

**AGENA.AI CLOUD SERVICE
TERMS OF SERVICE AGREEMENT**

THIS TERMS OF SERVICE AGREEMENT (“AGREEMENT”) GOVERNS CUSTOMER’S ACQUISITION AND USE OF THE AGENA.AI CLOUD SERVICE FROM AGENA LIMITED (“AGENA”). CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

IF CUSTOMER REGISTERS FOR A FREE TRIAL OF AGENA.AI CLOUD SERVICE, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL.

BY USING THE AGENA.AI CLOUD SERVICE FROM AGENA, THE INDIVIDUAL IF ACTING ON BEHALF OF THEMSELVES (“INDIVIDUAL CUSTOMER”) OR THE INDIVIDUAL WHO IS ACTING ON BEHALF OF A COMPANY, EDUCATIONAL OR NONPROFIT INSTITUTION, GOVERNMENTAL AGENCY, OR OTHER LEGAL ENTITY (“ENTITY CUSTOMER”), THE INDIVIDUAL CUSTOMER AND ENTITY CUSTOMER (TOGETHER ARE “CUSTOMER”) IS AGREEING TO BE BOUND BY THIS AGREEMENT.

IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF ENITY CUSTOMER, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

This Agreement was last updated on 6 March 2024.

These Terms of Service are effective on 8 April 2024, if you accepted a previous version of these Terms of Service prior to 6 March 2024.

Agena may update the terms of this Agreement from time to time. Agena will provide you with written notice of any material updates at least thirty (30) days prior to the date the updated version of this Agreement is effective. The updated version of this Agreement will be available at the Agena Website. Notices for material updates to the terms of this Agreement will be given in accordance with Section 9.7 (Manner of Giving Notice). Following such notice, your continued use of the Services on or after the date the updated version of this Agreement is effective and binding, as indicated at the top of this Agreement, constitutes your acceptance of the updated version of this Agreement. The updated version of this Agreement supersedes all prior versions. If you do not agree to the updated version of this Agreement, you must stop using the Services immediately.

1. DEFINITIONS

- “Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

- “Agena” means Agena Limited, a company registered in England and Wales, registration number 3459875 and registered at 11 Main Street Caldecote Cambridge CB23 7NU United Kingdom.
- “Agena Fair Use Policy” means certain terms relating to the use of the Services, the current version of which is available at the Agena Website, as updated from time to time.
- “Agena Website” means www.agna.ai, including any subdomains if applicable.
- “Agena.ai Modeller” means Agena’s Bayesian Network software, including Agena.ai Modeller API, licensed to Customer under the terms of the Agena.ai Modeller Software License Agreement which is hereby incorporated by reference into this Agreement.
- “Agreement” means this Terms of Service Agreement.
- “Authorised User” means an Individual Customer or employee or registered student of Entity Customer or its Affiliates who is authorised by Entity Customer to use the Services, for whom Entity Customer has purchased the Services. Entity Customer is responsible for maintaining a list of Authorised Users and agrees to disclose to Agena the list of Authorised Users within three working days of Agena requesting the list.
- “Beta Services” means Agena.ai cloud services or functionality that may be made available to Customer to try at its option at no additional charge which is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.
- “Customer Data” means electronic data and information submitted by or for Customer to the Services.
- “Documentation” means the applicable Privacy, Data and Fair Use policies at www.agna.ai, as updated from time to time.
- “End-User” means an Individual Customer or employee or registered student of Entity Customer or its Affiliates who is authorised by Customer to access web apps created by an Authorised User and accessed through the Services. For the avoidance of doubt the End User and Authorised User can be the same person.
- “License Fee” means the applicable fee for the Licensed Software excluding applicable taxes.
- “License Period” means a time-limited term to use the Licensed Software.
- “Licensed Software” means Agena.ai Modeller software licensed to Customer under the terms of the Agena.ai Modeller Software License Agreement including any Updates and Upgrades thereto, and access to the Agena.ai Cloud Service which is hereby incorporated by reference into this Agreement.
- “Malicious Code” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.
- “Sales Invoice” means an invoicing document or online invoice specifying the Services provided hereunder to Customer by Agena or any of their Affiliates, including any addenda and supplements thereto, and which lists the Licensed Software ordered by Customer, the License Fee payable for such Licensed Software, the License Period and any additional terms and conditions agreed to by the parties.

- “Services” means the Agena.ai Cloud Service, including the Web App Designer and Cloud App Manager, which is made available online by Agena.
- “Subscription Fee” means the applicable fee for the Services excluding applicable taxes.
- “Subscription Period” means a time-limited term to use the Services as set forth in the Sales Invoice, which is coterminous with the license period of Customer’s Agena.ai Modeller software license.

2. AGENA RESPONSIBILITIES

2.1 Provision of Services

Agena will (a) make the Services available to Customer pursuant to this Agreement, and the applicable Sales Invoice and Documentation, (b) provide applicable Agena standard support for the Services to Customer at no additional charge, and/or upgraded support if purchased, (c) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Agena shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond Agena’s reasonable control, including, for example, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labour problem (other than one involving Agena employees), Internet service provider failure or delay, or denial of service attack, and (d) provide the Services in accordance with laws and government regulations applicable to Agena’s provision of its Services to its customers generally (i.e., without regard for Customer’s particular use of the Services), and subject to Customer’s, Authorised Users’ and End Users’ use of the Services in accordance with this Agreement, the Documentation and the applicable Sales Invoice.

2.2 Protection of Customer Data

Agena will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorised access to or disclosure of Customer Data (other than by Customer, Authorised Users and End Users).

2.3 Agena Personnel

Agena will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with Agena’s obligations under this Agreement, except as otherwise specified in this Agreement.

2.4 Beta Services

From time to time, Agena may make Beta Services available to Customer at no charge. Customer may choose to try such Beta Services or not in its sole discretion. Any use of Beta Services will be subject to a separate Beta Services agreement.

2.5 Free Trial

If Customer has registered for a trial license for the Licensed Software or Agena provides Customer with a free trial, Agena will make the applicable Services available to Customer on a trial basis free of charge pursuant to the applicable Documentation until the earlier of (a) the end of the free trial period for which Customer registered to use the Licensed Software, or (b) the start date of any Licensed

Software purchased by Customer, or (c) termination by Agena in its sole discretion. Additional trial terms and conditions may appear on the registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

ANY DATA CUSTOMER ENTERS INTO THE SERVICES, AND ANY CUSTOMISATIONS MADE TO THE SERVICES BY OR FOR CUSTOMER, DURING CUSTOMER'S FREE TRIAL MAY BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES THE LICENSES SOFTWARE OR A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASES APPLICABLE UPGRADED SERVICES, OR EXPORTS SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD. NOTWITHSTANDING THE "REPRESENTATIONS, WARRANTIES AND DISCLAIMERS" SECTION BELOW, DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND AGENA SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE SERVICES FOR THE FREE TRIAL PERIOD. WITHOUT LIMITING THE FOREGOING, AGENA AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (A) CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL MEET CUSTOMER'S REQUIREMENTS, (B) CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USAGE DATA PROVIDED DURING THE FREE TRIAL PERIOD WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE "LIMITATION OF LIABILITY" SECTION BELOW, CUSTOMER SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO AGENA AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER. CUSTOMER SHALL REVIEW THE APPLICABLE SERVICE'S DOCUMENTATION DURING THE TRIAL PERIOD TO BECOME FAMILIAR WITH THE FEATURES AND FUNCTIONS OF THE SERVICES BEFORE MAKING A PURCHASE.

3. USE OF SERVICES

3.1 Subscriptions

Unless otherwise provided in the applicable Sales Invoice, (a) Services are purchased as subscriptions for the term stated in the applicable Sales Invoice, or as part of the Licensed Software purchased by Customer, (b) subscriptions for Services may be added during a Subscription Period at the same pricing as the underlying subscription pricing, prorated for the portion of that Subscription Period remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Agena regarding future functionality or features.

3.2 End Users of the Services

Unless otherwise provided in the applicable Sales Invoice, the number of End Users is limited to one End User per Agena.ai Modeller licence granted to the Customer or if the Agena.ai Modeller licence type is "Floating" the number of End Users is limited to the number of concurrent authorised user sessions granted to the Customer.

3.3 Usage Allowances

Unless otherwise specified in the applicable Sales Invoice, Services are subject to standard usage allowances during the Subscription Period.

3.4 Customer Responsibilities

Customer will (a) be responsible for Authorised Users' and End Users' compliance with this Agreement, Sales Invoice and Documentation, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, and Customer's use of Customer Data with the Services, (c) use commercially reasonable efforts to prevent unauthorised access to or use of Services, and notify Agena promptly of any such unauthorised access or use, (d) use Services only in accordance with this Agreement and Documentation. Any use of the Services in breach of the foregoing by Customer or Authorised Users or End Users that in Agena's judgment threatens the security, integrity or availability of Agena's services, may result in Agena's immediate suspension of the Services. However Agena will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.

3.5 Usage Restrictions

Customer will not (a) make the Services available to anyone other than to Authorised Users or End Users, unless expressly stated otherwise in the Sales Invoice, (b) sell, resell, license, sublicense, distribute, rent or lease the Services, or include the Services in a service bureau or outsourcing offering, (c) use the Services to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, (f) attempt to gain unauthorised access to the Services or its related systems or networks, (g) permit direct or indirect access to or use of the Services in a way that circumvents a contractual usage limit, or use the Services to access, copy or use any of Agena intellectual property except as permitted under this Agreement or Sales Invoice, (h) modify, copy, or create derivative works of the Services or any part, feature, function or user interface thereof, (i) frame or mirror any part of the Services, other than framing on Customer's own intranets or otherwise for its own internal business purposes, (j) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile the Services or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Services, or (4) determine whether the Services are within the scope of any patent.

4. FEES AND PAYMENT

4.1 Fees

Unless included as part of the License Fee, Customer will pay all Subscription Fees specified in the applicable Sales Invoice. Except as otherwise specified herein or in the applicable Sales Invoice, (i) fees are based on Services subscriptions purchased and not actual usage, (ii) payment obligations are non-cancellable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant Subscription Period.

4.2 Invoicing and Payment

Unless included as part of the License Fee, Customer will provide Agena with a valid purchase order, or alternative document reasonably acceptable to Agena for the Services and Agena will invoice Customer in advance for the Services. Unless otherwise stated in the applicable Sales Invoice, invoiced fees are due thirty (30) days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Agena and notifying Agena of any changes to such information.

4.3 Suspension of Services and Acceleration

If any charge owing by Customer under this or any other agreement for the Services is thirty (30) days or more overdue, Agena may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend the Services until such amounts are paid in full, provided that Agena will give Customer at least ten (10) days' prior notice that its account is overdue, in accordance with section 9.7 (Manner of Giving Notice) below for notices, before suspending the Services to Customer.

5. PROPRIETARY RIGHTS AND LICENSES

5.1 Reservation of Rights

Subject to the limited rights expressly granted hereunder, Agena, its Affiliates and its licensors reserve all of their right, title and interest in and to the Services, including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

5.2 License by Customer to Use Feedback

Customer grants to Agena and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use, distribute, disclose, and make and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer, Authorised Users or End Users relating to the operation of the Services.

6. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS

6.1 Representations

Each party represents that it has validly entered into this Agreement and has the legal power to do so.

6.2 Agena Warranties

Agena warrants that during an applicable Subscription Period (a) this Agreement and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, (b) Agena will not materially decrease the overall security of the Services, (c) the Services will perform materially in

accordance with this Agreement and applicable Documentation, and (d) Agena will not materially decrease the overall functionality of the Services. For any breach of a warranty above, Customer's exclusive remedies are those described in the "Termination" and "Refund or Payment upon Termination" sections below.

6.3 Disclaimers.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. SERVICES PROVIDED FREE OF CHARGE AND BETA SERVICES ARE PROVIDED "AS IS," AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

7. LIMITATION OF LIABILITY

7.1 Limitation of Liability

IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT- OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

7.2 Exclusion of Consequential and Related Damages

IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUE, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

8. TERM AND TERMINATION

8.1 Term of Agreement

This Agreement commences on the date Customer first accepts it and continues until all subscriptions hereunder have expired or have been terminated or the free trial period has expired or has been terminated.

8.2 Termination

A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

8.3 Refund or Payment upon Termination

If this Agreement is terminated by Customer in accordance with the “Termination” section above, Agena will refund Customer any prepaid fees covering the remainder of the term of all Sales Invoice after the effective date of termination. If this Agreement is terminated by Agena in accordance with the “Termination” section above, Customer will pay any unpaid fees covering the remainder of the term of all Sales Invoices to the extent permitted by applicable law. In no event will termination relieve customer of its obligation to pay any fees payable to Agena for the period prior to the effective date of termination.

8.4 Surviving Provisions

The sections titled “Fees and Payment”, “Proprietary Rights and Licenses”, “Disclaimers”, “Limitation of Liability”, “Refund or Payment upon Termination”, “Surviving Provisions” and “General Provisions” will survive any termination or expiration of this Agreement, and the section titled “Protection of Customer Data” will survive any termination or expiration of this Agreement for so long as Agena retains possession of Customer Data.

9. GENERAL PROVISIONS

9.1 Export Compliance

The Services may be subject to export laws and regulations of the United Kingdom and other jurisdictions. Agena and Customer each represents that it is not on any UK government sanctions list. Customer will not permit any User to access or use any Service in a UK embargoed country or region or in violation of any UK export law or regulation.

9.2 Entire Agreement

The Agreement is the entire agreement between Customer and Agena relating to the Services and (i) supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to its subject matter, and (ii) prevails over any conflicting or additional terms of any quote, purchase order, acknowledgement or similar communications between the parties.

9.3 Waiver

No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

9.4 Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

9.5 Assignment

Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party’s prior written consent (not to be unreasonably withheld); provided,

however, either party may assign this Agreement in its entirety, without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganisation, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if Entity Customer is acquired by, sells substantially all of its assets to, or undergoes a change of control in favour of, a direct competitor of Agena, then Agena may terminate this Agreement upon written notice. In the event of such a termination, Agena will refund Customer any prepaid fees covering the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

9.6 Governing Law

The laws of England and Wales will govern this Agreement.

9.7 Manner of Giving Notice

Except as otherwise specified in this Agreement, all notices to Agena will be provided via email to support@agena.ai. All notices to Customer will be provided via email to the relevant contact(s) Customer designates when ordering the Services.