

# Qodana Cloud Terms of Service

Version 1.1, effective as of January 31, 2024

Welcome to JetBrains Qodana Cloud!

These Terms of Service constitute a legally binding document, and it is important that You read them carefully.

JETBRAINS QODANA REQUIRES A HEIGHTENED AWARENESS OF SECURITY-RELATED ISSUES, INCLUDING ENABLING GUEST USER ACCESS TO YOUR DATA. PLEASE FAMILIARIZE YOURSELF WITH THE PRODUCT'S CHARACTERISTICS AND CAPABILITIES BY READING THE DOCUMENTATION (DEFINED BELOW) AND WITH YOUR RESPONSIBILITIES SET OUT IN THESE TERMS OF SERVICE. PLEASE NOTE THE DISCLAIMERS AND LIMITATIONS OF LIABILITY BELOW IN SECTIONS 9 AND 10, AS WELL AS THE INDEMNIFICATION PROVISIONS IN SECTION 8.

You understand that by accepting these Qodana Cloud Terms of Service (by clicking the “I agree” or a similar button or by accessing or using Qodana), You enter into a legal agreement and agree to certain legal conditions for Yourself or for the legal entity that You represent.

By accepting these Qodana Cloud Terms of Service, You confirm that You understand them, agree to them, and are at least 13 years of age.

## 1. Introduction

These JetBrains Qodana Cloud Terms of Service (“**Terms**”) describe how You can access, purchase, and use Qodana.

Accepting these Terms creates a legal agreement between (i) JetBrains s.r.o., a company registered in the Commercial Register of the Prague Municipal Court, Section C, File 86211, ID No. 265 02 275 with its registered office at Na Hřebenech II 1718/8, Prague, 14000, Czech Republic (“**JetBrains**”, “**We**”, or “**Us**”) and (ii) you, either a legal entity or a natural person (“**Customer**” or “**You**”). JetBrains and Customer may each also be referred to individually as a “**Party**” or jointly as the “**Parties**”.

If You accept these Terms on behalf of a legal entity, You confirm (‘represent and warrant’) that You are authorized to enter into agreements on behalf of that legal entity. If these Terms are accepted using an email address provided by a legal entity, We will regard (‘deem’) You as authorized to represent that legal entity. You must be able to enter into contracts (‘have capacity’).

***Summary: Accepting these Terms creates a legal agreement between You and JetBrains. There are legal implications to accepting these Terms.***

## 2. Definitions

### a) Special legal phrases

There are certain phrases that have an accepted meaning for lawyers. To ensure these Terms are clear and accessible, We have included the accepted ‘legal’ phrase in parentheses after the word to show that We intend it to have the accepted ‘legal’ meaning.

### b) Definitions

There are also words or phrases in these Terms that have a particular defined meaning. When the word or phrase is used for the first time, it is defined and capitalized. These Terms also use the following definitions:

“**Affiliate**” means, with respect to any party, any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control of that party. ‘Control’ for such purposes means the possession, direct or indirect, of the power to direct or affect the direction of the management and policies of a

person or entity, whether through the ownership of voting securities, by contract, or otherwise. You are responsible for the compliance of Your Affiliate with these Terms.

**“Confirmation”** means an email confirming Your rights to use Qodana and containing important information about Your Subscription Plan, such as (‘including, but not limited to’) the Subscription Period and the price of Your Subscription.

**“Contributor”** means any unique individual or bot who makes one or more commits (i.e. change) in any Project Source Code.

**“Data”** means any of Your data that is transferred to, stored in, processed by, or otherwise used in Qodana Cloud, such as source code and other content of Your Project Source Code, as well as any other materials You and Your Users share with Us.

**“Documentation”** means the latest versions of all online Qodana technical documentation available at <https://www.jetbrains.com/help/qodana> and any other relevant Qodana policy available on the JetBrains Website that applies to Qodana.

**“JetBrains Account”** means an account created by You at <https://account.jetbrains.com> enabling administration of and/or access to Qodana.

**“JetBrains Website”** means the hosted version of JetBrains product website and any other website operated by Us.

**“Organization”** means a shared workspace for Qodana Users created by You in Qodana Cloud. You may create one or more Organizations to use Qodana Cloud.

**“Subscription”** means Your right to use Qodana Cloud in connection with Qodana Linters and features corresponding to Your Subscription Plan.

**“Subscription Period”** means the Subscription period described in Your Confirmation.

**“Subscription Plan”** means a subscription plan detailed in Your Confirmation and the specific features associated with it, as described on the JetBrains Website and/or in the Documentation. If the description of Your Subscription Plan in Your Confirmation is different from the description on the JetBrains Website or in the Documentation, the description in Your Confirmation takes precedence.

**“Qodana”** means the JetBrains product known as JetBrains Qodana. Qodana includes (a) the JetBrains software program known as Qodana Linters, which is downloadable; (b) the hosted service known as Qodana Cloud; (c) the Documentation; (d) updates to Qodana; and (e) incorporated Third-Party Software.

**“Qodana Cloud”** means the hosted service available to You on a subscription basis that collects and displays data from different Qodana Linters in a centralized manner. Qodana Cloud can be used to manage code quality checks in a variety of contexts, ranging from single-person projects to large development teams, and allows the sharing of Reports and further information generated by Qodana based on Reviews with Qodana Users selected by You.

**“Qodana Linter”** means a downloadable software tool that analyzes a given codebase for bugs, errors, and other mistakes that impact its quality and can cause problems. Qodana Linters communicate with Qodana Cloud to obtain Subscription details, retrieve project configurations, upload Reports, and interchange information about the executed analysis.

**“Project Source Code”** means a repository of source code in a supported version control system outside of Qodana (e.g. JetBrains Space, GitHub, or any other online or self-hosted system). The Project Source Codes that are supported by Qodana are detailed in the Documentation. You can associate one or more Project Source Codes with the projects that You create in Qodana.

**“Report”** means a record of functional and structural issues, performance metrics, adjustment recommendations, and tips identified by Qodana.

**“Review”** means the technical analysis of code by Qodana.

**“Third-Party Software”** means any third-party software program that is owned or licensed by someone other than Us and is described on the JetBrains Website.

“User” means any unique individual or bot that is authorized by You to use Your Subscription. A User can be registered under Your Organization or can be someone who has access to the Data of Your Organization as an unregistered outsider (guest) if You have enabled guest User access to such Data.

***Summary: Words starting with capital letters have special meanings. These words are defined in this section or wherever they are used for the first time in these Terms. Please note the difference between Contributor and User, as the former does not interact with Qodana and the latter does.***

### 3. Subscriptions, Rights, and Responsibilities

#### a) Subscriptions

i) *Subscription Plan* – In order to use Qodana Cloud, You must have a Subscription (either a free or paid Subscription Plan) and register at least one Project Source Code in Qodana Cloud. When You subscribe, You can select either the Yearly Subscription or Monthly Subscription for Your Subscription Plan, determining the length of the Subscription Period. Your Subscription gives You and any of Your Affiliates authorized by You the ability to use Qodana Cloud based on the limits described in Your Subscription Plan. Depending on Your Subscription Plan, You will have access to different features and be subject to certain limits. These features and limits are described on the JetBrains Website. The most important limits include the number and type of Qodana Linters used in connection with Your Qodana Cloud and the number of Organizations linked to Your JetBrains Account.

ii) *Start and End of the Subscription Period* – You choose when Your Subscription starts. The start date impacts the duration of Your initial Subscription Period. If Your Subscription Period starts between the first and the fifth day of a calendar month:

- Monthly Subscriptions – Your Subscription Period ends on the last day of the same calendar month in which it started;
- Annual Subscriptions – Your Subscription Period ends on the last day of the previous calendar month in the following year.

If Your Subscription Period starts on the sixth day or later of a calendar month:

- Monthly Subscriptions – Your Subscription Period ends on the last day of the following calendar month;
- Annual Subscriptions – Your Subscription Period ends on the last day of the previous calendar month in the following year.

For initial Subscription Periods, the Subscription fees (if applicable) will be adjusted on a pro-rata basis, and You will be billed for the full duration of the Subscription term, which may differ from the actual calendar month or calendar year as described above.

iii) *Automatic Renewals* – Unless You expressly opt out, Your Subscription and the Subscription Period renew automatically. You can opt out of the automatic renewal of Your Subscription in Your JetBrains Account at any time.

iv) *Trial Subscriptions* – If You selected one of the paid Subscription Plans, You may be eligible for a 60-day evaluation Subscription (“**Trial Subscription**”), as described in the Documentation or on the JetBrains Website. The Trial Subscription is free and must be used only to assess whether Qodana suits Your needs. You are eligible for one Trial Subscription. When the Trial Subscription ends, You will have the option to continue with a paid Subscription Plan, use the free Subscription Plan, or stop using Qodana. If You stop using Qodana, We will suspend the Trial Subscription and maintain Your Data for the period specified in the Documentation, in case You decide to purchase a Subscription within that time frame. If You do not let Us know before the end of the period for which the data is stored that You would like to purchase a Subscription, the preserved Data will be permanently deleted.

#### b) Right to use Qodana

You and Your Affiliates authorized by You can use Qodana Cloud in connection with Qodana Linters as long as You comply with these Terms, the Documentation, and the limits of Your Subscription. Subject to Your compliance with

these Terms and Documentation, JetBrains grants to You during the Subscription Period a non-exclusive, revocable, conditional, worldwide right to use Qodana Linters and Reports as laid out in this section.

You may:

- i) Install and use Qodana Linters to run Reviews and generate Reports within the limits set out in the purchased Subscription Plan, including on third-party hardware used by You, provided that You are duly authorized by the third party to do so and the Qodana Linters are used solely for Your internal purposes;
- ii) Display and use the Reports for Your internal development purposes.

#### **c) Your responsibilities**

You are responsible for:

- i) *Installation* – Unless You let Us install Qodana Linters on Your behalf, this covers the download and installation of Qodana Linters;
- ii) *Users* – creating and maintaining a JetBrains Account and the permissions You grant to Your Users (and guest Users) – including registering User accounts – and Your and Your Users’ actions and omissions while using Qodana Cloud. If You enable guest Users, they do not require Qodana registration, which can result in third parties having access to Your Data. If You become aware that any User breaches these Terms, You must notify Us and immediately revoke that User’s access to Qodana Cloud;
- iii) *Contributors* – any commits, edits, and changes made in Your Project Source Code, as well as the management of Contributors;
- iv) *Project Source Code* – maintaining Your Project Source Code, its connection to Qodana Cloud, and ensuring the interoperability of the Project Source Code with Qodana Cloud in accordance with the Documentation;
- v) *Confidentiality and security* – keeping Your usernames, passwords, and access tokens confidential and secure, and making sure that Your Users do the same;
- vi) *Acceptable use* – using Qodana Cloud in accordance with the Documentation, Your Subscription, and the JetBrains Products Acceptable Use Policy, which is available at <https://www.jetbrains.com/legal/docs/terms/acceptable-use-policy/> (“Acceptable Use Policy”);
- vii) *Equipment* – Since all deliveries under these Terms will be electronic, You must have a suitable internet connection in order to access Your JetBrains Account and Qodana Cloud and to receive any deliveries. It is also Your responsibility to have access to any hardware and any third-party software needed to run Qodana, such as a browser with compatible data security protocols;
- viii) *Your Data* – all Data that You or Your Users submit, store, or use in Qodana Cloud, including ensuring that it is legal for You and Your Users to do so. You are also responsible for all legal consequences, such as claims, damages, losses, liabilities, costs, and expenses, that result from Your Data. If You become aware that any of Your Data breaches these Terms or another person’s (‘third-party’) rights, You must notify Us and remove this Data from Qodana Cloud;
- ix) *Settings* – maintaining the default settings We provided or the settings recommended in the Documentation; and
- x) *Compliance with laws* – ensuring that You and Your Users use Qodana according to all applicable laws and governmental regulations.

#### **d) Restrictions**

You must not, and You must make sure Your Users do not:

- i) *Interfere* – reverse-engineer, disassemble, or decompile all or part of Qodana, or try to derive the source code of Qodana in any way, unless applicable law allows it;
- ii) *Steal* – modify all or part of the Qodana binaries, or modify, alter, tamper with, repair, or otherwise create derivative works of Qodana, unless We give You express permission;

- iii) *Cheat* – use, or try to use, Qodana in a way that avoids incurring fees as specified in Section 6;
  - iv) *Transmit illegal Data* – use Qodana to upload, store, or share, or allow others to upload, store, or share (‘transmit’), any material that is criminal, offensive, defamatory, or otherwise unlawful or a tort, or that breaches the privacy or intellectual property rights of anyone else (‘third-party’). We have (‘reserve’) the right, but not the responsibility, to reject or remove any Data, suspend or ban any User, or close any User account that We believe (‘in Our sole discretion’) breaches these Terms, any other legal agreement with Us, or Our policies, or is otherwise illegal;
  - v) *Facilitate unauthorized access* – allow unauthorized access to Qodana, unless expressly permitted by these Terms;
  - vi) *Resell or distribute* – resell or otherwise provide Qodana or access to Qodana to any third party, except if We give You express permission; and
  - vii) *Hack* – utilize any procedures or tools to bypass Qodana security, or utilize or allow Qodana to be utilized for the purpose of hacking, tunneling, or otherwise gaining unauthorized access to any computer or system.
- More details are included in the JetBrains Products Acceptable Use Policy made available at <https://www.jetbrains.com/legal/docs/terms/acceptable-use-policy/>.

#### e) Our responsibilities

With regards to Qodana Cloud, We will exercise commercially reasonable efforts regarding:

- i) *Access and availability* – making Qodana available and providing Your Users with access to it, according to the permissions You define;
- ii) *Security and Confidentiality* – keeping Data, usernames, passwords, and access tokens associated with Your Subscription confidential and secure from unauthorized use, access, and disclosure;
- iii) *Data integrity* – not altering Your Project Source Code without Your permission; You can find more details in the Documentation or in Your Subscription Plan.

Qodana may be unavailable to You during planned downtime, failures of Qodana, including failures or delays contributed to by an internet service provider, or any unavailability caused by circumstances beyond JetBrains’ reasonable control (see the ‘Force Majeure’ Section).

***Summary: You can use Qodana according to these Terms. Do not breach the restrictions outlined above, as they are an important part of this agreement, and do not alter the recommended settings. Both Parties to these Terms have certain responsibilities and need to approach them with the appropriate levels of seriousness. Please pay attention to the time period in which You are entitled to use Qodana, the fact that your Subscription renews automatically, and the number of Qodana Linters and Organizations You have purchased in Your Subscription Plan.***

## 4. Intellectual Property Rights and Ownership

### a) We own Qodana

We own, or have the right to use, all the proprietary and intellectual property rights to Qodana. This includes all Qodana-related trade secrets, copyrights, trademarks, service marks, patents, other registered or unregistered intellectual property, and system-generated data. System-generated data includes aggregate anonymized data on how Qodana is used, system logs, metadata, registration and login data, and data required to provide support. These are Our rights (‘rights are reserved’) and the only rights that You have in relation to Qodana are those that are necessary for You to access and use Qodana in accordance with these Terms and the Documentation.

### b) You own Your Data

You own Your Data submitted to Qodana Cloud and keep all proprietary rights, including intellectual property rights. Every time You submit Data to Qodana, You confirm that You have the right to do so and understand that

You are doing so at Your own risk, and that You are solely responsible for this Data and all consequences of its use in Qodana. You also indemnify Us from any liability relating to this Data (see the 'Indemnification' Section).

#### c) Feedback

You give Us the right to use, change ('modify'), commercialize, and incorporate into Qodana any of Your ideas, suggestions, recommendations, proposals, or other feedback relating to Qodana. You cannot withdraw this permission after it is given (it is 'irrevocable') and it is perpetual. We are not required to pay a fee for this feedback (it is 'royalty-free'), and We can transfer and give similar rights ('sublicense') to Your feedback to anyone else worldwide.

#### d) Third-Party Software

You understand that Qodana integrates Third-Party Software and that by using Qodana You might be using Third-Party Software. This Third-Party Software is provided to You on the terms and conditions of the respective Third-Party Software and You need to comply with those terms and conditions, which are available here: <https://www.jetbrains.com/legal/third-party-software>. Nothing in these Terms limits Your right to use Third-Party Software under those applicable terms and conditions.

***Summary: Qodana and all intellectual property relating to Qodana is owned by Us unless We integrated Third-Party Software listed on the JetBrains Website. Any Data submitted by You remains Yours. However, You provide Us with certain limited and necessary rights to it so We can provide Qodana and all its features to You. You have control over Your Data and maintain responsibility for it. When You share feedback with Us, We are allowed to use it.***

### 5. Access and Your Data

#### a) Access control

If You use Qodana Cloud, Your Data and Project Source Codes might be accessible to Us and visible to Your Users, depending on the nature of Your Data, the type and specifications of Your Project Source Code, and the specific Qodana Cloud feature that You are using. It is Your responsibility to select and set the appropriate level of access to Your Data and Project Source Codes, as described in the Documentation.

Regardless of the level of access You set, You give Us permission to access Your Data and Project Source Codes for the following purposes:

- i) *To provide You with the Qodana Cloud service* – We can access and utilize Your Data and Project Source Code for the purpose of providing You with the Qodana Cloud service and displaying Reports and other information to Users;
- ii) *For security reasons* – We can access Your Data and Project Source Code if We have a good reason to ('reasonably') believe this access is required to maintain the ongoing confidentiality, integrity, availability, performance, and resilience of Our systems and Qodana;
- iii) *For support reasons* – If You request support, You give Us permission to access Your Data and Project Source Code to carry out the support task, though You can revoke these permissions at any time; and
- iv) *If We are legally required* – We have the right to access, review, and remove all or a part of Your or Your Users' Data if We have a good reason to ('reasonably') believe that the Data breaches the law or these Terms. You understand that there are laws that could require Us to disclose Your Data and, if these laws apply, We are obliged to comply with them.

#### b) Permission to handle Your Data

If You use Qodana Cloud, You give ('grant') Us certain permissions ('rights') so that We can provide the Qodana Cloud service to You. Each of these permissions takes effect immediately when Your Data is submitted to Qodana Cloud.

Each permission ends when Your Data is removed from Qodana Cloud, except as described in the Documentation or in Your Subscription Plan. You understand that these permissions are necessary to use Qodana and You will not receive any payment for them.

i) *Permission that You grant to Us*

You give Us permission to host, store, copy, alter, utilize, parse, display, publish, and share Your Data in Qodana Cloud with You, and You allow it to be similarly shared in Qodana Cloud with Your Users. This permission includes the right to do things such as copy it to Our database, make backups, and analyze it on Our servers. It does not permit Us to sell or otherwise transfer ownership of Your Data to a third party, nor does anything here give Us permission to grant access to Your Data to any third party (other than, to the extent applicable, to Users or third parties engaged by Us in the services under these Terms) without Your permission.

ii) *Permission You grant to Users*

You understand that, depending on the specific settings You choose in Qodana, Your Users may be able to access and use any or all of Your Data submitted to Qodana Cloud. You give Us permission to enable this access among Your Users. These rights can be given to multiple Users (are 'non-exclusive') and apply worldwide.

***Summary: Any Data created by You is Yours. You have control over Your Data, and responsibility for it. However, You grant Us certain rights with respect to this data so that We can provide Qodana and all its features to You.***

## 6. Fees and Payments

a) **Subscription fees**

You can use Qodana for free when You sign up for the free Subscription Plan. The free Subscription Plan comes with limited features compared to a paid Subscription Plan, and You cannot make use of features that allow You to exceed the limits described on the JetBrains Website. If You select a paid Subscription Plan, You agree to pay Subscription fees based on the pricing described on the JetBrains Website and in these Terms and We will charge You based on the number of Active Contributors and the selected Subscription Period, as stated in this Section. "Active Contributor" means any Contributor who committed (i.e. made at least 1 change) within the last 90 calendar days into any of the Project Source Codes registered by You in Qodana Cloud, regardless of when those commits were originally authored.

b) **Subscription billing**

i) *Monthly Subscriptions* – At the beginning of each Subscription Period, You will be charged Subscription fees according to the expected number of Active Contributors (three or more) You specified. Qodana checks the actual number of Active Contributors at the end of every Subscription Period. If that number is higher than the number of Active Contributors that You specified for that Subscription Period, You will not be charged for overuse. However, the number of Active Contributors You specify for the next Subscription Period cannot be lower than the actual number from the preceding Subscription Period.

ii) *Annual Subscriptions* – fees for an annual Subscription are based on the number of Active Contributors, with provisions for additional charges in cases of excess usage.

- *Prepayment* – At the beginning of Your annual Subscription, You will specify the expected monthly number of Active Contributors (three or more). You will be charged upfront for the Subscription fee, which will be calculated based on the number of Active Contributors that You specified multiplied by the monthly fee per Active Contributor based on Your Subscription Plan for each month of Your Subscription.
- *Excess Usage* – Qodana will check the actual number of Active Contributors at the end of every calendar month. If the actual number of Active Contributors exceeds the monthly number of Active Contributors that You specified, Your annual Subscription will be automatically extended from the following month for the rest of the Subscription Period to cover the excess number of Active Contributors, and You agree to pay the difference between the already paid Subscription fees and the fees for the new number of Active Contributors.

We will notify You about the amount to be paid electronically. Please note that failure to pay for the extension of Your Subscription may lead to the suspension of Qodana service or termination of these Terms.

- *Continued Excess Usage* – If You don't pay for the new Active Contributors as required by the excess notification, Your Subscription will be suspended for three months or until You pay for the additional Active Contributors. Your Subscription will be automatically reactivated three months after its suspension for the number of Active Contributors for which You paid, unless We use our right to terminate these Terms (see 'Term and Termination' Section).

#### c) Calculation of Active Contributors

The number of actual Active Contributors is calculated using both the commit author information and the timestamp for when their contribution to the Project Source Code was pushed. Qodana Cloud combines lists of Active Contributors across all Project Source Codes registered by You in Qodana Cloud and removes duplicates so that a single Active Contributor will be counted only once across all Project Source Codes.

#### d) Purchasing directly or through authorized resellers and distributors

These Terms apply whether You pay the fees described above directly to JetBrains or through an authorized JetBrains reseller or distributor. Neither resellers nor distributors are authorized to make any promises or commitments on JetBrains' behalf, and You understand and agree that JetBrains is not bound by any obligations to You other than as specified in these Terms.

#### e) Payments

i) *Payment terms* – Unless We agreed to specific payment or billing terms in these Terms, fees according to these Terms must be paid by You in accordance with the JetBrains Terms and Conditions of Purchase (available at [www.jetbrains.com/legal/docs/store/terms/](http://www.jetbrains.com/legal/docs/store/terms/)) or in accordance with the terms provided to You by Your authorized JetBrains reseller or distributor, whichever are applicable.

ii) *Set-off* – You cannot deduct or set off any amount from the fees that You have to pay Us, even if We owe You an amount or You believe We owe You an amount ('counterclaim').

iii) *Taxes* – All Subscription fees, and other amounts relating to Qodana, exclude any and all applicable taxes and similar fees (except taxes based solely on Our income) now in force or that may be imposed in the future on the provision of Qodana. You are responsible for all taxes, levies, and duties, such as value-added tax ('VAT'), sales tax, and withholding tax, that apply in Your country. You have to pay these in addition to the fees payable to Us.

#### f) Resolution of late payments

To continue using Qodana without interruption, You must make sure that You pay all the relevant fees on time. If You do not, We can:

- i) limit Your Users' access to Qodana Cloud or any of its features; or
- ii) suspend Your access to Qodana or end these Terms (see the 'Temporary Suspension' and 'Term and Termination' Section).

You will reimburse Us for any additional costs that We incur in collecting late payments or that result from a breach of this Section. There will be no refunds of prepaid services in the event of termination or suspension, and We can charge You during the suspension period.

***Summary: To use Qodana with a paid Subscription, You must pay Your Subscription fees on time. The duration of the initial Subscription depends on the start date You selected. You can use Qodana more than the terms of Your Subscription allow. With a monthly Subscription, You will not be charged for the overuse, but Your overuse in one month will impact the cost of Your subscription in the following months. With an annual Subscription, You will be required to extend Your Subscription for Additional Contributors to cover the excess usage for the remaining duration of Your Subscription Period.***



## 7. Support

Your Subscription includes the support outlined on the JetBrains Website (“**Support**”). You can request Support by submitting a Support ticket. We will try to respond to Your request in a reasonable period of time. You understand that We can handle Support requests in the manner We deem best (‘in JetBrains sole discretion’), including by choosing to remain inactive.

## 8. Indemnification

### a) Indemnity

If there are any claims, damages, losses, liabilities, or fees and similar expenses, including fair (‘reasonable’) attorney fees, brought against Us that are related to any of the following:

i) *Access and use of Qodana* – Your or Your Users’ access or use of Qodana. This includes all activities related to Your JetBrains Account and any actions taken by Your personnel in relation to Qodana;

ii) *Breach of these Terms* – the breach of these Terms by You or any of Your Users;

iii) *Your Data* – Your Data or the combination of Your Data with other data, infrastructure, or processes. This includes any allegation that Your Data, or its use, development, design, production, advertising, or marketing, infringes someone else’s (a ‘third-party’) rights, or that You have illegally or without permission claimed someone else’s rights; or

iv) *Disagreements* – disagreement between You, any of Your Contributors or Users, and another person;

(each of these is defined as a “**Claim**”), then You agree to indemnify, defend, and hold Us and Our owners, directors, employees, agents, and representatives harmless, and to indemnify, defend, and hold Our affiliates and their owners, directors, employees, agents, and representatives harmless, from any and all Claims.

### b) Indemnity claims

We will quickly (‘promptly’) let You know if someone makes a Claim. If We fail to let You know quickly, then that failure will only affect Your obligation to indemnify Us to the extent that Our failure to inform You quickly adversely affected Your ability to defend Us against the Claim. When You are defending Us against the Claim, You can choose Your own lawyer, with Our written permission. If You have Our written permission, You can resolve (‘settle’) the Claim as You decide (‘at Your discretion’). However, We can take full control of Your defense and settlement at any time.

## 9. IMPORTANT – YOUR RISK AND OUR DISCLAIMERS

(**RISK**) QODANA AND ANY QODANA SUPPORT IS PROVIDED ON AN ‘AS IS’ AND ‘AS AVAILABLE’ BASIS. YOU ACCESS AND USE QODANA AT YOUR OWN RISK.

(**WARRANTIES & REPRESENTATIONS**) EXCEPT AS EXPRESSLY SET OUT IN THESE TERMS, WE MAKE NO REPRESENTATIONS AND GIVE NO WARRANTIES IN RELATION TO QODANA – EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. THIS INCLUDES WARRANTIES THAT QODANA WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF HARMFUL COMPONENTS, AS WELL AS WARRANTIES THAT YOUR CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED.

WE ALSO DENY (‘DISCLAIM’) ALL WARRANTIES. THIS INCLUDES ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

THIS DISCLAIMER DOES NOT APPLY TO REPRESENTATIONS AND WARRANTIES THAT CANNOT BE EXCLUDED BY LAW.

(SECURITY) YOU UNDERSTAND AND AGREE THAT PARTS OF QODANA MAY REQUIRE YOU AND/OR YOUR USERS TO INITIALIZE, CONFIGURE, AND MAINTAIN QODANA, WITHOUT ASSISTANCE OR GUIDANCE FROM US. IT IS YOUR RESPONSIBILITY TO ASSESS YOUR SYSTEM REQUIREMENTS AND COMPATIBILITY WITH QODANA AND CONFIGURE ALL OR PART OF QODANA IN A SECURE MANNER, AND/OR KEEP IT SO CONFIGURED, CONSISTENT WITH INDUSTRY STANDARDS, ALL OUR RECOMMENDATIONS (IF ANY), AND THE DOCUMENTATION. WE ARE NOT RESPONSIBLE FOR YOUR OR YOUR USERS' ACTIONS OR OMISSIONS ARISING IN CONNECTION WITH IMPROPER, INADEQUATE, OR DEFICIENT INITIALIZATION, CONFIGURATION, OR USE OF QODANA.

## 10. IMPORTANT – LIMITATION OF OUR LIABILITY

(TYPES OF DAMAGES) WE WILL NOT BE LIABLE TO YOU OR ANY OF YOUR USERS FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES. THIS INCLUDES DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR DATA, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(CIRCUMSTANCES OF LOSS) WE WILL NOT BE LIABLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH:

- a) YOUR, OR YOUR USERS', INABILITY TO USE QODANA, INCLUDING AS A RESULT OF A SUSPENDED SUBSCRIPTION OR THE CANCELLATION OF YOUR SUBSCRIPTION OR THESE TERMS;
- b) OUR DECISION TO NO LONGER PROVIDE QODANA FOR BUSINESS, ECONOMIC, LEGAL, OR REGULATORY REASONS;
- c) YOUR HAVING MADE QODANA AVAILABLE TO YOUR USERS;
- d) YOUR USE OF QODANA BEING CONTRARY TO OR INCONSISTENT WITH THE DOCUMENTATION;
- e) THE COST OF PROVIDING A SUBSTITUTE FOR QODANA;
- f) ANY UNANTICIPATED OR UNSCHEDULED UNAVAILABILITY OF QODANA OR A PART OF IT FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES, OR OTHER INTERRUPTIONS;
- g) ANY INVESTMENTS, EXPENSES, OR COMMITMENTS THAT YOU OR A USER MAKE RELATING TO THESE TERMS OR YOUR ACCESS TO OR USE OF QODANA; OR
- h) ANY MODIFICATION, DELETION, DESTRUCTION, DAMAGE, LOSS, OR FAILURE TO STORE ANY OF YOUR DATA CAUSED BY YOU OR YOUR USERS.

(MAXIMUM LIABILITY) OUR MAXIMUM, OVERALL ('AGGREGATE') LIABILITY RELATING TO THESE TERMS IS LIMITED TO THE GREATER OF ONE HUNDRED (100) US DOLLARS OR THE AMOUNT THAT YOU ACTUALLY PAID TO US FOR QODANA IN THE SIX (6) MONTHS BEFORE YOU CLAIMED THAT WE WERE LIABLE. THE MAXIMUM LIABILITY APPLIES EVEN IF WE WERE ADVISED THAT LIABILITY COULD EXCEED THE MAXIMUM LIABILITY AMOUNT OR EVEN IF THE LEGAL BASIS (I.E. TORT, BREACH OF CONTRACT, EQUITY, OR A SIMILAR BASIS) FOR A REMEDY IS INVALID.

## 11. Temporary Suspension

We can immediately suspend Your or Your Users' right to use all or part of Qodana Cloud if We have a good reason to ('reasonably') believe that:

- i) *Threats* – Your or Your Users' use of Qodana might adversely impact or pose a security, privacy, or legal risk to Qodana or any of its parts, Us, or another person ('third party');
- ii) *Financial distress* – You have stopped operating in the usual course of business, have transferred ('assigned') Your assets for the benefit of creditors or made a similar arrangement, or are undergoing bankruptcy, reorganization, liquidation, dissolution, or a similar proceeding; or
- iii) *Breach of terms* – You or Your Users breached these Terms, applicable law, Our policies, or someone else's rights.

We will make a reasonable effort to let You know of a suspension. Suspensions are temporary, but if the reasons for suspension are not resolved, We can end these Terms (see the ‘Term and Termination’ Section).

## **12. Term and Termination**

### **a) Term**

These Terms start (‘take effect’) when You click the “I Accept” button or provide similar consent to (‘be bound by’) these Terms. These Terms continue until the end of Your Subscription Period, unless they are ended (‘terminated’) earlier either by You or Us as described in these Terms.

### **b) Termination by You**

You can terminate these Terms if We breach them. This must be done by letting Us know (‘give notice’) that We have breached these Terms. If this breach is not resolved within thirty (30) days, these Terms will end.

If You terminate these Terms according to this Section, We will provide a refund to You of any prepaid amount for the period that would have been Your Subscription Period after the date these Terms ended.

### **c) Termination by Us**

We may terminate these Terms and Your Subscription if:

- i) You materially breached these Terms and failed to remedy the breach within thirty (30) days of written notice;
- ii) You fail to make timely payment of Subscription fees in accordance with Section 6 of these Terms;
- iii) We are required to do so by law (for example, where the provision of Qodana to You is, or becomes, unlawful);
- iv) We elect to discontinue providing Qodana, in whole or in part; or
- v) You have a free Subscription Plan and none of Your Users logged in for at least 3 calendar months in a row.

We will make a reasonable effort to notify You via email (to the email address of the billing or technical contact provided by You) thirty (30) days prior to termination of these Terms in the events specified in Sections 12(c)(iii) and 12(c)(iv) above, in which case You will be entitled to a refund of the unused portion of prepaid Subscription fees, if applicable.

In the event of termination for cause specified in Section 12(c)(ii) or 12(c)(v), We will make reasonable efforts to notify You three (3) days prior to termination of these Terms. When these Terms are terminated as a consequence of Your breach of these Terms, no refund is provided.

### **d) Effect of termination**

Upon the expiration or termination of these Terms, Your Subscription will be terminated and You have no further rights to use Qodana, but Sections 4(c), 4(d), 6, 8, 9, 10, 13, and 16 of these Terms will remain in effect. In such case, We will store Your Data and make it available to You for export (‘download’) in accordance with the Documentation and Your Subscription Plan. You understand that after the time specified therein, Your Data will be deleted.

## **13. Marketing**

If You are a legal entity, You give Us permission to publicly identify You as Our customer and refer to You by name or trade name, display Your logo and trademarks, and describe Your business in marketing materials, on the JetBrains Website, and in other public documents. You give Us permission to do this, but only for marketing purposes. We can use Your name, trade name, and trademarks. We are not required to pay a fee for this permission (it is ‘royalty-free’), and it applies worldwide.

## 14. Notices

### a) Notices by You

If You are required under these Terms to notify Us ('give notice') of anything, You may do so:

- i) by sending an email to [legal@jetbrains.com](mailto:legal@jetbrains.com). Any time period starts on the next business day after You send the email;
- ii) by courier delivery of a letter marked for the attention of the 'Legal Department' at the physical address published on the JetBrains Website. Any time period starts five (5) business days from when You send the letter; and
- iii) by registered post, marked for the attention of the Legal Department at the address displayed on the JetBrains Website. Any time period starts ten (10) business days from when You send the letter.

### b) Notices by Us

If We are required under these Terms to notify You ('give notice') of anything, We may do so:

- i) by posting the information on the JetBrains Website. Any time period starts on the day specified on the JetBrains Website;
- ii) by sending an email to the email address that Your Confirmation was sent to. Any time period starts on the next business day after We send the email.

It is Your responsibility to check the JetBrains Website for any changes and make sure that Your email address is up to date in Our records.

## 15. Export Control Laws

You must comply with all applicable laws and regulations relating to export restrictive measures, economic sanctions, export controls, import regulations, and trade embargoes, including those maintained by the European Union and the United States of America ("Export Control Laws"). You confirm ('represent and warrant') that You are not an entity, nor are You owned, controlled, or otherwise related to a person or entity, or acting on behalf of any person or entity, that is targeted by Export Control Laws.

This means that You will ensure that Qodana, related services, and/or technical data is not (i) accessed, downloaded, transferred, provided, exported, or re-exported directly or indirectly in violation of Export Control Laws; or (ii) used for any purpose prohibited by Export Control Laws.

You are also expected to report any concerns of non-compliance with these requirements and address any questions to [ethics@jetbrains.com](mailto:ethics@jetbrains.com), [compliance@jetbrains.com](mailto:compliance@jetbrains.com), or [legal@jetbrains.com](mailto:legal@jetbrains.com). In addition, You are required to cooperate with Us in Our efforts to verify Our and Your compliance with Export Control Laws.

## 16. General Provisions

### a) These Terms and their Parties

These Terms together with the order accepted by Us form the entire agreement and replace any previous agreement between You and Us in relation to its subject matter. By accepting these Terms, You agree to use and ensure that Your Users will use the Qodana in accordance with the JetBrains Products Acceptable Use Policy, available at <https://www.jetbrains.com/legal/docs/terms/acceptable-use-policy/> and the JetBrains Team Tools User Agreement, available at <https://www.jetbrains.com/legal/docs/agreements/teamware.html>. Except as expressly mentioned, these Terms do not apply or give rights to anyone else ('no third-party beneficiaries').

#### **b) Personal Data**

Any information directly or indirectly identifying an individual or other data protected under an applicable law as personal data (“**Personal Data**”), that We will process on Your behalf in connection with these Terms, will be processed in accordance with the Data Processing Addendum at <https://www.jetbrains.com/legal/dpa/> which is a part of (‘incorporated into’) these Terms. We may also process some of Your Personal Data in connection with these Terms in our capacity as a data controller in accordance with our Privacy Notice at <https://www.jetbrains.com/legal/docs/privacy/privacy/>.

#### **c) Governing law and disputes**

These terms are governed by the laws of the Czech Republic, without reference to conflict of laws principles, and specifically excluding the United Nations Convention on Contracts for the International Sale of Goods. The Parties to these Terms undertake to use the best commercial efforts to amicably settle any disputes arising hereunder (“**Dispute**”).

Should the Parties to these Terms fail to settle a Dispute amicably, the Dispute will be excluded from the jurisdiction of general courts and all such Disputes will be finally decided by the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic by three (3) arbitrators in accordance with the Rules of that Arbitration Court, and the language of the proceedings will be English.

Notwithstanding this, You agree that We will still be allowed to apply (i) for payment orders (or otherwise enforce payment for Qodana provided under these Terms) in the jurisdiction in which You have Your registered seat or principal place of business, and (ii) for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

#### **d) Force Majeure**

We will not be responsible (‘liable’) for any delay or failure to perform any obligation under these Terms where the delay or failure results from any cause beyond Our reasonable control. This includes any ‘acts of God’, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, public health emergencies, earthquakes, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

#### **e) Severability**

If a court finds that any part of, or word in, these Terms is not enforceable, that part or word will not affect the enforceability of the rest of these Terms.

#### **f) Interpretation**

Any heading, title, or paragraph summary is only for convenience and does not affect the interpretation of these Terms. Any instance of an inclusive word, such as ‘including’, is not comprehensive and refers to other items in that category. References to time or periods of time are determined in reference to Central European Time.

#### **g) Waiver**

Any waiver of Our rights under these Terms must be in writing and signed by Us.

#### **h) Changes to Terms and policies**

These Terms can be updated from time to time, to reflect changes in Qodana and how it is offered to You. If this happens, We will update these Terms on the JetBrains Website and let You know either by:

- i) Displaying them to You in Qodana;
- ii) Displaying them in Your JetBrains Account; or
- iii) Sending the updated version to the email address used in Your JetBrains Account.

Any updated Terms will start ('come into effect') on the date specified in the updated Terms. By continuing to use Qodana after thirty (30) days from the effective date, You agree to be bound by the modified Terms.

We respect that You may not agree to the updated Terms. If that is the case, You can terminate Your Subscription at any time up to thirty (30) days after the effective date of the updated Terms. Termination according to this Section entitles You to a pro-rata refund of the pre-paid unused Subscription fees.

#### **i) Relationship**

Your relationship with JetBrains is that of independent parties. These Terms do not create a partnership, franchise, joint venture, agency, fiduciary, employment, or any other type of relationship.

#### **j) Contract review**

By agreeing to these Terms, You are confirming to Us that:

- i) You have had sufficient opportunity to read, review, and consider these Terms;
- ii) You understand the content of each paragraph of these Terms; and
- iii) You have had sufficient opportunity to seek independent professional legal advice.

This means that, to the extent permitted by applicable law, any statutory provisions relating to so-called 'form' or 'adhesion' contracts do not apply to these Terms.

#### **k) Reservation of rights**

We reserve the right to alter Qodana prices, features, specifications, capabilities, functions, terms of use, release dates, general availability, and other characteristics. We can also alter, limit, or cease to provide Qodana support at any time.

#### **l) Children and minors**

If You are younger than 13 years old, You cannot agree to these Terms or use Qodana. By agreeing to these Terms You are confirming that:

- You have the legal capacity to enter into these Terms, or, if You are between the age of 13 and 18, You have valid consent from a parent or legal guardian to do so; and
- You understand the JetBrains Privacy Notice, available at <https://www.jetbrains.com/legal/docs/privacy/privacy.html>.

IF YOU DO NOT UNDERSTAND THIS SECTION, DO NOT UNDERSTAND THE JETBRAINS Privacy Notice, OR DO NOT KNOW WHETHER YOU HAVE THE LEGAL CAPACITY TO ACCEPT THESE TERMS, PLEASE ASK YOUR PARENT OR LEGAL GUARDIAN FOR HELP.

If You have any questions about these Terms, please contact Us at [legal@jetbrains.com](mailto:legal@jetbrains.com).