



# Codean

## User license agreement

Last update: **Sep 1, 2023**



## USER LICENSE AGREEMENT

This User License Agreement (hereinafter “License Agreement”) is a legal agreement between you (either as an individual, a company, or an organization, hereinafter “the Licensee”) and Codean B.V. (hereinafter “the Licensor”) regarding your use of Codean and associated information (hereinafter “the Software”).

### DEFINITIONS

Additional Service	Any additional services purchased by the Licensee in connection to the Software and/or the Service, through a Quote. Such Additional Service is subject to the conditions of this License Agreement and any further conditions defined in the Quote.
Community Edition	Basic online version of Codean, available at the conditions and with the limitations described in the website (Pricing page).
Data	Any and all information and data - including but not limited to the price plan, purchase data records, pricing, customer data, product data, source code uploaded to Codean (when using any online edition), usage data, audit data, service data, client’s usage percentages and other, related billing details accruing from time to time in respect of certain sales of goods and/or services delivered and/or rendered by the Licensee - processed by the Licensee through use of the Service, including Personal Data.
Documentation	All content describing to any extent the use of the Software.
Effective Date	The date of execution or acceptance of the Quote, or the date on which the Software is accessed or used for the first time, whichever is earlier.
Enterprise Edition	Paid online or offline version of Codean, available at the conditions and with the limitations described in the website (Pricing page).

Error	A substantial, demonstrable and reproducible failure of the Software to perform in accordance with the Documentation.
GDPR	European Union General Data Protection Regulation (Regulation (EU) 2016/679).
IP-Rights	Any patent right, copyright, design right, trade mark right, sui generis rights in databases, whether registered or not, as well as any application to register any of the aforementioned rights, and (rights in) trade secrets, or know-how and any other intellectual or industrial right of whatever nature in any part of the world.
Licensee	The person or entity using either edition of the Software.
Licensor	Codean B.V.
Online Edition	Paid online version of Codean, available at the conditions and with the limitations described in the website (Pricing page).
On-premise Edition	Paid offline version of Codean, available at the conditions and with the limitations described in the website (Pricing page).
Party/Parties	The Licensee and/or the Licensor, that engage or have engaged into a collaboration under the terms and conditions as described in this License Agreement (and any further conditions defined in the Quote).
Quote	The document by which the Licensee is offered the Software, Service, Additional Service and/or Support.
Software	Codean (the tool) and all its underlying technology, software, and documentation.
Schedule	Exhibit to the Agreement.
Service	Access and use of the Software by the Licensee.
Service Fee	Fee to be paid by the Licensee to the Licensor.

User	The Licensee when using the Community Edition or the Online Edition. The person(s) authorized by the Licensee to access the Software, as per conditions specified in the Quote, when using the On-premise Edition or the Enterprise Edition.
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## APPLICABILITY

1. By accessing or otherwise using the Software, the Service, or Additional Service(s) provided by the Licensor, the Licensee is bound by the terms of this License Agreement. If the Licensee does not agree to all of the terms of this License Agreement, they shall not install or use the Software. If they agree to all of the terms of this License Agreement, they may use the Software for any lawful purpose.
2. This License Agreement comes into force from the date of execution or acceptance of the Quote, or the date on which the Software is accessed or used for the first time, whichever is earlier ('Effective Date').
3. Each User shall comply with this Agreement and the Licensee shall be responsible for the acts or omissions of any User.
4. Any Terms and Conditions defined by the Licensee are explicitly excluded by the Licensor.
5. In case of an irreconcilable conflict among the provisions of the Quote, this License Agreement, or other documents, the following order of precedence applies:
  - > The Data Processing Addendum (if parties have entered into a DPA); then
  - > the Quote, if any; then
  - > this License Agreement.

## SERVICE USAGE

6. The Licensee must create an account to use the Service, and provide accurate, current and complete information. The Licensee must keep their credentials secret and up-to-date to receive notices, statements, and other information from the Licensor by email or through the account. At all times, the Licensee is responsible for all actions taken through their account, regardless of who is using it.

7. The Licensee will determine which Users will have access to the Service when using the On-premise Edition or the Enterprise Edition. The use of the Service by Licensee's User(s) is personal. Therefore, the User(s) may not give any other person remote or other access to the Software. The login and password made available to the User are also personal. The User must keep these codes strictly confidential and/or use these codes with due care and caution. The use of said codes shall be solely the responsibility of and the risk of the Licensee. The Licensee shall indemnify, defend, and hold harmless the Licensor from any claim, proceeding, loss or damages based upon any use, misuse, or unauthorized use of the User's login code and/or password relating to the Service.
8. The Licensor does not guarantee that the Software provided as part of the Service is Error-free and works without interruption. The Licensor shall make every effort to resolve Errors in the software within a reasonable term, insofar as the software has been developed by the Licensor themselves and the relevant Errors have been reported to the Licensor by the Licensee in detail and in writing.
9. The Licensor shall carry out the Agreement and provide the Service and the Support in accordance with the demands of good workmanship under Dutch law, with observance of reasonable commercial standards of fair dealing. The Licensor cannot guarantee that the expected results will be achieved, and the agreement therefore leads to a best efforts obligation ("inspanningsverplichting") and not to an obligation of result ("resultaatsverplichting"). As such, the Licensor will take reasonable actions that they anticipate to achieve the stated objective(s), but will not be required to exhaust all possibilities or put forth all reasonable efforts to achieve the stated objective(s).
10. The Licensor does not make backups of Licensee's content or any other information stored on the Software, unless it has been explicitly agreed in writing.
11. The Licensee acknowledges and agrees that it must not, and will ensure each User does not - nor permit any third party to - make use of the Service other than as expressly stipulated in the Agreement and/or as expressly and explicitly allowed by overriding mandatory law, such as the Copyright Act.
12. The Licensee is responsible for the correct and lawful processing of Data (which includes personal data). The Licensee should ensure that processed Data is correct,

complete and up-to-date. The Licensee agrees and understands that any inadequate, incorrect or incomplete Data may negatively impact the Service.

13. By utilizing the Software, the Client agrees that any uploaded code, as well as any modifications thereof, can be used for training purposes of the Software. This entails that the provided code may be analyzed, processed, and utilized to enhance the analysis algorithm and error detection capabilities of the Software. This processing and analysis will be conducted in a manner that renders the original code non-reproducible, and there is no risk of exposing confidential information. If the Client wishes to exclude specific parts or all of the code from this training process, the Client should send a request to [legal@codean.io](mailto:legal@codean.io).
14. The purchase, use and maintenance of electronic communication facilities and the Licensee own IT- infrastructure (including software and hardware) in order to be able to use the Service, is for the Licensee own account and risk. This also includes, for instance, necessary access of the Software to third party platforms which are used by the Licensee. The Licensor will in no event be liable for any damage, loss or costs, including loss of Data, or any inability to use the Service as a result of a malfunction and/or any other non-availability of the aforesaid electronic communication facilities and/or IT-infrastructure and/or third party platforms and/or the Licensee using inadequate Data.
15. In using the Service, the Licensee is responsible for compliance with all laws and regulations that apply to it.
16. The Licensee is obliged to ensure that the Software is not used in such a way that would breach any applicable laws or this Agreement. The Licensee indemnifies the Licensor against all claims and losses arising from any such use and from any use that is not in accordance with the applicable laws and/or the terms of this Agreement.
17. The Software is licensed to the Licensee only for checking/modifying/scanning of non-copyrighted materials, materials in which the Licensee owns the copyright, or materials the Licensee is authorized or legally permitted to upload/check/modify/scan or otherwise process through the Software.

## MAINTENANCE AND SUPPORT

18. Subject to the terms and conditions of the Agreement, the Licensor shall use best efforts in maintaining the Software and providing the Service and Support to the Licensee in accordance with the following terms and conditions (and to any additional terms and conditions set by the Quote):

- > Standard Support is available for Errors only. The Licensee will notify Standard Support requests to the Licensor as soon as reasonably possible. Issues may be reported to the helpdesk, which is accessible per e-mail seven (7) days a week. The Standard Support will be rendered during regular business hours from 9:00 to 17:00, Monday through Friday, CET.
- > The Licensor will make qualified technical representatives available to render Standard Support. This support relates to troubleshooting of the Software issues, file management, report troubleshooting, interpretation of error messages, problem diagnosis, and recommendations for fully utilizing the Software capabilities. The Licensor also will answer questions regarding procedures, documentation, proper operation, service, training, and Software enhancements.
- > The Licensor will provide Software releases, if and when available. The Licensor is not responsible for upwards or downwards compatibility and/or interoperability.
- > The Licensee shall be responsible for the adequate duplication and documentation of all of its files and Data for backup purposes. The Licensor will not be liable for Licensee's failure to backup their files and Data.
- > Standard Support is not provided for any Error that the Licensor reasonably believes not to be attributable to the Licensor, including but not limited to Errors caused by (a) Licensee's or a third-party contractor's modifications; (b) operation of another platform other than what utilized by the Software (including but not limited to cloud providers, operating systems, other software applications or databases) or any hardware or other equipment owned by the Licensee; (c) use of the Software that does not conform with the Documentation; (d) misuse by the Licensee of the Software. In the event the Licensor provides Error correction services and, in doing so, reasonably determines that the Error was not caused

by the Software, the Licensor shall be entitled to charge and the Licensee shall pay for the time and materials expended at Licensor's then-standard commercial rates.

19. The Licensee acknowledges that the Licensor is always innovating and improving the Software. Therefore, the Licensee agrees to changes within the Software that are made at Licensor's discretion (whether this is for the purpose of improving or updating the Service, resolving bugs or otherwise); the Service is provided 'as is', with no warranties, and the Licensee agrees that the Licensor is not liable for anything that the Licensee does with it.
20. The Licensor reserves the right to perform procedural and technical changes or improvements to the Services during the Agreement. Users are proactively notified of changes to the Software.

## PRICING

21. A description of the Service, including the allowed number of Users and applicable prices is stated in the Quote. Unless expressly stated otherwise, all prices stated are exclusive of VAT.
22. The Licensee will pay the invoices in accordance with the payment terms set forth on the invoice. Unless otherwise agreed, the Licensee will make payment within fourteen (14) days from the invoice date.
23. Additional Services purchased by the Licensee are agreed with a Quote.
24. Price increase: Associated charges for any (financial) transfer are at all times at the Licensee's expense. The Licensor will be entitled to adjust the applicable prices and rates in case of circumstances that lead to an increased cost price, such as (but not limited to): i) increase of taxes or other levies and/or government rights, ii) changing exchange rates, iii) increase of wages, transport costs, supplier purchase prices and/or purchase prices, etc., iv) inflation, v) increase of product functionality. The Licensor will provide written notice of such changes as part of its invoicing process.



25. Price indexation: Every three months (quarterly) since the start date of the Agreement, the Licensor is authorized to modify their fees – if needed in retrospect – every quarter in accordance with the consumer price index (CPI) as published by the Central Bureau of Statistics (CBS). The series 2015=100 will be used, unless the Licensor chooses a more recent series. The changed price is equal to the applicable price of the previous quarter, multiplied by the index figure of the current quarter.

## LICENSOR'S INTELLECTUAL PROPERTY

26. The Licensor grants the Licensee a limited, personal, non-transferable, non-exclusive, non-sub-licensable right to use the Service in accordance with the Agreement, as of the Effective Date, during the agreed license term.
27. All IP-rights related to the Software, Service, Documentation and Support will vest and will remain vested exclusively in the Licensor and/or (insofar applicable) their third party suppliers. The Licensee acquires limited rights of use only in as far as explicitly granted under the Agreement. Furthermore, the Licensor exclusively owns and/or may use all rights in any ideas, concepts, know-how and techniques with respect to the Service, Support, the Software and/or the Documentation as well as the technology in connection thereto. The Licensee shall not, and shall not permit any third party to use the Software to develop a product that competes with the Software.
28. It is explicitly acknowledged and agreed that (i) the Licensee may not and shall not permit any third party to reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code of the Software or any parts thereof (including interfaces, web-sites etc.), (ii) the Licensee shall not, and shall not permit any third party, to copy, make error corrections or otherwise modify or adapt the Software or any part thereof nor create derivative works based on the Software, and/or (iii) the Licensee may not sell, (sub-)license, assign, transfer or lease the Service nor use the Service for commercial time-sharing, rental, or service bureau use.
29. All IP-rights in/relating to Data (as meant in Clause “Service Usage”) uploaded or otherwise provided by the Licensee remain vested in the Licensee, their User(s) and/or their licensors. By submitting Data onto the Software, the Licensee automatically grants (on behalf of their User(s)) to the Licensor a royalty free, unencumbered,

worldwide, non- exclusive license to use, multiply and otherwise use the Data insofar as necessary in order to provide its services pursuant to the License Agreement. This license will lapse after i) the Data is removed or ii) the Agreement is terminated.

## THIRD PARTY RIGHTS

30. The Licensee will be responsible for ensuring that they are entitled to process Data through the Software under the applicable regulations, including data protection regulations, and shall exempt and indemnify the Licensor of any third party claims regarding the use/processing of such Data. If a third party objects to Licensee's use of the Software based on the claim that such use infringes the third party's intellectual property right or any other rights (hereinafter referred to as 'Infringement Claim'), the Licensee will defend the Licensor against that Infringement Claim and pay all costs, damages and legal fees that a court finally awards. The Licensee shall promptly notify the Licensor in writing of the Infringement Claim as soon as they becomes aware of such Infringement Claim and cooperate with the Licensor in the defense and any related settlement negotiations by providing the Licensor with appropriate information and assistance needed for such defense or settlement.
31. In the event of an Infringement Claim relating to the Software itself, the Licensor shall only be obliged to pay damages to the Licensee for the infringement of intellectual property rights of third parties if the Licensor has been responsible for the infringement. The Licensor will be entitled to either: 1) obtain the continued right for the Licensee to use the Software, 2) bring the infringement to an end by modifying the Software for the part which, essentially, possesses the same functions as the affected software, or 3) terminate this License Agreement with written notice and pay to the Licensee an amount equal to the License Fee actually paid for the license to the Software by the Licensee. The Licensor shall only be obliged to pay the stated amount to the Licensee if the Infringement Claim is actually raised against the Licensee within a period of two (2) years following the commencement date of the License Agreement. If an Infringement Claim is raised against the Licensee after the stated period has expired, the Licensor shall be entitled to terminate this License Agreement without payment of any amount to the Licensee.

32. The performance of Licensor's obligations under this Clause "Third Party Rights" shall be Licensee's sole remedy in case of any Infringement Claims, and the Licensee shall have no other claims against the Licensor as a result of such Infringement Claim. Upon termination of this License Agreement, the Licensee shall promptly cease using the Software and fulfill the terms and conditions connected to termination as stated in Clause "Term and Termination" of this License Agreement.
33. The limited warranty stated under this Clause "Third Party Rights" is void if the Infringement Claim has resulted from accident, abuse or misapplication.

## LIABILITY

34. To the extent permissible under applicable law, the Licensor shall not be liable for any loss of use, loss of data, interruption of business, downtime, lost profits, or any indirect, special incidental, or consequential damages of any kind regardless of the form of action whether in contract, tort (including negligence), strict product liability, or otherwise, even if it has been advised of the possibility of damages. The maximum total and aggregate liability of the Licensor for direct damages, on whatever legal ground, including but not limited to any indemnification obligation and breach of warranty, per calendar year is limited to the amount paid by the Licensee to the Licensor in that calendar year.
35. By 'direct loss' shall exclusively be understood:
  - > reasonable expenses which the Licensee would have to incur to have Licensor's performance fulfill the Agreement. However, such loss shall not be compensated, however, if the Licensee has terminated the Agreement on the basis of termination for cause ("ontbinding");
  - > reasonable expenses incurred in determining the cause and extent of the loss insofar as such determination relates to any direct loss within the meaning of the Agreement;
  - > reasonable expenses incurred in preventing or reducing a loss insofar as the Licensee proves that such expenses have resulted in a reduction of any direct loss within the meaning of this Article.

36. Licensor's liability for any other loss than direct loss, including – but not limited to – indirect loss, consequential loss, damages due to late delivery, damages due to late billing, loss of and/or damage to data, incorrect data (incl. validation, transformation and/or integration), incorrect audit data, loss of revenue, loss of profits, lost savings and loss caused by interruption of operations, is fully excluded.
37. The limitations mentioned in the preceding paragraphs shall not apply if and insofar as the damage is the result of willful intent or gross negligence by the board of directors or the executive management of the Licensor.
38. Licensor's liability shall not arise unless the Licensee forthwith and properly declares the Licensor in default in writing, stating a reasonable period in which to remedy the failure, and the Licensor continues, and can be held accountable for continuing to fail in the fulfillment of its obligations even after such remedy period. The notice of default must specify the failure in as much detail as possible and be reported by the Licensee to the Licensor in writing within five working days after it has been arisen, so that the Licensor will be able to react adequately and timely.
39. Without prejudice to Licensor's limitation of liability, the Service will be in conformity with the Agreement if rendered substantially in accordance with the Documentation, when correctly and properly used. The Licensee acknowledges and accepts, however, that:
  - > the Service is provided "as-is", as described under Clause "Maintenance and Support" and may not always meet all of Licensee's expectations;
  - > the Service will not be free of errors and will not function without interruption; and,
  - > not all the errors in the Services (if any) can be repaired.
40. Licensee's exclusive remedy and Licensor's entire liability for an attributable, material breach of the conformity statement in this Clause "Liability" is that the Licensor will use its best efforts (as defined under Clause "Service Usage") in order to attempt to cure such breach, provided that the Licensee properly and sufficiently informed the Licensor in writing about the breach.

41. Force majeure. Neither party shall be bound to meet any obligation if prevented from doing so as a consequence of force majeure. The expression 'force majeure' shall in any event include any failure of any suppliers of the Licensor not due to their fault or not for their risk, any DDOS attack (attempt), any viruses in the Software, any hacking (attempts) of the Software and/or fire. If a situation of force majeure has lasted for more than 60 working days, the Parties shall be entitled to terminate the Agreement by terminating it in writing. In that case any performance, which has already taken place pursuant to the Agreement, shall be settled proportionately without either Party being thereafter indebted to the other in any other amount.

## WARRANTIES AND OBLIGATIONS

42. Each Party represents and warrants to the other Party that it has all necessary rights and authority to enter into the Agreement.
43. The Licensor warrants that, to its best knowledge, the Services do not violate the Intellectual Property Rights of any third party.

## TERM AND TERMINATION

44. The Agreement is valid for the period as specified in the Quote. After this term, the Agreement will automatically be renewed for, each time, a period of one year, unless terminated by either Party with a notice period of three months before expiry of the renewed period (the end-date defined as the 'Termination Date'). The right of either Party to early terminate for convenience is excluded.
45. Additional Services that are purchased by the Licensee will be concluded for the remaining term of the initial Agreement and will be extended in accordance with the terms for the initial Agreement.
46. Either Party may terminate the Agreement if the other Party, after having been given proper notice of default in writing specifying as many details as possible and stating a reasonable period within which to remedy the failure, fails to meet, and can be held accountable for not performing, any material obligations arising from the Agreement. Codean considers acting with your violation of the payment terms, your violation of any

third-party right, your violation of any provision of the User license agreement and the Privacy policy, etc.

47. Either Party may terminate the Agreement immediately if:
  - > the other Party makes a composition for the benefit of creditors;
  - > the other Party is insolvent or is unable to pay its debts as they fall due in the ordinary course of its business;
  - > any proceedings are instituted by or against the other Party in bankruptcy or under any insolvency laws or for re-organization, receivership or dissolution.
48. Upon the termination being effective, the Licensee will cease:
  - > any and all use of the Service;
  - > any and all use of Licensor's IP-rights, including Licensor's brands.

## CONFIDENTIALITY

49. Parties ensure that all information, such as Data, designs, IP rights, Documentation and Software received from the other party and is known or should have been known by the receiving party as Confidential Information, is kept strictly Confidential Information. The receiving Party shall use such confidential information solely for the purposes it was provided for and shall not disclose or otherwise dispose of such confidential information to third parties, unless it is obliged to do so by legal requirement or verdict. In that case the disclosing party shall inform the other party of the legal requirement or verdict, unless laws prohibit such notice.
50. The receiving Party will use all reasonable efforts to safeguard the confidential information of the other Party, in the same way and on the same level as it would safeguard its own confidential information.
51. All copies, extracts and notes thereof made by the Licensee shall remain Codean's property and shall be treated as confidential information of Codean. Upon termination of this Agreement, the Licensee shall, at the request of Codean, promptly return to the

Codean all confidential information of Codean which the Licensee may then have in its possession.

## PRIVACY

52. In order to make use of the Service it is required that the Licensee's User(s) creates an Account. The Licensee will provide the Licensor with contact information such as name and e-mail address. The provision of this information is subject to legislation in respect of privacy, such as the General Data Protection Regulation (GDPR). If the Licensee shares additional personal data, for example as part of the code uploaded in the Software, the Licensee qualifies as a controller and is responsible for the lawful processing of this data. The Licensor only uses your personal data in accordance with the Data Processing Agreement and the Privacy Policy.

## APPLICABLE LAW AND JURISDICTION

53. The Agreement shall be governed by and construed in accordance with the laws of The Netherlands. References to any legislation in this document are construed as references to such legislation as amended or re-enacted or as otherwise modified from time to time. The Parties agree that any dispute arising from or in connection with the Agreement shall be brought before the competent court of Amsterdam.
54. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this License Agreement.

## MISCELLANEOUS

55. Deviations from these Terms of Use are valid only if they have been accepted in writing by the Licensor.
56. The Licensor may at any time during the term of the Agreement amend or supplement these Terms and Conditions. The Licensee will be notified in writing of these amendments, in which notification amendments will be mentioned. These new Terms and Conditions will be applicable as of the next renewal date of the Licensee.

57. If any provision of this License Agreement is held to be illegal, invalid or unenforceable, such provision shall nonetheless be enforced to the fullest extent permitted by applicable law, so as to reflect the original intent of the parties, and such provision shall not affect the legality and validity of the other provisions.
58. Rights and obligations under this Agreement which by their nature are intended to survive termination, including without limitation the indemnification and liability limitations provisions set forth in this Agreement, shall remain in full effect after termination or expiration of the Agreement.
59. The Licensee is not permitted to transfer any obligation from the Agreement to third parties, unless the Licensor expressly agrees.
60. Any notice of legal nature under this Agreement shall be given by sending it by email to [legal@codean.io](mailto:legal@codean.io).