

# Open-Source Software Maintenance and Support Terms

(version 1.0, August 2022)

THESE OPEN-SOURCE SOFTWARE MAINTENANCE AND SUPPORT TERMS AND CONDITIONS (HEREINAFTER THE “**TERMS**”) WILL GOVERN THE RIGHTS AND OBLIGATIONS OF QDRANT SOLUTIONS GMBH, CHAUSSEESTRASSE 86, 10115 BERLIN, GERMANY (HEREINAFTER “**QDRANT**”) AND THE CUSTOMER INDICATED AS SUCH IN THE ORDER FORM IN RELATION TO THE SERVICES DESCRIBED IN THE ORDER FORM(S) MADE BETWEEN QDRANT AND CUSTOMER. THE ORDER FORM TOGETHER WITH THESE TERMS MAY HEREINAFTER BE REFERRED TO AS THE “**AGREEMENT**”.

CUSTOMER AND QDRANT MAY HEREINAFTER INDIVIDUALLY BE REFERRED TO AS A “**PARTY**” AND COLLECTIVELY AS THE “**PARTIES**”.

## 1. Services

(1) **Services.** Subject to the terms of the Agreement, Qdrant will, during the term of the Order Form, provide Customer with the Services (as set forth in the Order Form).

(2) **Subject of the Services.** Customer shall only be entitled to request from Qdrant, and Qdrant shall solely be obliged to render to Customer, Services concerning the Qdrant Vector Similarity Search engine software, available at <https://github.com/qdrant/qdrant> and provided under the Apache 2.0 open-source software license (the “**Software**”). Except as otherwise agree in writing, Customer may purchase Services only for the most current, generally available release of the Software. Hence, Customer may be required to upgrade the Software to the current (latest stable) version upon the Effective Date of the Order Form.

(3) **Exclusions.** Services do not cover problems caused by the following: (a) accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; failure of rotation media not furnished by Qdrant; operation of the Software with other media not in accordance with Qdrant’s specifications; or causes other than ordinary use; (b) improper installation by Customer or use of the Software that deviates from any operating procedures as specified in the documentation made available by Qdrant; (c) third-party products, other than the interface of the Software with the third-party products; (d) modifications, additions and/or development of code scripts deviating from the predefined product code tree(s)/modules developed by Qdrant for production deployment or use of the Software (“**Modified Software**”), whereby the configuration of Software options which are intended to be altered shall not be considered Modified Software; (e) issues relating to the SaaS infrastructure or Customer’s on-premises system environment on which the Software may be used; (f) any customized deliverables created by Qdrant specifically for Customer as part of consulting services; or (g) use of the Software with unsupported tools, APIs, interfaces, or data formats other than those included with the Software and supported as set forth in the documentation made available by Qdrant; or (h) any issue that would necessarily require on-site support. Customer may request assistance from Qdrant for such problems, subject to an additional fee agreed for the specific case.

(4) **Modified Software.** Notwithstanding section 1(3)(d) above, if Qdrant suspects that a reported problem may be related to Modified Software, Qdrant, may, in its sole discretion: (a) request that the Modified Software is to be removed prior to rendering the Services; and/ or (b)

inform Customer that additional assistance may be obtained by Customer directly from various product discussion forums or by engaging Qdrant's consulting services group for an additional fee.

**(5) License.** If Qdrant provides Customer with any software in the course of providing the Services, any such software shall be subject to the same license as the original Software acquired by Customer.

## **2. Customer Responsibilities**

Qdrant's obligations regarding the Services are subject to Customer's adherence to the following cooperation duties, all of which are essential for the proper performance of Qdrant:

**(1) Reporting.** Customer shall promptly report to Qdrant all problems with the Software and will implement any corrective procedures provided by Qdrant reasonably promptly upon receipt of the request.

**(2) Information.** Customer shall provide Qdrant with all information, access, and full good faith cooperation reasonably necessary to facilitate the provision of the Services, and Customer will do anything that is identified in the relevant Order Form as Customer's responsibility. Customer's failure or delay in its performance of any of the foregoing relieves Qdrant of its obligations under the Agreement to the extent that such obligations are dependent upon Customer's performance.

**(3) Eligible Users.** Customer shall provide Qdrant a list of contacts (including name, email address, and phone number) of those individuals authorized that are eligible to issue Service requests or submit Error Reports (as defined in the Order Form) on Customer's behalf. These eligible users must have the access and authority to administer or configure the Software as required by the nature of the Service request.

**(4) Data Backups.** Customer is solely responsible for protecting and backing up the data and information stored on the computers on which the Software is used, and Customer should confirm that the data and information are protected and backed up in accordance with any internal or regulatory requirements as applicable before contacting Qdrant with a Service request. Customer is solely responsible for maintaining procedures external to the Software for reconstruction of lost or altered files, data, or programs to the extent that it deems necessary and for performing any such reconstruction.

**(5) Resources.** Customer will have dedicated resources available to work on Category A incidents (as defined in the Order Form).

**(6) System Environment.** Customer is responsible for obtaining and maintaining appropriate equipment and ancillary services needed to connect to, access, or otherwise use the Software, including, without limitation, computers, computer operating systems, data storage, network devices, and web browsers.

## **3. Payment Terms; Set-off**

**(1) Payment Obligations; Payment Methods.** Qdrant may charge and collect payment in advance for each month during the term in accordance with the terms of the Order Form. Qdrant is under no obligation to accept any non-cash means of payment (e.g. bills of exchange, checks). Checks and bills of exchange are only accepted on account of performance and will only be accepted in lieu of performance by Qdrant upon the respective encashment in the full amount. Customer shall bear all costs associated with payment by bills of exchange or checks.

**(2) Net Pricing; Taxes; Fees for Payment Services.** Qdrant's fees do neither include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction based on amounts paid or payable under the Agreement (collectively "**Taxes**"), nor include any fees imposed by banks, payment service providers or other parties involved in a payment procedure, including, for example, fees for cross-border transfer of money (collectively "**Fees**"). Customer shall be responsible for paying all Taxes associated with its use of the Software as well as all Fees in connection with its payment of Qdrant's invoices. If Qdrant has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, Qdrant will invoice Customer and Customer will pay that amount unless Customer provides Qdrant with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Qdrant is solely responsible for taxes assessable against Qdrant based on its net income, property and employees.

**(3) Adjustment of Fees.** Qdrant may adjust fees during the term as appropriate on an annual basis. Adjustments shall be made to reflect changes in cost incurred for salaries and wages as well as purchasing IT services. However, adjustments shall take effect only from the date specified by Qdrant, nonetheless no sooner than one month after Customer's receipt of notification of the fee adjustment. If a fee is increased by more than 5%, Customer is entitled to terminate the Agreement with effect from the entry into force of the increase. The termination must be made in writing promptly, but in no event later than 14 days upon receipt of notification of the increase.

**(4) Billing Information.** Customer agrees to provide Qdrant with complete and accurate billing and contact information including (a) its legal company name, street address; (b) e-mail, name and telephone number of an authorized billing contact; (c) its VAT and company registration codes (regardless of whether VAT is not applicable due to reversed-charge procedure); and (d) any purchase order or other numbers or references Qdrant should state in its invoices. Customer agrees to update this information within thirty (30) days of any change to it. If Customer fails to provide or timely update any of the foregoing information, Qdrant shall be entitled to use for any invoice the latest information provided by Customer; in such event, Customer shall have no claim whatsoever to dispute the invoice or delay payment of the invoice on the ground of missing or incorrect billing and/or contact information. All fees are billed in Euros unless otherwise specified in the applicable Order Form.

**(5) Late Payment.** Delinquent invoices are subject to the statutory interest rates on any outstanding balance and reimbursement of expenses incurred by Qdrant. If a payment is not disputed in good faith (and in addition to its other rights), Qdrant reserves the right to terminate the Agreement or suspend the Services if any delinquent payment is not received by Qdrant within thirty (30) days after notice to Customer of such delinquency. Qdrant reserves the right to use all payments by Customer to settle the oldest due outstanding accounts of Customer plus the default interest and costs accrued thereon, if any; Qdrant will use Customer's payments in the order of costs, interest, due receivables.

**(6) Set-off.** Customer may not set off any amount against invoices of Qdrant unless Qdrant has acknowledged in writing to owe such amount, or it has been held in an uncontested court decision that Qdrant owes such amount.

#### **4. Representations and Warranties**

**(1) Mutual Representations and Warranties.** Each Party represents and warrants that: (a) it has the power to enter into and perform the Agreement, (b) the Agreement's execution has been duly authorized by all necessary corporate action of the Party, (c) the Agreement constitutes a valid and binding obligation on it, enforceable in accordance with its terms, (d) neither it nor its employees or agents has or have offered or will offer any illegal bribe, kickback, payment, gift, or thing of value in connection with the Agreement, and (e) that it is not named on any applicable denied-party list.

**(2) Qdrant's Warranties.** Qdrant warrants that all Services rendered to Customer will be substantially in accordance with the specifications of the Agreement. In the event of defects or malfunctions attributable to Qdrant, Qdrant may initially remedy the defect. Subsequent performance shall be effected at the discretion of Qdrant either by eliminating the defect or by re-performing the Services. The provision of updates or upgrades which do not contain the defect, or of a patch which remedies the defect, shall also be deemed subsequent performance. If subsequent performance fails, Customer may, at its discretion, reduce the compensation or, unless the defect only insignificantly impairs the contractual use of the Software or the quality of the Services, withdraw from the Agreement or terminate the Agreement for cause and claim a refund payment in accordance with the Order Form. Subsequent performance, however, shall only be deemed to have failed if Customer has given Qdrant sufficient opportunity to remedy the defect within a reasonable period of time without the due success having been achieved. The provision of a provisional solution that circumvents the defect ("workaround") shall be taken into account when determining the time limit.

**(3) Third-Party Claims.** Qdrant warrants that all Services are rendered without adversely affecting third-party intellectual property rights. If Customer becomes aware of any third party's allegation, or if Customer otherwise has indications that the provision and/or use of the Software infringes such third party's intellectual property rights or those of other third parties, Customer shall inform Qdrant accordingly without delay and at least in text form. As far as possible, Qdrant will take over, at its own expense, the defense against claims asserted on the basis of the alleged infringement of intellectual property rights and conduct any negotiations regarding the settlement of the legal dispute. Customer shall support Qdrant in this respect as far as reasonable and conducive to defense and settlement discussions. If Qdrant becomes aware of any judicial or non-judicial claim, action, demand, suit, or proceeding (collectively the "**Claim(s)**"), or the intent of a third party to file a Claim, concerning an alleged infringement or misappropriation related to the Software or any Services, Qdrant may, at Qdrant's sole discretion, (a) modify the Software or the Services so that they no longer can be claimed to infringe or misappropriate any third-party rights, whilst providing reasonable support to Customer in connection with such changes to ensure adequate and continued use of the Software or Services, (ii) obtain a license for Customer's continued use of the Software or the Services in accordance with the Agreement, or (c) terminate the respective Order Form inasmuch as it is affected by the Claim upon thirty (30) days' written notice to Customer and refund for any prepaid fees covering the remainder of the term for the affected Software or Services. Qdrant's further liability for defects of title shall be in accordance with these Terms.

**(4) Limitations of Warranties.** Customer acknowledges that Qdrant does not control the transfer of data over communications facilities, including the Internet, and that Services provided remotely may, thus, be subject to limitations, delays, and other problems inherent in the use of such communications facilities. In addition, Qdrant shall not be liable if the use of the Software is

impaired due to improper installation, operation or maintenance by Customer or a third-party on Customer's behalf. In particular, any warranty shall be excluded for impairments caused by the fact that the Software is used under conditions that do not correspond to the system requirements specified in the Order Form or otherwise agreed between the Parties.

**(5) Warranty Period.** Except where also Qdrant's liability would be unlimited in accordance with these Terms, the warranty period for all Services shall be twelve (12) months as of the delivery date thereof.

## **5. Liability**

**(1) Unlimited Liability.** Except for cases of willful misconduct or gross negligence, or as stated to the contrary in this section, Qdrant's liability shall be excluded or limited as set forth hereinafter. In addition, nothing herein shall, to the extent applicable, limit Qdrant's liability for a violation of life, body or health of a person, claims under the German Product Liability Act (Produkthaftungsgesetz), or – where explicitly so declared by Qdrant – independent quality guarantees (Beschaffenheitsgarantie).

**(2) Limitation of Liability.** Save paragraph 1 above, Qdrant shall not be liable for any indirect, special, incidental, consequential, punitive or exemplary damages, whether foreseeable or not. Furthermore, in cases of simple negligence and in the absence of an individual agreement between the Parties on a fixed liability cap, Qdrant's liability shall be limited to the violation of cardinal obligations, i.e. obligations which are essential for the proper performance of the Agreement and the violation of which jeopardizes the purpose of the Agreement, and upon which the Customer, thus, may reasonably rely. In such case, Qdrant shall nevertheless only be liable for the foreseeable and typical damage.

**(3) Liability for Loss of Data.** Qdrant shall not be liable for the loss of data inasmuch as the damage is due to the fact that Customer has failed to carry out regular data backups and thereby ensure that lost data can be restored with reasonable effort. This does not if and to the extent that Qdrant was itself entrusted with data backup Services.

**(4) Exclusion of Liability.** All other liability on the part of Qdrant shall be excluded regardless of its legal and factual foundation. All claims for damages shall become statute-barred within twelve (12) months.

**(5) Force Majeure.** Neither Party will be liable to the other for any delay or inability to perform its obligations or otherwise if such delay or inability arises from fire, natural disaster, pandemic or epidemic disease, act of government, riot, civil disturbance, or any other cause beyond the reasonable control of a Party (hereinafter a "**Force Majeure Event**"). In such a Force Majeure Event, the time for performance will be extended for a period of time equal to the length of the delay or inability to perform. If a Force Majeure Event delays or obstructs a Party from performing its obligations under the Agreement, such Party shall (a) without undue delay inform the respective other Party about the nature of the Force Majeure Event and its impact on such Party's ability to perform its obligations, and (b) use all reasonable endeavors to mitigate the adverse effects of the Force Majeure Event on such Party's ability to perform its obligations. Either Party may terminate the Agreement for cause in whole or in part if and inasmuch as a Force Majeure Event continues for more than eight (8) weeks.

## **6. Confidentiality**

**(1) Confidential Information.** “Confidential Information” means any information disclosed by a Party (the “Disclosing Party”) to the other Party (the “Receiving Party”), in any form, that is designated confidential or that reasonably should be understood to be confidential given its nature and the circumstances surrounding the disclosure. Confidential Information includes, but is not limited to, the Qdrant technology, the documentation, Qdrant’s pricing, and the terms and conditions of any Order Form. Notwithstanding the foregoing, Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach by the Receiving Party of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party; (iii) is received from a third party without an obligation of confidentiality; or (iv) was independently developed by the Receiving Party without use of the Disclosing Party’s Confidential Information.

**(2) Degree of Care.** The Receiving Party will use at least the same degree of care in protecting the Disclosing Party’s Confidential Information that it uses to protect its own Confidential Information, but in no event less than a reasonable standard of care.

**(3) Restrictions of Use.** The Receiving Party shall: (a) not use the Disclosing Party’s Confidential Information except as permitted under the Agreement; and (b) limit access to the Disclosing Party’s Confidential Information to its employees, representatives, and contractors who need such access to perform their duties hereunder and who either owe a duty of confidentiality to the Receiving Party or are bound by professional secrecy obligations with protections no less stringent than those set forth in the Agreement.

**(4) Disclosure on Legal Reasons.** The Receiving Party may disclose the Disclosing Party’s Confidential Information to the extent compelled by law to do so, provided that the Receiving Party uses reasonable efforts to give the Disclosing Party prior notice of the compelled disclosure and reasonable assistance, at the Disclosing Party’s cost, in order to permit the Disclosing Party to contest or limit the disclosure.

**(5) Survival.** The foregoing confidentiality obligations shall survive termination of the Agreement, regardless of cause.

## **7. Data Protection**

**(1) Processing by the Parties.** The Parties hereto acknowledge that, for the purposes of entering into and execution of the Agreement, they may be required to process personal data of the respective other Party or such other Party’s representatives or employees. The Parties shall, in such event, always observe the duties imposed on them in accordance with applicable Data protection laws.

**(2) Data Processing on Behalf of Customer.** Where Qdrant provides the Services to Customer, Qdrant may be obligated to process personal data as a processor on Customer’s behalf, who will be the controller. The processing of such personal data will be carried out in accordance with the obligations and information set forth in the Data Processing Agreement drawn up and executed separately by the Parties.

## **8. Place of Performance; Governing Law; Jurisdiction**

**(1) Place of Performance.** Unless (a) explicitly agreed to the contrary between the Parties, or  
(b) where the nature of specific Services so requires (such as, Services rendered on-site at Customer’s facilities), the place of performance for all Services is Qdrant’s seat of business.



(2) **Governing Law.** The Agreement will be governed by German law without regard to the choice or conflicts of law provisions of any jurisdiction, and with the exception of the United Nations Convention on the International Sale of Goods (CISG). Any references to the application of statutory provisions shall be for clarification purposes only. Even without such clarification, statutory provisions shall apply unless they are modified or expressly excluded in the Agreement.

(3) **Venue.** The Parties agree that all disputes resulting from these Terms and/or the Order Form shall be subject to the exclusive jurisdictions of the courts in Berlin, Germany.

## 9. Miscellaneous

(1) **Entire Agreement.** The Agreement comprises the entire agreement between Customer and Qdrant and supersedes all prior or contemporaneous negotiations, discussions, or agreements, whether written or oral, between the Parties regarding its subject matter. No text or information set forth on any purchase order, preprinted form or document (other than an executed Order Form, if applicable) will add to or vary the terms and conditions of these Terms. No modification or amendment of the Agreement shall be effective unless in writing and signed by the Parties.

(2) **Severability.** If any provision of these Terms is found to be invalid, illegal, or unenforceable, the remainder of these Terms will still be enforceable.

(3) **Relationship of the Parties.** No joint venture, partnership, employment, or agency relationship exists between Customer and Qdrant as a result of the Agreement.

(4) **No Waiver.** The failure of either Party to enforce any right or provision in the Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed to by that Party in writing.

(5) **Assignment; Change of Control.** The Agreement, and the rights and obligations thereunder, may not be assigned by either Party, whether by operation of law or otherwise, without the prior written consent of the other Party, which will not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign the Agreement in its entirety, without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a competitor of the other Party. In the event of an assignment as described in the preceding sentence, the assigning Party shall provide the other Party with written notice of the assignment. Subject to the foregoing, the Agreement will bind and inure to the benefit of the Parties, their respective successors and permitted assigns. Any assignment in violation of this section shall be deemed void *ab initio*. § 354a of the German Commercial Code (Handelsgesetzbuch) shall remain unaffected.

(6) **Written Form Requirements.** If “written form” is required in the Agreement, or if it is stipulated in the Agreement that declarations of the Parties are to be made “in writing”, then the written form within the meaning of § 126 BGB is meant. Transmission by fax maintains the agreed form, also the transmission of electronic documents protected against editing (e.g. PDF files), even if they are not signed by hand or provided with a signature stamp or another printed or scanned signature. However, the sending of a simple e-mail or other electronic message does not comply with the agreed form.

(7) **Language; Translations.** The Agreement is made in the English language. For the avoidance of doubt, the English language version of the Agreement shall prevail over any translation of the Agreement. However, where a German translation of a word or phrase appears in the text of the Agreement, the German translation of such word or phrase shall prevail.

(8) **Electronic Communications.** The Parties are aware that electronic and unencrypted communication (e.g. e-mail) are potential security risks. They will, therefore, abstain from asserting claims related to using this type of communication, which are based in the lack of encryption, unless encryption was previously agreed upon.