



# Terms of Service

## Important; Read Carefully:

GoAnimate, Inc. (“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) (“You”) and Company. Read the terms of this Agreement carefully. By signing up for a free trial, subscribing to, or using the Vyond Platform, You agree to be bound by this Agreement. If You do not agree to the terms of this Agreement, do not sign up for a free trial, subscribe to, or use the Vyond Platform.

## WE HAVE MODIFIED THE TERMS OF SERVICE

This Agreement is effective as of August 17, 2021 except if You have 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 your review here:

- [April 29, 2018 Terms of Service](#)
- [July 22, 2021 Terms of Service](#)

## 1. DEFINITIONS

“**Administrator**” means the person or persons assigned system privileges by Customer under a multi-seat Professional account or Enterprise solution, 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, audio, music, sounds, graphics, special effects, images, logos, branding, marks and other files, information and content.

“**Data Protection Law**” means all laws applicable to the Company in its performance of the Services relating to data protection and data privacy including but not limited to the EU General Data Protection Regulation 2016/679 (“**GDPR**”) and the California Consumer Privacy Act, Cal. Civ. Code § 1798.100 et. seq. as amended, extended, repealed and replaced (“**CCPA**”).

“**Personal Data**”, “**Data Controller**”, “**Data Processor**” and “**Personal Data Breach**” shall have the meanings given those terms in the GDPR;

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

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

“**Video**” or “**Videos**” means an animated video(s) that You create by using the Vyond Platform.

“**Vyond Assets**” means all Content that Company makes available or provides within the Vyond Platform, including but not limited to templates, characters, actions, backgrounds, props, fonts, music and sound effects.

“**Vyond Platform**” means the Vyond cloud-based hosted platform, including applications such as the Vyond Studio and Vyond Character Creator, which allows users to, among other things, create and edit Videos, create and modify characters, access Vyond Assets, upload Your Content, and download, export, host and play Videos.

“**Your Content**” means all Content that You upload, post or otherwise make available or provide to the Vyond Platform.

## 2. LICENSES

Subject to the terms and conditions of this Agreement, including the payment of the applicable subscription fee, and the limitations imposed by Your applicable Subscription Plan, Company hereby grants You, solely during the term of this Agreement, a non-exclusive, non-transferable right to access and use the Vyond Assets and Vyond Platform to create Videos for Your own commercial use.

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

Subject to the terms and conditions of this Agreement, You hereby grant to Company, solely during the term of this Agreement, a non-exclusive, royalty-free license to use, reproduce, display and perform Your Content solely as necessary to provide the Services to You under this Agreement. This license shall include the right to sublicense the license granted in this paragraph to Company’s cloud service provider for the sole purpose of hosting the Vyond Platform and storing and performing the Videos as contemplated by this Agreement.

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

## 3. OWNERSHIP

As between the parties, and except for the licenses granted by this Agreement, You retain all right, title and interest, including all related intellectual property rights, in and to Your Content.

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 Your Content contained therein, which shall be owned by You), any other software, information and materials made available by Company under this Agreement, and any modifications to the foregoing.

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

## 4. RESTRICTIONS

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

You 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. You shall not remove (or attempt to remove) any digital watermark that may appear in any Video. Additionally, You 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 cannot be “shared” or used by more than one individual.

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 or in any public performance (i.e., including, without limitation, exhibition over the Internet).

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.

Subject to Section 13, the Videos may not be assigned, transferred or used for the benefit of a third party unless You have purchased a “Transfer Rights” or “Sublicense Rights” license.

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

### Data Security

Customer shall control the privacy settings for the Videos it has created and may designate them as “Private” or “Shared.” If Customer accesses the Vyond Platform under a multi-seat Professional account or Enterprise solution, Customer acknowledges that the Administrator, as Customer’s agent, has the ability and authority to delete all of Customer’s data processed

on the Vyond Platform, including all Customer Consent and individual account details.

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/>). Company has implemented reasonable security measures in connection with the Vyond Platform; however, You acknowledge 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. You acknowledge that if it wishes to protect its transmission of any data, it is Your responsibility to use a secure encrypted connection to communicate with the Vyond Platform. Company shall not be liable to You 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 Your 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. You agree to abide by Company’s acceptable use policy.

### **Data Privacy**

Company as Controller: You acknowledge 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 available at <https://vyond.com/privacy> as it is amended from time to time.

Company as Processor: When Company provides You with the Services under this Agreement Company may process certain Personal Data on Your behalf – for example Personal Data You have uploaded at Your own discretion for inclusion in Vyond Videos. When Company processes this limited Personal Data Company is the Data Processor and You are the Data Controller. This section applies to this limited Personal Data over which Company is the Data Processor. You agree to comply with all the obligations applicable to You under Data Protection Law and You represent that You have all necessary rights and consents to transfer the Personal Data to Company for processing. Company will use and process the Personal Data in order to provide the Services under this Agreement in accordance with Your instructions (as represented in this Agreement) and Data Protection Law. In Company’s role as Data Processor it shall: (a) only process Personal Data in accordance with this Agreement, as part of any processing initiated by You in using the Services and to comply with other reasonable documented instructions consistent with this Agreement (Company will inform You if an instruction infringes Data Protection Law); (b) not sell, rent, release, disclose, disseminate, make available, transfer Personal Data for monetary or other valuable consideration; (c) not further transfer Personal Data (You understand that Company and its subcontractors are located in the United States and the EEA and You consent to processing in these locations) to any country outside EEA

without notice to You and subject to such requirements as are necessary to comply with Data Protection Law; (e) ensure that 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 Personal Data are subject to appropriate confidentiality obligations; (f) notify You and allow You an opportunity to object (on reasonable grounds) before engaging a new subcontractor to process Personal Data in order to provide the Services, ensure such subcontractor provides at least the same level of security as Company, and remain fully liable to You in respect of the performance of the subcontractor's data protection obligations; (g) at Your cost, provide assistance to You in relation to Your obligations concerning data subject rights, data security, data breach notification and data protection impact assessment obligations; (h) notify You without undue delay of becoming aware of a Personal Data Breach; (i) after the Services have been provided, cease processing Personal Data and, at Your discretion, delete or return Personal Data except for non-readable backup copies of 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 You of such requirement; and (j) comply with any reasonable requests for information necessary to demonstrate compliance with this Section 5. You consent to Company's use of its current subcontractors, And Company will make available a list of current subcontractors on request. You may request a standalone Data Processing Agreement and/or EU standard contractual clauses for EEA to US data transfers. The nature, purpose, subject matter and duration of processing is the provision of the Services for the Term, the categories of data subjects are generally employees and the types of Personal Data are any Personal Data You have uploaded at Your own discretion for inclusion in Vyond Videos.

## **6. TERM AND TERMINATION**

This Agreement begins on the date when You first sign up for a free trial or the date when You subscribe to a paid Subscription Plan. If You subscribe to a monthly, quarterly or annual Subscription Plan, 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 You have not paid any applicable Subscription fee or if You materially breach the Agreement and fail to remedy the breach within thirty (30) days of notice of the breach. Should You wish to terminate this Agreement, You may turn off the auto-renew feature under Account Settings. In the event of Your termination pursuant to this Section 6, this Agreement will terminate at the end of then-current Subscription Plan term. You must continue to pay all charges incurred during the remainder of the then-current term. Company reserves the right to change or discontinue any part of the Vyond Platform or Services at any time. If Company discontinues or sunsets the Vyond Platform or Services altogether, it will give You 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. You agree to pay all fees charged by Company and otherwise incurred by You. All fees are payable in advance, non-refundable and, unless otherwise stated, in US dollars.

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

You are 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. You 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 Your sole responsibility, and You agree 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**

You may not export or re-export the Vyond Assets, the Vyond Platform or Your 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 You that for a period of ninety (90) days from Your 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 You 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 YOU "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 Your 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.

You represent and warrant to Company that You own or otherwise control and have sufficient rights or licenses to provide all Your Content for use by Company in the manner contemplated by this Agreement.

## 10. LIMITATIONS 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), OR OTHERWISE.

EACH PARTY'S LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED THE FEES, IF ANY, PAID OR PAYABLE BY YOU 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, You 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 or in connection with any and all of the following: (a) any allegation that Your 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 Your account, or (d) any failure of You to have all necessary rights and licenses in and to Your Content.

Subject to Section 10, Company shall indemnify and hold harmless You and Your 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 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 pro-

vide 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 You 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 the subscription fees paid by You under this Agreement.

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**

You agree 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 You know or reasonably should know is confidential to Company.

To the extent You provide Company with any suggestions, information, ideas, or feedback concerning any of the Vyond Assets, Vyond Platform, or Services, including but not limited to, a report of any errors which You discover while using the Vyond Platform or any related documentation ("Feedback"), such Feedback will be the property of Company. You agree to assign, and hereby do assign, all right, title and interest worldwide in the Feedback, and the related intellectual property rights, to Company and agree to assist Company in perfecting and enforcing these rights.

## **13. ASSIGNMENT**

You may not transfer or assign Your rights under this Agreement, in whole or in part, without the prior written consent of Company, except that You may, without obtaining the prior written consent of Company, transfer and assign Your rights under this Agreement in connection with a merger, acquisition or sale of all or substantially all of Your assets to which this Agreement relates (each, a "Permitted M&A Transaction"). Any attempted assignment in violation of the foregoing is void. If You assign this Agreement pursuant to a Permitted M&A Transaction, You agree 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 You have any questions about this Agreement, or if You want 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 You 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 Videos. If You believe that Your 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 You as the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which You may be contacted.
- A statement that You have 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 You are 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:

Gary Lipkowitz

[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 You that we have removed or disabled access to copyright-protected material that You provided, if such removal is pursuant to a valid DMCA take-down notice that we have received. If You receive such notice from us, You may provide us with a counter-notification in writing to Company's designated agent that includes all of the following information:

- Your 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 You under the penalty of perjury, that You have 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
- Your name, physical address and telephone number, and a statement that You consent to the jurisdiction of a court for the judicial district in which Your physical address is located, or if Your physical address is outside of the United States, for any judicial district in which Company may be located, and that You 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 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 nonexclusive, 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, but not limited to, 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; unavailability of rights-of-way or materials; or 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 You, 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 ("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 the Vyond 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.

You will neither knowingly upload Content to nor knowingly create a 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 You do 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, You 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 Your statements are sponsored or endorsed by Vyond or Company.

You 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 Your account and/or suspend Your access to the Vyond Platform for violation of this Policy until such time as the violation is corrected and (b) block or delete any of Your Content or Your Videos; 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 of Your Content or other information submitted by You or anyone else.