



# Terms of Service

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Last update: 22nd February 2022

# Terms of service agreement

**Important Notice:** Please read these terms and conditions carefully. Your attention is drawn in particular to Section 10, which contains important limitations on the liability of Encodian.

This Agreement contains the terms and conditions (“Terms”) that govern your access to and use of the Service Offerings (as defined below) and is an agreement between Encodian Solutions Ltd. (“Encodian,” “we,” “us,” or “our”) and you or the entity you represent (“you” or “your”).

## 1 Use of the Service Offerings

- 1.1 Generally. You may access and use the Service Offerings and/or Third-Party Content in accordance with this Agreement. Service Level Agreements and Site Terms apply to Service Offerings and Third-Party Content.
- 1.2 By agreeing to the Terms you are deemed additionally to accept the terms under which we are entitled to process your personal data in accordance with our Data Processing Agreement which can be found at: <https://support.encodian.com/hc/en-gb/articles/360010559134-Data-Processing-Agreement>. You are also deemed to have consented to us processing such data in order to contact you when we introduce product updates or enhancements to the Service Offerings.

## 2 Changes

- 2.1 To the Service Offerings. We reserve the right in our absolute discretion to change, or discontinue any or all of the Service Offerings or change or remove functionality of any or all of the Service Offerings from time to time. We will notify you of any material change to or discontinuation of the Service Offerings.
- 2.2 To the APIs. We may change or discontinue any APIs for the Services from time to time. For any discontinuation of or material change to an API for a Service, we will use reasonable endeavours to continue supporting the previous version of such API for 6 months after the change or discontinuation (except if doing so (a) would pose a security or infringement of intellectual property issue, (b) is economically or technically burdensome, or (c) would cause us to violate the law or requests of governmental entities).

2.3 To the Service Level Agreements. We reserve the right in our absolute discretion to change, discontinue or add Service Level Agreements from time to time.

### **3 Security and Data Privacy**

3.1 Without limiting your obligations under Section 4.2, we will implement reasonable and appropriate measures designed to help you secure Your Content and your Account Information against accidental or unlawful loss, access or disclosure.

3.2 As part of our provision of the Service Offerings we are obliged to collect and process certain personal information supplied by you. When doing so we are regulated by the General Data Protection Regulation and will act in accordance with our [Privacy Policy](#).

### **4 Your Responsibilities**

4.1 Your Accounts. Except to the extent caused by our breach of this Agreement, (a) you are responsible for all activities that occur under your account, regardless of whether the activities are authorized by you or undertaken by you, your employees or a Third-Party (including your contractors, agents or End Users), and (b) we and our affiliates are not responsible for unauthorized access to your account.

4.2 Your Content. You will ensure that Your Content and your and End Users' use of Your Content or the Service Offerings will not violate our Acceptable Use Policy or any applicable law. You are solely responsible for the development, content, operation, maintenance, and use of Your Content.

4.3 Your Security and Backup. You are responsible for properly configuring and using the Service Offerings and otherwise taking appropriate action to secure, protect and backup your accounts and Your Content in a manner that will provide appropriate security and protection, which might include use of encryption to protect Your Content from unauthorized access and routinely archiving Your Content.

4.4 Log-In Credentials and Account Keys. Encodian log-in credentials and private keys generated by the Services are for your internal use only and you will not sell, transfer or sublicense them to any other entity or person, except that you may disclose your private key to your agents and subcontractors performing work on your behalf.

4.5 End Users. You will be deemed to have taken any action that you permit, assist or facilitate any person or entity to take related to this Agreement, Your Content

or use of the Service Offerings. You are responsible for End Users' use of Your Content and the Service Offerings and/or the Third-Party Content. You will ensure that all End Users comply with your obligations under this Agreement and that the terms of your agreement with each End User are consistent with this Agreement. If you become aware of any violation of your obligations under this Agreement caused by an End User, you will immediately suspend access to Your Content and the Service Offerings and/or the Third-Party Content by such End User.

## **5 Fees and Payment**

- 5.1 **Service Fees.** We calculate and bill fees and charges monthly or yearly if previously agreed. We may bill you more frequently for fees accrued if we suspect that your account is fraudulent or at risk of non-payment. You will pay us on the due date for payment calculated in accordance with this Agreement the applicable fees and charges for use of the Service Offerings and/or Third-Party Content (including any usage which is above the agreed threshold) using one of the payment methods we support. All amounts payable by you under this Agreement will be paid to us without set-off or counterclaim, and without any deduction or withholding. We may increase or add new fees and charges for any existing Services and/or Third-Party Content you are using by giving you at least 30 days' prior notice. We nonetheless reserve the right in our absolute discretion to increase our Service Fees at any time where (a) our costs increase for reasons beyond our control including, but not limited to, price increases imposed by our licensors; or (b) where the usage limits for Third-Party Content are regularly exceeded. We shall be entitled to charge you interest at the rate of 1.5% per month on all late payments until payment is made in full, whether before or after, any judgment. You must notify us of any change to your payment method in advance of payment becoming due.
- 5.2 **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 on that party upon or with respect to the transactions and payments under this Agreement. All fees payable by you are exclusive of Value Added Tax which will be charged additionally and which we are authorized to collect from you. All payments made by you to us under this Agreement will be made free and clear of any deduction or withholding, as may be required by law.
- 5.3 **When you purchase a Subscription,** payments are to be made to us on either a monthly (for Monthly Subscriptions) or annual (for Annual Subscriptions) basis in

advance. If payment is not made on the due date access to the relevant content will be prohibited until payment is received.

## **6 Temporary Suspension**

6.1 Generally. We may suspend your or any End User's right to access or use any portion or all of the Service Offerings immediately upon notice to you if we determine:

- (a) your or an End User's use of the Service Offerings and/or the Third-Party Content (i) poses a security risk to the Service Offerings or any third party, (ii) could adversely impact our systems, the Service Offerings or the systems or Content of any other Encodian customer, (iii) could subject us, our affiliates, or any Third-Party to liability, or (iv) could be fraudulent;
- (b) you are, or any End User is, in breach of this Agreement;
- (c) you are in breach of your payment obligations under Section 5; or
- (d) you have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

6.2 Effect of Suspension. If we suspend your right to access or use any portion or all of the Service Offerings:

- (a) you remain responsible for all fees and charges you incur during the period of suspension; and
- (b) you will not be entitled to any service credits under the Service Level Agreements for any period of suspension.

## **7 Term; Termination**

7.1 Term. The term of this Agreement will commence on the Effective Date and will remain in force and effect until terminated under this Section 7. In respect of Subscriptions, the term will automatically renew on a monthly or annual basis (as applicable) unless this Agreement is terminated by us in accordance with Section 7.2 or by you in accordance with Section 7.2(c). Any notice of termination of this Agreement by either party to the other must include a Termination Date that complies with the notice periods in Section 7.2.

7.2 Termination

- (a) Termination for Convenience. You may terminate this Agreement for any reason by giving us at least 90 days' advance written notice. We may

terminate this Agreement for any reason by giving you at least 60 days' advance written notice. This clause is not applicable to Subscriptions.

- (b) Termination for Cause.
  - i. By Either Party. Either party may terminate this Agreement for cause if the other party is in material breach of this Agreement and the material breach remains unremedied for a period of 60 days from receipt of notice by the other party.
  - ii. By Us. We may also terminate this Agreement immediately upon notice to you (A) for cause if we have the right to suspend under Section 6, (B) if our relationship with a third-party partner who provides software or other technology we use to provide the Service Offerings expires, terminates or requires us to change the way we provide the software or other technology as part of the Services, or (C) in order to comply with the law or requests of governmental authority.
- (c) Monthly Subscriptions are subject to a minimum 3-month term for all new purchases and upgrades
- (d) Subject to 7.2(c) auto-renewal of a Monthly Subscription may be disabled immediately by contacting [support@encodian.com](mailto:support@encodian.com).
- (e) Annual Subscriptions are subject to a minimum 12-month term.
- (f) Auto-renewal of an Annual Subscription may be disabled immediately by contacting [support@encodian.com](mailto:support@encodian.com).

### 7.3 Effect of Termination

- (a) Generally. Upon the Termination Date:
  - iii. all your rights under this Agreement immediately terminate;
  - iv. (you remain responsible for all fees and charges you have incurred up to the Termination Date and are responsible for any further fees and charges you incur post-termination;
  - v. you will immediately return or, if instructed by us, destroy all Encodian Content in your possession; and
  - vi. Sections 4.1, 5, 7.3, 8 (except the licence granted to you in Section 8.3), 9, 10, and 13 will continue to apply in accordance with their Terms.

For any use of the Services after the Termination Date, the Terms of this Agreement will apply and you will pay the applicable fees at the rates under Section 5.

## 8 Proprietary Rights

- 8.1 Your Content. Except as provided in this Section 8, we obtain no rights under this Agreement from you (or your licensors) to Your Content. You consent to our use of Your Content to provide the Service Offerings and/or the Third-Party Content to you and any End Users.
- 8.2 Adequate Rights. You represent and warrant to us that: (a) you or your licensors own all right, title, and interest in and to Your Content and Suggestions; (b) you have all rights in Your Content and Suggestions necessary to grant the rights contemplated by this Agreement; and (c) none of Your Content or End Users' use of Your Content or the Service Offerings or the Third-Party Content will violate our Acceptable Use Policy.
- 8.3 Licence. We or our licensors own all right, title, and interest in and to the Service Offerings and the Third-Party Content, and all related technology and intellectual property rights. Subject to the Terms of this Agreement, we grant you a limited, revocable, non-exclusive, non-licensable, non-transferrable licence to do the following: (a) access and use the Services or the Third-Party Content which is the subject of a Subscription solely in accordance with this Agreement; and (b) copy and use the Encodian content solely in connection with your permitted use of the Services. Except as provided in this Section 8.3, you obtain no rights under this Agreement from us, our affiliates or our licensors to the Service Offerings or the Third-Party Content, including any related intellectual property rights.
- 8.4 Licence Restrictions. Neither you nor any End User will use the Service Offerings or the Third-Party Content in any manner or for any purpose other than as expressly permitted by this Agreement. Neither you nor any End User will, or will attempt to (a) modify, distribute, alter, tamper with, repair, or otherwise create derivative works of any Content included in the Service Offerings or the Third-Party Content, (b) reverse engineer, disassemble, or decompile the Service Offerings or the Third-Party Content or apply any other process or procedure to derive the source code of any software included in the Service Offerings or the Third-Party Content, (c) access or use the Service Offerings and/or the Third-Party Content in a way intended to avoid incurring fees or exceeding usage limits or quotas, or (d) resell or sublicense the Service Offerings and/or the Third-Party Content. You will not imply any relationship or affiliation between us and you except as expressly permitted by this Agreement.
- 8.5 Suggestions. If you provide any Suggestions to us or our affiliates, we and our affiliates will be entitled to use the Suggestions without restriction. You hereby

irrevocably assign to us all right, title, and interest in and to the Suggestions and agree to provide us with any assistance we require to document, perfect, and maintain our rights in the Suggestions.

- 8.6 Unless you specifically notify us to opt out by requesting an amendment to this agreement, you are deemed to have granted to us a non-exclusive revocable licence to use your trading name and logo (as appropriate) on our website for marketing purposes only but not otherwise howsoever.

## **9 Indemnification**

- 9.1 **General.** You will, indemnify, and hold harmless us, our affiliates and licensors, and each of their respective employees, officers and directors from and against all Losses suffered or incurred by us, our affiliates and licensors arising out of or relating to any third-party claim concerning: (a) your or any End Users' use of the Service Offerings and/or the Third-Party Content (including any activities under your Encodian account and use by your employees and personnel); (b) breach of this Agreement or violation of applicable law by you, End Users or Your Content; or (c) a dispute between you and any End User. You will reimburse us on a full indemnity basis for all legal and professional fees incurred, as well as our employees' and contractors' time and materials spent responding to any process associated with Third-Party claims described in (a) to (c) above at our then-current hourly rates.
- 9.2 **Intellectual Property.** You will additionally indemnify and hold harmless us, our affiliates and licensors, and each of their respective employees, officers and directors from and against all Losses suffered or incurred by us, our affiliates and licensors arising out of or relating to any third-party claim alleging that any of Your Content infringes or misappropriates that third party's intellectual property rights, and will pay the amount of any adverse final judgment or settlement
- 9.3 **Warranties.** Except where expressly stipulated under these Terms we make no warranties or representations to you as to the performance or operation of the Services or the Third-Party Content. We make no other warranty express or implied with respect to us, our affiliates or licensors, or the Services or Third-Party Content provided by us, and subject to this, any condition or warranty which would otherwise be implied in these Terms is hereby excluded. Where legislation implies in these Terms any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application or exercise of or liability under such condition or warranty, that condition or warranty will be deemed to be included in these Terms.



## 10 Liability and Limitations of Liability

10.1 This Section 10 sets out our entire financial liability (including any liability for our affiliates or licensors or for the acts or omissions of their respective employees, officers and directors, agents and sub-contractors) to you:

- (a) arising under or in connection with these Terms
- (b) in respect of any use made by you of the Services or the Third-Party Content or any part of them; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms.

10.2 Except as expressly and specifically provided for in these Terms:

- (a) you assume sole responsibility for results obtained from the use of the Services and/or the Third-Party Content by you, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information or instructions provided to us by you in connection with the Services and/or the Third-Party Content, or any actions taken by us at your direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms; and
- (c) the Services and/or the Third-Party Content are provided to you on an “as is” basis.

10.3 Nothing in these Terms excludes our liability:

- (a) for death or personal injury caused by our negligence; or
- (b) for fraud or fraudulent misrepresentation.

10.4 Subject to Sections 10.2 and 10.3:

- (a) we shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any of the following:
- (b) loss of profits, loss of business, depletion of goodwill and/or similar losses; or
- (c) loss or corruption of data or information, or pure economic loss, or
- (d) for any special, indirect or consequential loss, costs, damages, charges or expenses in all cases, however arising under these Terms; and

- (e) our total maximum aggregate liability in contract, tort (including without limitation, negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms shall be limited to the total fees actually paid by you to us under this Agreement for the Services and/or the Third-Party Content during the 12 months immediately preceding the date on which the liability arose.

## **11 Modifications to the Agreement.**

- 11.1 We may modify this Agreement (including any Policies) at any time by posting a revised version on the Encodian Site or by otherwise notifying you in accordance with Section 12.8; provided, however, that we will provide at least 90 days' advance notice in accordance with Section 12.8 for material changes to any Service Level Agreement. Subject to the foregoing modified Terms will become effective upon posting or, if we notify you by email, as stated in the email message. By continuing to use the Service Offerings or the Third-Party Content after the effective date of any modifications to this Agreement, you agree to be bound by the modified Terms. It is your responsibility to check the Encodian Site regularly for modifications to this Agreement.

## **12 Miscellaneous**

- 12.1 **Assignment.** You will not assign or otherwise transfer this Agreement or any of your rights and obligations under this Agreement, without our prior written consent. Any assignment or transfer not in accordance with this Section 12.1 will be legally ineffective. Subject to the foregoing, this Agreement will be binding upon, and ensure to the benefit of the parties and their respective permitted successors and assigns.
- 12.2 **Entire Agreement.** This Agreement incorporates our Acceptable Use Policy by reference and is the entire agreement between you and us regarding the subject matter of this Agreement. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between you and us, whether written or verbal, regarding the subject matter of this Agreement. We will not be bound by any term, condition or other provision that is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) including for example, any term, condition or other provision (a) submitted by you in any order, receipt, acceptance, confirmation, correspondence or other document, (b) related to any online registration request for information, or other

questionnaire, or (c) related to any invoicing process that you submit or require us to complete.

- 12.3 Force Majeure. We and our affiliates and licensors will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond our and/or their reasonable control, including acts of God, labour disputes or other industrial disturbances, electrical or power outages, utilities or other telecommunications failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.
- 12.4 Governing Law. These Terms shall be governed and construed in accordance with the laws of England and Wales.
- 12.5 Disputes. The parties agree to refer any dispute or claim between them relating in any way to your use of the Service Offerings, or to any products or services sold or distributed or licensed by Encodian to the exclusive jurisdiction of the English courts.
- 12.6 Language. All communications and notices made or given pursuant to this Agreement must be in the English language.
- 12.7 Confidentiality and Publicity. You will not disclose Encodian Confidential Information during the Term or at any time during the 5-year period following the end of the Term. You will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Encodian Confidential Information, including, at a minimum, those measures you take to protect your own confidential information of a similar nature. You will not issue any press release or make any other public communication with respect to this Agreement or your use of the Service Offerings or the Third-Party Content.
- 12.8 Notice
- (a) To You. We may provide any notice to you under this Agreement by: (i) posting a notice on the Encodian Site; or (ii) sending a message to the email address then associated with your account. Notices we provide by posting on the Encodian Site will be effective upon posting and notices we provide by email will be effective when we send the email. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email.

(b) To Us. To give us notice under this Agreement, you must contact Encodian by personal delivery, overnight courier or registered or special delivery mail to Encodian Solutions Ltd, Blythe Valley IC, Central Boulevard, Blythe Valley Business Park, Solihull, B90 8AJ. We may update the address for notices to us by posting a notice on the Encodian Site.

12.9 No Third-Party Beneficiaries. Except as set forth in Section 12.1, this Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to this Agreement.

12.10 No Waivers. The failure by us to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. All waivers by us must be in writing to be effective.

12.11 Severability. If any provision of this Agreement is held to be legally invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect. Any invalid or unenforceable provisions will be interpreted to the effect and intent of the original provisions. If such construction is not possible, the invalid or unenforceable provision will be severed from this Agreement but the rest of the Agreement will remain in full force and effect.

### 13 Definitions

“Account Information” means information about you that you provide to us in connection with the creation or administration of your Encodian account. Without limitation, Account Information includes names, usernames, phone numbers, email addresses and billing and payment information associated with your Encodian account.

“Annual Subscription” means a Subscription which is charged and renewed on an annual basis.

“API” means an application program interface.

“Content” means software (including machine images), data, text, audio, video or images.

“Effective Date” means the date you first access and use the Service Offerings.

“Encodian Confidential Information” means all non-public domain information disclosed by us, our affiliates, business partners or our or their respective employees, contractors or agents that is designated as confidential or that,

given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential.

“Encodian Content” means Content we or any of our affiliates make available in connection with the Services or on the Encodian Site to allow access to and use of the Services, including APIs; documentation; sample code; software libraries; command line tools; proofs of concept; templates; and other related technology (including any of the foregoing that are provided by our personnel).

“Encodian Marks” means any trade marks, service marks, service or trade names, logos, and other designations of Encodian and its affiliates that we may make available to you in connection with this Agreement.

“Encodian Site” means <https://www.encodian.com> (and any successor or related site designated by us), as may be updated by us from time to time.

“End User” means any individual or entity that directly or indirectly through another user: (a) accesses or uses Your Content; or (b) otherwise accesses or uses the Service Offerings or the Third-Party Content under your account. The term “End User” does not include individuals or entities when they are accessing or using the Services or any Content or the Third-Party Content under their own Encodian account, rather than under your account.

“Losses” means any claims, damages, losses, liabilities, costs, and expenses (including legal and other professional fees).

“Monthly Subscription” means a Subscription which is charged and renewed on a monthly basis.

“Policies” means any related policy designated on the Encodian support portal located at <https://support.encodian.com> (and any successor or related locations designated by us), as it may be updated by us from time to time.

“Privacy Policy” means the privacy policy located at <https://support.encodian.com/hc/en-gb/articles/360010885513-Privacy-Policy> (and any successor or related locations designated by us), as it may be updated by us from time to time.

“Services” means each of the services made available by us or our affiliates, including those web services described in the Site Terms. Services do not include Third-Party Content.

“Service Level Agreement” means all service level agreements that we offer with respect to the Services and post on the Encodian Site, as they may be updated by us from time to time.

“Service Offerings” means the Services (including associated APIs), the Encodian Content, the Encodian Marks, and any other product or service provided by us under this Agreement. Service Offerings do not include Third-Party Content.

“Site Terms” means the terms of use located at <https://www.encodian.com/policies/terms-of-use/> (and any successor or related locations designated by us), as may be updated by us from time to time.

“Subscription” means a service that provides subscribers with on-demand access to one or more of our Service Offerings and/or Third-Party Content for a periodic fee.

“Suggestions” means all suggested improvements to the Service Offerings that you provide to us.

“Term” means the term of this Agreement described in Section 7.1.

“Termination Date” means the effective date of termination provided in accordance with Section 7, in a notice from one party to the other.

“Third-Party Content” means Content made available to you by any Third-Party on the Encodian Site or in conjunction with the Services.

“Your Content” means Content that you or any End User transfers to us for processing, storage or hosting by the Services in connection with your Encodian account and any computational results that you or any End User derive from the foregoing through their use of the Services.