



Talkoot Terms of Service

NOTE: THIS AGREEMENT WILL ONLY APPLY TO THE EXTENT THAT NO BINDING AGREEMENT, WRITTEN OR ELECTRONIC, (THE "OTHER AGREEMENT") IS ALREADY IN PLACE BETWEEN CUSTOMER (DEFINED BELOW) AND TALKOOT, INC. ("TALKOOT") PERTAINING TO THE PRODUCT OR SERVICES TO WHICH THIS AGREEMENT APPLIES (AS DEFINED BELOW). TO THE EXTENT THAT ANY APPLICABLE OTHER AGREEMENT IS IN EFFECT, THEN SUCH OTHER AGREEMENT WILL GOVERN CUSTOMER'S ACCESS TO AND USE OF THE SOFTWARE AND RECEIPT OF SERVICES AND THIS AGREEMENT WILL NOT APPLY, EVEN IF YOU AFFIRM YOUR CONSENT TO THE TERMS OF THIS AGREEMENT.

BY ACCESSING OR USING THE SOFTWARE (AS DEFINED BELOW) WITHOUT AN APPLICABLE OTHER AGREEMENT OR BY OTHERWISE AGREEING IN WRITING TO THE TERMS AND CONDITIONS SET FORTH HEREIN, YOU SUBMIT TO TALKOOT, INC., A DELAWARE CORPORATION ("WE" OR "TALKOOT"), AN OFFER TO OBTAIN THE RIGHT TO USE THE SOFTWARE UNDER THE PROVISIONS OF THIS SOFTWARE AND SERVICES AGREEMENT (THE "AGREEMENT").

YOU HEREBY AGREE THAT YOU HAVE THE REQUISITE AUTHORITY, POWER AND RIGHT TO FULLY BIND THE PERSON AND/OR ENTITY (THE "CUSTOMER") WISHING TO USE THE SOFTWARE LISTED ON THE ORDER (DEFINED BELOW) WHICH TALKOOT OR ONE OF ITS AUTHORIZED RESELLERS (A "RESELLER") PROVIDES TO CUSTOMER IN CONNECTION WITH THE PURCHASE OF LICENSES TO THE SOFTWARE AND RECEIPT OF SERVICES DESCRIBED BELOW. THE TERMS OF EACH ORDER WILL SET FORTH THE SPECIFIC TERMS OF THE ORDER, BUT ALL APPLICABLE TERMS AND CONDITIONS BELOW SHALL APPLY.

IF YOU DO NOT HAVE THE AUTHORITY TO BIND THE CUSTOMER OR YOU OR THE CUSTOMER DO NOT AGREE TO ANY OF THE TERMS BELOW, TALKOOT IS UNWILLING TO PROVIDE THE SOFTWARE OR PROFESSIONAL SERVICES TO THE CUSTOMER, YOU SHOULD DISCONTINUE THE ORDER, ACCESS, DOWNLOAD AND/OR INSTALLATION PROCESS AND NOT REQUEST ANY SERVICES.

CUSTOMER ACKNOWLEDGES AND AGREES THAT IT IS A PARTY TO THIS AGREEMENT WITH TALKOOT AND THAT TALKOOT MAY ENFORCE THESE TERMS AND CONDITIONS AGAINST CUSTOMER EVEN IF THE ORDER HAS BEEN ISSUED AND/OR EXECUTED BY A RESELLER.

- 1 Ordering.** Customer may order from Talkoot or one of its Resellers (a) license to the Talkoot hosted offering, (b) related maintenance and support services ("Maintenance and Support") and/or (c) consulting, training, implementation or other professional services ("Professional Services") pursuant to the terms of this Agreement. The specifics of each Customer transaction will be set forth on an order form, quote, statement of work, invoice or other ordering form that references this Agreement and is mutually agreed to by the parties in writing (each, an "Order"). Certain components and modules of the Software may be developed and licensed by a third party and additional terms and conditions may apply and will be specified on the Order. Customer's execution of, or other agreement to

the terms of, an Order constitutes a binding commitment to purchase the items described therein pursuant to the terms of this Agreement.

2 License Grants and Restrictions.

2.1 **Users.** Talkoot licenses the Software for use by Customer's employees, partners, consultants, affiliates, contractors, and other individuals designated by Customer (each a "User") under one of several license models. The type and number of licenses obtained by Customer (including a description of the rights associated therewith) are specified in the relevant Order. Customer is responsible for all activity by and liabilities incurred through use of Customer's restricted access to the administrative interface.

2.2 **Hosted License.** The Talkoot Software is provided on a hosted basis and is subject to the terms of this Agreement and solely during the License Terms, Talkoot will make the Software and the related Documentation available to the Customer's Users for Customer's own internal business purposes and in accordance with the Documentation.

a) **Security.** Talkoot shall or shall require any hosting facility to (i) establish and maintain technical and organizational measures designed to protect against accidental damage to, or destruction, loss, or alteration of Customer Content; (ii) establish and maintain technical and organizational measures designed to protect against unauthorized access to the hosting infrastructure and Customer Content (defined below); and (iii) with respect to the Software. Talkoot is not responsible for the security of the Customer Content while in transit over the Internet. As part of the hosting services, Talkoot does not scan for the existence of Harmful Code within downloaded files prior to opening by the User. "Harmful Code" means computer software routines intentionally designed to permit unauthorized access or damage to or use of the Software, hosting infrastructure, Customer Content or Customer's computer systems.

b) **Uptime.** Talkoot will use commercially reasonable efforts to make the Software available at least 99.5% of the time, as measured monthly, subject to the exclusions set forth below and also excluding scheduled downtime and any time necessary to implement any updates or other modifications to the Software ("Uptime Target"). Talkoot will notify Customer at least twenty-four (24) hours prior to any scheduled downtime and will use commercially reasonable efforts to minimize the effect of such maintenance. The Uptime Target shall not apply in the event of any causes beyond the reasonable control of Talkoot or its hosting provider, including, without limitation, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion, denial of services attacks, failure of the internet generally, or any actions or inactions of Customer or any third party.

2.3 **Restrictions.** Customer agrees not to; (a) decompile, disassemble, reverse engineer or otherwise attempt to discover the source code of or trade secrets embodied in the Software; (b) distribute, lend, lease, sell, transfer, grant, sublicense to, or otherwise make available the Software (or any portion thereof) to parties other than authorized Users; (c) create modifications to or derivative works of Software; (d) reproduce the Software; (e) attempt to modify, alter, or circumvent any license control mechanisms within the Software; (f) use or transmit the Software in violation of any applicable laws, including, without limitation, any data privacy or data protection laws; (g) allow access or permit use of the Software by anyone other than Users; (h) in any way access, use or copy any portion of the Documentation of Software (including the logic and/or architecture thereof and any trade secrets included therein) to develop, promote, distribute, sell or support any product or services that is competitive with any Talkoot products or services; or (h) remove, obscure or alter any copyright notices or any name, logo, tagline, or other designation of

Talkoot displayed within the Documentation, Software, or output therefrom (“Talkoot Marks”).

3 Professional Services. If indicated in the Order, Talkoot will perform Professional Services. The details of each Professional Services engagement (including any materials to be provided to Customer by Talkoot in connection therewith (“Deliverables”) will be as set forth in an Order and/or one or more statements of work (each an “SOW”) entered into by the parties. In a timely manner, Customer will provide all assistance reasonably requested by Talkoot in connection with the Professional Services.

4 Proprietary Rights. As between the parties, (a) Customer shall retain ownership of all Customer Confidential Information (defined below), Customer intellectual property, product copy and other content of any kind uploaded or produced by Customer and its Users through the Software (collectively, “Customer Content”), (b) Customer shall exclusively own all rights to any content generated (“Generated Content”) using the proprietary artificial intelligence technology, algorithms, and software developed and owned by Talkoot and/or a third party (“AI Models”); (c) Talkoot will not be held liable for any incomplete or inaccurate Generated Content produced through any AI Models. (d) Customer agrees that Talkoot may use Customer Content to aid in the training and developing of AI Models, and (e) Talkoot and its Resellers will retain all right, title and interest in and to the Talkoot Marks, Software, Documentation, Deliverables (except to the extent they include pre-existing Customer Confidential Information or Customer intellectual property), and other derivative works of the Software and/or Documentation, including any and all intellectual property and other proprietary rights to the foregoing. Notwithstanding anything to the contrary herein, Talkoot may freely use and incorporate into Talkoot’s Software and Services any suggestions, enhancement requests, recommendations, or other feedback provided by Customer or its Users. Talkoot may monitor, collect, use, and aggregate Customer Content and data pertaining to usage of the Software for purposes of conducting analysis, including providing support, verification of security and data integrity, capacity planning, improving and developing Talkoot products and services, and benchmarking, provided that such data will only be disclosed in an anonymous form in a way that neither Customer nor any User can be identified from such data. The foregoing will not limit Talkoot’s confidentiality obligations hereunder. All rights not expressly licensed by Talkoot hereunder are reserved. Customer rights to the Deliverables shall be the same as Customer rights to the Software to which such Deliverables pertain.

5 Representations and Warranties.

5.1 Professional Services Warranty. Talkoot represents and warrants that it will perform all Professional Services in a professional manner consistent with industry standards and practices. In the event of any breach of this warranty, Customer shall provide written notice of such breach to Talkoot within thirty (30) days of completion of the Professional Services, and Talkoot shall, as its sole liability and Customer’s sole remedy, reperform the defective Professional Services.

5.2 Limited Software Warranty. Talkoot represents and warrants that during the License Term, the Software, when used as permitted under this Agreement and in accordance with the Documentation, will perform in all material respects as described in the Documentation. Talkoot represents and warrants that upon delivery, the Software will not contain any Harmful Code. In the event of any breach of the warranties in this Section, Talkoot shall, as its sole liability and Customer’s sole remedy, diligently remedy any deficiencies after receipt of the written notice from Customer. If Talkoot determines that it is unable to remedy the deficiency, Talkoot will refund to Customer a pro-rata portion of the fees

actually paid by Customer to Talkoot for the defective Software and Customer's right to use that Software will terminate. Talkoot will not be liable to the extent that any breach of the foregoing warranties are caused by (a) third party components (including in combination with the Software) not provided by Talkoot or any open source components or freeware; (b) modification to the Software other than provided by Talkoot as part of the Maintenance and Support; (c) unauthorized use or use of the Software other than in accordance with the Documentation; (d) Harmful Code introduced by Customer or its Users.

- 5.3 **Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, THE SOFTWARE, PROFESSIONAL SERVICES, AND DELIVERABLES, ARE PROVIDED "AS IS" AND TALKOOT HEREBY DISCLAIMS ALL WARRANTIES, IMPLIED OR EXPRESS, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS, NON-INFRINGEMENT, TITLE, ACCURACY, AND COURSE OF DEALING. TALKOOT DOES NOT WARRANT THAT THE SOFTWARE WILL BE ERROR-FREE. TALKOOT'S RESELLERS MAKE NO WARRANTIES DIRECTLY TO CUSTOMER HEREUNDER AND TALKOOT'S RESELLERS SHALL HAVE NO LIABILITY PURSUANT TO THIS AGREEMENT.

6 **Indemnification.**

- 6.1 Talkoot will defend and indemnify Customer from all damages, costs, and expenses arising from any claim or suit by a third party against Customer alleging that the Software infringes any trademark, copyright, or trade secret recognized in the United States, Canada or any member country within the European Union (a "Claim"). If the Software (or any component thereof) becomes, or in Talkoot's reasonable opinion is likely to become, the subject of an infringement claim, Talkoot may, at its option and expense, either (a) procure for Customer the right to continue exercising the rights licensed to Customer in this Agreement or (b) replace or modify the Software so that it is non-infringing and reasonably functionally equivalent. If neither of the foregoing options are in Talkoot's reasonable opinion, commercially reasonable, Talkoot may terminate the applicable Order and refund to Customer a pro-rata portion of the applicable prepaid fees. Talkoot's obligation as set forth in this paragraph is expressly conditioned upon the following: (i) Talkoot shall be notified promptly in writing by Customer of any Claim; (ii) Talkoot shall have sole control of the defense or settlement of any Claim; (iii) Customer shall cooperate with Talkoot in a reasonable way to facilitate the settlement or defense of any Claim; and (iv) the Claim does not arise from any combination of the Software with non-Talkoot programming or devices. Talkoot's indemnification obligations shall not apply to the extent that any Claim or liability results from any Exclusion or continued use of the Software after Customer has been made aware of a potential infringement claim. This Section 6 states Talkoot's entire liability and Customer's sole and exclusive remedy for infringement claims and actions.
- 6.2 Customer will defend and indemnify Talkoot from all damages, costs, and expenses arising from or relating to the Customer Content or Customer's failure to comply with Talkoot's Acceptable Use Policy. Customer's obligation as set forth in this paragraph is expressly conditioned upon the following: (a) Customer shall be notified promptly in writing by Talkoot of any Claim; (b) Customer shall have sole control of the defense of any indemnified claim or suit; and (c) Talkoot shall cooperate with Customer in a reasonable way to facilitate the settlement or defense of any Claim.

7 **Limitation on Liability.** IN NO EVENT SHALL TALKOOT BE LIABLE TO

CUSTOMER, USERS, OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR SPECIAL DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES TO BUSINESS REPUTATION, LOST BUSINESS OR LOST PROFITS), WHETHER FORESEEABLE OR NOT, AND HOWEVER CAUSED, EVEN IF TALKOOT IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF TALKOOT TO CUSTOMER, USERS, OR ANY THIRD PARTY, EXCEED THE FEES PAID BY CUSTOMER DURING THE PREVIOUS TWELVE (12) MONTH TERM.

- 8 Maintenance and Support Services.** During the License Term, Talkoot will provide Maintenance and Support in accordance with the terms and conditions set forth in the applicable Maintenance and Support Services Agreement made available at <http://www.talkoot.com/terms>, which terms are incorporated herein by reference (the "Support Terms").
- 9 Acceptable Use.** Neither Customer nor any User shall use the Software in connection with any (a) infringement or misappropriation of any intellectual property right of any third party; (b) defamation, libel, slander, obscenity, or violation of the rights of privacy or publicity of any third party; or (c) other offensive, harassing or illegal conduct. Talkoot reserves the right to take down, delete and/or block access (whether temporarily or permanently) to any Customer Content within the Software that violates any of the provisions of this Section or in respect of which Talkoot receives a complaint from a third party. In relation to all personal data comprised within any Customer Content, Customer warrants that such personal data shall have been obtained and supplied to Talkoot in compliance with applicable data protection legislation, including Customer having obtained all necessary consents and approvals from Users that are necessary to permit Talkoot to provide the Software, Professional Services, and Maintenance and Support.
- 10 Confidentiality.**
- 10.1 General.** Each party acknowledges that it may have access to certain confidential information of the other party ("Discloser"). "Confidential Information" shall include, but not be limited to, the Software, each party's proprietary technology and trade secrets, and all information concerning the Discloser's business, plans, customers, products, services, technical know-how, patent applications, Resellers, product roadmaps, concepts, ideas, methods and procedures of operations, and marketing and financial information, and which the Discloser, in the case of tangible disclosures, marks as "Confidential" or with a similar legend, or in the case of non-tangible disclosures, designates as confidential at the time of disclosure; provided, however, that regardless of whether so marked or designated, any information which the receiving party ("Recipient") knows or reasonably should know is confidential or proprietary to the Discloser shall be deemed Confidential Information of the Discloser.
- 10.2 Protection of Confidential Information.** Each party shall: (i) maintain the Discloser's Confidential Information in confidence and shall not disclose Confidential Information, or any portion thereof, to any third party, and shall protect the Confidential Information with at least the same degree of care as the Recipient uses to protect its own confidential information, but in no case less than reasonable care; (ii) restrict disclosure of Confidential Information solely to employees, contractors, and professional advisors of the Recipient who have a need to know such Confidential

Information in connection with this Agreement; provided such employees, contractors, and professional advisors are bound to confidentiality obligations no less restrictive than the terms of this Agreement before they receive such Confidential Information; and (iii) use Confidential Information received from Discloser only as authorized herein. These obligations will last for a period of five (5) years from the date of return or destruction of the Confidential Information, regardless of when this Agreement terminates.

10.3 **Exclusions from Confidential Information.** The obligations in Section 10.2 do not apply to Confidential Information that: (a) is or becomes publicly available through no fault of Recipient; (b) was known by Recipient without a confidentiality obligation prior to receipt from Discloser; (c) is provided to Recipient without an obligation of confidentiality by a third party who has no obligation to Discloser; or (d) is lawfully and independently developed by Recipient without use of or reference to Discloser's Confidential Information.

10.4 **Required Disclosures.** If Recipient becomes subject to an order that requires Recipient to disclose Confidential Information, Recipient will, to the extent permitted by law: (a) promptly notify Discloser of the order's terms and the circumstances surrounding its issuance; (b) consult in good faith with Discloser regarding possible responses to the order and, if requested by Discloser, make reasonable efforts to narrow the order's scope, obtain a protective order from the court, or produce documents to the court or government body under seal with appropriate instructions regarding preservation of the information's confidentiality; and (c) disclose only the Confidential Information that, in the opinion of counsel, is legally required to be disclosed, consistent with a reasonable interpretation of the order.

11 Term and Termination.

11.1 **Term.** This Agreement will remain in effect until terminated. The initial License Term for the Software and related Maintenance and Support will be as set forth on the Order. After the Initial Term, this Agreement may renew for one or more successive twelve (12)-month terms (each, a "Renewal Term").

11.2 **Suspension.** Talkoot may suspend Professional Services, Maintenance and Support, and/or Customer's license (a) with respect to the Software, in order to prevent damage to, or degradation of, Talkoot's network integrity; (b) if Customer has breached this Agreement in a way that affects Talkoot's provision of the Software; (c) if Customer infringes Talkoot's or Talkoot's Resellers intellectual property rights, (d) if Customer has failed to pay any amounts for ten (10) days after their due date; or (e) if Customer violates applicable laws or regulations or a court order requires suspension. If suspended, Talkoot will promptly restore Customer's services and license after the event giving rise to the suspension has been resolved to Talkoot's reasonable satisfaction.

11.3 **Termination.** Either party may terminate this Agreement and/or an Order(s) entered pursuant hereto upon written notice to the other party if the other party materially breaches any term of this Agreement or the applicable Order and fails to cure such breach within 30 days after receiving written notice of such breach from the non-breaching party. The terms of this Agreement shall remain in effect with respect to any Order which has not been terminated as of the date of termination of this Agreement.

- 11.4 **Effect of Termination.** Upon any termination of this Agreement, without prejudice to any other rights or remedies which the parties may have, (a) all rights and obligations hereunder shall immediately cease (including, without limitation, Customer's and Users' right to access and use the Software); provided that Sections 4, 5.3, 7, 10, 11.4, 12, and 14 shall survive termination, and (b) Customer shall promptly pay to Talkoot any outstanding fees that have accrued prior to the termination date.
- 12 **Fees and Payment.** Subject to the terms and conditions below, all fees for the Software licenses, Professional Services and/or Maintenance and Support will be set forth on the applicable Order. Unless otherwise agreed to in writing by the parties, Customer will pay to Talkoot or, if applicable, one of its authorized resellers all undisputed fees owed within thirty (30) days after Customer's receipt of an invoice pertaining thereto. Talkoot may charge interest on late payments at the lesser of 1.5% per month or the maximum rate permitted by law. Payments will be sent to the address included on the invoice. All amounts payable shall be in the currency of the United States and specifically exclude, and Customer is responsible for, any and all applicable sales, use, withholding, and other taxes related to this Agreement (other than taxes based on Talkoot's income).
- 13 **Bankruptcy and U.S. Government Contracts.**
- 13.1 All licenses granted pursuant to this Agreement are, for the purposes of Section 365(n) of the U.S. Bankruptcy Code ("Code"), deemed to be licenses of rights to "intellectual property," as defined under Section 101 of the Code. In any bankruptcy or insolvency proceeding involving Talkoot, Customer (as licensee of such rights) will retain and may fully exercise all of its rights and elections under the Code, notwithstanding conflicts of law principles.
- 14 **Miscellaneous.** Talkoot may audit Customer's use of the Software to ensure that Customer is operating within the license parameters and other requirements of this Agreement. The parties are independent contractors with respect to each other. Each party will be excused from any delay or failure in performance hereunder, other than the payment of money, caused by reason of any occurrence or contingency beyond its reasonable control. The obligations and rights of the party so excused will be extended on a day-to-day basis for a period equal to that of the underlying cause of the delay. Neither party will assign, transfer or delegate its rights or obligations under this Agreement (in whole or in part) without the other party's prior written consent, except pursuant to a transfer of all or substantially all of such party's business and assets, whether by merger, sale of assets, sale of stock, or otherwise. Any attempted assignment, transfer or delegation in violation of the foregoing shall be null and void. Talkoot may include Customer's name and logo in a customer list, on its website or in marketing materials, or otherwise identify Customer as a user of Talkoot's Software. All modifications to or waivers of any terms of this Agreement must be in a writing that is signed by the parties hereto and expressly references this Agreement. This Agreement shall be governed by the laws of the state of Oregon, excluding its conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the interpretation or enforcement of this Agreement. The exclusive venue and jurisdiction for any and all disputes, claims and controversies arising from or relating to this Agreement shall be the courts located in Multnomah County, Oregon. Each party waives any objection (on the grounds of lack of



jurisdiction, forum non conveniens or otherwise) to the exercise of such jurisdiction over it by any such courts. In the event that any provision of this Agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (a) such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and (b) the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect. Talkoot and Customer each represent that they are not named on any U.S. government denied-party list. Customer will comply with all applicable export and import laws or regulations in connection with this Agreement. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing. This Agreement, including any terms and conditions incorporated herein by reference, together with the applicable Order constitutes the entire agreement between the parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements or communications. In the event of a conflict between the terms of this Agreement and an Order, the applicable Order shall control. The terms on any purchase order or similar document submitted by Customer to Talkoot will have no effect and are hereby rejected. All notices under this Agreement must be delivered in writing by courier or certified or registered mail (postage prepaid and return receipt requested), if to Customer, to Customer's invoice address or by email to Customer's invoicing contact or the signer of the applicable Order, and if to Talkoot the attention Talkoot's General Counsel at Talkoot's main corporate headquarters, with a copy by email to legal@talkoot.com.