

# Terms of Use

## MyScript Cloud Development Kit services

(V.4 October 2017)

This MyScript Cloud Development Kit Agreement (hereinafter referred to as “Agreement”) governs your access to and use of the MyScript Cloud Development Kit services (hereafter referred to as the “Service” and further defined below) and is an agreement between MyScript (as further identified on last page and hereinafter referred to as “we”, “us”, “our” as the context requires) and you or the entity you represent (“you”, “your” or “Customer”). This Agreement takes effect when you click the “Subscribe” button or check box presented with these terms (the “Effective Date”). You represent to us that you are lawfully able to enter into contracts (e.g. you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity. This Agreement is provided to you in English. We recommend that you download or print a copy of this Agreement for your records.

The Service is accessible by logging into MyScript Developer website at <https://developer.myscript.com/>.

MyScript<sup>®</sup> is a registered trademark of MyScript in France, in the United States and other countries.

### Section 1 – Definitions

“API” means programmatic web application program interface, interface definitions, generated code libraries, sample code and associated tools and documentation that allow Customer to create Application(s) that use(s) the Service.

“Application(s)” means the Customer’s application software or Customer’s web-based applications that are using the Service.

“Confidential Information” means any information concerning the Service and any information disclosed by a party to the other party including but not limited to information communicated to the party by other party’s employees or agents, in relation with party’s services, designs, opportunities, finances, research, development, know-how, personnel, or third-party confidential information; Confidential Information, however, does not include information that (i) is now or subsequently becomes generally available to the public through no fault or breach; (ii) the party can demonstrate to have had rightfully in its possession prior to disclosure to the party by other party with written records; (iii) is independently developed by the party without the use of any Confidential Information; (iv) the party rightfully obtains from a third party who has the right to transfer or disclose it without breach or violation of any obligation of confidentiality.

“Request(s)” shall mean, using the REST (i.e. representational state transfer) API, a REST call to the Service. With the web socket API, a request includes all the exchanges between the ‘socket open’ and the ‘socket close’. It is limited to 5 minutes, and 3 minutes if there are no exchanges.

“Result” shall mean the result of the MyScript engine recognition process that runs on the recognition server, and which processes incoming digital ink data and provides information as to the objects recognized in the incoming digital ink data. The specific format taken by the Results depends on the type of Request made: e.g. a text request returns character strings, a shape request returns the type of shape and its spatial characteristics, and an equation request returns a LaTeX/MathML string.

“Customer and end-users Data” means any information sent via the Requests and any Customer’s personal data and information, such as identification or contact details as part of the registration process for the Service or as part of the Customer’s continued use of the Service, stored in the MyScript’ server database.

« MyScript Developer website » means the MyScript’s website offering cross-platform handwriting recognition APIs for the use of MyScript recognition engine. The MyScript Developer is accessible through the following link: <https://developer.myscript.com/>.

“Documentation” means user documentation made available by MyScript to Customer for use with the Service, as updated from time to time.

“Service” means MyScript Cloud Development Kit consisting in a HTTP-based set of services providing handwriting recognition for digital ink, using the MyScript recognition engine, in a client-server configuration. Service includes the API and its related Documentation.

“Customer’s Account” or “Account” means the private account created by Customer after registration to the MyScript Developer website and acceptance of the Agreement. The Account is accessible by login with individual Customer identification codes and passwords and allows them to use the Service.

## **Section 2 – Service Access Conditions**

### **2.1 Customer’s Account**

You need a valid Account in order to access the Service. You shall accurately register the information necessary for the creation of your Account. You understand and agree that the Service shall only be made available to you as long as your Account is valid.

### **2.2 Confidentiality and Identification codes**

When registering on the MyScript Developer website, Customer creates a private Account and shall choose a login (corresponding to his/her email address) and a password (hereinafter jointly referred to as the “Identification Codes”). Such Identification Codes are personal, confidential and non-transferable.

Customer shall keep the Identification Codes confidential and shall not disclose them to any third party. In the event of loss or disclosure, Customer shall immediately inform MyScript in writing so that we can proceed to the cancellation and/or update of such Identification Codes.

Customer is responsible for the use of the Identification Codes, including in the event of loss, access by a third party and/or disclosure.

### **2.3 Free Trial Version and Paid Subscription**

The Service is made available through a free trial version and a subscription paid version.

Subject to your compliance with the Agreement, MyScript grants you a revocable, non-exclusive, non-transferable license to use the Service according to the Documentation in order to develop and distribute the Application for internal and commercial purposes.

#### 2.3.1 Free Trial Version

Customer has access to the free trial version which is the default setting and offers a use of the Service limited to a certain number of monthly Requests as defined in the [pricing page](#) available on the MyScript Developer website.

#### 2.3.2 Subscription

Customer may subscribe to the paid version of the Service by clicking on the « Subscribe » button. Customer will then receive an email to confirm his/her subscription. The paid version of the Service does not automatically set up a limited number of Requests unlike the free trial version. Customer may also choose, at his/her sole discretion to set up a limit of Requests and a notice alert when such limit has been reached or is about to be reached. Customer may set up the limits of requests, check the current number of sent Requests, and check the price list on their Account dashboard.

The pricing for the paid subscription is specified in Section 3.1 below.

### **Section 3 – Pricing and Payment Terms**

#### 3.1 Pricing for the Paid Subscription

MyScript will charge Customer depending on the number of Requests sent according to the pricing details made available on the MyScript Developer website.

All fees and charges payable by Customer are in US Dollars and exclusive of applicable taxes and duties, including VAT and applicable sales tax. Customer shall provide us with any information we reasonably request to determine whether we are obligated to collect VAT from you, including your VAT identification number.

#### 3.2 Invoicing and Payment Terms

##### 3.2.1 Invoicing Information

MyScript relies on a third-party provider for invoicing named Chargify. Chargify is not a payment processor or payment gateway service. When subscribing to the paid version of the Service, Customer will receive a form to be completed with accurate information that are required for invoicing. Such requested information includes but is not limited to the company name and address (if Customer acts on behalf of a company), name and address of Customer, email address, payment card holder, payment card number, CVV. A Chargify account dedicated to your invoices will then be automatically created and Chargify will send transaction requests to Braintree, the payment gateway. If your payment card information is not valid, MyScript will inform you by email requesting you to correct your payment card information. You will not be able to subscribe to the Service until your payment card information is validated.

Invoices are sent to you by email on the 3rd of every month and shall correspond to the amount due for the number of Requests sent during the preceding month. Your invoices are due immediately and

will be paid according to section 3.3. Your invoices will also be available at any time via your Account dashboard.

**3.2.2 Late Payment.** According to Section 9.3 (Term and Termination), MyScript reserves the right to deactivate your Account, discontinue or terminate the Service if there is an existing dispute in relation to payment of a previous invoice. Before discontinuing the Service and before deactivating your Account, MyScript will send you several reminders by email to give you the opportunity to cure the breach and pay the due amounts. If after the reminders, we still have not received payment we will deactivate your Account and we may terminate the Agreement according to section 9.3.

Your Account will be reactivated once all due amounts are paid.

According to articles D 441-5 and L 441-6 of the French Commercial Code, a flat fee of 40 Euros shall apply for each late payment as recovery expenses.

### 3.3 Method of Payment

Payments shall be made by payment cards through Braintree, a PayPal specific service. You do not need to have a Braintree or PayPal account to pay by payment card. Unless you act on behalf of your company, you must be the holder of a payment card that is valid at the time of your payment. If these requirements are not met, it will not be possible to proceed with the payment.

At the time of the online payment, the bank of reference will debit the amount of the invoice from your payment card. Neither MyScript nor Chargify guarantees the availability of Braintree and they shall not be responsible in the event of Braintree outage, downtime or erroneous operation of their systems. In this event, MyScript recommends you inform MyScript by sending an email to [sales.developer@myscript.com](mailto:sales.developer@myscript.com) so that we can work with you to find an alternative solution.

### 3.4 Payment Security

The MyScript Developer website uses encrypted communication with Customer. Also, we have chosen Braintree as a service payment provider in order to provide the best possible protection for the sensitive data pertaining to online payments. Indeed, Braintree implements a high level of security by using firewall and encryption procedure. To learn more about Braintree security measures, we invite you to read [PayPal policy](#). To protect Customers against any intrusion, neither MyScript nor Chargify will store any payment card information from Customer. Instead, the payment card information is passed to Braintree and they store it in their system. Consequently, neither MyScript nor Chargify shall be responsible or liable for any problems arising as a result of payment card information being misused after they have been transferred to Braintree for storage by them.

## **Section 4 – Subscription to the Service and Unsubscription**

### 4.1 Subscription

To subscribe to the Service (paid version) via the MyScript Developer website: (i) Select the Service to subscribe from <https://dev.myscript.com/pricing/> and click on the “Subscribe” button, (ii) Complete the Customer information page regarding the processing of the payment as per Section 3.2.1 of the Agreement, (iii) Read and accept the Agreement by clicking on the « I agree to the Terms of use of the MyScript® Cloud Development Kit™ services » checkbox, (iv) Once all required information have been verified, including your payment card validity, you will receive an email confirming the success of your subscription. You will then be able to use the Service.

## 4.2 Unsubscription

You can unsubscribe the Service (paid version) at any time by clicking on the « Unsubscribe » button in your MyScript Developer website dashboard. A window will then appear on your screen to ask you for confirmation to unsubscribe from the Service and inform you that you will now only benefit from the free trial version of the Service. You will then receive an email confirming your unsubscription. A last invoice corresponding to the Requests sent before you unsubscribe are still due and will be sent to you according to Section 3.2.1.

You can subscribe again to the Service at any time as long as your Account is valid by following the process described in Section 4.1.

## Section 5 – Conditions of Use of the Service

The price list is available at <https://developer.myscript.com/pricing/>.

Customer shall not sell, rent or transfer to anyone who is not an “Authorized Account User” any of its rights to use the Service and its related Documentation. An Authorized Account User is an employee of Customer who is duly authorized to access the Service for the purpose of developing Applications. You shall not, and shall not permit any third party, directly or indirectly, but not limited to, to reverse engineer, disassemble, reconstruct, decompile, translate, modify or copy the API or any part of the Service, other than as explicitly permitted hereunder. You shall not distribute or otherwise disseminate the API or any part of the Service by any means or in any form, except as an integral part of your Application and pursuant to this Agreement. You undertake that when using the Service you shall not, directly or indirectly, take or enable another to take any of the following actions: - interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements or guidelines related to the Service; - use the Service for any illegal or unauthorized purpose; - use any robot, spider, site search/retrieval application or other device to retrieve or index any portion of the Service or collect information about users for any unauthorized purpose; - create user accounts by automated means or under false or fraudulent pretenses; - transmit any viruses, worms, defects, Trojan horses or any other items of destructive nature. Customer shall be solely responsible for any breach of its obligations pursuant to this Agreement and for the consequences (including any loss or damage which MyScript may suffer) of any such breach. Customer undertakes to indemnify, defend and hold MyScript harmless against the consequences of any such breach.

## Section 6 - Modification

6.1 Modification to the Agreement. MyScript reserves the right, at its sole discretion, at any time and without prior notice, to modify the Agreement including the prices of the Service. In case of modification of the Agreement, the new version will be made available on the MyScript Developer website and a written notice will be sent to Customer by email.

Any new version of the Agreement shall delete and replace any prior version.

6.2 Modifications to the Service Offerings. As part of the continuing development efforts, MyScript may change or discontinue the MyScript Developer website as well as any of the Service offerings (including the Service offerings as a whole) or change or remove features or functionality of the Service offerings from time to time. We will notify Customer of any such material change to or discontinuation of the Service offerings, subject to a commercially reasonable prior notice. If possible, we will give you

advance notice of any limitation or suspension, but we may take such actions without advance notice under certain circumstances, including if we believe that your use of the Service represents a security threat or involves fraud or any other illegal activities or has the effect of rendering the service unusable by other customers.

### 6.3 Modification to the API

MyScript may change the API for the Service from time to time and subject to a three (3) months' prior notice. We will use commercially reasonable efforts to continue supporting the previous version of any changed or discontinued API.

## Section 7 – Service Level

7.1 Service Availability. MyScript will use commercially reasonable efforts to maintain a high uptime availability of the Service, make the Service available with a Monthly Uptime Percentage of at least 98% of the time. Availability will be calculated per calendar month, as follows:  $-(\text{Total} - \text{Downtime}) / (\text{total}) \geq 98\%$  - "Total" means the total number of minutes in the month. - "Downtime" means the total number of minutes for which the Service was unavailable.

Monthly Uptime Percentage measurements exclude Downtime resulting directly or indirectly from any exclusion as stated in this Agreement.

7.2 Remedies. For each month during which the Service fails to meet the availability requirement above, Customer may request that MyScript credits your Account with an amount equal to 5 % of the invoice paid to MyScript by you for the month in question. The request may only be made within thirty (30) days of payment by Customer of the invoice for the month in question. If the request is valid, Customer shall be credited on the following month's invoice, provided that the credit due is lower than the invoice amount. provided that this Service credit shall not exceed fifty (50) US Dollars.

7.3 Customer acknowledges and agrees that MyScript may in its sole discretion decide to set or change a fixed upper limit on the number of Requests you may send through the Service or on the routine bandwidth used for the provision of any Service. MyScript may interrupt, without notice, access to all or part of the Service, without any liability to you, if: (i) MyScript needs to carry out permit maintenance operations and/or for update purposes necessary for the proper functioning and improvement of the Service; (ii) Your or your end-users' use or registration poses a security risk, as determined by MyScript, to the Service or any third party; (iii) Your or your end-users' use or registration may adversely impact the Service, including cases where such use and registration may be fraudulent; (iv) Your or your end-users' use or registration may subject MyScript or any third party to liability; (v) You have ceased to operate in the ordinary course, including cases where it is subject to bankruptcy, reorganization, liquidation or similar proceedings; (vi) an event beyond MyScript's reasonable control prevents MyScript from providing the Service, as defined in section 15.4.

## Section 8 – Technical Support

MyScript does not provide any technical support to you. Any technical questions may be submitted on the MyScript Developer forum: <http://developer-support.myscript.com/support/discussions/>.

## Section 9 - Term and Termination

9.1 Term. The Service shall commence on the Effective Date and shall terminate if (i) your Account has been deleted or (ii) the Agreement is terminated according to sections 9.2 and 9.3.

#### 9.2. Termination by Customer

You may terminate the Agreement without cause at any time, by sending us an email at [termination.developer@myscript.com](mailto:termination.developer@myscript.com). You shall include the email address you used to create your Account. In such a case, your Account will be deleted.

#### 9.3 Termination by MyScript

MyScript may terminate the Agreement and cease to provide the Service in case of:

- (i) any event beyond MyScript's reasonable control that prevents MyScript from continuing to provide the Service as defined in section 15.4 (e.g. without limitation, technical difficulties, capacity problems or communications failures, or problems with MyScript's service providers);
- (ii) Customer's breach of any provision of this Agreement and, where such breach is capable of cure, the breach remains uncured for more than 30 days following the receipt of written notice thereof from MyScript specifying the default in sufficient detail to enable the Customer to cure the breach;
- (iii) if it becomes contrary to any law or regulation for MyScript to continue to supply the Service;
- (iv) MyScript in its sole discretion considers that the supply of the Service to Customer is no longer commercially viable or has the effect of rendering the Service unusable by other customers.

In the event MyScript terminates the Agreement, your Account will be automatically deleted and MyScript shall send you a last invoice which shall be paid according to the conditions in section 3.

### **Section 10 – Intellectual Property**

The use of the Service and the accompanying documentation is governed by personal and specific rights of use, concerning copying, conditions of use and so on. All intellectual property rights linked to the Service, including trademarks, patents, copyright and proprietary knowledge, linked to Service design, development and marketing are and remain the exclusive and absolute property of MyScript. These Terms of Use and Sale in no way permit the transfer of all or part of these rights to the Customer or any user of the Service or generally to any third party. Both parties acknowledge and agree that MyScript may be independently creating applications, content and other Services or services that may be similar to or competitive with Customer's Application and its content, and nothing in this Agreement will be construed as restricting or preventing MyScript from creating, using or otherwise distributing such applications.

### **Section 11 – Personal Data Protection**

MyScript informs you that your email address and your bank information (payment card holder, payment card number and CVV) are transferred to Braintree in order to process to the payment. Any personal information you submit to MyScript as part of this Agreement will be treated in accordance with MyScript's privacy policy, which can be viewed at <http://www.myscript.com/privacy-policy/>.

In the event your Account is deleted, MyScript will make sure that your personal information will also be deleted to the extent required by law and in accordance with MyScript's privacy policy.

## **Section 12 - Warranty and Indemnification**

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICE IS PROVIDED WITHOUT ANY GUARANTEE OF ANY KIND WHATSOEVER, WHETHER EXPRESS OR IMPLIED, SUCH AS WARRANTIES, CONDITIONS OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE. MYSCRIPT GIVES NO UNDERTAKINGS AND EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS, WITH REGARD TO THE RELEVANCE, CONTINUITY, ACCURACY, RELIABILITY, COMPLETENESS, ABSENCE OF ERRORS, VERACITY, TIMELINESS, QUALITY, VALIDITY, AVAILABILITY, USEFULNESS OF THE SERVICE AND ANY RESULT. CUSTOMER SHALL BE FULLY RESPONSIBLE FOR THE RISKS INCURRED BY PLACING ITS RELIANCE ON, AND FOR ALL CONSEQUENCES OF ITS USE OF (I) THE SERVICE, (II) THE CONTENT OBTAINED BY USE OF THE SERVICE. MYSCRIPT SHALL NOT BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST OR CORRUPTED DATA, LOST PROFITS, LOST BUSINESS OR LOST OPPORTUNITY), OR ANY OTHER SIMILAR DAMAGES UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY), EVEN IF THE OTHER PARTY HAS BEEN INFORMED OF THIS POSSIBILITY. MYSCRIPT'S TOTAL LIABILITY FOR ANY DIRECT LOSS, COST, CLAIM OR DAMAGES OF ANY KIND RELATED TO THE SERVICE SHALL NOT EXCEED TEN PERCENT (10%) OF THE AMOUNT PAID BY CUSTOMER TO MYSCRIPT DURING THE 12 MONTHS BEFORE THE EVENT GIVING RISE TO SUCH LOSS, COST, CLAIM OR DAMAGES. THIS LIMITATION ON LIABILITY WAS AND IS AN EXPRESS PART OF THE CONSIDERATION BETWEEN MYSCRIPT AND CUSTOMER AND WAS A CONTROLLING FACTOR IN THE SETTING OF THE TECHNOLOGY ACCESS FEES PAYABLE TO MYSCRIPT. The Service conforms to current French law and applicable standards. Photographs, texts, drawings, information and reproduced characteristics illustrating the Service are merely for illustration purposes and are in no way binding. Total or partial inability to use the Service, especially in the case of hardware or material incompatibility shall not be compensated or reimbursed by MyScript, nor shall MyScript responsibility be invoked. MyScript will not be held responsible for any delay or failure to comply with our obligations under these conditions if the delay or failure arises from any cause which is beyond our reasonable control as defined in section 15.4. This condition does not affect your right to have the Service sent to you within a reasonable time. If the delay occurs before the Service is dispatched, we will not charge you for the Service until they are dispatched and you may cancel your order at any time prior to dispatch.

## **Section 13 - Publicity**

You hereby grant MyScript the non-exclusive right to list you as a customer and use your logo on MyScript's website, on publicly available customer lists, and in media releases. You shall use the mention "Powered by MyScript®" when communicating on and distributing your Application.

## **Section 14 - Confidentiality**

Confidential Information shall be held confidential by each party. Each party shall not disclose Confidential Information to third parties without the other party's written consent, except as



permitted pursuant to this Agreement. Each party shall disseminate the other party's Confidential Information among its employees, affiliates, agents and subcontractors only on a need-to-know basis and shall use such Confidential Information only for the sole purpose of effecting the permitted uses of the software and performing its rights and obligations hereunder. To the extent a party is required by applicable law, regulation, or a government agency or court order, subpoena, or investigative demand, to disclose Confidential Information, parties shall use their reasonable efforts to minimize such disclosure and obtain an assurance that the recipient shall treat such Information as confidential. This confidentiality provision shall survive the termination or expiration of the entire Agreement by a period of two years. Confidential Information is and remains the sole property of the disclosing party.

## **Section 15 - Miscellaneous**

15.1 No Waivers. With the exception of section 7.2, the failure by a party to enforce any provision of this Agreement will neither constitute a present or future waiver of such provision nor limit such party's right to enforce such provision at a later time. All waivers shall be in writing to be effective.

15.2 Severability. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement but the rest of the Agreement will remain in full force and effect.

15.3 Assignment. This Agreement shall not be assigned by either party without the other party's prior written consent. Such consent shall however not be unreasonably withheld or delayed. Notwithstanding the above, MyScript shall not be prevented or restricted from assigning all of its rights and obligations under this Agreement (a) to any affiliate; or (b) in connection with any merger, consolidation, reorganization, or restructuring, or the sale of all or substantially all of its assets and/or business which is the subject of this Agreement.

15.4 Force Majeure. Either party to this Agreement shall be excused for its failure or delay in performance at any time during which performance is prevented by an act of God as defined by the case law of the French "Cour de Cassation". This may include but shall not be limited to: (i), epidemic, landslide, lightning, earthquake, fire, explosion, accident, storm, flood or similar occurrence, an act of the public enemy, war, blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar industrial or labor action; (ii) the order of judgment of any court, administrative agency or government officer or body. This Article shall not relieve the non-performing party from using reasonable efforts to overcome or remove such force majeure with all reasonable dispatch. A party claiming the benefit of this Article shall give prompt written notice to the other party of the events giving rise to the assertion and the estimated duration thereof and shall keep such other party reasonable advised as to the progress of such party's efforts to overcome or remove such force majeure.

15.5 Applicable Law and Jurisdiction. This Agreement shall be governed by the laws of France, regardless of conflict of laws principles. The Parties consent to the exercise of exclusive jurisdiction by the Paris courts for any claim relating to this Agreement