SCW SaaS Agreement - AWS Marketplace

This Subscription Agreement (including the SLAs, the Data Processing Agreement (DPA) (if applicable) and any applicable order form) sets out the Terms and Conditions between Secure Code Warrior (SCW) and the Customer. SCW and the Customer shall hereinafter be defined as the "**Party**" and collectively as the "**Parties**".

1. DEFINITIONS AND INTERPRETATIONS

1.1 The following words shall have the meaning stipulated herein below:

Affiliates means a company in which either party either wholly owns or has a controlling interest;

Applicable Data Protection Legislation means any data protection or privacy legislation which applies, respectively to the activities of the Customer and SCW, including, where applicable the European General Data Protection Regulation Act 2016 (*GDPR*), the UK Data Protection Act 2018, the Australian Privacy Act (Cth) 1985, and any other applicable legislation.

Confidential Information means any information, maintained in confidence by the disclosing Party, communicated in written or oral form, marked as proprietary, confidential or otherwise so identified, and/or any information that by its form, nature, content or mode of transmission would, to a reasonable recipient, be deemed confidential or proprietary, including, without limitation, each party, employees, business plans, methods of operation, SCW Offerings, including the SCW Learning Platform. Confidential Information will also include, without limitation:

- certain confidential and/ or proprietary financial, sales and distribution, marketing, research and development, organizational, technical and other business information, policies or practices, related information; and
- any information disclosed by a Party which relates to an actual or potential End User, vendor or third party with which the disclosing Party is in a confidential relationship

Consent means consent, permission, agreement or approval which meets the requirements for the consent of the Applicable Data Protection Legislation.

Controller has the meaning as defined by Regulation (EU) 2016/679 with obligations as set forth in the regulation.

Customer means the party which acquires a Subscription to the SCW Learning Platform directly or through a third party and, if applicable, End Users(s).

Defect means a defect, error or bug having a materially adverse effect on the appearance, operation or functionality of the SCW Learning Platform, but excluding any defect, error or bug caused by or arising as a result of an act or omission of the Customer, any failures of the internet

or part of the internet or other mechanism designed or used to disable, erase, alter or harm the SCW Learning Platform.

Device means a single personal computer, workstation, mobile phone, tablet, or other electronic devices.

Documentation means any electronic or written aids, manuals, user instructions, technical literature, training material, demo material, specifications and all other related materials, which may be accessible by the Customer in the SCW Learning Platform.

End User means a person or persons employed and / or otherwise authorised by the Customer, or where applicable the Customer's group, and who is provided with a subscription by the Customer to access and use the SCW Learning Platform..

Force Majeure means any circumstances which are outside the parties' control and which prevent or delay SCW providing the service and SCW's materials (or any of them), including any act or omission of the Customer, of any End User, or any third party, the failure of any utility service or transport or telecommunications network, any bug, defect, error, fault or deficiency in any software or data not provided by SCW, any act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation, or direction, accident, breakdown of place, machinery or equipment fire, flook, storm or the failure of any supplier, subcontractor or Sub-processor.

Insolvency Event means a situation where in respect to either party (1) a party is unable to pay its debt as and when they fall due; (2) a receiver or administrator is appointed over the party or any part of their respective undertakings or assets; (3) a resolution for winding up the party is proposed (or ordered), with the expectation of such an order being proposed for the purpose of a bona fide reconstruction; (4) a court of competent jurisdiction makes an order to that effect; (5) it becomes subject to an order of administration; (6) it enters into any scheme of arrangement with credits or any similar process to any of the above is begun in any jurisdiction, or if it ceases or threatens to cease to carry on business.

Intellectual Property means all intellectual property rights wherever in the world, whether registered or unregistered, including patents, rights to any invention, copyrights and related rights, moral rights, rights in computer software, trade marks, service marks, trade names, domain names, rights in any goodwill and the right to sue for passing off or unfair competition, registered designs, other rights in designs any application or right of application of such rights, including codes, sequences, derivative works, copyrights, data-base rights, trade secrets, know-how, business names, trade names, trademarks, service marks, patents, petty patents, utility models, rights in design, organisation, structure, interfaces, any documentation, data and other related rights.

Personal Data has the meaning given to it according to Regulation (EU) 2016/679 and Directive 95/46/EC, as amended from time to time.

Processor has the meaning as defined by Regulation (EU) 2016/679 with obligations as set forth in the regulation.

SCW means Secure Code Warrior Limited, and its related/ affiliate entities.

SCW Learning Platform means computer software developed and owned by SCW Limited, a company incorporated in England, made available to the Customer as a service via the internet, including Documentation, updates, supplements, modification, addition and/or adaptation of the SCW Learning Platform to enable or include certain features and/or functionality, under the terms and conditions of this Agreement.

SCW Offerings means any SCW products and/ or services that SCW may offer from time to time, and includes the SCW Learning PLatform.

SLAs means the Service Level Schedule referred to in clause 5 below.

Subscription means the subscription for the right to access and use the SCW Learning Platform according to this Subscription Agreement

Sub Processor means a 3rd party processor selected by SCW for a specific set of processing needed by the SCW Learning Platform.

1.2 The headings of the Subscription Agreement are for convenience only and shall not constrain or affect its construction or interpretation in any way whatsoever. Words importing the singular shall include the plural, and vice versa. Sections, addendums and headings do not affect the interpretation of this Subscription Agreement.

2. SCW LEARNING PLATFORM

2.1 The SCW Learning Platform provides an integrated suite of secure code training and tools that moves the focus from reaction to prevention. SCW's Learning Platform includes hands-on training, tournaments, courses, self-paced learning for every skill level and online assessments.

2.2 The SCW Learning Platform is made available through an account set up for the Customer. The Customer's right to access and use the Subscription for the SCW Learning Platform is web based only pursuant to the terms of this Subscription Agreement.

3. TERM

3.1 This Subscription Agreement commences on the date, and for the period set out in the applicable order form unless terminated in accordance with this Subscription Agreement or renewed by agreement.

3.2 On termination or expiration of the Subscription Agreement, the Customer's access to and use of the SCW Learning Platform will no longer be available, neither the Customer or the End User(s), will have access to or use of the SCW Learning Platform and applicable data or Documentation therein.

4. CUSTOMER RIGHTS AND RESTRICTIONS

4.1 The Customer (including its End Users) is granted a limited, non-transferable, non-exclusive subscription to access and use the SCW Learning Platform on Devices via any standard web browser during the Subscription Term.

4.2 Neither Customer nor any End User are permitted to frame, reproduce, or otherwise re-publish, re-sell or re-distribute the SCW Learning Platform, or any part thereof.

4.3 The Customer agrees, and will procure that it's End Users, will only access and use the SCW Learning Platform for its internal business use. The Customer must not, and will procure that it's End Users do not:

   (a) access or use the SCW Learning Platform in any way that causes or may cause damage to the SCW Learning Platform or impairment of the availability or accessibility of the SCW Learning Platform or any of the areas of or services on the SCW Learning Platform

   (b) access or use the SCW Learning Platform in any way that is unlawful, illegal, fraudulent or harmful or in connection with any unlawful, illegal, fraudulent unethical, immoral, inappropriate or harmful activity, including but not limited to, to exploiting or acquiring skills for illegal or malicious attacks

   (c) allow its End Users or any third party to attempt, to copy, modify, duplicate, create derivative works, mirror, republish, reverse compile, disassemble, reverse engineer, download, transmit, or distribute all or any portion of the SCW Learning Platform, including but not limited to the object code and the source code, in any form or media or by any means

   (d) rent, lease, distribute, sell, sublicense, transfer or provide access to or use of the SCW Learning Platform to any third party; and(e) access or use the SCW Learning Platform for any commercial purpose or for any public display, whether commercial or non-commercial, without the prior written approval of SCW.

4.4 The Customer acknowledges and agrees that the SCW Learning Platform may include certain software which is incorporated in the SCW Learning Platform for no additional fee (Open Source Software). Access to the Open Source software is provided subject to the terms provided for such access. A link to the relevant terms is [insert link]. The Customer herein agrees that such terms are incorporated into this Subscription Agreement.

5. SUPPORT

Customer acknowledges and agrees that SCW will maintain the SCW Learning Platform and provide all support services on terms set out in the SLAs, as set out in the Service Level schedule https://www.securecodewarrior.com/trust/service-level-agreement.

6. FEES and PAYMENTS

The Subscription Fee including any direction to pay, payment terms, number of End Users are set out in the applicable order form, and may be updated from time to time. For clarity, the Customer may add additional End Users, subject to agreement to pay an additional fee.

7. CONFIDENTIALITY

Each party agrees to protect Confidential Information disclosed to it to the same extent and in the same manner that it would protect its own Confidential Information. Each party further agrees to bind their respective employees, agents and subcontractors to the confidentiality and other terms and conditions of the Agreement and to be liable for their compliance therewith. In no event shall either parties' practices and/ or policies fall below a level of reasonable and due care, which includes each party limiting reproduction, access, disclosure and use to those personnel who have a need to know for the purposes of performing the services in this Agreement, and who are made aware of and agree to comply with the terms of the confidentiality obligations herein.

8. INTELLECTUAL PROPERTY

8.1 SCW owns and retains all right, title, interest and ownership to the SCW Learning Platform including without any limitation all Intellectual Property rights in and to the SCW Learning Platform, Documentation, and learning materials. Accordingly, the Customer acknowledges and agrees that this Subscription Agreement and its access and use of the SCW Learning Platform transfers no title or ownership of the SCW Learning Platform either to it or any of its End Users.

8.2 The Customer acknowledges and agrees that SCW has a royalty-free, worldwide, transferable, irrevocable, perpetual license to use or incorporate into the SCW Learning Platform any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including End Users, relating to the operation of the SCW Learning Platform.

9. WARRANTIES

9.1 The Customer acknowledges and agrees that:

   (a)   SCW makes no representation regarding the SCW Learning Platform other than as stated in this Subscription Agreement;

(b)   it has relied on its own skill and judgment or that of its advisers in entering to enter into this Subscription Agreement; and

(c) the SCW Learning Platform including all Documentation comprise a standard service and materials provided to SCW's customers generally and they have not been developed to meet the Customer's or any of the Affiliates requirements.

10. SUSPENSION

10.1 SCW reserves the right to suspend the Customers access to and use of the SCW Learning Platform in circumstances set out in clause 11.2(b) below and if any of the following occur or SCW has reasonable grounds to suspect:

(a) Customer has not paid the Subscription Fee;

(b) there has or may have been, a breach of security (including the introduction of any Malicious Code), a breach of this Subscription Agreement, or any unlawful or illegal use of the Service and the Documentation;

(c) SCW knows or has reasonable grounds to suspect that any of the Customer Data infringes the Intellectual Property Rights or other rights of any third party, or is in any way unlawful, or is likely to lead to any third party instituting or threatening legal proceedings against SCW or any other person;

(d) the Customer or any of the Affiliates cause, the Customer, its End Users, and/ or other employees including those of any of its Affiliates has caused any technical or security issue which affects the Service or other customers of SCW or of any SCW Affiliate; and/ or

(e) in circumstances set out in clause 11.2 below.

11. TERMINATION

11.1 Either party may terminate the Subscription Agreement and any applicable Subscription Order by notice in writing to the other and with immediate effect if:

(a) the other party commits a material breach, incapable of remedy;

(b) the other party fails to remedy a breach within 10 business days of receiving written notice by the other party, provided that, in each instance of a claimed breach:

(i) the non-breaching Party notifies the breaching Party in writing of such breach; and

(ii) the breaching Party fails to either cure such breach within thirty (30) days (or such other period as mutually agreed by the Parties) from receipt of such notice;

(c) An Insolvency Event occurs in relation to either party; or(d) any law enforcement agency or court requires or requests SCW to do so

11.2 SCW may terminate the Subscription Agreement at any time in circumstances where there are technical and or security issues caused by the Customer that directly impact (or may impact) either of (a) the business operations of SCW or any of its customers; (b) the integrity of the SCW Learning Platform. For clarity, SCW will provide the Customer with a period of 14 days to respond to and or resolve any issues or concerns that Secure Code Warrior identifies in writing to the Customer, but the decision will otherwise be exercised by Secure Code Warrior in its absolute discussion.

12. LIMITATION OF LIABILITY

12.1 The maximum liability of SCW to the Customer will in no circumstances exceed an amount equal to or more than the Subscription Fee paid or payable to SCW for access to and use of the SCW Learning Platform, in any 12 month period.

12.1 Notwithstanding the above, neither Party will be liable to the other, whether in contract or tort, or otherwise for any incidental, indirect, punitive, exemplary, special, consequential or unforeseeable loss, damage or expense, loss of profits, loss of business, loss of opportunity, loss or corruption of data, however arising, even if advised of the possibility of such loss or damages being incurred.

13. GOVERNING LAW

13.1 This Subscription Agreement and any disputes arising out of or in connection with access to and use of the SCW Learning Platform under the terms of the Subscription Agreement will be governed and interpreted by the non-exclusive jurisdiction of the laws of the State of New York

14. MISCELLANEOUS

14.1 **Relationship.** This Subscription Agreement and the Customer's right to access and use the SCW Learning Platform does not establish any relationship of partnership, joint venture, employment, franchise or agency between the Customer and SCW.

14.2 **Survival.** Sections of this Subscription Agreement that, by their terms, require performance after the termination or expiration of this Subscription Agreement will survive as permitted by local law. These sections include section 1 (Definition), section 7 (Confidentiality), section 8 (Intellectual Property), section 9 (Warranties), and section 14 (Miscellaneous).

14.3 **Entire agreement.** This Subscription Agreement (including the Service Level Schedule), and where relevant, any DPA constitutes the entire agreement between SCW and the Customer. It supersedes any prior or contemporaneous communications, and any prior agreement between

the Parties regarding its subject matter, and cannot be amended or updated other than by a written agreement signed by both Parties. In the event of a conflict between the terms of this Subscription Agreement and a subsequent written agreement, this Subscription Agreement shall prevail.

14.4 **Waiver.** No waiver of any breach of this Subscription Agreement shall be a waiver of any other breach, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving Party.

14.5 **Severability.** If a court holds any provision of this Subscription Agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the Parties will amend this Subscription Agreement to give effect to the stricken section to the maximum extent possible.

15. DATA PROCESSING ADDENDUM

15.1 Where applicable and agreed, terms of the DPA are located here. this Subscription Agreement can be found https://www.securecodewarrior.com/trust/data-processing-addendum