

Terms of Service

We are Modat B.V., located at Wilhelmina van Pruysenweg 104, (2595 AN) 's-Gravenhage, the Netherlands, registered in the Dutch Chamber of Commerce under number 93876106 (**“Modat”**, **“we/us/our”**). You can reach us via e-mail at subscriptions@modat.io.

To the extent that we are not providing such services to you under a more specific, written agreement, these Terms of Service (**“TOS”**) describe the general terms and conditions that govern all the services that Modat and its affiliates may offer to you, including but not limited to its website, software, search engine, data, mobile apps, browser extensions, and APIs (**“Services”**). Whenever we refer to ‘you’ or ‘your’, we are referring to the person or legal entity whose payment method (i.e. up-to-date and valid method of payment accepted by us, as may be updated from time to time) is charged for the subscription plan covering your account. Whenever we require an action to be taken “in writing”, we mean that you must use the electronic means made available by us or otherwise accepted by us (e.g. through UI/UX made available to you via our website) or alternatively send us an e-mail.

1. Your Account and Your Rights to Our Services

1.1 To use our Services, you need an account with us that is tied to an active subscription plan. You can register for an account through our website. Accounts are issued on a name-basis and are meant for single person use, unless expressly otherwise allowed by your subscription plan. Accounts may not be shared with third parties.

1.2 We grant you a limited, non-exclusive, non-transferable right to access and use our Services for the duration of your account being active. No other right, title or interest to our Services is transferred to you. Holding an account does not grant you any right to use our trademarks, designs, logos, nor does it grant to you the right to publicly advertise any partnership with Modat without our prior written consent. Given the nature of our delivery model (i.e. as-a-service), your agreement(s) with Modat expressly do not grant you any (intellectual property) license to, nor do they bring into effect a transfer of, intellectual property belonging to Modat and its licensors; your agreement with Modat for Services must be construed solely as a service agreement (overeenkomst van opdracht).

1.3 When you register for an account you personally represent and warrant to us that:

- you are legally capable and appropriately authorized to (a) represent the person or legal entity contracting and paying for our Services (e.g. your employer); and (b) to review and accept these TOS on behalf of the person or legal entity under (a).
- you unconditionally agree to the contents and applicability of these TOS;
- you are at least 18 years of age which is the minimum age to register and hold an account for our Services;
- you have provided us with your own name and e-mail address;
- you have read, understand and accept our Privacy Policy available here: <https://www.modat.io/privacy-policy>. The Privacy Policy may be changed from time to time. You will be informed of these changes and any changes automatically apply to the existing contract between Modat and you.
- all information that you submitted to us for the purpose of registration is, to the best of your knowledge, accurate and complete;
- you shall keep the authentication credentials for your account (e.g. username, password, MFA tokens)

2. Subscription Plans, Fees, and Termination of your Subscription

2.1 Each account requires a subscription plan (for which all fees due have been paid), but one subscription plan may cover multiple accounts (e.g. a company purchasing a subscription for its employees with each employee having an account). Subscription plans for our Services can be purchased via an order form (e.g. a sales order, purchase order, online form) or any other written means made available and accepted by us. Such an order will list, at a minimum, the ordered subscription plan(s), the related fees, the subscription term, and the billing cycle. All orders are deemed to have incorporated and be governed by these TOS.

2.2 At the end of each agreed-upon subscription term, the subscription plan will automatically renew for a new term of equal duration unless you have informed us in writing of your intent to not renew prior to the first day of your new subscription term. You can terminate your subscription plan at any time by informing us in writing, you will continue to have access to your account throughout your then-current subscription term with the termination becoming effective at the end of the last day of your then-current subscription term. You remain responsible and liable to pay all fees agreed upon for the full duration of your subscription term. Article 7:408, sections 1-2, of the Dutch Civil Code and any other statutory means of termination for convenience (opzeggen) are hereby excluded.

2.3 The fee for our Services depends on your subscription plan and will be charged to the payment method listed in your account in accordance with the chosen billing cycle (i.e. monthly or annually). You hereby authorize us and - to the extent that we choose to use them – our payment services providers and other payment-related partners to charge any and all payment methods listed in your account, now and in the future, for the agreed-upon fee for our Services in accordance with the agreed-upon billing cycle. Should we not be able to charge your payment method, we may suspend or functionally restrict your account until your payment has been successfully received. You remain responsible for any fees and costs related to your chosen payment method, such as card fees, transaction fees, issuer fees and currency conversion charges.

2.4 All fees shall – unless otherwise indicated by us - be exclusive of all taxes, including VAT, withholding tax, sales tax, and any other levies which may be imposed by the authorities. Any currency conversion fees that may occur before, during, or after the payment has been made must be borne by you. We are entitled to receive the agreed upon amount in full without those fees deducted.

2.5 You warrant and represent that you will keep the payment method for your account current at all times.

2.6 We may change our fees from time to time. We will not make changes to fees during an active subscription term and we will inform you in writing of such changes at least 30 calendar days before your current subscription term to enable you to prevent further renewal if you cannot agree to the new fees. Notwithstanding the previous sentence, we may change our fees during an active subscription term only if this to compensate for inflation in accordance with the public CBS-index DPI (category 6202; 2015=100) and we agree to never index our fees more than once every 12 months.

2.7 Termination of an agreement (incl. any subscription) with Modat shall never entitle you to reimbursement of fees already paid to and received by us, nor will we provide refunds or other credits for subscriptions only partially used.

2.8 You must notify us in writing of any disputed invoices or charges within 30 calendar days after the date of invoicing resp. the charge date. You shall not be able to dispute invoices or charges, or to otherwise withhold payment (opschorten) after the expiration of this term.

2.9 You are not entitled to set-off (verrekenen) any debts or sum which we may, for whatever reason, owe to you against the amounts invoiced or charged by us.

3. Acceptable Usage

3.1 In using our Services, you agree to:

- not use our Services for conduct that is illegal, threatening, deceptive, or defamatory;
- not use our Services for any other purpose than your own personal or internal business purpose;
- not white label our Services or the results of our Services, nor shall you otherwise make our Services available to third parties without our explicit prior written consent.
- not use automated means to access or otherwise engage with our Services beyond using interfaces explicitly provided by us and approved for your use (e.g. our APIs);
- not impair, harm, or damage the integrity, performance or reliability of the Services, or hinder the use of the Services for other customers;
- not disrupt, interfere, attempt to gain access to, or introduce harmful data to Modat's or third parties' IT-infrastructure, databases, servers, hardware, or networks connected to or accessible via the Services;
- not adapt, modify or reverse engineer the Services, except insofar as such actions cannot be excluded under applicable law, without our explicit prior written consent;
- not intentionally obscure, spoof or hide relevant network information (e.g. IP-address, referrer-headers) to access or use the Services;
- not remove any (possible) attributions crediting Modat or its content-licensors;
- not impair, harm, or damage Modat's reputation;
- not violate applicable law (e.g. privacy laws and intellectual property laws), regulations or reasonable instructions by Modat in any way;
- not cause any third party to breach this Clause 3.1 on your behalf; and
- enable us to comply with laws and regulations applicable to us.

3.2 You warrant that you will only use our Services pursuant to your agreement with Modat and that you are solely responsible and liable for acquiring any required licenses, permissions and legal grounds for processing of data (personal or otherwise) from 3rd party licensors, data subjects or other affected third parties.

3.3 Modat may monitor usage of its Services in order to ensure compliance with these TOS and to be able to comply with its obligations under statutory law.

4. Quality of Our Services and Disclaimer

4.1 We try to provide our Services using a commercially reasonable level of skill and care.

4.2 Except as expressly agreed to in these TOS, we exclude to the fullest extent permitted by law all warranties, conditions, or representations with the Services, explicit or implied. In particular, we do not make any guarantees or commitments about the reliability, availability, non-infringement or suitability of our Services. You acknowledge and agree that the Services are provided "as is" and "as available".

4.3 You acknowledge that Modat is reliant on third party service providers and their services to provide its Services and you shall not hold Modat liable for any limitation in the provision of the Services resulting from actions or inactions of such third party service providers.

6. Liability

6.1 We are not liable for any damages suffered by you related to the use of our Services, regardless of the legal basis of your claim (i.e. tort, contract or otherwise).

6.2 Should the exclusion of liability as stipulated in Clause 6.1 not be enforceable against you, our liability shall be limited, per 12 months and per claim (with a series of related claims treated as a single claim), to the compensation of damages with a maximum of the fees that you paid to us for our Services in the 12 months preceding the damage-causing event (or start of a series of connected events). Notwithstanding the previous sentence, under no circumstances shall Modat have any liability for: (a) loss of profits or revenues; (b) loss of contracts or business opportunities; (c) loss of goodwill or reputation; (d) loss or damages arising from the use of open source components; (e) any indirect, special, or consequential loss or damages.

6.3 The exclusions and limitations of liability in these TOS shall not apply to loss or damages as a result of wilful misconduct or gross negligence (opzet of bewuste roekeloosheid) of Modat or its senior management.

6.4 You agree to indemnify, defend, and hold harmless Modat, its affiliates, its partners, and each of their respective directors, employees and agents, from and against all third party claims for damages, costs and expenses (including reasonable attorney fees) arising from or related to (a) your access or use of the Services; or (b) your violation of these TOS or otherwise an agreement with Modat.

6.5 Modat can only be considered in default (verzuim) in relation to its agreement with you if (i) you have informed us in writing of our (alleged) non-performance; (ii) you have afforded us a reasonable term of at least 60 days to remedy any non-performance; and (iii) the term for remedying has passed without any cure.

6.6 Any claim for damages or other compensation by you will lapse six (6) months after the damage-causing event on which the claim is based, unless you have brought a claim for damages before the expiry of that term.

7. Feedback

You hereby grant Modat a worldwide, perpetual, royalty-free, fully paid, non-exclusive license to use any feedback, suggestions, complaints or other input that you submit to us via the Services or via e-mail for the purpose of correcting, improving or further commercializing our Services (incl. creating new Services). The license contained in this Clause shall survive termination of your agreement with Modat.

8. Suspension or Termination of Services by MODAT

8.1 Without prejudice to any other remedies available to us in these TOS or by way of statutory law, we are entitled to suspend (opschorten) or terminate (ontbinden), with immediate and indefinite effect, and without prior notice, your use of our Services, partly or in full, if you, to be determined at our sole discretion, fail to comply with these TOS. You will not be entitled to any compensation or refund for this.

8.2 Upon your request, we will always provide you with a clear and specific statement of reasons for any of the following restrictions imposed on the ground that the information provided by the recipient of the service is illegal content or incompatible with their terms and conditions:

- any restrictions imposed by us of the visibility of specific items of information provided by you, including removal of content, disabling access to content, or demoting content;
- suspension, termination or other restriction of monetary payments;
- suspension or termination of the provision of the Services in whole or in part;
- suspension or termination of the recipient of your account

8.3 If you fail to comply with these TOS and cause damages, our decision to suspend or terminate your access to the Services will not affect our entitlement to also seek compensation for those damages.

9. Confidentiality

9.1 “Confidential Information” means all information of whatever nature and in whatever form, which relates to you or us, which is disclosed or made accessible to the other party prior to and during the term of our agreement(s), and which was designated as confidential information or that, by the circumstance surrounding the disclosure or by the nature of the information, must be considered confidential. For the avoidance of doubt: the roadmap to our API and all technical documentation surrounding our API are considered Confidential Information belonging to Modat

9.2 You and we shall keep confidential any and all Confidential Information and shall not disclose Confidential Information to any third parties other than with explicit prior written consent by the party by whom it was disclosed, except:

- as may be necessary to comply with laws, statutes and regulations, provided that the party obligated to provide the Confidential Information shall notify the other party in advance to give that party enough time to take all necessary steps to prevent disclosure;
- to the extent the Confidential Information is known to the public otherwise than by a breach of the provisions of this Clause 9;
- to the extent the Confidential Information has been in the possession of the recipient party prior to the disclosure thereof by the disclosing party as must be demonstrated by the recipient party via written evidence;
- to the extent information which in content is equal to the Confidential Information has been independently developed by the recipient party without using any Confidential Information of the disclosing party as demonstrated by the recipient Party by written evidence;
- to the extent such Confidential Information has been received from a third party without a duty of confidence to the disclosing party; or
- to the professional advisers of the recipient party in connection with the interpretation or operation of the agreement with Modat or any regulatory burden or dispute arising from it, provided that the recipient party has obtained a commitment in writing from these professional advisers to keep the Confidential Information strictly confidential.

9.3 A similar duty of confidentiality as mentioned in this Clause must be imposed on each Party's staff members and personnel, as well as any third parties engaged by a Party, including its subcontractors and employees of such subcontractors.

9.4 The confidentiality obligations in this Clause 9 shall expire twenty-four (24) months after all agreements between you and us have expired or been terminated.

10. Security and Stress-testing

10.1 You shall not intentionally test the security of or otherwise stress-test our Services without our explicit prior written consent.

10.2 You represent and warrant that any applications calling our APIs have been developed and configured to be secure, resilient and reliable as to limit any negative effect on our Services.

~~10.3 We are entitled to detect, prevent or limit the impact of any misconfigurations, vulnerabilities or other~~

11. Changes to the Services

11.1 We may change, modify, revise and/or update the Services, at any time and at our sole discretion. We aim to do so with minimally adverse impact to the Services, and will use best efforts to inform you of any scheduled maintenance in advance through our website.

11.2 We may permanently discontinue certain Services at any time and for whatever reason. We are also entitled to limit the functionality of the Services or to charge for certain functionality that was free before.

12. Changes to these TOS

We may make changes to these TOS at any time and without prior notice. Any changes to the TOS shall enter into effect for you immediately upon posting the changes to our website or upon informing you of the changes via other appropriate means (e.g. e-mail).

13. Third-Party Content and Components

13.1 Our Services may give you access to content that belongs to third parties. We typically do not have any control over third-party content. Accordingly, we do not make any guarantees or commitments about the reliability, availability, non-infringement or suitability of such third-party content, and disclaim any liability in this regard to the fullest extent allowed under applicable law. You acknowledge and agree that such content is provided “as is” and “as available”

13.2 To provide you with an optimal experience of our Services, we may require the use of third-party technology components or services that may be subject to your agreement to the terms and conditions (and privacy policies) of these third parties. We strive to indicate the applicability of such additional terms and conditions (and privacy policies) where possible in a clear manner. We encourage you to read the terms and conditions and privacy notices provided by such third parties on their own website. You shall agree to all such third party terms and conditions and acknowledge that any refusal to do so may preclude you from enjoying our Services in full or in part

14. Notice and Action

14.1 Should you believe any content accessible through our Services violates intellectual property rights or is otherwise unlawful, you should first contact the third party hosting the content to have it removed. You may also report such content to Modat and we will use best efforts to make it non-accessible from our Services if the complaint is legitimate. Such reports can be submitted to the following e-mail address: subscriptions@modat.io and must contain all of the following:

- a sufficiently substantiated explanation of the reasons why you allege the information in question to be illegal content;
- a clear indication of the exact electronic location of that information, such as the exact URL or URLs, and, where necessary, additional information enabling the identification of the illegal content adapted to the type of content and to the specific type of hosting service;
- your name and email address; and
- a statement confirming your bona fide belief that the information and allegations contained therein are accurate and complete.

14.2 Where your report contains your electronic contact information, we shall, without undue delay, send a confirmation of receipt of the report, process it in a timely, diligent, non-arbitrary and objective manner, and

15. Force Majeure

Modat shall not be liable for any delays or failures in performance of any obligation under any agreement with you to the extent that such delay or non-performance is due to any cause beyond its reasonable control ("Force Majeure"). Force Majeure-events will always include: fire, flood, explosion, epidemic, riot, civil commotion, strikes, lockout or other industrial action, acts of God, war, warlike hostilities or threats of war, terrorist activities, accidental or malicious damage and any prohibition or restriction by any government or other legal authority which affects your agreement with Modat, as well as any material delay in respect of any third party, the services or products of which are required in order for Modat to be able to perform its obligations under its agreement with you.

16. Choice of Law and Forum

16.1 These TOS, the provision of, and the usage of, our Services, are governed by the laws of the Netherlands, without application of its conflict of laws-rules.

16.2 Disputes will be exclusively submitted to the competent court in Amsterdam, the Netherlands.

17. Miscellaneous

17.1 These TOS govern the relationship between you and Modat, and each agreement that is concluded with you. Together with any specific instructions agreed to between us, they contain the entire agreement and supersede all prior proposals, agreements, understandings, terms, and contemporaneous discussions, whether oral or written, between you and Modat concerning the same subject matter.

17.2 You may not assign, novate, or otherwise transfer an agreement with Modat or your rights or obligations thereunder (incl. your account) without Modat's prior written consent. We are entitled to subcontract and assign our rights and obligations related to our performance of the Services to any third party without your consent. Any assignment not in accordance with this Clause must be considered void. This provision is meant to have effect under property law (goederenrechtelijke werking).

17.3 All delivery dates and timelines described by Modat for delivery of the Services will be considered non-binding target dates (streeftermijnen), unless expressly agreed upon in writing by Modat.

17.4 Any failure by Modat to enforce any provision of the Agreement at any time shall not be deemed to be a waiver of its right under these TOS, nor shall it prejudice any of its right to take subsequent action.

17.5 Expiry of these TOS, cancellation or other forms of termination of the TOS will not affect any existing obligations of you to Modat, nor will it affect any rights or remedies of the Parties that have accrued up until the moment of expiry or termination. In particular, the provisions surrounding liability, and applicable law and dispute resolution shall survive expiry and termination.

17.6 We consider each other independent contractors and nothing in your agreement with Modat shall be construed to create a partnership, agency, joint venture or employment relationship between Modat and you. Neither one of us is authorized to, or will, represent itself to be an employee or agent of the other or enter into any agreement on the other's behalf of or in the other's name.