

Terms Applicable to Consulting

AdaCore

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1 AdaCore Consulting Terms and Conditions

2021-05-18

1.1 Scope

The following documents are applicable to any “consulting activity” specifically performed by AdaCore for a Customer and, in the event of a conflict or inconsistency between their provisions, must be interpreted in the following decreasing order of precedence:

- (i) The AdaCore quote and any document attached thereto;
- (ii) The present “*AdaCore Consulting Terms and Conditions*”, inclusive of any document they refer to other than those in this paragraph;
- (iii) The “*AdaCore Terms and Conditions*”;
- (iv) The statement of work of the Customer, if any.

These documents taken together constitute the entire and only agreement between the Parties with respect to the work and supersedes all other agreements or arrangements of any kind, whether written or oral or express or implied, between the Parties in relation to the work. Each of the Parties acknowledges that it has not relied on any representations or warranties except for those contained herein.

The consulting activity covered by these terms and conditions is performed by one or more AdaCore “consultants”, either on the premises of the Customer (“on-site”) or from AdaCore premises (“off-site”), over the number of days identified in AdaCore’s quote and involves:

- (i) providing advice to the Customer regarding the use of AdaCore Software in the context of the Customer’s technical environment; and/or
- (ii) assisting in the implementation of “changes” to the Customer software, documentation or build environment to optimize its processing by AdaCore Software.

1.2 Preliminary cooperation

Before issuing a quote:

- (i) The Customer shall let AdaCore know of any specific access or similar requirements applicable, in particular whenever consulting is to be performed on-site in a military, classified or restricted area, and
- (ii) The Customer shall let AdaCore know if the consulting activity is likely to involve disclosing to AdaCore consultant(s) any material falling under the Export Administration Regulations (EAR) of the US Bureau of Industry Standards (BIS) or within the US Munitions List (ITAR), under any other similar export-control regulations for military or dual-use goods, or is any other form of Controlled Defence Information.

AdaCore shall promptly let the Customer know if it is not able to provide consultants able to receive such information or able to comply with the access restrictions.

AdaCore's quote will specify the days when the activity will be performed, the names of the individual consultant(s) and, optionally, the nature of the consulting activity.

1.3 Performance of the work

In the performance of the consulting activities, AdaCore will employ consultants with appropriate professional qualification and skills and use methods compliant to the state of the art in its business area. AdaCore consultants will undertake a reasonable effort to address the needs of the Customers. When on-site, AdaCore consultants will abide by any Customer safety and security regulations.

The Customer shall provide AdaCore consultant(s) with all the information needed to perform the consulting activity.

1.4 Price and payment

In consideration for the consulting activity, the Customer agrees to pay AdaCore the "consulting fees" listed in the quote, according to the payment schedule detailed therein. Fees are fixed and firm and payments shall be made according to "AdaCore Terms and Conditions".

If the consulting is on-site, the Customer also agrees to pay the amount specified in the quote for the travel and subsistence expenses of AdaCore consultants the travel expenses mentioned in the quote.

1.5 Changes to consulting

The Customer may notify AdaCore at any time that it requests changes in the nature or dates of the consulting activity. AdaCore will, at its sole choice, either:

- (i) Accept such changes, with or without a change of consulting fee. AdaCore will issue a new quotation for the modified consulting activity. In this case, the Customer will remain liable for the travel and accommodation expenses already incurred by AdaCore.
- (ii) Reject such changes. The Customer then has the option of either cancelling the consulting activity, in which case the provisions of the following paragraph apply, or proceeding with the consulting under the original conditions.

1.6 Cancellation

If the consulting activity is canceled by the Customer more than thirty (30) calendar days before its planned date, the Customer will remain liable only for the travel and accommodation expenses already incurred by AdaCore;

If the consulting activity is canceled by the Customer between twenty-nine (29) and eight (8) calendar days from its planned date, the Customer will remain liable for the travel and accommodation expenses already incurred by AdaCore and for half of the consulting fees.

If the consulting activity is canceled by the Customer at a later stage, the Customer will remain liable for the travel and accommodation expenses already incurred by AdaCore and for the entirety of the consulting fees.

1.7 Intellectual property

1.7.1 Works of the Customer

The Customer shall be the sole owner of all changes made by AdaCore staff to its software, build environment, documentation, articles, certification material or studies as soon as they become tangible.

The Customer shall be assigned all intellectual property rights pertaining to these changes, in particular the rights to reproduce, translate, adapt, arrange and distribute to the public, for a fee or for no fee, part or the whole of the Contributions. Such rights are assigned for all purposes, globally, and for the maximum amount of time permitted by law. AdaCore shall not receive any consideration other than the consideration expressed in this Agreement for such changes and this agreement shall act as that assignment.

AdaCore represents and warrants that it fully owns or is legally authorized to assign these changes to the Customer. In particular, AdaCore represents and warrants that the rights to the changes have not been transferred or assigned to a third party, either exclusively or non-exclusively, are not subject to any lien, pledge or other security, and that no other person or legal entity may claim any intellectual property right to the changes.

AdaCore warrants to the Customer the peaceful enjoyment of the intellectual property rights on the changes and pledges not to compromise, prevent, or encumber the enjoyment by the Customer of such rights in any manner. In particular, AdaCore represents and warrants that it has not submitted and will not make any patent submissions nor holds any patents pertaining to any part or the whole of the changes.

AdaCore will indemnify and keep the Customer harmless against any claim or action that the changes, or any part thereof, infringe the intellectual property right of any third party, provided that:

- (i) The Customer is not, and never was, in breach of the license applicable to the AdaCore Software it uses; and
- (ii) The Customer promptly notifies AdaCore of any such claim; and
- (iii) The alleged infringement is not the result of any action of the Customer or a third party.

In particular, AdaCore will indemnify the Customer against judgments, awards, damages and costs, including court and arbitration costs and attorney fees, finally awarded on such claims.

1.7.2 New works and works of AdaCore

AdaCore shall remain the sole owner of all changes made to AdaCore's software, qualification material and documentation by AdaCore staff at the occasion of the activity, including when such changes are covered by the terms of a separate subscription or consulting or special development contract. Unless agreed otherwise in the quote or the statement of work, AdaCore shall also remain the sole owner of all new works created as part of this agreement.

Customer acknowledges that:

- (i) AdaCore retains all rights to the changes made to AdaCore Software or to new works created as part of this agreement, in particular copyright, patent, and trademark rights; and

- (ii) these works may be included, in whole or part, in one or more product(s) and/or service(s) marketed or made available by AdaCore; and
- (iii) AdaCore's pricing and agreement to perform the work is based on the above acknowledgements.

AdaCore grants to the Customer the right to use those components of these works that are executable software, libraries, and source code deliverables under the terms of the "AdaCore Software License". The material listed in Appendix 1 ("*Qgen License Addendum*") is third-party material provided to the Customer by AdaCore under the terms contained in that Addendum. AdaCore grants to the Customer the right to use those components of these works that are technical documentation, reports, coding standards and certification or qualification material under the terms of the "AdaCore Documentary License".

AdaCore represents and warrants that it has the right to make these works available under the above terms. AdaCore will hold the Customer harmless against any claim that the work infringes any copyright, patent, database or trade mark rights of any third party, provided that:

- (i) The Customer is not, and never was, in breach of the applicable license; and
- (ii) The Customer notifies promptly AdaCore of any such claim; and
- (iii) the alleged infringement does not result exclusively from modifications to the works made by the Customer or third parties.

If these works are found to be infringing, AdaCore will, at its sole option, either:

- (i) Procure for the Customer the right to continue using the works; or
- (ii) Replace, as soon as reasonably possible, the infringing works by a non-infringing work.

1.8 Confidentiality

AdaCore agrees that any document or information of any kind, including business, commercial, financial, or technical, not generally known to the public and pertaining to the Customer's activities (the "confidential information") that AdaCore consultant(s) may become aware of while at the Customer site during the consulting will be kept in confidence and protected with the same degree of care as AdaCore's own confidential information, or at least with reasonable care. AdaCore will not disclose confidential information to third parties. AdaCore shall ensure that its employees and partners are bound by confidentiality obligations at least as restrictive as those contained herein and is responsible for their compliance thereto.

If any document or information being removed or transmitted from the Customer site by an AdaCore consultant is to be treated as confidential, it must be identified as such, either orally or in writing.

In addition, information sent as part of support requests (including any opened during the consulting) is subject to the confidentiality terms contained in "*Description of AdaCore Subscription Service for Enterprise and Assurance Product Lines*".

1.9 Limitation of liability

Any changes made to Customer software or build environment, even if made jointly with an AdaCore consultant, are the sole responsibility of the Customer, who must follow their standard QA procedures for those changes. AdaCore specifically disclaims any liability whatsoever with respect to those changes.

The aggregate cumulative liability of AdaCore and the Customer in relation to the consulting activity is limited to the total sum paid by the Customer hereunder. AdaCore represents, and the Customer acknowledges, that this clause is essential to AdaCore's consent to performing the work, and that the price of the work depends on this clause. However, this limitation of liability does not apply to cases of:

- (i) Gross negligence; or

- (ii) Willful acts; or
- (iii) Wrongfully caused death or bodily injury.

This clause states the sole and exclusive remedy of the Customer with respect to such claims.

2 AdaCore Software License

2021-05-18

These AdaCore Licensing Terms (the “License”) set forth the terms under which “AdaCore”, provides the software Components made available to the Customer under any AdaCore Subscription.

2.1 Definition of the Software

This license covers any software Component supported by AdaCore as part of its Subscription, including any tools and libraries, whether in binary or source form. Such software is referred to in the remainder of this License as “AdaCore Software”.

2.2 Software License

AdaCore Software is subject to terms of the GNU General Public License (GPL) or alternative similar licensing conditions that can be found with such Components. AdaCore Software library units are subject to the GPL and additional permissions that can be found with such Components. The Customer has a non-exclusive, worldwide, perpetual license to use AdaCore Software under the terms of such licenses.

During the period of a Subscription, AdaCore represents and warrants to the Customer that:

- AdaCore has the right to distribute AdaCore Software under the terms in this license.
- The Customer may make any needed copies of AdaCore Software for the use of engineers on the Customer’s project, and any copies needed for archival, backup or other similar purposes.
- The Customer can execute any of the copies of AdaCore Software on any computing equipment used by its project. In particular, the Customer can execute any number of copies of AdaCore Software servers located on premises, on the Cloud, or as part of automated processes.
- There are no restrictions on the use of the AdaCore Software library units that are linked with the Customer’s programs or on the use of Customer programs generated by AdaCore Software. The Customer may copy, modify and distribute those programs in any manner without requiring any additional permission from AdaCore, or payments thereto. In particular, such programs can be proprietary, secret, or classified.
- AdaCore will provide source code for the current version of AdaCore Software at no charge through its GNAT-tracker service.

2.3 Export Control

AdaCore represents and warrants that, as of the time of order, all products or deliveries made pursuant thereto are classified as EAR99 or under a Commerce Control List Export Control Classification Number with no license required (NLR) under the US Export Administration Regulations. AdaCore will provide on demand the Export Control Classification Number applicable to their products.

3 AdaCore Documentary License

2021-05-05

These AdaCore Licensing Terms (the “License”) set forth the terms under which AdaCore grants a non-exclusive, worldwide, perpetual license for material delivered by AdaCore to the Customer under a Special Development contract.

3.1 Definition of the Material

Unless agreed otherwise, this license covers any deliverable provided by AdaCore under a Special Development contract that qualifies as documentation, certification or qualification material (collectively “AdaCore Material”).

This license does not apply to software deliverables, which are subject to the “AdaCore Software License”.

3.2 License

AdaCore Material is licensed, under any of the following terms at the option of the Customer, or under alternative licensing conditions that can be found with such Material:

- (i) the GNU General Public License (GPL) version 3, or any later version published by the FSF, or
- (ii) the GNU Free Documentation License version 1.3, or any later license published by the FSF, or
- (iii) the Creative Commons Attribution, Share-Alike license, version 4.0, as published by the Creative Commons Foundation, or
- (iv) any other terms of the Customer’s choosing, provided that:
 - (a) AdaCore Material is incorporated in whole or part in a document containing significant content other than such AdaCore Material; and
 - (b) an acknowledgement is made that parts of the document were produced by AdaCore; and
 - (c) AdaCore is not identified as author of the whole document; and
 - (d) Warranty and liability disclaimers contained in AdaCore Material are preserved;
 - (e) such other terms, if they permit redistribution of this document to third parties, require that any further redistribution satisfies (b), (c), and (d) above.

AdaCore represents and warrants to the Customer that it has the right to distribute AdaCore Material under the terms in this License.

3.3 Export Control

AdaCore represents and warrants that, as of the time of its quote, all products or deliverables are either classified as EAR99 or under a Commerce Control List (CCL) Export Control Classification Number (ECCN) with no license required (NLR) under the US Export Administration Regulations. If requested, AdaCore will provide the ECCNs applicable to its products.

4 AdaCore Terms and Conditions

2021-05-03

4.1 Scope

These Terms and Conditions are applicable to all purchase orders issued to the AdaCore legal entity you are doing business with (“AdaCore”) as specified on AdaCore’s quote, for a product and/or service item (the “Item”) provided by AdaCore, except where these Terms and Conditions are modified or amended by specific terms and conditions applicable to the Item, or by AdaCore’s quote.

4.2 Resellers

A “Reseller” may purchase one or more Items for use by the “Customer”. The Reseller will provide to AdaCore a contact person at the Customer to confirm product requirements. The Reseller acknowledges that it has informed the Customer that these Terms and Conditions govern the Customer’s use of each Item and that it has verified the suitability of each Item for the Customer’s purpose. By using each Item, the Customer acknowledges that they are aware that these terms and Conditions govern their use of that Item and that they are the exclusive user of the Item and not the Reseller. The term “Buyer” below refers to either the Customer when they directly purchase the Item or the Reseller acting as above.

4.3 Ordering

This Quote is valid for the validity period stated within and must be referenced by the Buyer’s Purchase Order. Sending of the Order implies acceptance of these Terms and Conditions, of specific terms and conditions applicable to the Item, and of any condition set forth within the Quote. In particular, both the Customer or Reseller waive their right to assert terms or conditions that contradict those specified in Buyer’s Order.

4.4 Payment

Any payment made to AdaCore must be made in the currency specified in the quote, unless otherwise mutually agreed in writing. Payment must be made by the Buyer within thirty (30) days from the date of the invoice, by check or bank transfer to AdaCore’s bank account.

Notwithstanding any other existing legal remedy, in the event of the default by the Buyer to pay the Price within this period, an annual 12% penalty rate can be applied forthwith.

AdaCore will also be entitled to obtain reasonable compensation from the Buyer for any recovery costs incurred due to the Buyer’s late payment. If you are doing business with AdaCore SAS, this compensation will be no smaller than a fixed sum of 40 euros.

AdaCore may also suspend forthwith the delivery of the Item to the Customer.

4.5 Governing Law and Jurisdiction

The present contract is subject to the laws of:

- the state of New York, if you are doing business with Ada Core Technologies Inc.;
- England and Wales if you are doing business with AdaCore Ltd.;
- France, if you are doing business with AdaCore SAS or any other AdaCore entity;

Failing amicable agreement between the Parties concerning any dispute arising between them regarding the interpretation, performance, termination or any other aspect of the Order, the Parties irrevocably submit to the cognizance of the competent courts in:

- New York (United States), if you are doing business with Ada Core Technologies Inc.;
- London (United Kingdom), if you are doing business with AdaCore Ltd.;
- Paris (France), if you are doing business with AdaCore SAS or any other AdaCore entity;

4.6 Limitation of Liability

THE AGGREGATE CUMULATIVE LIABILITY OF ADACORE UNDER THE PRESENT AGREEMENT FOR ANY BREACH OF ITS OBLIGATIONS HEREUNDER IS LIMITED TO THE PRICE PAID BY THE BUYER FOR THE ITEM. BECAUSE OF THE PURPOSE OF BETA SOFTWARE AND CONTINUOUS RELEASES, ADACORE EXPLICITLY DISCLAIMS ANY LIABILITY WHATSOEVER REGARDING THE PROVISION OF SERVICES FOR SUCH SOFTWARE. THIS CLAUSE STATES THE SOLE AND EXCLUSIVE REMEDY OF THE CUSTOMER AND RESELLER FOR ANY SUCH BREACH OF CONTRACT. THE PARTIES ACKNOWLEDGE THAT THIS CLAUSE REFLECTS THE ECONOMIC BALANCE OF THEIR AGREEMENT AND IS ESSENTIAL TO THEIR CONSENT.

4.7 Confidentiality and Privacy

AdaCore will handle any code sent by the Customer during the delivery of an Item in accordance with the description of services for that item. In addition, Customer acknowledges that such code is filed in AdaCore's information system for the purpose of delivering the Item and for performing regression testing during and after the delivery, and accessible by the IT providers used by AdaCore in the normal course of its business, under its control and responsibility.

Information exchanged between AdaCore and Customers of the GNAT Developer Product Line will be available to other GNAT Developer Customers and may be made available to the public. AdaCore will use all other information exchanged with Customers only during the delivery of the Item for the purpose of delivering the Item and providing commercial information to the User. AdaCore may share such information with partner companies to answer specific requests pertaining to the products or services of such companies. Customer acknowledges that this information is filed in AdaCore's information system for the above purposes.

For the purpose of this section, "Personal Data" has the same meaning as it does under the European regulation 2016/679 ("the GDPR") and "AdaCore" here refers to AdaCore and its related companies, which the Customer acknowledges are collectively a joint controller under the GDPR.

For the Purpose of delivering its products and services, AdaCore collects Personal Data of persons affiliated with the Customer ("Customer Personal Data") and may not be able to adequately provide its products and services without having such data. AdaCore will process all Customer Personal Data in accordance with the requirements of the GDPR and any other applicable legislation regarding the protection of personal information (together, "the Privacy Laws"). All related AdaCore companies will unanimously agree on and implement appropriate technical and organizational measures and dedicate the required resources to both ensure and demonstrate that its processing is performed in accordance with both Privacy Laws and the AdaCore Privacy Policy accessible at <http://www.adacore.com/privacy>.

The Customer also acknowledges that AdaCore may use third-party data processors operating on its behalf and under its control for part or all of its processing. AdaCore will ensure that such third parties also fulfill the requirements imposed by Privacy Laws on data processors.

Any Customer material falling under the Export Administration Regulations (EAR) of the US Bureau of Industry Standards (BIS) or within the US Munitions List (ITAR), under any other similar export-control regulations for military or dual-use goods or is any other form of Controlled Defence Information shall not be sent using GNATracker or e-mail. Specific guidance can be obtained through a Support Request.

The obligations of AdaCore contained in this section will continue notwithstanding fulfilment of the order.

4.8 Miscellaneous

4.8.1 Language

The language to be used for technical correspondence is English.

4.8.2 Default by the Customer

If the Customer or Reseller default in the performance of its obligations, AdaCore may immediately terminate any Subscriptions or contracts in this order without refund, notwithstanding any other possible remedies. However, if the default is cured by the defaulting party within fifteen (15) days of notification of such default, such Subscriptions or contracts will continue.

4.8.3 Force Majeure

None of the Parties shall be liable to the other in respect of anything which may constitute a breach of its obligations arising by reason of force majeure. If such circumstances last for more than three (3) months, any subscription or contract in this Order may be terminated by either Party. In this case, AdaCore shall refund the Buyer part of the Price, in proportion of the costs incurred by AdaCore (i.e. refund for a Subscription will be equal to the Subscription Charge prorated to the time left in the Subscription).

4.8.4 Severability

In the event that anything in the present Terms and Conditions is determined to be invalid, unlawful or unenforceable to any extent, such term shall be severed from the remaining terms, which continue to be valid to the fullest extent permitted by law.

4.8.5 Interpretation

These Terms and Conditions must be interpreted in combination with the quote and the specific terms and conditions applicable to the Item.

4.9 Exclusion of Trade Marks License

Nothing in this Order shall be construed as granting to the Customer or Reseller a license to use the GNAT Pro trademark, or any other trademark owned by AdaCore or any third Party.