALL OTHER WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SERVICES AND PLATFORM ARE PROVIDED "AS IS" AND "WITH ALL FAULTS". TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CODESECURE AND ITS SUPPLIERS AND/OR LICENSORS DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTIES RELATING TO THE RELIABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF RESULTS OR OUTPUT, WORKMANLIKE EFFORT, LACK OF VIRUSES OR OTHER MALWARE, LACK OF NEGLIGENCE, CONDITION OF TITLE, QUIET TITLE OR POSSESSION, OR CORRESPONDENCE TO DESCRIPTION. NO ORAL OR WRITTEN INFORMATION OR REPRESENTATION GIVEN BY CODESECURE'S EMPLOYEES, DISTRIBUTORS, DEALERS, OR AGENTS SHALL INCREASE THE SCOPE OF THE ABOVE WARRANTIES OR CREATE ANY NEW WARRANTIES.

16.2     IN THE EVENT THAT MANDATORY APPLICABLE LOCAL LAW PROHIBITS THE EXCLUSION OF IMPLIED WARRANTIES, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE LESSER OF THIRTY (30) DAYS FROM THE DATE OF INITIAL ACCESS TO THE SERVICES OR THE MINIMUM PERIOD OF TIME PERMITTED BY APPLICABLE LAW.

17     Indemnification. Customer will indemnify, hold harmless, and defend CodeSecure (and its officers, directors, employees, contractors, licensors, suppliers, and agents) from and against any and all damages, liabilities, losses, fines, penalties, costs, and expenses (including reasonable attorneys' fees) as incurred in connection with or as a result of: (1) Customer's use of or access to the Services or Platform; (2) any Customer Content or any Output or any access thereto or use thereof; (3) any breach by Customer of any representation,

warranty, covenant, or other provision of this Agreement or any applicable law; or (4) damage to property or injury to or death of any person directly or indirectly caused by Customer. CodeSecure agrees to give Customer prompt notice of any claim subject to this Section.

## **18 Limitation of Liability.**

18.1 REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL CODESECURE AND, IF ANY, ITS SUPPLIERS AND/OR LICENSORS, BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, INDIRECT OR SIMILAR DAMAGES RELATING TO THIS AGREEMENT OR THE SERVICES OR PLATFORM, INCLUDING, BUT NOT LIMITED TO, ANY LOST PROFITS OR LOST DATA, ARISING OUT OF OR RELATED TO THIS AGREEMENT AND/OR THE USE OR INABILITY TO USE THE SERVICES OR ANY DATA SUPPLIED, CREATED, OR STORED THEREWITH, EVEN IF CODESECURE OR ANYONE ELSE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES, INCLUDING BUT NOT LIMITED TO IN THE EVENT OF FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, OR STRICT LIABILITY, OR FOR ANY CLAIM BY ANY OTHER PARTY, INCLUDING THIRD-PARTIES. CODESECURE'S SUPPLIERS AND LICENSORS, IF ANY, DISCLAIM ALL LIABILITY TO YOU OR ANY THIRD-PARTY FOR DAMAGES OF ANY KIND FOR ANY AND ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT OR THE USE OF THE SERVICES.

18.2 IN THE EVENT THAT MANDATORY APPLICABLE LOCAL LAW PROHIBITS THE LIMITATION OR EXCLUSION OF LIABILITY FOR ANY INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, INDIRECT OR SIMILAR DAMAGES, CODESECURE'S, AND ITS SUPPLIERS' AND/OR LICENSORS' TOTAL CUMULATIVE LIABILITY FOR ANY INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, INDIRECT OR SIMILAR DAMAGES RELATING TO THIS AGREEMENT OR THE SERVICES OR PLATFORM SHALL BE THE LOWER OF ONE THOUSAND DOLLARS (\$1,000.00) OR THE MINIMUM PERMITTED BY LAW.

18.3 IN NO CASE SHALL CODESECURE'S, ITS SUPPLIER'S, AND/OR LICENSOR'S TOTAL CUMULATIVE LIABILITY RELATING TO THIS AGREEMENT OR THE SERVICES OR PLATFORM EXCEED:

18.3.1 IN THE CASE OF ANY PAID SUBSCRIPTION, THE LESSER OF THE FEES ACTUALLY PAID BY CUSTOMER TO CODESECURE IN CONNECTION WITH THE SERVICES GIVING RISE TO SUCH LIABILITY OR TWO THOUSAND DOLLARS (\$2,000.00); AND

18.3.2 IN THE CASE OF ANY EVALUATION SUBSCRIPTION, ONE HUNDRED DOLLARS (\$100).

19 **United States Government Rights.** The Services, including the software components and Documentation that constitute the Services, are "Commercial Computer Software" as defined in DFARS 252.227-7014 and, pursuant to DFAR 227.7202, licensed to the U.S. Government under terms customarily provided to the public. If DFAR is not applicable and to the extent not inconsistent with the terms of this Agreement, use, disclosure, or duplication is subject to the restrictions enumerated in FAR 52.227-19(b)(2). Any use, modification, reproduction, or disclosure of the Services by the U.S. Government shall be solely in accordance with the terms of this Agreement. The manufacturer is CodeSecure, Inc., 531 Esty Street, Ithaca, NY 14850.

20 **Export**. Customer shall not access, use, or otherwise export or re-export the Services, any Output, or any underlying information or technology except in full compliance with all United States and other applicable laws and regulations, including but not limited to those dealing with nuclear, chemical, or biological weapons proliferation. These laws include, among other things, restrictions on import/export destinations, end-users, and end-use. In particular, but without limitation, none of the Services or underlying information or technology may be accessed, used, or otherwise exported or re-exported (1) into Embargoed Countries/Area Controlled List Countries, or (2) to anyone on the US Treasury Department's list of Specially Designated Nationals or the US Commerce Department's Table of Deny Orders. By accessing or using the Services, Customer is agreeing to the foregoing and Customer is representing and warranting that Customer is not located in, under control of, or a national or resident of any such country or on any such list.

21 **Usage Review**. Customer agrees to provide CodeSecure with written certification of Services usage information as requested by CodeSecure and confirming that, during the Term, the Services are being used in accordance with this Agreement. If Customer's certification or review of Customer's usage of the Services reveals that Customer has underpaid Fees, exceeded Services usage limitations, and/or otherwise engaged in conduct resulting in an underpayment, Customer shall promptly pay CodeSecure, as invoiced, for such Fees based on CodeSecure's price list in effect at the time the review is completed. If the Fees invoiced as a result of the review exceed five percent (5%) of the Fees paid by Customer for the Services, then Customer will also pay any and all costs and expenses arising from or relating to the review, including reasonable attorneys' fees if collection action is undertaken.

22 **Force Majeure**. CodeSecure will not be liable for any default or delay in the performance of the Agreement or provision of Services, to the extent that such default or delay is caused, directly or indirectly, by fire, flood, earthquake, explosions, elements of nature, acts of God, acts or regulations of government bodies, nuclear, chemical or biological contamination, court orders arising out of circumstances other than a breach of this Agreement, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes, lockouts or labor difficulties, epidemics or by any other event or circumstance that is beyond the reasonable control of CodeSecure.

23 **System Maintenance**. CodeSecure will occasionally perform scheduled system maintenance which requires limits to the use of part or all of the Services, or significantly reduces features and functions during the scheduled system maintenance period. CodeSecure will provide reasonable notice for all scheduled system maintenance activities. Notwithstanding the foregoing, in the event of emergency or urgent issue which may negatively impact Customer, CodeSecure has the right to carry out unscheduled maintenance to remedy such instance(s).

24 **Sensitive Data**. The parties acknowledge and agree that, (1) the Services are not designed for the purpose(s) of storing, processing, compiling or transmitting Sensitive Data (as defined herein), and (2) Customer shall not use the Service, or otherwise provide to CodeSecure without prior written consent, Sensitive Data under this Agreement. "**Sensitive Data**" means: (a) special categories of data enumerated in European Union Regulation 2016/679, Article 9(1) or any successor legislation; (b) patient, medical, or other protected health information regulated by the Health Insurance Portability and Accountability Act (as amended and supplemented) ("**HIPAA**"); (c) credit, debit, or other payment card data or financial account

information, including bank account numbers or other personally identifiable financial information; (d) social security numbers, driver's license numbers, or other government identification numbers; (e) other information subject to regulation or protection under specific laws such as the Children's Online Privacy Protection Act or Gramm-Leach-Bliley Act ("**GLBA**") (or related rules or regulations); or (f) any data similar to the above protected under foreign or domestic laws. Customer further acknowledges that the Services and related features are not intended to meet any legal obligations for these uses, including HIPAA and GLBA requirements, and that CodeSecure is not a Business Associate as defined under HIPAA. Therefore, notwithstanding anything else in this Agreement, CodeSecure has no liability for Sensitive Data processed in connection with Customer's use of the Services.

25 **Links to Other Sites.** The Services may contain links to non-CodeSecure websites. Such links are solely provided as a convenience. Unless expressly stated, this content is not under CodeSecure's control. CodeSecure disclaims any and all warranty or liability of any kind for such content or use of thereof or the link. Customer understands and acknowledges that by clicking or activating such links Customer will leave the Services and go to another website. CodeSecure does not screen, review, approve, or otherwise endorse any content or information contained in these linked websites. Customer acknowledges and agrees that CodeSecure is not responsible for the contents of any of these linked websites, including the accuracy or availability of information provided by the linked websites.

26 **Applicable Law/Venue.** The validity, construction, and performance of this Agreement will be governed by the law of the State of New York, as if the Agreement were executed in, and to be fully performed within, the State of New York, and without regard to its principles of conflicts of laws. The parties expressly agree that the Uniform Commercial Code (UCC), the United Nations Convention on Contracts for the International Sale of Goods (UNCISG), and the Uniform Computer Information Transactions Act (UCITA), including any version of UCITA adopted by a state, shall not apply. Any legal action or proceeding arising from and/or related to this Agreement shall be brought exclusively in the federal or state court of New York. Customer and CodeSecure expressly consent to the personal jurisdiction and exclusive venue therein.

27 **Non-Exclusive Remedy.** Except as set forth herein, the exercise by either party of any of its remedies will be without prejudice to any other remedies provided herein or otherwise available at law or in equity. The breach or threatened breach of this Agreement may result in irreparable harm to CodeSecure and impair its value in such a way that is difficult or impossible to calculate. Therefore, Customer acknowledges and agrees that CodeSecure is entitled to seek, in addition to any other remedy provided for at law, equitable relief to protect its interests, without the necessity of posting bond or surety, including, but not limited to, injunctive relief, as well as money damages.

28 **Assignment.** This Agreement is personal to Customer and is not assignable or transferable by Customer, whether by operation of law or otherwise, without the express prior written consent of CodeSecure, which shall be provided at the sole discretion of CodeSecure. CodeSecure may assign this Agreement at its sole discretion. However, Customer may assign this Agreement to an acquirer or successor in interest in connection with a Change of Control of Customer without the prior written consent of CodeSecure, provided that Customer gives CodeSecure written notice of any such assignment within thirty (30) days thereof. "**Change of Control**" means the closing of (1) a merger, consolidation or similar transaction providing for the

acquisition of the direct or indirect ownership of more than fifty percent (50%) of Customer's shares or similar equity interests or voting power of the outstanding voting securities or that represents the power to direct the management and policies of Customer, or (2) the sale of all or substantially all of Customer's assets related to the subject matter of the Agreement.

29 **Amendment to Terms; Change to Services.**

29.1 CodeSecure reserves the right to update these Terms at any time. Customer's continued access or use of the Services following the posting of the updated Terms constitutes acceptance of and agreement to such updated Terms. If Customer does not agree to the updated Terms, then Customer is no longer authorized to access or use the Services.

29.1.1 CodeSecure may change or modify the Services at any time. CodeSecure will only be required to notify Customer of a change or modification to the Services in advance if the change or modification is material and does not extend or enhance the functionalities or architecture of the Services. If Customer does not wish to use the Services after notification of the material change, Customer may, within ten (10) business days of notification, provide CodeSecure with written notice that it does not accept the material change. If Customer does not accept a material change, CodeSecure may, in its sole discretion, choose to continue to offer Customer the Services without the change or terminate the Agreement on thirty (30) days' written notice. If Customer provides no written notice to CodeSecure within the ten (10) business day period, then Customer will be deemed to have accepted the material change and the Agreement will continue in full force and effect. Upon any such termination, Customer's exclusive remedy and CodeSecure's sole liability is to refund any prepaid and unused Fees from the effective date of the termination of the Services.

30 **Waiver; Severability.** The waiver by either party of a breach of any provision of this Agreement must be in writing signed by the waiving party and shall not operate or be construed as a waiver of any other breach, prior, contemporaneous, or subsequent thereto, of the same or a different kind. If any provision of this Software License is held by a court of competent jurisdiction to be contrary to law, the remaining provisions will remain in full force and effect. In the event of invalidity, the parties further agree to substitute for the invalid provision a valid provision which most closely resembles the intent of the invalid provision.

31 **Notice.** All notices by Customer under this Agreement will be via reputable overnight mail service. CodeSecure may also provide notices hereunder by electronic mail transmission or by message sent through the Services. Notices will be effective upon confirmation or acknowledgment of receipt (or when delivery is refused), except notice by electronic mail which will be effective upon receipt of the electronic mail is actually confirmed by the recipient. Either party may change its address for notice by giving notice of the new address to the other party.

32 **Entire Agreement.** The Agreement includes these Terms and all applicable Purchase Documents, each of which is hereby incorporated into and made a part of this Agreement. The Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications relating to the subject matter hereof. If the terms of any Order Form or other document provided by Customer to CodeSecure in connection with Customer's paid subscription for the

Services includes different or additional terms from the Agreement, the provisions of the Agreement shall prevail and such inconsistent and/or additional terms shall have no effect. Any inconsistent and/or additional terms contained within any Purchase Documents or other document Customer provides to CodeSecure related hereto shall be of no effect unless separately agreed upon in writing by an authorized representative of CodeSecure.

33 **Additional Terms.** This Agreement is in the English language, which language will be controlling in all respects. The parties are independent contractors, and nothing in this Agreement will be construed as creating an employer-employee relationship, a partnership, or a joint venture between the parties. Neither party is an agent of the other and neither party is authorized to make any representation, contract, or commitment on behalf of the other party. No term of this Agreement will be construed to confer any third-party beneficiary rights on any non-party. Each and every right and remedy hereunder is cumulative with each and every other right and remedy herein or in any other agreement between the parties or under applicable law. The words “include,” “includes” and “including” means “include,” “includes” or “including,” in each case, “without limitation.”

**Appendix A: CodeSecure Cloud Service Level Commitment**

1 **Service Level Commitment.** During the Subscription Term for which CodeSecure has agreed to provide a relevant Cloud Product to you, we will use commercially reasonable efforts to provide the following service level.

<i>Service/Activity</i>	<i>Service Level</i>	<i>Service Level Credit</i>
Availability of the Subscription Services	The Subscription Services will be available to users for use 99.00% of the time each month, not including scheduled downtime. Scheduled downtime shall be for regular maintenance and upgrades and will be communicated with at least 24 hours of notice. Any downtime that might require more than 2 hours will be scheduled at least 7 days in advance.	5% of the recurring monthly fee for the Subscription Services for the month of the failure.
Restore Time	In the event of unscheduled downtime, the system shall be restored to a fully operational state within 48 hours.	5% of the recurring monthly fee for the Subscription Services for the month of the failure.

*Table 1 Service Level Commitment*

(a) If we confirm there is a failure to meet the Service Level Commitment in a particular month and you make a request for service credit within fifteen (15) calendar days after the end of such period, you will be entitled to a credit as shown in Table 1. To receive a Service Credit, you must submit a ticket at <https://support.codesecure.com> with all fields fully and accurately completed and provide any other reasonably requested information or documentation. Our monitoring and logging infrastructure is the source of truth for determining Monthly Uptime Percentage, errors and whether we have met the Service Level Commitment. All calendar months will be measured in the UTC time zone.

(b) Customer acknowledges (i) that it is responsible for procuring and operating all computer systems, software, and telecommunications services required for Customer’s Authorized End Users to access and use the Subscription Services, and Customer may be unable to access or utilize some or all aspects of the Subscription Services if it does not utilize an updated and recent stable version of one of the predominantly utilized browsers (Internet Explorer, Safari, Chrome, or Firefox), and (ii) this Agreement allows only for the purchase

of certain rights of access to the Subscription Services, and nothing in this Agreement may be interpreted as an implied license or to require CodeSecure to deliver a copy of any software or other product utilized by CodeSecure to provide the Subscription Services.

(c) The Service Credit will be calculated as set forth here. We will apply each Service Credit against a future payment otherwise due from you for the affected Cloud Product, provided that your account is fully paid up, without any outstanding payment issues or disputes. No refunds or cash value will be given for unused Service Credits. Service Credits are non-transferable and may not be applied to any other CodeSecure Product or Service. The aggregate maximum Service Credits applied to an invoice will not exceed 100% of the amount invoiced for the affected Cloud Product in that invoice billing period. We reserve the right to deny a Service Credit if you do not qualify for one.

(d) If you ordered a Cloud Product through a Reseller, you or the Reseller remains responsible for submitting a ticket as set forth in Section 2(a) above; and the Reseller will be solely responsible for issuing the appropriate amounts to you.

**2 Exclusions.** You will not be entitled to a Service Credit if you are in breach of the Terms. The Service Level Commitment will not include unavailability to the extent due to: (i) your use of the Cloud Products in a manner not authorized in the Terms or not in accordance with the applicable Documentation; (ii) force majeure as set for in section 18 of this EULA; or (iii) routine scheduled maintenance or reasonable emergency maintenance as set forth in the CodeSecure Maintenance Policy. No Service Level Commitment or Service Credits are provided for sandbox instances or free, proof-of-concept, “beta”, or trial services.

**3 Exclusive Remedies.** Service Credits are your sole and exclusive remedy, and our sole and exclusive liability, for our failure to meet the Service Level Commitment. For the elimination of uncertainty, Service Level Commitments apply only to CodeSecure Cloud services administered by CodeSecure.

These Terms of Service were last updated February 20, 2023.