

Master Service Agreement (MSA)

This Master Service Agreement ("Agreement") is made and entered into by and between Talkscriber and Customer pursuant to and effective upon the date set forth in an Order Form or as otherwise set forth in the Term and Termination section below. In cases in which an Order Form applies, the terms of such Order Form are incorporated herein by reference. Customer and Talkscriber are referred to individually as a "Party," and collectively as the "Parties."

1. Introduction.

Talkscriber shall provide voice-to-text transcription services and artificial intelligence (AI) driven insights and information (ADI2) by way its proprietary software platform (collectively, the "Services"). Talkscriber's text-based transcripts services may be used by Customer for assorted business purposes such as record keeping. Talkscriber's ADI2 services utilize machine learning tools to provide insights, metrics, and other information that can be used to enhance Customer's service and product offerings. The Services are provided by way of Talkscriber's Software, which means and includes:

- a) Talkscriber's "Speech Engine," encompassing automated speech recognition (ASR) software in object code form and any other software or services listed in an Order Form;
- b) Talkscriber's Trained Models and Documentation (which means and includes all written and online guides, manuals, and instructional materials regarding the Software provided by Talkscriber; along with any subsequent modifications, updates, or upgrades); and
- c) applications, databases, modules, source code, development tools, libraries, utilities, and all subsequent updates.

2. Term and Termination.

The Effective Date and Term of this Agreement are set forth in an Order Form, or, in the case of use of the Services by way of this website, the date of your acknowledgement to use of the Services subject to this Agreement, at www.talkscriber.com/acceptance

Termination for Convenience. Either Party may terminate this Agreement without cause upon not less than sixty (60) days' prior written notice. All agreed fees shall be payable through and including the date of such termination.

Termination for Cause. If a Party breaches a material term of this Agreement, the non-breaching Party may provide notice of such breach to the breaching Party that identifies the suspected breach with reasonable specificity. The non-breaching Party shall cure such breach within thirty (30) days after receipt of the breach notice. If the breach remains uncured at the end of the thirty-day period, the non-breaching Party may, upon notice to the breaching Party, immediately terminate the Agreement. A Party may also terminate for cause if the other Party becomes subject to bankruptcy, insolvency, receivership, liquidation, or any proceeding related to the assignment for creditors' benefit.

Rights and obligations with respect to confidentiality, intellectual property, indemnity and liability shall survive termination.

3. Licenses and Use

3.1 Software License to Customer

During the Term, Talkscriber grants Customer a limited, non-exclusive, non-transferable, and non-sublicensable license for the following purposes of receiving the Services:

- (a) Install or access, as applicable, and use the Software in the format specified herein and, as applicable, in an Order Form. This use is limited to the number of Trained Models and/or committed funds as outlined herein or in an Order Form.
- (b) Utilize the Software solely for internal purposes associated with the operation of the Software.

3.2 Restrictions on, Obligations of, and Prohibited Uses by Customer

Customer agrees to abide by the following restrictions:

- (a) Refrain from using or accessing the Software penetration testing or competitive analysis purposes, unless expressly permitted by Talkscriber in writing.
- (b) Refrain from any modification, derivative creation, decompilation, reverse engineering, unauthorized source code access, or copying of the Software or any of its components.
- (c) Ensure the Software is not used to submit or transmit computer viruses, worms, defects, Trojan horses, or other harmful or destructive items.
- (d) Refrain from using the Software in a manner that could damage, disable, overburden, or impair server or network capacity or the Software's infrastructure. This includes adhering to API request quotas as detailed in a Purchase Order or by other written indication from Talkscriber.

4. Data Security and Data Privacy

Talkscriber is dedicated to safeguarding the confidentiality and integrity of all data in its possession and control. To this end, Talkscriber employs security measures that are at par with current industry standards. These measures encompass robust physical, technical, and administrative safeguards.

Talkscriber is committed to handling personally identifiable information (PII) in a manner consistent with applicable law and its established Privacy Policy, which is accessible at [Talkscriber Privacy Policy](#).

5. Service Details

5.1 Service Provision

Talkscriber will provide the Services and Software as set forth in the Agreement and, as applicable, an Order Form. Customer will transfer to Talkscriber data including as voice/audio content, which Talkscriber will convert into transcripts. Talkscriber will provide machine-generated audio-to-text transcription of the Content, including associated metadata.

5.2 Delivery and Updates of Software

The Software will be provided to Customer as specified herein or, as applicable, in an Order Form, using the following methods:

- **On-Premises Software Delivery:** On-premises Software (i.e., Software deployed within the Customer's own data center or virtual private cloud environment) will be facilitated through electronic download, physical delivery, or another agreed-upon mechanism. Customer is responsible for installing the Software at its designated location.
- **Hosted Software Accessibility:** This will be available to Customer via an API or a web-based interface, enabling easy and secure connection.

Talkscriber is committed to keeping Customer informed about updates to the on-premises Software, primarily through email notifications. Updates include regularly scheduled or ad-hoc modifications, enhancements, upgrades, and improvements made by Talkscriber to the Software. It is Customer's responsibility to implement updates in a timely manner. Failure to update the On-Premises Software may result in suboptimal performance or other operational issues.

6. Fees and Payment

6.1 Fee Payment

- **Fee Obligation:** Customer must pay all fees outlined on the website (at www.talkscriber.com/fees), or if applicable, as set forth in in an Order Form.

- **Invoice and Payment:** Upon commencement of this Agreement or as set forth in an Order Form, Talkscriber will issue an invoice to Customer. Payment of this invoice is due upon receipt and prior to commencement of use unless an alternative due date is specified in an Order Form (referred to as the “Due Date”).
- True-Ups will apply in cases of variations to agreed usage terms and volumes.

6.2 Overdue Charges

- **Interest on Late Payments:** If any undisputed invoiced amount is not received by the Due Date, it may accrue late interest at 1.0% per month of the outstanding balance or the maximum legal rate, whichever is lower.
- **Subscription Conditions:** Talkscriber reserves the right to condition future Subscriptions on the settlement of outstanding payments and may set payment terms shorter than those previously agreed upon.

6.3 Taxes

- **Exclusions:** Fees exclude sales taxes or similar assessments, barring those included on the invoice. This does not cover income or franchise taxes levied on Talkscriber.
- **Customer's Tax Responsibility:** Customer is responsible for all Taxes associated with this Agreement unless they provide a valid exemption certificate. Customer must indemnify Talkscriber for all such Taxes.

6.4 Billing Adjustments

- **Usage and Billing:** If Customer's use of the Software exceeds the allocated committed funds for a period by more than 15%, Talkscriber may invoice Customer for the actual usage at the rates specified in an Order Form.

7. Confidentiality

7.1 Definition of Confidential Information. “Confidential Information” means all information relating to the business, services, and products of the disclosing Party, and all documents and other tangible materials and things that pertain to such information, provided by or on behalf of a Party that is identified as confidential or proprietary, is a trade secret, or which reasonable person would consider to be confidential based on reasonable business judgment and industry standards. The terms and conditions of the Agreement shall be considered Confidential Information of both Parties and shall not be disclosed without the other Party’s written consent or in compliance with a legal order. Confidential Information does not include information, even if designated by a Party, that: (a) is or becomes generally available to the public without breach of the Agreement; (b) can be documented was in the possession of the receiving Party prior to its disclosure by the disclosing Party; (c) becomes available from a third party not in breach of any obligations of confidentiality and without knowledge by the receiving Party of any breach of

a fiduciary duty or obligation; or (d) can be documented was independently developed by the receiving Party without reference to or reliance upon the disclosing Party's Confidential Information.

7.2. **Safeguards.** Each Party shall hold the other Party's Confidential Information in confidence with reasonable safeguards which may be no less stringent than those used to protect its own Confidential Information. The receiving Party will not disclose the disclosing Party's Confidential Information to any third party unless with the specific written direction of the disclosing Party, or as otherwise authorized by the disclosing Party in writing.

7.3. **Legal Obligations.** A Party may disclose the Confidential Information of the other Party only to the extent required pursuant to a lawful subpoena, court order, or on government authority, provided that the disclosing Party responding to said subpoena, court order or government authority first provide timely advanced notice to the other Party to allow the other Party the opportunity to object.

7.4. **Permitted Use.** The receiving Party shall use the Confidential Information of the disclosing Party only to: (a) provide or receive Services under the Agreement, (b) further the business of the Parties, or (c) any other purpose agreed to by the Parties in writing.

7.5. **Return or Destruction.** Upon termination or expiration of the Agreement, each Party shall delete all forms of the other Party's Confidential Information (whether in electronic or hard copy form) in its possession, custody, or control, in accordance with the requirements of the Agreement and applicable law, or return such Confidential Information to the other Party.

8. Ownership

8.1 Talkscribe's Ownership

- **Talkscribe's Intellectual Property:** Talkscribe unequivocally retains all rights, title, and interest in the Software, and ADI2. This encompasses full ownership over any intellectual property associated with these elements. Talkscribe shall assume exclusive ownership of all anonymized or aggregated contents of the data (that does not identify any natural person) which may be generated or derived from the use or operation of the Services, including volumes, frequencies, bounce rates, and performance results for the Services provided by Customer to Talkscribe as set forth in Section 4 above, which content Talkscribe will use in order to develop and enhance trained models, the Software, and ADI2.
- **Customer Feedback:** Any feedback, suggestions, or similar inputs provided by Customer regarding the Software also become the property of Talkscribe.
- **License Limitations:** Apart from the specific, limited licenses granted to Customer as described in Section 3, no other rights or ownership interests in the Software are transferred to Customer under this Agreement. Customer is obligated to respect

Talkscriber's intellectual property rights and refrain from any action that would infringe upon these rights.

8.2 Customer's Ownership

- **Customer's Intellectual Property:** Customer maintains all rights, title, and interest in the Content and Training Data. This Agreement does not constitute a transfer of any ownership rights in the Content or Training Data to Talkscriber.
- **License to Talkscriber:** The only rights transferred to Talkscriber are the limited licenses specified in Section 3 above.

9. Representations and Warranties

9.1 Mutual Representations and Warranties

- **Legal Capacity and Authority:** Each Party represents and warrants that it has the legal capacity and authority to enter this Agreement. This includes the power to bind itself to the terms and obligations set forth herein.

9.2 Talkscriber's Limited Warranty

- **Conformance with Documentation:** Talkscriber represents and warrants that the Software will materially conform to the specifications and functionalities described in the Documentation.

9.3 Customer Representations and Warranties

- **Rights and Consents:** Customer confirms that it may lawfully provide all data and materials that it will provide to Talkscriber pursuant to this Agreement.

9.4 Talkscriber's Disclaimer

- **'As Is' Provision:** Beyond the limited warranties expressed in this section, Talkscriber provides the Software on an "as is" basis.
- **Warranty Exclusions:** Talkscriber and its licensors explicitly disclaim any implied warranties, including but not limited to, warranties of performance, merchantability, fitness for a particular purpose, and non-infringement.
- **Limitations of Warranty:** Talkscriber does not warrant that:
 - (i) The Software is completely error-free;
 - (ii) The Software will operate without interruptions;
 - (iii) The Software will fully meet Customer's specific requirements.

Customer acknowledges that the internet and telecommunications providers' networks are inherently insecure. Accordingly, Customer agrees that Talkscriber is not liable for any changes to, interception of, or loss of customer data while in transit via the internet or a telecommunications provider's network.

- **Liability Exclusion:** Talkscribe is not liable for any consequences or liabilities incurred by Customer by way of use of the Software in any way

10. Indemnification

10.1 Indemnification Scope. Each Party shall indemnify, defend and hold harmless the other Party, its employees, principals (shareholders or holders of an ownership interest, as the case may be), officers, directors, and affiliates from and against any third party allegations, actions, causes of action, lawsuits and other third party claims, and resulting damages, liabilities, obligations, costs and expenses (including reasonable attorneys' fees, court costs, and witness fees) to the extent arising out of or resulting from: (a) the indemnifying Party's breach of its representations or warranties in the Agreement, or (b) the indemnifying Party's breach of its obligations under the Privacy Policy.

10.2 Procedure. To receive the foregoing indemnities, the Party seeking indemnification shall promptly notify the other in writing of a claim or suit. Failure to give such prompt notice, however, will not relieve the indemnifying Party of its obligations under this Section, except to the extent of losses that would have been avoided had such notice been given. The indemnified Party will fully cooperate with the indemnifying Party to enable the indemnifying Party to fulfill its obligations hereunder with respect to any claim. The indemnified Party, at its own expense, may participate in the defense, provided that the indemnifying Party shall control such defense and all negotiations relative to the settlement of any claim. Participation in the defense shall not waive or reduce any obligations of the indemnifying Party to indemnify or hold the indemnified Party harmless. The indemnifying Party may enter into a settlement only if it: (a) involves only the payment of money damages by the indemnifying Party; and (b) includes a complete release of the indemnified Party. Any other settlement will be subject to written consent of the indemnified Party, which consent shall not be unreasonably withheld or delayed.

11. Limitations of Liability

EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES ARISING IN ANY WAY OUT OF THE AGREEMENT UNDER ANY CAUSE OF ACTION, WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY WILL NOT EXCEED THE AGGREGATE AMOUNT OF FEES PAID OR AGREED TO BE PAID TO TALKSCRIBER UNDER THE APPLICABLE SOW DURING THE PRECEDING TWELVE (12) MONTH PERIOD. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, AND REGARDLESS OF THE THEORY ON WHICH DAMAGES ARE SOUGHT, INCLUDING, WITHOUT LIMITATION, CONTRACT, STATUTE OR TORT. THEY SHALL NOT APPLY TO THE EXTENT THAT DAMAGES CANNOT BE LIMITED UNDER APPLICABLE MANDATORY LAW.

12. Miscellaneous

12.1 Entire Agreement

- **Supersedence and Completeness:** This Agreement, along with any applicable Order Forms, constitutes the complete and exclusive agreement between Customer and Talkscriber. It supersedes all prior agreements and understandings related to this subject matter.
- **Amendments:** Any amendments or modifications to this Agreement must be made in writing and signed by both parties.

12.2 Relationship of Parties

- **Independent Contractors:** Customer and Talkscriber are independent contractors. This Agreement does not create a partnership, joint venture, or agency relationship between them.

12.3 Non-Waiver

- **Right Exercise:** The failure of either party to exercise any right provided in this Agreement shall not be deemed a waiver of any further rights hereunder.

12.4 Third-Party Beneficiaries

- **Exclusion:** There are no third-party beneficiaries to this Agreement.

12.5 Governing Law and Jurisdiction

- **Applicable Law:** This Agreement is governed by the laws of the State of Massachusetts excluding its conflict of law rules.
- **Jurisdiction:** The parties' consent to personal jurisdiction and exclusive venue in the courts of Massachusetts for any disputes arising from this Agreement.

12.6 Notices

- **Method of Notice:** Any notices under this Agreement shall be in writing and sent via electronic mail to the email addresses listed on an Order Form or, as applicable, on client's acceptance of these terms at www.talkscriber.com/acceptance.

12.7 Severability

- **Enforceability:** If any provision of this Agreement is found unenforceable, the Agreement will be construed as if such provision had not been included.

12.8 Assignment

- **Restrictions on Assignment:** Neither party may assign this Agreement without the prior written consent of the other party, except to an affiliate or in connection with an acquisition or sale of all or substantially all of the assigning party's assets.

12.9 Execution

- **Authorization:** This Agreement has been executed by duly authorized representatives of the parties.

12.10. **Binding Arbitration**

- Customer agrees to submit any and all claims arising out of or related to your use of this website to mandatory binding arbitration in the state of Texas or another location mutually agreeable to the Parties. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. An award of arbitration may be confirmed in a court of competent jurisdiction. **FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, YOU AGREE THAT NO CLASS OR COLLECTIVE ACTIONS CAN BE ASSERTED IN ARBITRATION OR OTHERWISE. ALL CLAIMS, WHETHER IN ARBITRATION OR OTHERWISE, MUST BE BROUGHT SOLELY IN YOUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR COLLECTIVE PROCEEDING.**