

CODESCENE CLOUD DATA PROCESSING AGREEMENT

This Data Processing Agreement (the “DPA”) is entered into between:

- (1) Customer (the “Controller”); and
- (2) CodeScene AB, reg. no. 559028-3270, Hyllie Boulevard 34, 215 32 Malmö, Sweden, a company organized under the laws of Sweden (the “Processor”).

Each of Controller and Processor are referred to as a “Party” and jointly as the “Parties”.

1. BACKGROUND

- 1.1 The Parties have entered into the Codescene Cloud Terms of Service (the “Agreement”), where Controller has contracted Processor to provide the code analysis tool Codescene Cloud (the “Service”) to the Controller, which forms the subject matter of the processing of personal data under this Agreement.
- 1.2 Terms such as “personal data”, “processing” and “data subject” and other expressions not defined in this DPA shall have the same meaning as set out in the Regulation of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “GDPR”), as may be amended, updated, replaced or superseded from time to time, if not expressly stated otherwise.
- 1.3 The Processor’s Service is a software as a service solution, rendering Controller the data controller, whilst Processor qualifies as data processor under the applicable data protection laws. In light of the above, Processor and Controller have agreed on the following terms and conditions set out in this DPA.
- 1.4 This DPA shall supersede any prior agreements, arrangements and understandings between the Parties and constitutes the entire agreement between the Parties relating to the subject matter hereof. In case of conflict between the Agreement and the DPA, this DPA shall take precedence.

2. PROCESSOR’S OBLIGATIONS

- 2.1 Processor shall to the extent any personal data is processed by Processor on behalf of Controller under the Agreement:
 - (i) only process personal data in accordance with Controller’s documented instructions specified in Schedule 1 of this DPA, unless when required to do so under applicable European Union (“EU”) or Member State law to which the Processor is subject. Processor shall in such case inform Controller of such legal obligation unless prohibited by law. Processor shall immediately inform Controller if the Controller’s documented instructions, in the Processor’s opinion, are infringing applicable laws, rules and regulations. Such information shall not be considered as legal advice provided by Processor;

- (ii) ensure that the employees/agents/sub-contractors or other third parties that are authorized to process personal data are subject to an obligation of confidentiality with regards to the personal data. Processor is only allowed to disclose personal data to third parties if Controller has given its written consent or if it is required by applicable law;
- (iii) implement appropriate technical and organizational measures required pursuant to Article 32 of the GDPR;
- (iv) hereby be given a general authorization to engage other processors (“Sub-processors”) for the processing of personal data on behalf of Controller. Where Processor engages a Sub-processor under this clause, Processor undertakes to ensure that the contract entered into between Processor and any Sub-processor shall impose, as a minimum, data protection obligations not less stringent than those set out in this DPA. Processor shall notify Controller of any intended changes concerning the addition or replacement of Sub-processors, to which the Controller may object. If Controller has made no such objection within ten (10) days from the date of receipt of the notification, Controller is assumed to have made no objection;
- (v) have the right to cure an objection from Controller as described in (iv) above, at Processors sole discretion. If no corrective option is reasonably available and the objection has not been cured within thirty (30) days after receiving the objection, either Party may terminate the affected Service or the Agreement with reasonable written notice;
- (vi) be allowed to transfer personal data to third countries outside the EU or European Economic Area (“EEA”). When personal data is transferred to a country that does not ensure an adequate level of data protection, the Processor ensures that the transfer is subject to adequate safeguards as stated in Chapter V GDPR. Processor is hereby given clear mandate, on behalf of the Controller, to enter into: 2010/87/EU: Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council (notified under document C (2010) 593) or decisions and clauses that may replace or amend these;
- (vii) taking into account the nature of the processing and the information available for the Processor, at Controller’s cost, assist the Controller in its obligation to respond to requests from data subjects pursuant to chapter III in the GDPR by implementing appropriate technical and organizational measures, insofar as this is possible;
- (viii) taking into account the nature of processing and the information available to the Processor, at Controller’s cost, assist the Controller to fulfil its obligations pursuant to Articles 32 to 36 in the GDPR;
- (ix) on termination or expiration of the Agreement or on instruction from Controller, upon written request and at Controller’s choice, return or delete all personal data processed under the Agreement at Controller’s cost, unless Processor is

required to retain the personal data by applicable laws, rules and regulations. Controller must make such written request fourteen (14) days from the Agreement's termination or expiration; and

- (x) upon Controller' request and at the cost of Controller, make available all information necessary to demonstrate Processor's compliance with the obligations laid down in Article 28 in the GDPR and in this DPA and allow for and contribute to audits, including inspections, conducted by Controller or another auditor mandated by Controller and accepted by Processor. Processor shall not unreasonably withhold its acceptance. The audit shall be carried out maximum once (1) per calendar year, and a written notice shall be sent to the Processor with a notice period of at least sixty (60) days, before the audit commences. The audit shall be conducted during Processor's normal working hours without disturbance to the normal operations of Processor.

3. LIMITATION OF LIABILITY AND INDEMNIFICATION

- 3.1 The Processor shall only be liable for direct losses caused and the total aggregate liability of the Processor shall be limited to the liability cap specified in the Agreement. In the event the Agreement contains no liability cap, the aggregate liability of the Processor for breach of the personal data obligations set forth in this DPA or applicable data protection laws shall be limited to an amount corresponding to 100% of the fees paid as per the Agreement, during the twelve (12) months period immediately preceding the time when the claim arose.
- 3.2 Each Party shall bear its own administrative penalties or fines issued by relevant courts or data protections authorities. Neither Party shall be liable for any loss of production, loss of business or profit, loss of use, loss of goodwill or any indirect or consequential damages.
- 3.3 Notwithstanding what is stated in this DPA, the Processor shall be held harmless from all liability in the DPA, if such liability arises as a result of the Controller or its instructions being in breach with the provisions of the GDPR or other applicable laws.

4. GOVERNING LAW AND DISPUTES

- 4.1 This DPA shall be governed in accordance with the laws of Sweden, with the exclusion of its conflict of laws rules.
- 4.2 Any dispute, controversy or claim (contractual or non-contractual) arising out of or in connection with the Terms of Service, or the breach, termination or invalidity thereof, shall be settled exclusively by Swedish courts, with Malmö District Court (Malmö tingsrätt) as the court of first instance.

SCHEDULE 1 – CONTROLLER’S INSTRUCTIONS

The following is instructions from the Controller to the Processor for the processing of personal data which covers this DPA.

PROCESSING ACTIVITIES	Activities necessary to provide the Service such as collection, registration, analyzation, deletion etc
CATEGORIES OF PERSONAL DATA	Name and e-mail addresses
CATEGORIES OF DATA SUBJECTS	Customers of the Service and their developers
RETENTION PERIODS	The personal data is being deleted when the Customer so requests

SCHEDULE 2 – SUB-PROCESSORS

Sub-processors	Third country	Security measures
Amazon Web Services	N/A	N/A