



# Terms of Service

Last Updated: September 27, 2023

Important; Read Carefully: GoAnimate, Inc., a Delaware corporation doing business as Vyond ("Company") provides a right to use the Vyond Platform pursuant to these Terms of Service (this "Agreement"). This Agreement is a legal contract between you (if using the Vyond Platform in your capacity as an individual) or the legal entity you represent (e.g., your employer) ("Customer") and Company. Read the terms of this Agreement carefully. By signing up for a free trial, subscribing to, or using the Vyond Platform, Customer agrees to be bound by this Agreement. If Customer does not agree to the terms of this Agreement, do not sign up for a free trial, subscribe to, or use the Vyond Platform.

This Agreement is effective as of September 27, 2023 except if Customer has previously agreed to an earlier version of this Agreement, this Agreement shall be effective as set forth in Section 16 of this Agreement. Prior versions of this Agreement are archived for review here:

- [January 17, 2023 Terms of Service](#)
- [January 25, 2022 Terms of Service](#)
- [August 17, 2021 Terms of Service](#)
- [July 22, 2021 Terms of Service](#)
- [April 29, 2018 Terms of Service](#)

## 1. DEFINITIONS

"Administrator" means the person or persons assigned system privileges by Customer under a multi-seat Vyond Professional or Vyond for Enterprise plan, which system privileges are used to configure, and govern how non-administrative users under Customer's account interact with and use the Services.

"Content" means videos, photos, images, graphics, audio, music, sounds, special effects, logos, branding, marks, text, scripts, files, information and other data.

"Customer Content" means all Content that Customer uploads, posts or otherwise makes available or provides to the Vyond Platform.

"Customer-Owned Output" means all Content and Generated Scripts that are generated and/or transformed by Vyond AI based solely on Customer Content.

"Data Protection Law" means all laws applicable to Company in its performance of the Services relating to data protection and data privacy including, as applicable, the EU General Data Protection Regulation 2016/679 ("EU GDPR") and U.S. state privacy laws such as the California Consumer Privacy Act, Cal. Civ. Code § 1798.100 et. seq. as amended, extended, repealed and replaced (collectively "U.S. State Privacy Laws"). "Data Controller", "Data Processor" and "Personal Data Breach" shall have the meanings given those terms in the EU GDPR.

“Generated Script” means the written form of a Video generated and/or transformed on the Vyond Platform, which specifically includes dialogue, narration and/or on-screen text, but excludes audio and video.

“Personal Data” means any information that is considered “personal data,” “personal information,” or other analogous term under Data Protection Law.

“Services” means the services that Company provides to Customer under this Agreement, which may include use of the Vyond Platform, customer support and training.

“Subscription” means the then-current Company subscription plan(s) for which Customer will pay or has paid a subscription fee to use the Vyond Platform.

“Video” means an animated video(s) that Customer creates by using the Vyond Platform.

“Vyond AI” refers to features and modules on the Vyond Platform that enable Customer to generate and/or transform Content, Customer Content, Generated Scripts, Vyond Assets and/or Videos, and is based on one or more underlying third-party foundational models and/or Company-owned proprietary models.

“Vyond Assets” means all Content that Company makes available or provides within the Vyond Platform, including templates, characters, actions, backgrounds, props, fonts, music and sound effects, other than Customer Content. Vyond Assets include all Content that Customer generates and/or transforms using Vyond AI, other than Customer-Owned Output.

“Vyond Platform” means the cloud-based platform that allows Customer to create and edit Generated Scripts and Videos by accessing a suite of proprietary applications, the Vyond Assets and Vyond AI.

## 2. LICENSES

Subject to the terms and conditions of this Agreement, including the payment of the applicable Subscription fee and the limitations imposed by Customer’s Subscription, Company hereby grants Customer, solely during the term of this Agreement, a non-exclusive, non-transferable (except in accordance with Section 13 below) right to access and use the Vyond Platform.

Subject to the terms and conditions of this Agreement, Company hereby grants Customer a non-exclusive, royalty-free and perpetual license to use, reproduce, display, perform and distribute the Videos created by Customer for Customer’s own commercial use.

Subject to the terms and conditions of this Agreement, Company hereby grants Customer a non-exclusive, royalty-free and perpetual license to use, reproduce, display and distribute all Generated Scripts that are not Customer-Owned Output for Customer’s own commercial use. With respect to Generated Scripts that are Customer-Owned Output, such Generated Scripts are owned by Customer as provided in Section 3 below and therefore are not licensed under this paragraph.

Customer represents and warrants that Customer has (and will have) all rights that are necessary to grant Company the license rights in Customer Content under this Agreement. Customer represents and warrants that neither Customer, nor Customer’s use and provision of Content to be made available through the Services, nor any use of Customer’s Content by Company on or through the Services will infringe, misappropriate or violate a third party’s intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

Subject to the terms and conditions of this Agreement, Customer hereby grants to Company, solely during the term of this Agreement, a non-exclusive, worldwide, royalty-free license to use, reproduce, display and perform Customer Content and Customer-Owned Output solely as necessary to provide the Services to Customer under this Agreement. Company may sublicense this license to Company’s cloud service provider for the sole purpose of enabling Company to provide the Services to Customer under this Agreement.

Company may also grant Customer, subject to the terms and conditions of this Agreement, a non-exclusive, non-transferable right to access and use the Vyond Platform, on a free trial basis, not to exceed fourteen (14) days. Such trial subscription shall not include any license to use, reproduce, display, perform or distribute Videos for any commercial use other than for Customer to evaluate the Vyond Platform.

### 3. OWNERSHIP

As between the parties, and except for the licenses granted by this Agreement, Customer retains all right, title and interest, including all related intellectual property rights, in and to all Customer Content and Customer-Owned Output.

As between the parties, and except for the licenses granted by this Agreement, Company retains all right, title and interest, including all related intellectual property rights, in and to Vyond Assets, the Vyond Platform, the Videos (excluding Customer Content contained therein, which shall be owned by Customer), Generated Scripts (other than Generated Scripts that are Customer-Owned Output), any other software, information and materials made available by Company under this Agreement, and any modifications to the foregoing.

Customer acknowledges and understands that: (i) Vyond Assets used to create a Video make up the substantial majority of every Video and that Vyond Assets are reused by Company and offered to Company's other customers, and therefore any Video created by Customer may appear substantially similar to any videos created by Company's other customers; and (ii) the use of Vyond AI may produce similar scripts, Content or videos in response to similar prompts or queries from Company's other customers, and therefore any Generated Script, Vyond Asset or Video created by Customer using Vyond AI may be substantially similar to any scripts, Content or videos created by Company's other customers. Customer agrees that the ownership and license provisions set forth in this Agreement are reasonable and appropriate both to clarify and protect Customer's and Company's respective ownership rights, and to diminish the risk of ownership disputes between Customer and Company's other customers.

Company retains all rights not expressly granted to Customer under this Agreement. Customer does not have any implied rights under this Agreement, or any rights to use any Vyond Assets or the Vyond Platform except as expressly provided in this Agreement.

### 4. RESTRICTIONS

Except to the extent expressly permitted by applicable law, Customer may not decompile, disassemble, reverse engineer or otherwise attempt to derive the source code for the Vyond Platform.

Except to the extent expressly permitted by applicable law, Customer may not use Vyond AI to derive (or attempt to derive) the underlying components of models, algorithms and systems of the Services, or to create, train, or improve (directly or indirectly) any other AI service or any product or service that is competitive with the Vyond Platform.

Customer shall not remove (or attempt to remove) any copyright, trademark or other intellectual property rights notice contained in or on any Vyond Assets, the Vyond Platform or any Video. Customer shall not remove (or attempt to remove) any digital watermark that may appear in any Video. Additionally, Customer shall neither defeat nor circumvent (or attempt to defeat or circumvent) any digital rights management technology used by Company.

A user account is required to access the Vyond Platform and may be accessed and used only by those authorized individuals who have registered on Vyond. Each user will choose a unique, non-transferable password. User accounts may not be "shared" or used by more than one individual. In the event of a breach of this restriction, Company may terminate this Agreement or require Customer to pay any Subscription fees due in arrears, at Company's discretion.

No right or license is granted to display or perform any Video (in whole or in part), over any of broadcast, cable, satellite television or subscription-based or pay-per-download over-the-top (OTT) platforms, unless Customer has purchased a "Broadcast Rights" license for the Video(s) to be displayed or performed, or (b) Customer and Company have otherwise expressly agreed in writing.

No right or license is granted to use the Vyond Assets in any way other than as part of a Video created using the Vyond Platform, unless (a) Customer has purchased an "Asset Rights" license for the Vyond Asset(s) to be used, or (b) Customer and Company have otherwise expressly agreed in writing.

Videos may not be assigned, transferred or used for the benefit of a third party, unless (a) Customer has purchased a “Rights Transfer” license for the Video(s) to be transferred, (b) Customer has subscribed to a Vyond Professional for Agencies plan, (c) Customer and Company have otherwise expressly agreed in writing, or (d) Customer has transferred or assigned its rights under this Agreement pursuant to Section 13.

Customer shall not create or sell any non-fungible-token (NFT) in connection with any Generated Scripts (other than Generated Scripts that are Customer-Owned Output), Vyond Assets or any Video.

Certain of the Vyond Assets are provided by Company under license from Shutterstock, Inc. (“Shutterstock Assets”). If Customer chooses to use any Shutterstock Assets, Customer’s use of such Shutterstock Assets shall be further restricted as follows: (I) Customer shall not use any Shutterstock Assets (a) together with pornographic, defamatory, or unlawful content or in such a manner that it infringes upon any third party’s trademark or intellectual property rights, (b) portraying any person depicted in a Video (a “Character”) in a way that a reasonable person would find offensive, including but not limited to depicting a Character (i) in connection with pornography, “adult videos,” adult entertainment venues, escort services, dating services, or the like, (ii) in connection with the advertisement or promotion of tobacco products, (iii) as endorsing a political party, candidate, elected official, or opinion, (iv) as suffering from, or medicating for, a physical or mental ailment, or (v) engaging in immoral or criminal activities, or (c) as a trademark, service mark, or logo; (II) Customer shall not use any Shutterstock Assets that are music or sound effects (a) as a musical theme in connection with any Video, (b) in an audio-only capacity in which music or sound effects is the primary content of any Video, (c) in an international television advertising campaign by or on behalf of an entity with annual revenues of more than One Billion Dollars (\$1,000,000,000), (d) remixed or otherwise altered, except that Customer may engage in basic editing (e.g., setting start/stop points, determining fade-in/fade-out points, etc.), or (e) in a downloadable form available through the Internet or otherwise including making it available via FTP, IRC, peer-to-peer file sharing services or the like; and (III) Customer shall not use any Shutterstock Assets that are music or sound effects in any public performance (i.e., including exhibition over the Internet).

Certain of the Vyond Assets are provided by Company under license from Universal Production Music, a unit of Universal Music – MGB NA LLC (“UPM Assets”). If Customer chooses to use any UPM Assets, Customer shall be obligated to: (i) report to the appropriate performing rights society any public performance of such UPM Assets (i.e., including exhibition via the Internet); and (ii) pay any corresponding “public performance royalties/fees” in connection with such uses, as applicable.

## 5. DATA SECURITY, ACCEPTABLE USE, AND DATA PRIVACY

### Data Security

Company currently uses Amazon Web Services (“AWS”) as its cloud services provider. AWS infrastructure is housed in Amazon-controlled data centers. AWS has been accredited under ISO 27001, as well as SOC 1/SSAE 16/ISAE 3402 (Previously SAS 70 Type II) and SOC2 Type II. For more information on the security provided by AWS, please see the Amazon Web Services Security Center page (<https://aws.amazon.com/security/>).

Customer acknowledges that no data transmission over the Internet or data storage system can be guaranteed to be 100% secure and Company cannot guarantee the security of data transmitted to it or that it stores. Customer acknowledges that if it wishes to protect its transmission of any data, it is Customer’s responsibility to use a secure encrypted connection to communicate with the Vyond Platform. Company shall not be liable to Customer for any liabilities arising from the operation of the Vyond Platform over the Internet or other networks outside of its control.

Company will not monitor, display or delete Customer Videos except for the purpose of enforcing Company’s acceptable use policy, Company’s privacy policy, or complying with the request of a governmental or regulatory body (including subpoenas or court orders) or otherwise as required by law.

### Acceptable Use

Company’s acceptable use practices regarding the use of Vyond Platform are governed by Company’s acceptable use policy published at the bottom of this Agreement, as it is amended from time to time. Customer agrees to abide by Company’s acceptable use policy.

## Data Privacy

### EU GDPR:

Customer acknowledges that Company is the Data Controller with respect to the processing of Personal Data for which Company determines the purposes and means of processing (for example account and billing information) and which is governed by Company's privacy policy, currently available at <https://vyond.com/privacy>.

When Company provides Customer with the Services under this Agreement, Company may process certain Personal Data on Customer's behalf ("Covered Personal Data") – for example Personal Data Customer has uploaded at Customer's own discretion for inclusion in Vyond Videos. When Company processes this limited set of Covered Personal Data, Company is the Data Processor and Customer is the Data Controller. This subsection applies to this limited set of Personal Data over which Company is the Data Processor. Customer agrees to comply with all the obligations applicable to Customer under Data Protection Law and Customer represents that Customer has all necessary rights and consents to transfer the Covered Personal Data to Company for processing. Company will use and process the Covered Personal Data in order to provide the Services under this Agreement in accordance with Customer's instructions (as represented in this Agreement) and Data Protection Law. In Company's role as Data Processor it shall: (a) only process Covered Personal Data in accordance with this Agreement, as part of any processing initiated by Customer in using the Services and to comply with other reasonable documented instructions consistent with this Agreement (Company will inform Customer if an instruction infringes Data Protection Law); (b) not sell, rent, release, disclose, disseminate, make available, transfer Covered Personal Data for monetary or other valuable consideration; (c) not further transfer Covered Personal Data (Customer understands that Company and its subprocessors are located in the United States and the EEA, and Customer consents to processing in these locations) to any country outside EEA without notice to Customer and subject to such requirements as are necessary to comply with Data Protection Law; (d) ensure that Covered Personal Data is subject to appropriate technical and organizational security measures to protect against unauthorized or unlawful processing of such data and against accidental loss or destruction of, or damage to, such data; (e) ensure that all persons with access to Covered Personal Data are subject to appropriate confidentiality obligations; (f) notify Customer and allow Customer an opportunity to object (on reasonable grounds) before engaging a new subprocessor to process Covered Personal Data in order to provide the Services, ensure such subprocessor provides at least the same level of security as Company, and remain fully liable to Customer in respect of the performance of the subprocessor's data protection obligations; (g) at Customer's cost, provide assistance to Customer in relation to Customer's obligations concerning data subject rights, data security, data breach notification and data protection impact assessment obligations; (h) notify Customer without undue delay of becoming aware of a Personal Data Breach; (i) after the Services have been provided, cease processing Covered Personal Data and, at Customer's discretion, delete or return Covered Personal Data except for non-readable backup copies of Covered Personal Data which are retained and deleted in accordance with Company's data deletion policies and except as continued retention is otherwise required by law in which case Company shall notify Customer of such requirement; and (j) comply with any reasonable requests for information necessary to demonstrate compliance with this Section 5. Customer consents to Company's use of its current subprocessors, and Company will make available a list of current subprocessors on request. Customer may request a standalone Data Processing Agreement and/or EU standard contractual clauses for EEA to US data transfers.

### U.S. State Privacy Laws:

To the extent the U.S. State Privacy Laws apply to Company's processing of Covered Personal Data, this subsection shall also apply. Company will: (i) comply with its applicable obligations under such U.S. State Privacy Laws; (ii) provide the same level of protection as required under the U.S. State Privacy Laws; (iii) notify Customer if it can no longer meet its obligations under the U.S. State Privacy Laws; (iv) not "sell" or "share" (as such terms are defined by the U.S. State Privacy Laws) Covered Personal Data; (v) not retain, use, or disclose Covered Personal Data for any purpose (including any commercial purpose) other than the as necessary to provide the Services; (vi) not retain, use, or disclose Covered Personal Data outside of the direct business relationship between Customer and Company unless otherwise permitted by the U.S. State Privacy Laws; and (vii) not combine Covered Personal Data with Personal Data that Company (a) receives from, or on behalf of, another person, or (b) collects from its own, independent consumer interaction, unless otherwise permitted by the U.S. State Privacy Laws. Company will permit

Customer, upon reasonable request, to take reasonable and appropriate steps to ensure that Company Processes Covered Personal Data in a manner consistent with the obligations applicable to it under the U.S. State Privacy Laws by requesting that Company attest to its compliance with this Section of the Agreement. Following any such request, Company will promptly provide that attestation or a written response about why it cannot provide it. If Customer reasonably believes that Company is engaged in processing of Covered Personal Data that is not authorized under this subsection, Customer will immediately notify Company of such belief, and the Parties will work together in good faith to remediate the allegedly violative Processing activities, if necessary.

### **Processing Details**

The nature, purpose, subject matter, and duration of Company's processing of Covered Personal Data is the provision of the Services for the Term, the categories of data subjects are generally employees, and the types of Covered Personal Data are any Personal Data Customer has uploaded at Customer's own discretion for inclusion in Videos.

## **6. TERM AND TERMINATION**

This Agreement begins on the date when Customer first signs up for a free trial or the date when Customer subscribes to a paid Subscription.

If Customer subscribes to a monthly, quarterly or annual Subscription, the Agreement will continue for a term of one month, one quarter or one year, as applicable, and will automatically renew for additional one month, one quarter or one year periods, as applicable, each subsequent period thereafter until terminated as provided for in this Section 6.

Company may terminate this Agreement if Customer has not paid any applicable Subscription fee or if Customer materially breaches the Agreement and fails to remedy the breach within thirty (30) days' notice of the breach.

Should Customer wish to terminate this Agreement for convenience, Customer may turn off the auto-renew feature under Account Settings. In the event of Customer's termination pursuant to this Section 6, this Agreement will terminate at the end of then-current Subscription term, and there will be no refund of any Subscription fees paid by Customer under this Agreement for the then-current Subscription term.

Company reserves the right to change or discontinue any part of the Vyond Platform or the Services at any time. If Company discontinues or sunsets the Vyond Platform or Services altogether, it will give Customer thirty (30) days' prior notice.

The definitions and rights, duties and obligations of the parties that by their nature continue and survive shall survive any termination or expiration of this Agreement.

## **7. PAYMENT, RENEWALS AND TAXES**

Company charges a Subscription fee for access to the Vyond Platform. Customer agrees to pay all fees charged by Company and otherwise incurred by Customer. All fees are payable in advance, non-refundable and, unless otherwise stated, in US dollars.

If Customer fails to pay the applicable fees in a timely manner, other than fees disputed in good faith, Company may suspend or terminate Customer's access to either the Vyond Platform or certain features of the Vyond Platform.

Customer is responsible for, and will indemnify and hold Company harmless from, payment of all taxes (other than taxes based on Company's net income), fees, duties, and other governmental charges, and any related penalties and interest, arising from the payment of fees to Company under this Agreement or the delivery or license of the Vyond Platform or use of the Vyond Platform or provision of any Services. Customer will make all payments to Company free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of fees to Company will be Customer's sole responsibility, and Customer agrees to provide Company with official receipts issued by the appropriate taxing authority, or such other evidence as Company may reasonably request, to establish that such taxes have been paid.

## 8. GOVERNMENT RESTRICTIONS

Customer may not export or re-export the Vyond Assets, the Vyond Platform or Videos except in compliance with the United States Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. The foregoing and all 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 foregoing by the U.S. Government is governed solely by the terms of this Agreement.

## 9. WARRANTY

Company represents and warrants to Customer that for a period of ninety (90) days from Customer’s first use of the Vyond Platform, the Vyond Platform will function correctly in all material respects. In the event of a breach of this warranty, Company will use its reasonable commercial efforts to remedy the breach or, at Company’s discretion, may refund the fees paid for access to the Vyond Platform. Such remedies shall be the sole remedy by Customer against Company for a breach of this warranty.

EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE VYOND ASSETS, THE VYOND PLATFORM, THE VIDEOS AND THE SERVICES ARE PROVIDED TO CUSTOMER “AS IS” AND WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND COMPANY HEREBY DISCLAIMS AND EXCLUDES, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE AND SATISFACTORY QUALITY.

Company does not warrant that the Vyond Assets, the Vyond Platform, the Videos or the Services will meet Customer’s needs or requirements or be error-free or always available or available at any particular time or that any errors or defects will be corrected.

Customer represents and warrants to Company that Customer owns or otherwise controls and has sufficient rights or licenses to provide all Customer Content for use by Company in the manner contemplated by this Agreement.

## 10. LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND PRODUCT LIABILITY), INDEMNIFICATION OR OTHERWISE.

EACH PARTY’S LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED THE FEES, IF ANY, PAID OR PAYABLE BY CUSTOMER TO COMPANY UNDER THIS AGREEMENT IN THE 12 MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT FIRST GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. WITH RESPECT TO ANY TRIAL SUBSCRIPTION, IN NO EVENT WILL COMPANY’S LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RESULTING FROM THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY USE (OR ATTEMPTED USE) OF THE VYOND PLATFORM, EXCEED FIFTY DOLLARS (USD \$50).

## 11. INDEMNITY

Subject to Section 10, Customer shall indemnify and hold harmless Company and its officers, directors, employees and agents from and against liabilities, costs, losses, damages, judgments, expenses (including attorneys' fees and costs of experts and costs of appeals) arising out of or in connection with any and all of the following: (a) any allegation that Customer Content infringes, misappropriates or violates any intellectual property right, including, without limitation, any rights of publicity or privacy, (b) any claims for defamation or slander, invasion of privacy or other violation of a person's rights, (c) any unauthorized activity relating to Customer's account, or (d) any failure of Customer to have all necessary rights and licenses in and to Customer Content.

Subject to Section 10, Company shall indemnify and hold harmless Customer and Customer's officers, directors, employees and agents from and against third party out of pocket liabilities, costs, losses, damages, judgments, expenses (including attorneys' fees and costs of experts and costs of appeals) arising out of or in connection with any and all of the following: any third party claim that the Vyond Assets or Vyond Platform infringe, misappropriate or violate any United States patent, copyright, trademark or trade secret rights of any third parties.

Each party's obligations to indemnify the other party under this Section shall be conditioned upon the following: (a) The indemnified party shall promptly notify the indemnifying party in writing of the claim; (b) the indemnified party shall grant the indemnifying party sole control of the defense and settlement of the claim; and (c) the indemnified party shall provide the indemnifying party, at the indemnifying party's expense, with all assistance, information and authority reasonably required for the defense or settlement of the claim.

Notwithstanding the foregoing, Company shall have no liability for any claim of infringement based on (a) the use of the Vyond Assets or the Vyond Platform other than in accordance with this Agreement, or (b) the combination of the Vyond Assets or Vyond Platform with other content, services, software or hardware not provided by Company, where the combination causes the infringement and not the Vyond Assets or Vyond Platform standing alone.

If the Vyond Assets or the Vyond Platform, or any material portion thereof, are held by a court of competent jurisdiction to infringe, or if Company believes that the Vyond Assets or the Vyond Platform may be subject to a claim or held to infringe, Company shall in its commercially reasonable judgment and at its expense (a) replace or modify the Vyond Assets or the Vyond Platform so as to be non-infringing, provided that the replacement content or platform contains substantially similar functionality; (b) obtain for Customer the rights to continue using the Vyond Assets or the Vyond Platform; or (c) if a non-infringing content or platform or the rights to use the Vyond Assets or the Vyond Platform cannot be obtained upon commercially reasonable terms, terminate this Agreement. Upon any such termination of this Agreement, Company shall refund any unused Subscription fees paid by Customer under this Agreement for the then-current Subscription term.

This Section sets forth each party's exclusive remedy, and the indemnifying party's entire liability, with respect to infringement or misappropriation of intellectual property rights of any kind arising out of this Agreement.

## 12. CONFIDENTIALITY AND FEEDBACK

Customer agrees to keep confidential and not use other than in the performance of this Agreement or disclose to a third party any information of Company that Customer knows or reasonably should know is confidential to Company.

To the extent Customer provides Company with any suggestions, information, ideas, or feedback concerning any of the Vyond Assets, Vyond AI, Vyond Platform, or Services, including a report of any errors which Customer discovers while using the Vyond Platform or any related documentation ("Feedback"), such Feedback will be the property of Company. Customer agrees to assign, and hereby does assign, all right, title and interest worldwide in the Feedback, and the related intellectual property rights, to Company and agrees to assist Company in perfecting and enforcing these rights.

## 13. ASSIGNMENT

Customer may not transfer or assign Customer's rights under this Agreement, in whole or in part, without the prior written consent of Company, except that Customer may, without obtaining the prior written consent of Company, transfer and assign Customer's rights under this Agreement in connection with a merger, acquisition or sale of all or substantially all of Customer's assets to which this Agreement relates (each, a "Permitted M&A Transaction"). Any attempted assignment in violation of the foregoing is void. If Customer transfers or assigns Customer's rights under this Agreement pursuant to a Permitted M&A Transaction, Customer agrees to promptly inform Company of the identity and address of the other party involved in the Permitted M&A Transaction. Company may freely transfer or assign its rights under this Agreement. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns.

## 14. NOTICES AND INTELLECTUAL PROPERTY RIGHTS

If Customer has any questions about this Agreement, or if Customer wants to contact Company for any reason, please direct all correspondence to: GoAnimate, Inc., 204 East 2nd Avenue, Suite 638, San Mateo, CA 94401 USA or send us an email to [support@vyond.com](mailto:support@vyond.com).

Infringement. Company respects the intellectual property rights of others, and we ask Customer to do the same. Company may, in appropriate circumstances, terminate Services and/or access to the Vyond Platform for subscribers who infringe the intellectual property rights of others or block or delete their Generated Scripts or Videos. If Customer believes that Customer's work is the subject of copyright infringement and/or trademark infringement and appears on the Vyond Platform, please provide Company's designated agent the following information:

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- Identification of the copyrighted and/or trademarked work claimed to have been infringed, or, if multiple works at a single online site are covered by a single notification, a representative list of such works at that site.
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled at on the Vyond Platform, and information reasonably sufficient to permit Company to locate the material.
- Information reasonably sufficient to permit Company to contact Customer as the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which Customer may be contacted.
- A statement that Customer has a good faith belief that use of the material in the manner complained of is not authorized by the copyright and/or trademark owner, its agent, or the law.
- A statement that the information in the notification is accurate, and under penalty of perjury, that Customer is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Company's agent for notice of claims of copyright or trademark infringement on the Vyond Platform can be reached as follows:

General Counsel

[copyright-support@vyond.com](mailto:copyright-support@vyond.com)

GoAnimate, Inc.  
204 East 2nd Avenue, Suite 638  
San Mateo, CA 94401  
(888) 360-9639

Please also note that for copyright infringements under Section 512(f) of the Copyright Act, any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability.

Submitting a DMCA Counter-Notification. Company will notify Customer that Company has removed or disabled access to copyright-protected material that Customer provided, if such removal is pursuant to a valid DMCA take-down notice that Company has received. If Customer receives such notice from us, Customer may provide Company with a counter-notification in writing to Company's designated agent that includes all of the following information:

- Customer's physical or electronic signature;
- Identification of the material that has been removed or to which access has been disabled, and the location at which the material appeared before it was removed or access to it was disabled;
- A statement from Customer, under the penalty of perjury, that Customer has a good faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled; and
- Customer's name, physical address and telephone number, and a statement that Customer's consent to the jurisdiction of a court for the judicial district in which Customer's physical address is located, or if Customer's physical address is outside of the United States, for any judicial district in which Company may be located, and that Customer will accept service of process from the person who provided notification of allegedly infringing material or an agent of such person.

Termination of Repeat Infringers. Company reserves the right, in its sole discretion, to terminate the account or access of any user of our Vyond Platform and/or Services who is the subject or repeated DMCA or other infringement notifications and to block and delete their Generated Scripts or Videos.

## 15. ENTIRE AGREEMENT

This Agreement, any Company policy referred to in this Agreement and any schedule referring to this Agreement, each of which is incorporated by reference, constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement and such schedule.

Any terms and conditions contained in any purchase order that are inconsistent with or in addition to the terms and conditions of this Agreement will be deemed stricken from such purchase order, unless expressly agreed to in writing by Company.

## 16. GENERAL

The laws of the State of California govern all matters arising out of this Agreement, without regard to conflict of law principles. The United Nations Convention for the International Sale of Goods shall not apply. The federal and state courts located in San Mateo County, California USA will have non-exclusive jurisdiction in respect of disputes arising in connection with this Agreement. If any provision of this Agreement is held invalid, that provision will be deemed amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Agreement will continue in full force and effect. The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. This Agreement is non-exclusive, and each party will be free to enter into other similar agreements or arrangements with other third parties. Company has no liability for any failure of performance or equipment due to causes beyond its reasonable control, including the following: acts of God, fire, flood, earthquake, tsunami, storm, or other catastrophes; any law, order, regulation, direction, action, or request of any governmental entity or agency, or any civil or military authority; national emergencies, insurrections, riots, wars or acts of terrorism; strikes, lock-outs, work stoppages, or other labor difficulties; or failure of the Internet or any telecommunications, hosting or service provider. This Agreement may be modified only by a written agreement that is signed by authorized representatives of both parties and identifies itself as an amendment to this Agreement, provided that Company may modify this Agreement at any time upon notice to Customer, with such modification to be effective on the next renewal term of this

Agreement as provided under Section 7. No term or provision hereof will be considered waived by a party, and no breach excused, unless the waiver or consent is in writing signed by such party. No consent by a party to, or waiver of, a breach, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different or subsequent breach. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such paragraph or in any way affect such section.

# VYOND ACCEPTABLE USE POLICY (AUP)

GoAnimate, Inc. ("Company") has established this Acceptable Use Policy (this "Policy") in order to define certain activities and behaviors that are prohibited. Company reserves the right to modify this Policy at any time. Changes and modifications to this Policy will be effective when posted to Company's website or when Company provides notice of the change, whichever is sooner. Capitalized terms used in this Policy but not defined in this Policy shall have the meanings given to such terms in the Terms of Service.

Customer will neither knowingly upload Content to nor knowingly create a Generated Script or Video on the Vyond Platform which:

- Defames, abuses, harasses, stalks, threatens or otherwise violates the legal rights (such as the rights of privacy and publicity) of others, or is libelous or defamatory.
- Uses explicit or obscene language, contains sexually explicit images (actual or simulated) or is pornographic in any way.
- Uses racially, ethnically or otherwise offensive language.
- Is discriminatory (based on race, color, religion, gender, sexual orientation, age, national origin, ancestry or physical ability) or ridicules or makes negative reference to certain individuals or groups, including, without limitation, with respect to religion, the mentally or physically disabled, sexual orientation, gender, or national origin or ethnicity.
- Exploits children or minors.
- Depicts cruelty to animals.
- Incites illegal activity or otherwise promotes the committing of a crime.
- Incorporates any material to which Customer does not possess all necessary rights or which infringes or misappropriates any intellectual property or proprietary right of any party, including, without limitation, any patent, copyright, trademark, trade secret or moral right or any right of publicity or privacy.
- Incorporates any unsolicited or unauthorized advertising, promotional materials, 'junk mail', 'spam', 'chain letters', 'pyramid schemes', or any other form of such solicitation.
- Falsely expresses or implies that such content or material is sponsored or endorsed by Vyond or Company.
- Transmits or provides any viruses, worms, defects, Trojan horses or other items of a destructive nature or any software or material that is designed or intended, or otherwise likely, to cause harm to any software, equipment, hardware or system, including, without limitation, any materials which contains a virus, Easter egg, worm, software code, data or other files or programs designed to damage or allow unauthorized access to any hardware, software, equipment or system or which may cause any defect, error, malfunction, corruption, damage or harm to any such hardware, software, equipment or system.

In the community areas of the Vyond Platform, Customer will not knowingly:

- Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as the rights of privacy and publicity) of others, or make libelous or defamatory statements.
- Use explicit or obscene language, or make sexually explicit or pornographic statements.
- Use racially, ethnically or otherwise offensive language.
- Make discriminatory statements (based on race, color, religion, gender, sexual orientation, age, national origin, ancestry or physical ability) or ridicule or make negative reference to certain individuals or groups, including, without limitation, with respect to religion, the mentally or physically disabled, sexual orientation, gender, or national origin or ethnicity.
- Exploit children or minors.
- Encourage cruelty to animals.
- Incite illegal activity or otherwise promote the committing of a crime.
- Disseminate any unsolicited or unauthorized advertising, promotional materials, 'junk mail', 'spam', 'chain letters', 'pyramid schemes', or any other form of such solicitation.
- Collect any information about other users or members (including usernames and/or email addresses) for any purpose.
- Falsely express or imply that Customer's statements are sponsored or endorsed by Vyond or Company.

Customer will further refrain from knowingly:

- Using any robot, spider, scraper or other automated means to access the Vyond Platform or Services.
- Taking any action that imposes an unreasonable or disproportionately large load on Company's equipment or infrastructure.
- Creating user accounts by automated means or under false or fraudulent pretenses.
- Removing, obscuring or changing any copyright, trademark, hyperlink or other proprietary rights notices contained in or on the Services, Vyond Platform, Vyond Assets or any Vyond Platform related code embeddable or embedded on a third party web site.
- Using the Vyond Platform, Vyond Assets or Services to violate the security of any computer, equipment, device, hardware, system or network or transfer or store illegal Content or material.

This list of prohibitions provides examples and is not complete or exclusive. Company reserves the right to: (a) terminate Customer's account and/or suspend Customer's access to the Vyond Platform for violation of this Policy until such time as the violation is corrected; and (b) block or delete any Customer Content, Customer-Owned Output, Generated Scripts and/or Videos; in each case with or without cause, and with or without notice, which Company reasonably determines in good faith is inappropriate or disruptive to the Services or the Vyond Platform or to any other user of the Services or the Vyond Platform (or any combination thereof) or that may expose Company to liability. Company may report to law enforcement authorities any actions that may be illegal, and any reports it receives of such conduct. When legally required or at Company's discretion, Company will cooperate with law enforcement agencies in any investigation of alleged illegal activity on this site or on the Internet.

Company has no obligation to monitor, police or remove any Customer Content, Customer-Owned Output, Generated Scripts and/or Videos or other information submitted by Customer or anyone else.