



## TABNINE MASTER SERVICES AGREEMENT

BY ACCESSING, INSTALLING, HAVING INSTALLED, COPYING, OR OTHERWISE USING, TABNINE SOFTWARE PRODUCTS OR SERVICES, CUSTOMER AGREES TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH IN THIS MASTER SERVICES AGREEMENT (THE "**AGREEMENT**"), WHICH CUSTOMER AGREES IS A BINDING AND ENFORCEABLE AGREEMENT BETWEEN CUSTOMER AND TABNINE. IF CUSTOMER DOES NOT AGREE, CUSTOMER MAY NOT ACCESS, INSTALL, OR OTHERWISE USE THE SOFTWARE. THIS AGREEMENT APPLIES TO ALL SOFTWARE PRODUCTS AND SERVICES PROVIDED BY TABNINE TO CUSTOMER OR TO CUSTOMER END USERS, INCLUDING BUT NOT LIMITED TO SOFTWARE PRODUCTS AND SERVICES INSTALLED ON PREM ON CUSTOMER SYSTEMS, INSTALLED ON CUSTOMER PRIVATE CLOUD NETWORKS, OR WHEN PROVIDED BY TABNINE AS A SERVICE, AND WHETHER PURCHASED FROM TABNINE, ITS AFFILIATES, RESELLERS, OR DISTRIBUTORS.

If the Customer and Tabnine have executed an Order Form (as further defined herein), then the effective date ("**Effective Date**") for purposes of this Agreement shall be the Subscription start date set forth on the applicable Order Form or, if no Subscription start date is stated, the date on which Customer first accesses the Products or Services. The Tabnine entity entering into the Agreement is set forth in [Section 12.7](#) ("**Tabnine**"). All capitalized terms have the meanings set forth in the sections in which they are used or in [Section 14](#) below.

### 1. Products and Services.

1.1 **Products.** Tabnine's proprietary software Products include an AI coding platform and an agentic AI solution that generates suggested software code in response to the Input and context provided by an Authorized User. Software code generated by the Product and Services is provided in the form of code completion suggestions (the "**Suggested Code**") for Customer and Customer's Authorized User's evaluation and potential use. General suggestions on documentation along with Suggested Code may also be provided through Tabnine chat (general suggestions and Suggested Code are referred to collectively as "**Suggestions**"). Tabnine will provide access and use of Tabnine's Products and Services to Customer under the terms and conditions of this Agreement and as set forth in an applicable Order Form. Subscriptions are limited to the Products, functionality, and versions specified in the applicable Order Form and additional Products, releases, versions, or functionality that are not expressly included remain subject to additional fees.

1.2 **Third Party Models.** Tabnine's Products and SaaS offerings utilize Tabnine proprietary software Products in conjunction with large language models (LLM) through Customer private end points or through end points managed by Tabnine to generate Suggestions and Suggested Code. Subject to the terms and conditions of [Section 1.2](#), Customer may use the Products and SaaS in conjunction with certain Third-Party Models. Use of the Products or SaaS with a Third-Party Model is subject to the terms and conditions published by the owner of the Third-Party Model at the time of use, including but not limited to provisions related to software license terms, intellectual property rights, privacy rights, data security, and other material provisions related to Customer's interaction with the Third-Party Supplier and use of Third-Party Models. Customer is responsible for reviewing Third-Party Terms and Conditions to determine if they are acceptable to Customer. Third-Party Terms and Conditions are subject to change without notice and Tabnine bears no responsibility for monitoring or notifying Customer of any changes.

### 2. License Grant and Restrictions.

2.1 **License.** Subject to the terms and conditions of this Agreement, Tabnine grants to Customer, for the duration of each Subscription term, a limited, non-exclusive, revocable, non-sublicensable and nontransferable, license to install, use, access, display, and run the Products in object code form, as set forth in an applicable Order Form, solely for the Customer's internal use. Use of the Product is limited to the number of Authorized Users set forth in the Order Form. If Customer purchases Subscriptions to access and use the Products as a service, [Section 2.2](#) shall apply to Customer's access and use of the Product in lieu of [Section 2.1](#).

2.2 **Software as a Service.** Tabnine may make the Products available to Customer for access and use through a cloud-based service hosted by Tabnine ("**SaaS**"). In the event that access to Products are provided as SaaS, Customer may access and use the Products subject to the terms and conditions of this Agreement. During the term of the applicable Subscription designated on the applicable Order Form, Customer is granted a limited, non-exclusive, revocable, non-sublicensable and nontransferable right to access and use the Products identified in the Order Form, and related Documentation, in the SaaS

environment for the Customer's internal use. Use of the Product as SaaS is limited to the number of Authorized Users set forth in the Order Form.

2.3 **Authorized Users.** Customer may make the Products available to the number of Authorized Users set forth in the applicable Order Form and may increase the number of Authorized Users during the term of a Subscription by notifying Tabnine of the additional Authorized Users and paying the associated Subscription Fees, adjusted on a pro-rata basis over the remaining term of the applicable Subscription. When Customer notifies Tabnine of a new Authorized User (an "**Invited User**"), Tabnine will provision the Invited User who is then deemed an Authorized User. The Invited User's Subscription will be invoiced to Customer and may not be canceled or refunded. Customer may add Authorized Users, but may not reduce the number of Authorized Users, including any additional Authorized Users, during the Subscription term. Additional Authorized User subscriptions added during the Subscription term will co-terminate at the end of the Subscription term. Unless provided otherwise in the applicable Order Form, Fees for additional Authorized Users will be invoiced to Customer at the end of the quarter in which the additional Authorized Users were added.

2.4 **Restrictions.** Except as otherwise expressly permitted in this Agreement, Customer shall not itself, or through any parent, subsidiary, affiliate, agent or other third party: (a) sell, lease, license, distribute, sublicense or otherwise transfer in whole or in part, any Products or the Documentation to a third party; (b) decompile, disassemble, translate, reverse engineer or otherwise attempt to derive source code from the Products; (c) allow access or permit use of the Products or Documentation by any third party except authorized third-party contractors solely to provide services to Customer, provided that Customer shall be liable for all acts and omissions of such authorized third-party contractors; (d) circumvent the license keys embedded within the Products; (e) modify or create derivative works based upon the Products or Documentation; (f) disclose the results of any benchmark test of the Products to any third party; or (g) change any proprietary rights notices which appear in the Products or Documentation.

2.5 **Copies.** Customer may make up to two copies of the Products for backup and/or archival purposes.

2.6 **Open-Source Software.** The Products may include individual free and open-source software ("**FOSS**") components, each of which has its own copyright and its own applicable license conditions. FOSS components are licensed to Customer under the terms of the applicable open-source license conditions and copyright notices that can be found in the licenses file, the Documentation or other materials accompanying the Products. Tabnine represents that its use of such FOSS is in compliance with the license terms thereof. Tabnine makes no other representations or warranties in connection with such FOSS.

2.7 **Customer Responsibilities.** Customer represents and warrants that Customer and Customer Users shall not use the Products or Services (i) for purposes that are unlawful; (ii) for the knowing or intentional infringement of third-party intellectual property rights; (iii) to submit or process any infringing Input; and (iv) will use best practices in establishing and performing code review processes utilizing industry standard controls and tools to scan for infringing code generated by Customer Users. To the extent scanning tools and controls may be provided with the Products and Services, Customer agrees to employ and utilize such tools and controls.

3. **Professional Services.** Tabnine will provide Professional Services for Customer as set forth in the applicable Order Form or a Statement of Work ("**SOW**"). Customer shall reimburse Tabnine for all pre-approved travel and living expenses incurred by Tabnine personnel in performing the Professional Services. Each SOW shall be subject to the terms of this Agreement.

#### 4. **Fees and Payment.**

4.1 **Fees.** Customer agrees to pay Tabnine all Fees according to the rates as stated on the applicable Order Form.

4.2 **Payment Terms.** Fees shall be invoiced in full upon the effective date of the applicable Order Form. All Fees will (i) be paid in US dollars, and (ii) be due and paid by Customer within thirty (30) days of the date of the invoice. Payments are nonrefundable. Subscriptions are non-cancelable. If Customer does not pay the invoices when due, Tabnine may charge interest at one percent (1%) per month on the unpaid balance. If Customer fails to pay Fees in accordance with this Section, Tabnine may suspend fulfilling its obligations under this Agreement until such payment is received by Tabnine.

4.3 **True Up Payment for Additional Authorized Users.** Fees for Authorized Users Subscriptions added during a calendar month will be invoiced at the end of the quarter in which the Subscriptions were added. Customer will notify Tabnine at the

end of each calendar month of all additional Authorized Users that exceed the number of Authorized Users set forth in the applicable Order Form by sending notice by email to support@tabnine.com.

4.4 **Volume and Promotional Pricing; Pricing Tiers.** In the event that Tabnine provides volume pricing discounts, including through tiered pricing based on the number of Authorized Users, Customer acknowledges and agrees that (i) Subscriptions provided free of charge or for special promotional pricing do not count as Authorized Users for purposes of calculating volume discounts or discount tiers; (ii) tiered pricing applies only to the Subscriptions purchased within an applicable tier; (iii) the change in pricing applicable to Subscriptions when Customer reaches a new volume tier applies only to new Subscriptions purchased in the higher tier range such that Customer does not receive any discount or price reduction for Subscriptions sold in any lower tier.

4.5 **Taxes.** Each party will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed upon that party with respect to the transactions under this Agreement subject to the following:

4.5.1 **Indirect taxes.** *“Indirect Taxes”* means applicable taxes and duties, including, without limitation, VAT, service tax, GST, excise taxes, sales and transactions taxes, and gross receipts tax, imposed by a governmental authority on the sale of the Subscriptions, licenses, or services. All prices and the Fees payable by Customer are exclusive of Indirect Taxes, which will be stated separately from the fees on the invoice, except where applicable law requires otherwise.

4.5.2 **Payment of Indirect Taxes.** Tabnine may charge, and Customer will pay, all applicable Indirect Taxes that Tabnine is legally obligated or authorized to collect from Customer. Customer will provide such information to Tabnine as reasonably required to determine whether Tabnine is obligated to collect Indirect Taxes from Customer. Tabnine will not collect, and Customer will not pay, any Indirect Tax for which Customer furnishes Tabnine a properly completed exemption certificate or a direct payment permit certificate for which Tabnine can claim an available exemption from such Indirect Tax.

4.5.3 **Withholding.** All payments made by Customer to Tabnine under this Agreement will be made free and clear of any deduction or withholding, as required by law. If any such deduction or withholding (including cross-border withholding taxes) is required on any payment, Customer will pay such additional amounts as are necessary so that the net amount received by Tabnine is equal to the amount then due and payable under this Agreement and furnish Tabnine with tax receipts evidencing the payments of such amounts.

4.5.4 **Tax Planning and Cooperation.** Tabnine will provide Customer with such tax forms as are reasonably requested in order to reduce or eliminate the amount of any withholding or deduction for taxes in respect of payments made under this Agreement.

5. **Support Services.** Tabnine shall provide Support Services as described in **Exhibit A** during the term of the Subscription set forth in the applicable Order Form.

## 6. **Ownership.**

6.1 **Products and Services.** Notwithstanding anything to the contrary stated in this Agreement, except for the limited license and rights expressly provided in this Agreement, Tabnine has and will retain all rights, title, and interest in and to the Products, Services, Updates and Documentation (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) and all copies, modifications, and derivative works thereof. Customer acknowledges that it is obtaining only a limited license right to use the Products and that irrespective of any use of the words “purchase,” “sale,” or like terms hereunder no ownership rights are being conveyed to Customer under this Agreement or otherwise.

### 6.2 **Suggested Code.**

6.2.1 Subject to **Section 6.1**, Tabnine does not claim and is not granted any rights in the Output or to any code or other intellectual property developed by the Customer or any of its Users while using the Services in accordance with the provisions hereof. Suggested Code generated by any User while using the Services in accordance with this Agreement and incorporated by a User as Output, shall be deemed part of the code generated by the Customer for all purposes. To the extent that Tabnine may be deemed to hold any rights in the Suggested Code, Tabnine hereby grants the Customer a non-exclusive, perpetual, and royalty-free license to use, within the code generated by the Customer, any Suggested Code.

Tabnine, its directors, officers, employees, and consultants do not, and shall not, assume any responsibility or liability with respect to Suggestions, including any Suggested Code, or any use made by the Customer thereof. The ultimate responsibility with respect to Suggested Code, its usage or incorporation thereof into the Customer source code or any of the Customer software or other products, lies solely with the Customer.

6.2.2 It is further clarified that any code developed by a User while using the Services hereunder, is used by Tabnine for the purpose of improving the Service provided specifically and solely to the Customer (and not for any other purpose, including improving the Services provided to other Tabnine users).

## 7. Warranties.

7.1 Products. Tabnine warrants to Customer only that, for the duration of the applicable Subscription period (the "**Warranty Period**"), the Products shall substantially conform to the description contained in the applicable Documentation. If during the Warranty Period the Products do not substantially conform to the description contained in the applicable Documentation, Tabnine shall perform the Support Services described in Exhibit A.

7.2 Services. Tabnine warrants to Customer that the Services shall be performed in a workmanlike manner and shall conform to standards of the industry. If the Services are not performed as set forth above, Tabnine shall re-perform the applicable Services.

7.3 Remedies. The remedies in Sections 7.1 and 7.2 are Customer's sole and exclusive remedies for breach of warranty and Tabnine's sole and exclusive liability for breach of warranty.

7.4 No Guarantees. Tabnine does not warrant or guarantee that the Services will function without any disruptions, delay, or errors. Tabnine takes no responsibility for any disruption, interruption or delay caused by any failure of or inadequacy of the Services or any items over which Tabnine has no control.

7.5 The warranties in Sections 7.1 and 7.2 are made to and for the benefit of Customer only. The warranties shall apply only if: (i) the Products have been properly installed and used at all times in accordance with the instructions in the applicable Documentation; (ii) no modification, alteration or addition has been made to the Products; and (iii) Tabnine receives written notification of the breach, in the case of the warranty in Section 7.1, within thirty (30) days following the date the Products were initially licensed by Customer, and in the case of the warranty in Section 7.2, within ten (10) days following the performance of the relevant Services.

7.6 Disclaimer. THE PRODUCTS, SERVICES, SUGGESTIONS, DOCUMENTATION AND RELATED MATERIALS ARE PROVIDED "AS-IS" AND, EXCEPT FOR THE WARRANTIES IN THIS SECTION 7, TABNINE AND ITS SUPPLIERS MAKE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INTEGRATION, NON-INFRINGEMENT, TITLE, PERFORMANCE, ACCURACY, OR ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING DISCLAIMER, THE PRODUCTS, SERVICES, DOCUMENTATION AND RELATED MATERIALS ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN THE PLANNING, CONSTRUCTION, MAINTENANCE, CONTROL, OR DIRECT OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, CONTROL OR COMMUNICATION SYSTEMS, WEAPONS SYSTEMS, OR DIRECT LIFE SUPPORT SYSTEMS. CUSTOMER ACKNOWLEDGES THAT TABNINE HAS NO RESPONSIBILITY FOR ANY HARDWARE ON WHICH CUSTOMER INSTALLS OR EXECUTES THE PRODUCTS.

7.7 No Warranty for Third-Party Models. The following applies to use of Tabnine Products with Third-Party Models: to the maximum extent permitted by applicable law, Tabnine Products are provided "as is", with all faults and without warranty of any kind, and Tabnine and its licensors hereby disclaim all warranties and conditions with respect to the Tabnine Products, either express, implied, or statutory, including, but not limited to, the implied warranties of merchantability, of satisfactory quality, of fitness for a particular purpose, of accuracy, of quiet enjoyment, and non-infringement of third-party rights. Tabnine does not warrant against interference with the enjoyment of the Products or SaaS, that the functions contained in the Tabnine Products will meet customer's requirements, that the operation of the Tabnine Products or SaaS will be uninterrupted or error-free, or that defects in the Tabnine Products will be corrected.

## 8. Indemnification.

8.1 Tabnine Indemnity. Subject to the terms of this Agreement, Tabnine shall (i) defend, or at its option settle, a third party claim brought against Customer alleging that the Tabnine Products or Services infringe such third party's patent, copyright or trademark, or makes intentional, unlawful use of such party's trade secret (each, an "**Infringement Claim**") and (ii) pay any settlement of such Infringement Claim consented to by Tabnine or pay any damages finally awarded against

Customer to such third party by a court of competent jurisdiction as the result of such Infringement Claim; provided that Customer: (a) notifies Tabnine promptly in writing of such Infringement Claim, (b) grants Tabnine sole control over the defense and settlement of such Infringement Claim, and (c) reasonably cooperates in response to a Tabnine request for assistance. Tabnine will have the exclusive right to defend any such Infringement Claim and make settlements at its own discretion, and Customer may not settle or compromise such Infringement Claim, except with prior written consent of Tabnine.

If Customer's use of any Products is enjoined, Tabnine shall, at its option and expense, (A) procure for Customer the right to make continued use of the Products, (B) replace or modify such so that they become non-infringing, or (C) request return of the Products, and upon receipt of such Products, the corresponding licenses are terminated and Tabnine shall refund as applicable the prepaid but unused Fees paid for the infringing Products less straight line depreciation based on a three (3) year useful life.

Tabnine shall have no liability or obligations under this Section 8 if the alleged Infringement Claim arises from or is related to: (1) any combination with non-Tabnine products, data or business processes, (2) use for a purpose or in a manner for which the Products, Services or Suggestions were not designed, (3) use of any older release or version of the Products, Services or Suggestions when use of a newer version or revision would have avoided the infringement, (4) any modification or alteration of the Products, Services, or Suggestions, (5) any intellectual property right owned or licensed by Customer, (6) Tabnine's compliance with any materials, designs, specifications or instructions provided by Customer, (7) Customer use of the Products, Services, or Suggested Code after Tabnine notifies Customer to discontinue use due to an alleged Infringement Claim, (8) the Input, or (9) open source software. **THIS SECTION 8 STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND TABNINE'S ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS.**

**8.2 Customer Indemnity.** Customer agrees to defend, indemnify and hold harmless Tabnine, and each of its directors, officers, agents, contractors, partners and employees, from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with (a) Customer's or any User's use of and access to the Services, including, without limitation, Customer's use of any Suggested Code, (b) breach of Section 2 by Customer or any User; or (c) the Customer or any User's violation of any third party rights, including without limitation any intellectual property, property, or privacy right.

**8.3 No Indemnity for Third-Party Models.** Tabnine disclaims all liability arising from Customer's use of Third-Party Models. Any and all indemnity obligations of Tabnine, including any indemnity obligations related to infringement of intellectual property rights set forth in the Agreement, do not apply to allegations arising from Third-Party Models, including but not limited to allegations related to any code or Suggestions generated through use of the Products or SaaS.

## **9. Limitation of Liability.**

**9.1** EXCEPT WITH REGARD TO BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS, OR IN RELATION TO MISAPPROPRIATION OR INFRINGEMENT OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS, (i) IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, RELIANCE, PUNITIVE, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR INCIDENTAL DAMAGES OF ANY KIND AND HOWEVER CAUSED; (ii) IN NO EVENT WILL TABNINE'S CUMULATIVE LIABILITY FOR ANY AND ALL CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT EXCEED TWO TIMES (2X) THE AMOUNT PAID TO TABNINE BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE CLAIM.

**9.2** TABNINE SHALL HAVE NO LIABILITY ARISING FROM OR RELATED TO (i) SUGGESTIONS THAT ARE ALTERED OR MODIFIED, (b) SUGGESTIONS GENERATED IN RESPONSE TO INPUT THAT THE CUSTOMER DOES NOT HAVE THE APPROPRIATE RIGHTS TO USE, (ii) INTENTIONAL OR KNOWING INFRINGEMENT BY CUSTOMER OR CUSTOMER USERS OF ANY THIRD-PARTY RIGHTS, OR (iii) CUSTOMER INPUT.

**9.3 LIMITATION OF LIABILITY OF THIRD-PARTY MODELS.** CUSTOMER ASSUMES ALL RISKS OF USING THIRD-PARTY MODELS. TABNINE DOES NOT ASSUME ANY LIABILITY OF ANY KIND FOR ANY INPUT, OUTPUT, SUGGESTIONS, OR CODE, MADE OR GENERATED USING THIRD-PARTY MODELS. CUSTOMER AGREES TO LOOK SOLELY TO AGREEMENTS CUSTOMER MAY HAVE WITH THIRD-PARTY SUPPLIERS OF THIRD-PARTY MODELS TO RESOLVE ANY DISPUTES RELATING TO CUSTOMER'S USE OF SUCH THIRD-PARTY MODELS.

**9.4** THE LIMITATIONS AND EXCLUSIONS OF LIABILITY SET FORTH HEREIN IN THIS SECTION 9 (LIMITATION LIABILITY) SHALL APPLY REGARDLESS OF THE BASIS OF LIABILITY, WHETHER THE UNDERLYING ALLEGATIONS, ACTIONS, OR CLAIMS, ARE

BASED IN TORT, CONTRACT OR OTHER LEGAL THEORY. THE PROVISIONS OF THIS SECTION 9 ALLOCATE RISKS UNDER THIS AGREEMENT BETWEEN CUSTOMER, TABNINE AND TABNINE'S SUPPLIERS. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

## **10. Term and Termination.**

10.1 This Agreement shall commence on the Effective Date and shall continue for two years from the Effective Date or until all Subscriptions and Order Forms have been terminated by their terms, whichever is later, unless terminated earlier as set forth in this Section 10.1 ("**Term**"). Either party may terminate this Agreement, Order Form, or any Subscription in the event that the other party commits a material breach of this Agreement and does not cure such breach within thirty (30) days of receipt of written notice from the non-breaching party describing the breach. Each Subscription shall begin on the date Customer purchases the Subscription by entering into an applicable Order Form and shall continue during the term ("**Subscription Period**") set forth in the Order Form. Subscriptions may not be canceled or terminated except as set forth in this Section 10.1. Subscriptions shall automatically renew for additional terms of one (1) year each (each a "**Renewal Period**") unless either party gives the other party written notice of its intent not to renew at least thirty (30) days prior to the end of the then-current Subscription Period or Renewal Period. The applicable licenses granted in Section 2 of this Agreement automatically terminate upon the termination of the underlying Subscription or this Agreement. Upon the expiration or termination of the underlying Subscription or this Agreement, Customer must de-install and destroy the Products, all associated Documentation and Confidential Information and certify such de-installation and destruction in writing to Tabnine.

10.2 Sections 2 and Sections 6 through 14 shall survive the expiration or termination of this Agreement.

10.3 During the Term and for one (1) year following termination or expiration of this Agreement (but no more than once in a calendar year), Tabnine and its auditors may inspect Customer's records relating to its reproduction and use of the Products and Services for the purpose of verifying Customer's compliance with this Agreement. Customer shall cooperate fully with Tabnine and its auditors in conducting audits and provide reasonable assistance. If an underpayment is discovered, Customer shall promptly pay such amount. If an underpayment of more than ten percent (10%) for the period audited is discovered, Customer shall promptly reimburse Tabnine for the cost of the audit.

10.4 In any case of termination of Services for any reason whatsoever and/or otherwise as requested in writing by Tabnine, the Customer shall immediately, but no later than within five (5) days as of such termination and/or written request, as applicable, (i) return any and all Services' Materials and/or any other materials related to the Services and provided to it by Tabnine, and destroy, delete, and uninstall from its computers, mobile devices, servers or any other applicable hardware, the Services and any computer files or other materials in connection therewith and (ii) upon request of Tabnine, certify in writing, that it has complied with the obligations set forth in this Section 10.4.

**11. Confidentiality.** For a period of five (5) years from the date of disclosure of the applicable Confidential Information, the Receiving Party shall (i) hold the Confidential Information of the Disclosing Party in trust and confidence and avoid the disclosure or release of such Confidential Information to any other person or entity by using the same degree of care as it uses to avoid unauthorized use, disclosure, or dissemination of its own Confidential Information of a similar nature, but not less than reasonable care, and (ii) not use the Confidential Information of the Disclosing Party for any purpose whatsoever except as expressly contemplated under this Agreement; provided that, to the extent the Confidential Information is comprised of or constitutes trade secrets, including but not limited to software code, the Receiving Party agrees to protect such information for so long as it qualifies as a trade secret under applicable law. The Receiving Party shall disclose the Confidential Information of the Disclosing Party only to those of its employees and contractors having a need to know such Confidential Information and shall ensure that such employees and contractors comply with the provisions of this Section. The obligations under this Section shall not apply to information that the Disclosing Party can demonstrate (a) was in its possession at the time of disclosure and without restriction as to confidentiality, (b) at the time of disclosure is generally available to the public or after disclosure to the Receiving Party becomes generally available to the public through no breach of this Agreement or other wrongful act by the Receiving Party, (c) has been received from a third party without restriction on disclosure and without breach of this Agreement by the Receiving Party, or (d) is independently developed by the Receiving Party without regard to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information as required to comply with binding orders of governmental entities that have jurisdiction over it, provided that the Receiving Party gives the Disclosing Party prompt notice thereof if the Receiving Party is legally permitted to do so. Notwithstanding anything to the contrary, Customer acknowledges and agrees that Tabnine, its employees and agents shall be free to use and

employ their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any Subscriptions and Services performed under this Agreement.

## **12. General.**

12.1 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement which does not include the use of the Products or Services in violation of the terms of this Agreement. No amendment, modification, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. Purchase orders shall be for the sole purpose of defining quantities, prices and describing the Products and Services to be provided under this Agreement and to this extent only are incorporated as a part of this Agreement and all other terms in purchase orders are rejected. This Agreement supersedes all prior or contemporaneous discussions, proposals and agreements between the parties relating to the subject matter of this Agreement.

12.2 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining portions shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable.

12.3 **Waiver.** No waiver of rights by either party may be implied from any actions or failures to enforce rights under this Agreement.

12.4 **Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform due to causes beyond its reasonable control (excluding payment of monies due).

12.5 **No Third-Party Beneficiaries.** Unless otherwise specifically stated, the terms of this Agreement are intended to be and are solely for the benefit of Tabnine and Customer and do not create any right in favor of any third party.

### **12.6 Governing Law and Jurisdiction.**

12.6.1 (a) In the event that the Tabnine contracting entity is Tabnine, Inc., the Agreement shall be governed by the laws of the State of New York, without reference to the principles of conflicts of law. Any litigation related to this Agreement shall be brought in the state or federal courts located in New York, New York, and only in those courts and each party irrevocably waives any objections to such venue. (b) In the event that the Tabnine contracting entity is Tabnine Ltd. the Agreement shall be governed by the laws of Israel, without reference to the principles of conflicts of law. Any litigation related to this Agreement shall be brought in the courts in Tel-Aviv, Israel, and only in those courts and each party irrevocably waives any objections to such venue.

12.6.2 The provisions of the Uniform Computerized Information Transaction Act and United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The parties shall attempt to resolve any dispute related to this Agreement informally, initially through their respective management, and then by non-binding mediation to take place in the applicable jurisdiction.

12.7 **Tabnine Contracting Party.** All references to "**Tabnine**" in this Agreement will be deemed to be a reference to the applicable Tabnine entity as follows: (a) if Customer's primary place of business is located in the North America, the Tabnine entity is Tabnine, Inc., a Delaware Corporation; (b) if Customer's primary place of business is the European Economic Area, Middle East or Africa ("EMEA"), the Asia-Pacific region ("APAC"), or in a region outside of North America, the Tabnine entity is Tabnine Ltd.

12.8 **Notices.** All notices under this Agreement shall be sufficient only if in writing and personally delivered, delivered by a major commercial courier service, or mailed by certified or registered mail, return receipt requested. Notices to Customer may be addressed to the address listed above or in the applicable Order Form or purchase order. Notices to Tabnine shall be addressed to the addresses set forth opposite the applicable Tabnine entity below, or as amended by notice pursuant to this subsection.

Tabnine, Inc.  
Attn: Legal Dept.  
651 N. Broad Street, Suite 201  
Middletown, DE 19709 USA

Tabnine Ltd.  
Attn: Legal Dept.  
94 Igal Alon,  
Tel-Aviv, Israel

**12.9 Government Regulation.** Customer acknowledges that the Products and Services may be subject to export restrictions, including by the U.S. government and import restrictions by certain foreign governments. Customer may not export or re-export the Products or Services except in compliance with the U.S. Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. Customer shall not and shall not allow any third-party to remove or export from the United States or allow the export or re-export of any part of the Products, Services, or any direct product thereof: (i) into (or to a national or resident of) any embargoed or terrorist-supporting country; (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Customer agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Products and Services are further restricted from being used for terrorist activity, or for the design or development of nuclear, chemical, or biological weapons or missile technology without the prior permission of the U.S. government. The Products, Services, and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying, or disclosing of the Products, Services, and Documentation, by the U.S. Government shall be governed solely by the terms of this Agreement.

**12.10 Marketing.** Company may reference Customer's name and logo in its marketing communications and materials in accordance with Customer's applicable trademark and brand guidelines and policies. Such use shall be subject to Customer's right to revoke permission at any time in its sole discretion.

**13. Data Security and Privacy.** Tabnine will implement appropriate and reasonable security measures, including, without limitation, technical, physical, administrative, and organizational controls, designed to maintain the confidentiality, security and integrity of Customer's Confidential Information and personal information. Access to End Users' personal information will be in accordance with Tabnine's Privacy Policy (available at <https://www.tabnine.com/privacy>). The Customer represents and warrants that the Customer has full right and authority to provide Tabnine with the foregoing information, including, without limitation, any third party's consent to the extent required under any applicable law.

#### **14. Definitions.**

**"Authorized Users", "End Users" or "Users"** mean the persons who access and use the Products and Services permitted under an Order Form and as authorized by Customer.,

**"Confidential Information"** means any and all information or proprietary materials (in every form and media) not generally known in the relevant trade or industry and which has been or is hereafter disclosed or made available by one party to the other party under this Agreement in connection with the transactions contemplated under this Agreement, including (i) all trade secrets, (ii) existing or contemplated products, services, designs, technology, processes, technical data, engineering, techniques, methodologies and concepts and any related information, and (iii) information relating to business plans, sales or marketing methods and customer lists or requirements.

**"Disclosing Party"** means the party to this Agreement disclosing Confidential Information to the other party.

**"Documentation"** means the electronic user and administrative manuals contained within the Products or provided to Customer by Tabnine with the Updates.

**"Error"** means a reproducible failure of the Products to comply in a material respect with its Documentation when used as authorized under the relevant terms and conditions.

**"Fees"** mean the fees set forth in the applicable Order Form for Subscriptions, Services and any pre-approved travel and living expenses incurred by Tabnine personnel in performing the Services.

"**Input**" means the software code, data, information, and context provided by Customer or its Authorized Users to the Products and Services for the purpose of generating Suggestions.

"**Named Contacts**" means the engineering and support personnel who are knowledgeable and trained on the Products that are authorized to contact Tabnine for Support Services.

"**Order Form**" means a document governed by the Agreement, entered into by Tabnine and Customer, describing the applicable Products, SaaS, and any ancillary Services, and setting forth the number of Authorized Users, the type of Subscriptions, the Subscription Period, pricing, and related terms.

"**Output**" means the resulting software code comprised of the Input and Suggested Code generated by the Products or Services in response to such Input.

"**Products**" means the products licensed or provided for use under Subscription by Tabnine to Customer as set forth on an applicable Order Form, excluding any Output, Suggestions, or Suggested Code, generated by the Products based on Customer Input.

"**Professional Services**" mean the consulting services provided by Tabnine under this Agreement as set forth in an Order Form or SOW.

"**Receiving Party**" means the party to this Agreement receiving Confidential Information from the other party.

"**Services**" means services provided by Tabnine, including the Support Services and the Professional Services.

"**Statement of Work**" or "**SOW**" means a schedule or similar writing setting forth the scope, specifications, and other details for Professional Services.

"**Subscription**" means the right to access and use the Products and receive the Services for a set duration of time as set forth in an applicable Order Form subject to the terms and conditions of this Agreement.

"**Support Services**" mean the maintenance and support services provided by Tabnine under this Agreement as further described in **Exhibit A**.

"**Tabnine Pre-Trained Model**" means the machine learning model developed by Tabnine using a dataset containing open-source code developed and released under permissive licenses.

"**Third-Party Model**" means a machine learning model developed, provided, or offered by a third party.

"**Third-Party Supplier**" means the supplier and licensor of a Third-Party Model.

"**Third-Party Terms and Conditions**" means the license and terms of use terms provided by a Third-Party Supplier and applicable to the use of a Third-Party Model.

"**Update**" means an update to the Products made available by Tabnine as part of the Support Services but does not include new versions or new functionality.

*[Exhibit A: SLA follows]*

EXHIBIT A

Service Level Agreement ("SLA")  
Version 1.4

Article I. Support Tickets; Definitions

Enterprise Subscription Support
Customer must open a Support Ticket to <a href="mailto:support@tabnine.com">support@tabnine.com</a> with as much information as possible (describe the issue and its severity, add logs files, screenshots/videos, etc.).
<b>Customer should write in the subject and in the body of the ticket (email) the severity (Urgent, High, Normal, or Low) of the issue.</b>
See the information below in Enterprise Service. Customer can always check our <a href="#">FAQ</a> and our <a href="#">GitHub</a>

**1. Definitions**

"**Availability**" means the portion (in percentage terms) of Scheduled Uptime that the Software service is actually Available for Use:

Scheduled Uptime = (Total Time (24/7)) – (Scheduled Maintenance Windows)

% Availability = (Scheduled Uptime – Time Unavailable) / Scheduled Uptime

"**Available For Use**" means that all of the supported functions and features of the Software service is capable of sending and receiving data to and from the Internet.

"**Bug**" means an Issue which can only be resolved via a change to the Software code.

"**Enhancement**" means a new version of a Software which Tabnine makes generally available to its customers who are eligible to receive technical support services, which may improve the functionality of, or add minor functional capabilities to, the Software.

"**First Analysis**" means the first response which includes the initial outcome of support work conducted on the case. First Analysis can include the analysis of provided information or an action plan or a request for further information.

"**Issue**" means an error condition that causes the Software service to fail to operate substantially in compliance with the Documentation.

"**Software**" as that term is used in the SLA refers to the Products as licensed or provided for use under a Subscription.

"**Scheduled Downtime**" means the total minutes during the year represented by the Scheduled Maintenance Window.

"**Scheduled Uptime**" means the total minutes during the year less the total minutes represented by the Scheduled Downtime.

"**Service Level Period**" means 24x7: 24 hours a day, 7 days a week, 365 days a year.

"**Time Unavailable**" means any period of time during the applicable Service Level Period that the Software service is not Available For Use, except for the Exclusions set forth below ("**Exclusions**"):

Time Unavailable shall not include the aggregate amount of time during which the Software service is not Available For Use due to:

- Scheduled maintenance, provided that such scheduled maintenance occurs during scheduled maintenance windows, currently between the hours of Friday 10:00 pm and Sunday 4:00 pm, Central European Time ("**Scheduled Maintenance Window**");

- Emergency maintenance - Tabnine may perform any reasonably required, emergency maintenance work outside of the Scheduled Maintenance Window with one (1) hour prior electronic mail or other notice to Customer; and/or
- Interruptions in third party networks that prevent Internet users from accessing the Software service, provided that the data center is served by redundant connections to the Internet from multiple internet providers.

For clarity, any time during which the Software service is not Available For Use due to interruptions in electric power services serving the Hosting Environment shall not be excluded from Time Unavailable.

"**Updates**" means a set of procedures or new program code that Tabnine implements to fix reported Issues, and which may include modifications to improve performance or revisions to versions or releases of a Software which may improve its functionality, or additions or corrections to Documentation.

"**Workaround**" means a temporary error correction or change in operating procedure allowing Customer to continue to use the Software.

All capitalized terms not defined above shall have the meaning set forth in the main body of the Agreement.

## **Article II. Service Level Agreement - Enterprise SaaS**

This Article II applies to use of the Tabnine hosted Enterprise SaaS solutions only.

**1. Definitions.** All capitalized terms used in Section II. shall have the meaning set forth in Article I section 1 (Definitions) above.

### **2. Availability**

During the Term of the Agreement and subject to Customer's payment of applicable Fees, Tabnine shall provide no less than ninety-nine (99.0%) Software service Availability, as calculated on an annual basis, subject to the Exclusions.

### **3. Technical Support Services**

During the Term of the Agreement and subject to Customer's payment of applicable Fees:

- Tabnine shall provide, subject to the specifications set forth in this SLA, technical support to Customer and assistance with respect to the Software service, including (i) clarification of functions and features; (ii) clarification of Documentation; and (iii) technical support and assistance with Issues in connection with the operation of the Software.
- For tracking purposes, an Issue acceptance notification shall be sent automatically via e-mail with a case tracking number.
- First Analysis shall be conducted according to the severity of an Issue based on the timelines set forth in the table below.
- Tabnine may provide fixes through the periodic release of Updates and Enhancements.
- Tabnine shall not be responsible or liable for support or interruption to the Software service, the technical Support Services, any Services or any problems due to or resulting from: (1) all matters under the responsibility of Customer pursuant to the Agreement; (2) acts or omissions of Customer's (or its agents) use of the Software; (3) virus or hacker attacks beyond Tabnine's reasonable control; (4) circumstances beyond Tabnine's reasonable control; (5) intentional shutdown for emergency intervention or security incidents; (6) unauthorized modifications of the Software or configuration changes made by Customer without Tabnine's prior written consent; (7) Customer's failure to comply with the Documentation and security policies; (8) Internet or other connectivity between Customer's network and the Software or Tabnine's network, or any other network unavailability outside of the Tabnine network; (9) Customer's misuse of the Software or use of the Software in a manner other than as described in the Documentation; and/or (10) acts or omissions of a party other than Tabnine.
- Tabnine is not obligated to provide any technical support services for Third Party Products and Services (regardless of whether obtained from Tabnine or another source), including (without limitation) the Customer's networks or installation of networks.

## 4. Enterprise Service

### 4.1

Severity level	Criteria
Severity 1 <b>(Urgent)</b>	Fatal: <ul style="list-style-type: none"> <li>All or majority of Customer end users are unable to work with Tabnine.</li> <li>Critical severity security-related issue.</li> </ul>
Severity 2 <b>(High)</b>	Severe Impact: Issue disabling major functions of the Software service from being performed. This condition exists when the Software service is partially inoperative but is still usable by the Customer or an essential part of the Software service is unusable due to a defect.
Severity 3 <b>(Normal)</b>	Degraded Operations: The Customer's use of the Software service is somewhat compromised, but all essential parts can be used.
Severity 4 <b>(Low)</b>	Minimal Impact: Includes all other Issues or other inquiries. This condition generally exists when the Software service is usable, and the problems consist of inconveniences, deviation from Documentation, or minor failures involving individual system components.

All categories above apply only to Issues within the control of Tabnine or its hosting partners.

### 4.2

Upon receipt of a service ticket and initially classifying the Severity of the reported issue, Tabnine shall use commercially reasonable efforts to promptly contact the Customer to confirm the Severity level of the Software service call and shall use commercially reasonable efforts to respond to the Issue related error reports and service calls according to the following schedule\*:

Severity level	Initial Response time	First Standard Analysis time
Severity 1 <b>(Urgent)</b>	<b>2 hours</b> (8X5, CET, Monday-Friday)	<b>4 hours</b> (8X5, CET, Monday-Friday)
Severity 2 <b>(High)</b>	<b>4 hours</b> (8X5, CET, Monday-Friday)	<b>8 hours</b> (8X5, CET, Monday-Friday)
Severity 3 <b>(Normal)</b>	<b>12 hours</b> (8X5, CET, Monday-Friday)	<b>24 hours</b> (8X5, CET, Monday-Friday)
Severity 4 <b>(Low)</b>	<b>3 business days</b> (8X5 CET, Monday-Friday)	<b>3 business days</b> (8X5 CET, Monday-Friday)

\* Legal holidays excluded.

Time Not Included:

The measurement of time shall be suspended (a) during delays not caused by Tabnine (such as delays in response by Customer to questions or requests from Tabnine for information required or other required actions) and (b) when a Workaround has been provided.

Notwithstanding the foregoing, Tabnine shall make commercially reasonable efforts to deliver Software fixes to Bugs as quickly as possible based on the Severity Level of the reported Issues.

### 4.3 Customer's Responsibilities

As a condition for Tabnine's obligations hereunder, Customer must:

- a. Report Issues promptly and accurately following Tabnine’s standard ticket reporting process.
- b. Provide sufficient information for Tabnine to review, duplicate, replicate, and research the reported issue so Tabnine can analyze the situation and take appropriate corrective action.
- c. Follow Tabnine's instructions, Documentation, and suggestions regarding the use, Workarounds, configuration changes, or other related actions.

**Article III. Service Level Agreement - Enterprise On Prem/Private Deployment**

Article III applies to use of the Tabnine software installed on customer owned or managed systems (on prem or virtual private cloud) only.

**1. Definitions.** All capitalized terms used in Article III shall have the meaning set forth in Article I section 1 (Definitions) above.

**2. Technical Support Services.**

During the Term of the Agreement and subject to Customer's payment of applicable Fees: Tabnine shall provide technical support to Customer and assistance with respect to the Software service, including (i) clarification of functions and features; (ii) clarification of Documentation; and (iii) technical support and assistance with Issues in connection with the operation of the Software.

- a. For tracking purposes, an Issue acceptance notification shall be sent automatically via e-mail with a case tracking number.
- b. First Analysis shall be conducted according to the severity of an Issue based on the timelines set forth in the table below.
- c. Tabnine may provide fixes through the periodic release of Updates and Enhancements.
- d. Tabnine shall not be responsible or liable for support or interruption to the Software service, the technical Support Services, any Services or any problems due to or resulting from: (1) all matters under the responsibility of Customer pursuant to the Agreement; (2) acts or omissions of Customer's (or its agents) use of the Software; (3) virus or hacker attacks beyond Tabnine's reasonable control; (4) circumstances beyond Tabnine's reasonable control; (5) intentional shutdown for emergency intervention or security incidents; (6) unauthorized modifications of the Software or configuration changes made by Customer without Tabnine's prior written consent; (7) Customer's failure to comply with the Documentation and security policies; (8) Internet or other connectivity between Customer's network and the Software or Tabnine's network, or any other network unavailability outside of the Tabnine network; (9) Customer's misuse of the Software or use of the Software in a manner other than as described in the Documentation; and/or (10) acts or omissions of a party other than Tabnine.
- e. Tabnine is not obligated to provide any technical support services for Third Party Products and Services (regardless of whether obtained from Tabnine or another source), including (without limitation) the Customer's networks or installation of networks.

**3. Enterprise Service**

**3.1**

Severity level	Criteria
Severity 1 <b>(Urgent)</b>	Fatal: <ul style="list-style-type: none"> <li>● All or majority of Customer end users are unable to work with Tabnine.</li> <li>● Critical severity security-related issue.</li> </ul>
Severity 2 <b>(High)</b>	Severe Impact: Issue disabling major functions of the Software service from being performed. This condition exists when the Software service is partially inoperative but is still usable by the Customer or an essential part of the Software service is unusable due to a defect.

Severity 3 <b>(Normal)</b>	Degraded Operations: The Customer's use of the Software service is somewhat compromised, but all essential parts can be used.
Severity 4 <b>(Low)</b>	Minimal Impact: Includes all other Issues or other inquiries. This condition generally exists when the Software service is usable, and the problems consist of inconveniences, deviation from Documentation, or minor failures involving individual system components.

All categories above apply only to Issues within the control of Tabnine.

**3.2** Upon receipt of a service ticket and initially classifying the Severity of the reported issue, Tabnine shall use commercially reasonable efforts to promptly contact the Customer to confirm the Severity level of the Software service call and shall use commercially reasonable efforts to respond to the Issue related error reports and service calls according to the following schedule\*:

Severity level	Initial Response time (Support Hours)	First Standard Analysis time (Support Hours)
Severity 1 ( <b>Urgent</b> )	<b>2 hours</b> (8X5, CET, Monday-Friday)	<b>4 hours</b> (8X5, CET, Monday-Friday)
Severity 2 ( <b>High</b> )	<b>4 hours</b> (8X5, CET, Monday-Friday)	<b>8 hours</b> (8X5, CET, Monday-Friday)
Severity 3 ( <b>Normal</b> )	<b>12 hours</b> (8X5, CET, Monday-Friday)	<b>24 hours</b> (8X5, CET, Monday-Friday)
Severity 4 ( <b>Low</b> )	<b>3 business days</b> (8X5 CET, Monday-Friday)	<b>3 business days</b> 8X5 CET, Monday-Friday)

\* Legal holidays excluded.

Time Not Included:

The measurement of time shall be suspended (a) during delays not caused by Tabnine (such as delays in response by Customer to questions or requests from Tabnine for information required or other required actions) and (b) when a Workaround has been provided.

Notwithstanding the foregoing, Tabnine shall make commercially reasonable efforts to deliver Software fixes to Bugs as quickly as possible based on the Severity Level of the reported Issues.

### **3.3 Customer's Responsibilities**

As a condition for Tabnine's obligations hereunder, Customer must:

- a. Report Issues promptly and accurately following Tabnine's ticket reporting process.
- b. Provide sufficient information for Tabnine to review, duplicate, replicate, and research the reported issue so Tabnine can analyze the situation and take appropriate corrective action.
- c. Follow Tabnine's instructions, Documentation, and suggestions regarding the use, Workarounds, configuration changes, or other related actions.