

TERMS OF USE CODECODESHIP BY END USER | MOOSE CODE B.V.

1. Definitives

End user:	a company that wishes to make use of the Platform to obtain and make use of Software developed by a Software Supplier and made available to End users via the Platform;
Provider:	the private company with limited liability MOOSE CODE B.V. , having its registered office in Utrecht and its End User place of business in (3512 EG) Utrecht at the Lucasbolwerk 6, registered in the trade register of the Chamber of Commerce under number 70325855;
Availability Rate:	the time that the Platform is available to End User expressed as a percentage (percents);
Defect:	an error in the Platform that causes the Platform not to function in accordance with the agreed Specifications or the failure of the Platform;
Incident:	any event which results in the Platform not functioning in accordance with the agreed Specifications or not being available for use;
Measurement Periods:	every calendar month;
Network configuration:	the hardware, intermediate telecommunications connections and associated operating systems;
New Version:	a successive version of the Platform with predominantly new or modified functionalities, whether or not under the supervision of a third party;
Office Hours:	Monday through Friday between 09.00 hours and 17.00 hours Central European time, with the exception of national holidays in the Netherlands;
Platform:	the software and web interface developed and made available by Service Provider to End User to make it's Software available to End Users;
Scheduled Non-Availability:	the periods during Office Hours during which the Platform may not be available with the End User's consent;
Service:	the whole of activities carried out by the Service Provider for the purpose of implementing These Terms of use;
Software:	The software developed by Software Supplier and made available by Software Supplier to End Users by using the Platform;
Specifications:	a description of the functionality and operation of the Platform in connection with the Network configuration;
Support:	the provision of assistance (by telephone) by persons appointed for that purpose in the event of Defects, as well as advising on the use and functionality of the Platform;
Update(s):	a new release of the Platform in which Defects known up to that time have been removed and/or a limited improvement or extension of the existing functionality has been made.

2. General

These Terms of use shall apply exclusively to each use by End User of the Platform and to all Services and acts, both of a preparatory and executive nature, of Service Provider in connection with End User's use of the Platform.

3. Service

3.1 Service Provider is offering Services by making the Platform available for the End User's to obtain Software made available by Software Supplier via telecommunications connection. The Platform will run in the cloud and continuously and will be available in accordance with the agreed Availability Rate.

3.2 Service Provider will keep the Platform available in accordance with clause 4.

3.3 Service Provider shall provide End User with Support by telephone or email in the use of the Platform, application of the Services and any problems encountered therein by End User's employees.

4. Availability

4.1 The offering of the Services by Service Provider to End User involves a best-efforts obligation. Therefore, the mere fact that the Platform is not accessible, does not function or is otherwise malfunctioning does not constitute a failure.

4.2 The Availability rate of the Platform is a minimum of 95% measured over the entire period of two consecutive Measurement Periods, and a maximum consecutive Non-Availability of 5% hours per Measurement Period.

4.3 Incidental maintenance causing certain parts of the Platform to temporarily stop functioning will be planned as much as possible outside normal office hours in the Netherlands. If it is expected that the Platform will not function for a longer period of time due to maintenance, this will be planned as much as possible during weekends. Service Provider will make an effort to notify End User of such maintenance in advance by placing notices within the Platform. It is at all times up to End User to inform potential participants about this.

4.4 Support is only available during Office Hours.

5. Solving Incidents

5.1 Service Provider will make every effort to prevent Incidents in the broadest sense of the word in its Services. However, Service Provider is dependent on numerous external factors in this regard and Incidents may also be the result of irregularities or changes within the End User's network or third parties. Service Provider is therefore not obliged to prevent or solve all Incidents.

5.2 End User shall immediately inform Service Provider as soon as an Incident occurs that is not prima facie attributable to a circumstance attributable to End User or a third party. End User shall clearly describe the Incident to enable Service Provider to reproduce the Incident and report the Incident via info@codecodeship.com.

- 5.3 Upon receipt of an Incident, Service Provider will make every effort to resolve the Incident as quickly as reasonably possible given the nature and urgency of the Incident.
- 5.4 Service Provider shall regularly provide End User with information regarding the progress of the solution regarding the reported Incident. The frequency with which information is provided to End User regarding an Incident depends on the nature and urgency of the reported Incident.

6. Solving Defects

- 6.1 If the cause of an Incident is a Defect, Service Provider will remedy the Defect free of charge. Clause 5 also applies.
- 6.2 Service Provider shall report the cause of the Defect and the measures referred to in article 6.1 to End User in writing.
- 6.3 End User shall cooperate to a reasonable extent in order to enable Service Provider to fulfil its obligations under this Article 6. If there is a Defect, End User shall report this to the Service Provider without delay after discovering it.

7. Backup and data recovery

- 7.1 Service Provider will provide periodic backups of the Platform, the Software and End Users' data.
- 7.2 Service Provider shall store the backups as follows:
- a. The daily backups will be kept for one week;
 - b. The weekly backups will be kept for two months;
 - c. The monthly backups will be kept for one year.
- 7.3 The backups will be made in two copies each of which is kept in a separate geographical area (Amazon Web Services availability zone).
- 7.4 If circumstances arise in which the Platform and data are no longer available as a result of errors or loss of technical infrastructure, Service Provider will do its best efforts to continue to provide Services via the disaster recovery center within 48 hours. The loss of data shall, in accordance with the above, in principle not exceed the data for one working day.
- 7.5 If circumstances have occurred in the provision of Services in which processing, such as transactions, may have such as transactions have been destroyed or have become unusable, Service Provider shall arrange for restoration.

8. Updates and New Versions

- 8.1 Service Provider shall install generally available Update(s) on its own computer configuration and make them available to the End User via a telecommunication connection.
- 8.2 Service Provider shall from time-to-time release Updates in connection with the maintenance or optimization of the Platform. Service Provider does not need permission of the End User for this. Although Service Provider strives to perform updates in a manner that does not cause End User any inconvenience, inconvenience is not excluded.

8.3 If Service Provider releases a New Version, it shall also offer this to End User. If the End User accepts this offer, the provisions of the Agreement shall also apply to this New Version.

9. Cooperation End User

9.1 Service Provider's obligations under These Terms of use with regard to the provision of Services do not affect the End User's obligation to establish, maintain and implement adequate procedures and control mechanisms, taking into account the nature and extent of the interests of use, in order to prevent damage as a result of any irregularities in the Provision of Services. End User shall ensure that its staff is adequately trained and informed about the operation of the Service.

9.2 In particular, End User shall ensure that adequate information is provided to, and contractual arrangements are made with, external users who, for example via the Internet, without the actual intervention of an employee of the End User, perform actions that also involve the use of the Platform, regarding the risks associated with the use of an automated system to perform transactions and related services.

10. Intellectual property

10.1 All rights, including intellectual property rights, to the Platform provided and Services performed by Service Provider shall belong exclusively to Service Provider. Service Provider shall not transfer any intellectual property rights to End User. End User shall acquire a non-exclusive user license under the conditions set forth in These Terms of use solely for the purpose of normal use and proper operation of the Platform. End User is entitled to limit this user license in place and time. End User is not permitted to transfer the license or to issue a sublicense.

10.2 The Software of Software Supplier and associated intellectual property rights will remain the sole property of Software Supplier. Software Supplier shall not transfer any intellectual property rights to Service Provider nor to End User. Service Provider has a non-exclusive license solely for the purpose to make the Software available to End Users.

10.3 End User must enter into a license agreement with Software Supplier separately from These Terms of use regarding the use of the Software.

10.4 With respect to all intellectual property rights created Service Provider's acts, both of a preparatory and executive nature, with respect to the use of the Platform or the execution of the Services, Service Provider shall be considered the creator, designer or inventor of the created works, models or inventions, respectively. Service Provider shall have the exclusive right to apply for a patent, trademark or design. Furthermore, Service Provider becomes the exclusive copyright holder of created works.

10.5 Service Provider guarantees that granting End User user rights with regard to the Platform as referred to in These Terms of use is not in conflict with (intellectual property) rights of third parties.

11. Guarantees

- 11.1 Subject to the provisions elsewhere in These Terms of use, Service Provider guarantees that the Platform will be made available and kept available in such a condition that the quality corresponds to what End User may reasonably expect. Service Provider does not guarantee in any way the availability and functionality of the Platform at any specific time.
- 11.2 Service Provider does not guarantee in any way that the Platform or the Services it provides are suitable for End User's purpose. It is up to End User to investigate whether this is the case prior to use. In particular it is up to End User to decide whether the Software is suitable to be made available via the Platform.

12. Helpdesk

- 12.1 Service Provider shall use designated individuals – *i.e.* Derek Kraan – with an adequate level of expertise and experience to perform the work under These Terms of use.
- 12.2 End User can contact Service Provider's helpdesk at the email address: info@codecodeship.com.
- 12.3 Support is only available during Office Hours.

13. Regulation

- 13.1 Service Provider shall ensure that, as far as applicable, the Service, when used, complies with the legislation and regulations applicable in the Netherlands to which End User is subject and/or required to comply.
- 13.2 Service Provider shall incorporate new provisions in the legislation and regulations referred to in article 13.1, or provisions issued pursuant to them, insofar as relevant to the Services, so that the Services continue to comply with these provisions.

14. Security

- 14.1 The Parties and their employees shall have access to systems related to the Platform only when authorized by the authorized officer of the Service Provider. The authorization procedure of the Parties shall indicate for each person involved who is authorized under this procedure the nature of his activities, the duration of the authorization as well as the systems and data to which he is granted access.
- 14.2 Service Provider shall be responsible for the operational management of authorization with respect to access security and tools in use at Service Provider.
- 14.3 Service Provider is responsible for signalling (attempts to) unauthorized access to the Platform. If the Service Provider signals (attempted) unauthorized access, he shall take the necessary measures to limit any damage to a minimum and to try to prevent a recurrence. The (attempted) unauthorized access and all measures taken shall be reported immediately to the End User.

- 14.4 Service Provider is entitled to make changes to the Platform or changes to the security which affect the agreements made with the End User regarding security. End user is bound by these changes immediately.
- 14.5 End User shall make every effort to ensure that use of the Platform by employees of the End User does not lead to virus infection. The Service Provider shall make every effort to Service Provider shall make every effort to ensure that the Platform remains free from viruses.

15. Term and termination

- 15.1 The user agreement between Service Prover and End User to use the Platform commences as soon as End User first uses the Platform and is entered into for an indefinite period of time. Use of the Platform will at least consist of creating an account as an End User and logging into the Platform to use the Software.
- 15.2 Service Provider shall be entitled to terminate the agreement at any time by giving one (1) month notice. End User may terminate the agreement at any time by giving three (3) months' notice.
- 15.3 After termination of the agreement, all the Software will not longer be available for End User. It is up to End User to make new arrangements with Software Suppliers to guarantee the continued use of the Software.
- 15.4 Without prejudice to its other rights to do so, Service Provider may terminate End User's further use with immediate effect by written notice in the following cases:
- a. A petition for bankruptcy has been filed against the End User or the End User has been declared bankrupt, it has been granted a moratorium, whether provisional or not, another similar arrangement applies to the other Party, or the other Party has otherwise lost the free management or free disposal of its assets, all this irrespective of whether this situation is irrevocable;
 - b. End User has offered an arrangement to its creditors outside of bankruptcy, moratorium or other similar arrangement;
 - c. The business of End User is terminated.
- 15.5 In the event of a termination of use as provided in this article, Service Provider shall not owe End User any compensation or damages.

16. Fees and payment

- 16.1 For the use of the Software a licensing fee will be charged. The amount of the fee is determined by the Software Supplier and Provider has no influence on it.
- 16.2 End User is obliged to pay the full amount of the fee to Provider in the manner prescribed on the Platform. The following applies, in particular when payment through the Platform fails.
- 16.3 Invoicing and payment of all charges under These Terms of use shall be made in Euros.
- 16.4 Taxes, fees and other incidental charges payable on the fee are included in the fees mentioned on the Platform.

- 16.5 If End User (i) has given reasonable instructions which Service Provider has complied with, or if End User (ii) fails to give the agreed cooperation in time or in full, or (iii) End User reports changes or events as a result of which Service Provider has had to perform demonstrably more work, Service Provider shall be entitled to additional compensation.
- 16.6 Service Provider shall invoice End User for the amounts to be paid by End User under These Terms of use, on the basis of subsequent calculation.
- 16.7 End User shall pay invoices to Service Provider within 30 days of receipt of invoice.
- 16.8 If End User believes that an invoice is incorrect and for that reason suspends payment of all or part of the invoice, Service Provider shall be entitled to suspend its own performance under These Terms of use.
- 16.9 If End User fails to pay the amounts due within the agreed period, End User shall owe statutory commercial interest on the outstanding amount, without the need for a notice of default. If End User fails to pay the claim after notice of default and he does not dispute the invoice on good grounds, the claim may be passed on by the Service Provider, in which case End User shall, in addition to the total amount then owed, be obliged to pay in full all extrajudicial and judicial costs, including all costs calculated by external experts in addition to the costs established at law, relating to the collection of this claim or of legal action otherwise.

17. Liability and indemnities

- 17.1 Service Provider, in connection with or resulting from a (yet to be concluded) contract with End User or any other obligation under the law (such as a wrongful act), is not liable for damages suffered by End User or third parties. This also includes consequential loss, trading loss, loss of savings, damage due to business stagnation or damage due to claims from third parties against the End User.
- 17.2 For damage caused by acts or omissions by staff employed by Service Provider or other persons whose services Service Provider uses, including recommendations or advice, Service Provider is not liable, except in case of intent or conscious recklessness of Service Provider.
- 17.3 Any claim for damages against Service Provider, except a claim recognized by Service Provider, will expire one year after the day End User became aware of the damage and Service Provider's liability.
- 17.4 In the event that Service Provider, notwithstanding the above (by the standards of reasonableness and fairness) would be obliged to pay compensation, Service Provider's liability to End User, contractually or otherwise, will in any case be limited to the amount that Service Provider's liability insurance pays out in the case in question.
- 17.5 If Service Provider (by the standards of reasonableness and fairness) should be obliged to pay compensation, Service Provider's liability to End User, whether contractual or otherwise, will in any case be limited to the invoice value of the Services purchased by End User that

gave rise to the harmful event or (if this is lower) a total amount of EUR 5,000 per series of events with the same cause.

- 17.6 Liability limiting, exclusionary or establishing conditions which may be held against Service Provider by Service Provider's Service Providers in connection with the Services provided, will also be held against the End User by Service Provider.
- 17.7 Any advice provided shall not release the End User from his obligation to examine the Services (each time) for their suitability for the purposes intended by him, and if necessary to put them out of use. The actual application and use of the Services will be entirely at End User's expense and risk. Service Provider is not liable for this.
- 17.8 Service Provider is in no way liable for any damage if and insofar as these results from non-compliance with instructions/instructions given by Service Provider or non-compliance with user requirements, monitoring and/or maintenance requirements of Services or equipment/hardware/software used in combination with these by End User or its employees or third parties.
- 17.9 End User will never personally hold Service Provider's employees and parties engaged by Service Provider liable in connection with an agreement. Employees of Service Provider or auxiliary persons engaged by Service Provider for the execution of the contract may invoke all defenses to be derived from the contract against End User, as if they were a party to that contract themselves.
- 17.10 Service Provider shall not be liable, and End User shall indemnify Service Provider for violations of third party intellectual property rights caused by the Services provided by Service Provider.

18. Force Majeure

- 18.1 In the event of force majeure on the part of either Party, the obligations under These Terms of use shall be suspended for so long as the force majeure condition continues.
- 18.2 As long as the force majeure situation persists, the obligations of the other party will be suspended. However, this suspension will not apply to obligations to which the force majeure does not relate, and which already arose before the force majeure situation arose.
- 18.3 If the force majeure situation has lasted for three months, or as soon as it is established that the force majeure situation will last longer than three months, each of the parties shall be entitled to terminate the Agreement prematurely with immediate effect outside court by means of a Written notification, on the understanding that such premature termination is no longer possible after fulfilment of the obligation whose fulfilment was temporarily prevented by force majeure, or that the nature or scope of the failure does not justify premature termination. In the event of early termination on account of force majeure, End User shall still pay the portions of the agreed price that are due periodically or in advance for the time before the situation of force majeure arose. Similarly, Service Provider shall repay any sums already paid in advance in respect of services not performed as a result of force majeure.

18.4 The transmission of data and information by means of data communication lines such as telephone lines, cable or wireless connections shall take place under the responsibility and at the risk of the party using that method of communication. If a party uses data communication lines, its risk shall be limited to the warranties and liabilities provided by the (network) provider in that regard and shall cover the same, unless due to demonstrable fault on the part of one of the parties, the liability lies with the responsible party.

19. Confidentiality

Parties shall impose on each other the obligation to prevent confidential information of (one of) the Parties coming to the knowledge of or into the hands of third parties. This will not apply if the disclosing Party demonstrates that certain information is already publicly known or was in its possession other than by breach of this confidentiality obligation.

20. Other provisions

20.1 Service Provider is entitled to change These Terms of use unilaterally and with immediate effect for future use of the Platform. End User shall be deemed to have accepted the relevant changes in any case if he uses the Platform after notification of the change if Service Provider does not receive a protest from End User within 14 days after notification of the change and if End User again agrees to the Agreement.

20.2 Parties are not permitted to transfer the rights under These Terms of use to a third party, without the prior Written consent of the other party.

20.3 Any oral promises and agreements shall have no effect unless confirmed in writing by a party.

20.4 The failure of a party to exercise any right or to exercise any remedy shall not constitute a waiver of that right or remedy.

20.5 Provisions that by their nature are intended to continue even after the termination or expiration of the Agreement shall survive.

21. Dispute resolution and applicable law

21.1 Any disputes related to or arising from the use of the Platform or any agreement with Service Provider will be submitted in the first instance exclusively to the competent judge in the area in which Service Provider is located – *i.e.* Utrecht – without prejudice to Service Provider's right to submit a dispute to any other judge competent by law or convention.

21.2 The use of the Platform and any agreement concluded between the parties is governed by Dutch law.