

CODESCENE CLOUD TERMS OF SERVICE

These terms (the “**Terms of Service**”) shall govern your (the “**Customer**”) use of CodeScene (the “**Service**”). The Service is provided by CodeScene AB, registration number 559028-3270, address Hyllie Boulevard 34, 215 32 Malmö, (the “**Service Provider**”).

The Customer and the Service Provider is referred to individually as a “**Party**” and collectively as the “**Parties**”.

By signing up for the Service, the Customer acknowledges and agrees to be bound by the Terms of Service.

1. DEFINITIONS

1. “**Content**” means any materials, such as code, text, links, videos, images and other data, uploaded to the Service by the Customer.
2. “**Effective date**” means the date when the Customer has signed up for the Service.
3. “**Service Fee**” means the fee for the Service payable by the Customer to the Service Provider, as described from time to time at <https://codescene.com/>
4. “**Specification**” means the description of the functionality of the Service, as described from time to time at <https://codescene.com/>
5. “**Support**” means the support services in regard to the Service provided by the Service Provider to the Customer, as described under Section 6.
6. “**Free Plan**” means a subscription plan of the Service, free of charge with limited functionality, as described from time to time at <https://codescene.com/>
7. “**Territory**” means any country in the world, save for those countries classified as sanctioned destinations under the US Export Administration Regulations from time to time at <https://codescene.com/>

2. SERVICES

1. Subject to the Terms of Service, the Customer is hereby granted a non-exclusive, non-transferable, limited right to access and use the Service in the Territory for code analysis as set out in the Specification (the “**Purpose**”). Use of the Service is subject to the Customer’s payment of the Service Fee in accordance with the Terms of Service.
2. The Customer may not use the Service for any other purpose than the Purpose and may only use the Service in compliance with the Terms of Service.
3. The Customer may not permit a third party, directly or indirectly, with or without remuneration, to use or access the Service. Notwithstanding this Section 2.3, the Customer may allow its consultants to use the Service, where such consultants are employed by the Customer to support and facilitate the use of the Service. The Customer shall warrant that the abovementioned consultants abide by the Terms of Service and that the Customer remain solely liable for any usage of the Service by such consultants.

4. In the event that third party products or services are included, integrated or referenced to in the Service, the terms of the relevant third party products or services shall apply to such products and services instead of the Terms of Service and the Service Provider assumes no obligation or liability in regard to any third party products or services.
5. The Customer acknowledges that the Service constitutes digital content and hereby waives any statutory right of withdrawal.

3. AVAILABILITY

The Service is cloud based and provided via the internet and actual availability is hence dependent on factors outside of the Service Provider's control. Save for downtime due to updates and maintenance, the Service Provider shall strive to keep the Service available no less than 24/7/365. However, the Service Provider makes no guarantee with regards to such availability and actual availability may be lower.

4. FREE PLAN

1. The Free Plan is provided as is and the Service Provider makes no undertakings in regard to availability, freedom from defects or otherwise in such plan. The Customer is not entitled to Support in the Free Plan and the Service Provider assumes no liability for any loss the Customer may incur upon use of the Free Plan.

5. SERVICE FEE AND PAYMENT

1. As consideration for any plan of the Service other than the Free Plan, the Customer shall pay the Service Fee to the Service Provider.
2. The Service Fee is stated exclusive of value-added tax, and any other applicable taxes, which shall be borne by the Customer.
3. In the event the Customer changes its subscription to another plan of the Service (either with less or extended functionality), the Service Provider will charge the Customer for the applicable Service Fee in connection with such change.
4. If there are any changes in laws, decisions of authorities, decisions on new or changed taxes or public fees or if the practice of the courts in any respect affects the provision of the Service, the Service Provider is entitled to raise the Service Fee in order to cover the Service Provider's increased costs.
5. If the Service Provider is incurred with additional work or additional costs due to circumstances that the Customer is liable for, the Service Provider is entitled to remuneration for such costs.
6. The Customer agrees to make all payments by credit card, unless the Service Provider has specifically agreed in writing that the Customer can make payments against an invoice. Where such an agreement has been made, payment by the Customer is due within thirty (30) days from the date of issue of the invoice. In such cases, invoices may be provided electronically or in such other manner as the Service Provider in its reasonable opinion deems appropriate.
7. In the event of late payment, interest in accordance with the Swedish Interest Act (1975:635) shall accrue on the outstanding amount until payment has been made.

8. In case of the Customer's late or non-payment of the Service Fee, the Service Provider may, in addition to its other rights under the Terms of Service, suspend the Customer's access to the Service until payment in full has been received.

6. SUPPORT

1. The Service Provider shall provide the Customer with Support by e-mail in regard to the Service.
2. The Service Provider shall perform the Support with due care, in a professional manner in accordance with its ordinary routines.
3. Support is provided weekdays, except for public holidays in Sweden, between 9 am and 5 pm CET (the "**Business Days**").
4. Upon receiving an inquiry for Support from the Customer, the Service Provider shall endeavor to respond to the Customer the Business Day following the Service Provider's receipt of such inquiry.

7. CUSTOMER'S WARRANTIES AND OTHER OBLIGATIONS

1. The Customer represents and warrants that it is the owner of, or has a license to, any Content which it uses or uploads to the Service. The Customer further warrants that the Content does not infringe the intellectual property rights of any third party, including but not limited to copyrights, patents, or trademarks.
2. The Service Provider is responsible for backing up its the Customer's Content but shall not be liable for any loss or corruption of the Content.
3. The Customer shall be responsible for not disclosing its login details to any third party, and for keeping it safe so that they cannot be accessed by third parties. The Customer shall notify the Service Provider immediately if there is reason to believe that any other person has accessed the Customer's login details or that they are used in an illegitimate way.
4. Further to the abovementioned, the following shall apply regarding Content and the use of the Service:
 1. The Service Provider reserves the right to remove Content which the Service Provider deems to be in conflict the Terms of Service;
 2. The Service Provider is granted a non-exclusive, perpetual, royalty-free, worldwide license to use any metadata and metrics relating to the Customer, in anonymized form, including without limitation in print and electronic format;
 3. The Customer warrants that the Content it submits is not obscene, offensive, defamatory of any person or otherwise illegal, or is deliberately intended to upset users;
 4. The Customer agrees to not transmit any technically harmful postings or transmissions to or through the Service (including but not limited to computer viruses, logic bombs, trojan horses, worms, harmful components, corrupted data or other malicious software or harmful data) or engage in other practices of misuse, including but not limited to hacking.

5. The Customer assumes the sole responsibility and liability in relation to any Content and the Service Provider does not assume any responsibility for any Content used, published or uploaded into the Service by the Customer and the Customer agrees to indemnify and hold harmless the Service Provider against any claims for infringement, third party liabilities, costs, loss, damages or otherwise incurred as a result of any materials or Content provided by or on behalf of the Customer. The Service Provider shall notify the Customer without undue delay in writing of any received claim of infringement and allow the Customer to fully control the defense.
6. The Service Provider reserves the right to suspend the Customer's access to the Service in the event that the Service Provider, acting reasonably, deems the Customer to be in breach of this Section 7 or that the Customer is abusing the Service in any way.

8. INTELLECTUAL PROPERTY RIGHTS

1. With the exception of third party products or services, the Service Provider, or its licensor owns, all rights, including intellectual property rights, to the Service and the software used for providing the Service, including but not limited to patents, copyrights, design rights and trademarks, and nothing in the Terms of Service shall be interpreted as any transfer of such rights, or part of such rights, to the Customer.
2. The Customer is only granted the limited right to use the Service as specifically set out in the Terms of Service.
3. The Customer may not, directly or indirectly, use, copy, transfer, alter, develop or make additions to the Service or any software contained therein. The Customer may not, directly or indirectly, decompile or reverse engineer any software contained in the Service or by any other means try to recreate its source code except as set out in mandatory law.
4. The Customer, or the Customer's licensor, retains any rights to its Content uploaded to the Service and nothing in the Terms of Service shall be interpreted as a transfer of such rights, or part of such rights, to the Service Provider.

9. SUBCONTRACTORS

The Service Provider may use sub-contractors for the performance of its obligations under the Terms of Service. The Service Provider shall remain responsible for the performance of such subcontractor as for its own.

10. LIMITATION OF LIABILITY

1. The Service Provider shall, except for in the event of its gross negligence or willful misconduct, not be liable for any loss of profit, revenue, business savings or goodwill, loss of data, or the Customer's obligation to compensate any third party or any indirect or consequential damage whatsoever.
2. The Service Provider's aggregate and total liability under the Terms of Service shall be limited to direct damages and to an amount equal to one hundred (100) percent of the Service Fee paid by the Customer during the twelve (12) months period immediately preceding the time when the claim arose.
3. For the avoidance of doubt, the Service Provider shall have no liability for any loss whatsoever arising in connection with the Free Version.

11. CONFIDENTIALITY

1. Both Parties shall undertake not to disclose to third parties, without the consent of the other Party, such information concerning the other Party's business as can be deemed to constitute a trade secret or information which is covered by a statutory duty of secrecy. Information stated by one of the Parties to be confidential shall always be deemed to constitute a trade secret. For the avoidance of doubt, any Content uploaded to or published via the Service shall not constitute confidential information.
2. The Parties confidentiality obligation under this Section 11 shall not apply to trade secrets or any other confidential information which the receiving Party can demonstrate (i) was already known when received, (ii) is or has become public knowledge other than through breach of the Terms of Service, (iii) is received from a third-party who lawfully acquired it and who is under no obligation restricting its disclosure in relation to the Service Provider, or (iv) is to be made publicly available due to a court order, a decision by a public body or as otherwise required by mandatory law.
3. Each Party agrees to impose on its employees and consultants, in an appropriate manner, the confidentiality obligations set out above in this Section 11. Each Party shall be liable for its employees' and consultants' actions and for their observance of the above stated provisions.
4. The Parties' confidentiality obligations shall be applicable as long as the Terms of Service are in force between the Parties and continue for a period of two (2) years after termination of the Terms of Service, regardless of the reason therefor.

12. PERSONAL DATA

1. The Service Provider collects personal data from the Customer through the sign-up procedure. Such personal data may e.g. include names and e-mail addresses. The Service Provider shall be the data controller in relation to such personal data and will process the said personal data in accordance with Service Provider's privacy policy which can be found at <https://codescene.com>.
2. Where the Content uploaded by the Customer contains personal data, the Customer shall be the data controller in relation to such personal data and the Service Provider shall be the data processor and the Parties shall enter into the separate data processing agreement ("DPA") found at [link] which shall be incorporated into this Agreement by reference and the Parties agree that Service Provider's processing of Customer's personal data on behalf of Customer under the Terms of Service shall be governed exclusively by the DPA.

13. TERM AND TERMINATION

1. The Terms of Service shall enter into force on the Effective Date and remain in force for twelve (12) months (the "Initial Term") and will automatically renew for successive periods of twelve (12) months. Either Party may terminate the Terms of Service thirty (30) days prior to the expiration of the then current term.
2. Each Party may, upon written notice to the other Party, terminate the Terms of Service with immediate effect if: (i) the other Party has committed a material breach of the Terms of Service, and has not rectified the same within thirty (30) days after receipt of a written notice thereof; or (ii) the other Party becomes subject to an insolvency proceeding, goes into liquidation, suspends its payments or can otherwise be deemed to have become insolvent.

3. In the event the Customer has committed a material breach of the Terms of Service, the Customer shall compensate the Service Provider for its damages, costs and loss, regardless if the Service Provider chooses to terminate the Terms of Service under this Section 13 or not.

14. DELETION OF DATA

Four weeks following the expiry or termination of the Terms of Service, or upon the Customer's request and against reasonable compensation, whichever comes first, the Service Provider will delete the Customer's content in the Service. This Section 14 shall be without prejudice to the Customer's responsibility and liability in relation to such Content as set out in Section 7.5 hereof.

15. AMENDMENT OF THE TERMS OF SERVICE

The Service Provider may update or make amendments to the Terms of Service from time to time, including the Service Fee. In the event of material updates or amendments, the Customer will be reasonably notified in advance and where the Customer does not accept the updated or amended terms, it shall cease to use the Service within thirty (30) days from the receipt of notice from the Service Provider. In the event the Customer continues to use the Service after thirty (30) days following the notification from the Service Provider has passed, any such continued use will be subject to the updated or amended terms.

16. FORCE MAJEURE

1. If and to the extent that a Party's performance of any of its obligations pursuant to the Terms of Service is prevented, hindered or delayed due to circumstances beyond the reasonable control of such Party, including but not limited to, lightning, labor disputes, pandemics, epidemics, fire, acts of war, requisition, seizure, currency restriction, riots and civil disorders, shortage of means of transportation, shortage of goods, amendments to regulations issued by governmental authorities, intervention of authorities or defects and/or delays in delivery of sub-suppliers due to the circumstances here stipulated (each, a "**Force Majeure Event**"), then the non-performing Party shall be excused from any performance of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues. The Party whose performance is prevented, hindered or delayed by a Force Majeure Event shall immediately notify the other Party of the occurrence of the Force Majeure Event. The non-performing Party is, however, always obligated to mitigate the effects of the Force Majeure Events.
2. Should fulfilment of the Terms of Service to a significant extent be prevented for more than three (3) months due to above described circumstances, either Party shall have the right to terminate the Terms of Service by written notice.

17. PUBLICITY

The Service Provider may subject to the Customer's prior consent publicly disclose the Customer's name for publicity purposes, including in its advertising. This right shall survive the termination or expiry of the Terms of Service.

18. MISCELLANEOUS

1. The Customer may not make any amendments or modifications to the Terms of Service without the prior written consent of the Service Provider.

2. The Customer may not assign the rights or obligations under the Terms of Service to any third party without the prior written consent of the Service Provider.
3. No delay or failure to exercise any right or remedy shall constitute a waiver of such right or remedy or prevent the exercise of such right or remedy on any subsequent occasion. Any waiver granted shall not, unless expressly stated, constitute any waiver for any future occasion.
4. The provisions in the Terms of Service which to their nature are intended to survive the expiry or termination of the Terms of Service, shall so survive such expiry or termination, including but not limited to the provisions on confidentiality, limitation of liability and intellectual property rights.
5. Notices in connection with the Terms of Service, save for in the event of the Customer's termination under Section 13.1 which the Customer shall conduct in the Service, shall be in writing and may be delivered to the other Party via e-mail. Such notice shall be deemed to be given, if sent by e-mail, on the day when the e-mail is sent, provided that the sending e-mail account has generated a message indicating that the e-mail has been successfully sent.
6. The Terms of Service shall constitute the entire agreement between the Parties regarding its subject matter and shall replace and supersede any prior agreement or arrangement, oral or written. No additional terms set out by the Customer and provided to the Service Provider, whether in connection with the sign-up procedure or otherwise, shall apply unless confirmed in writing by an authorized representative of the Service Provider.

19. GOVERNING LAW AND DISPUTES

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

20. MANDATORY APPLICABLE CONSUMER LEGISLATION

1. In the event that the Customer is deemed a consumer under mandatory applicable consumer legislation and such legislation prescribes provisions that are in conflict with the Terms of Service, the provisions under the mandatory applicable consumer legislation shall prevail and the sections of the Terms of Service which are not in conflict with such legislation shall remain in force with no changes.
-