



TERMS OF SERVICE

Last updated: January 1st, 2021

This is a legal agreement between the person or organization (“**customer**” or “**you**”) agreeing to these Terms of Service (“**terms**”) and the applicable contracting entities (“**Telaworks, Inc.**,” “**us**,” or “**we**”). By accepting these terms, signing an order, or using the services, you represent that you are of legal age and have the authority to bind the customer to the order, these terms, and the applicable “**service**” each as applicable (collectively the “**agreement**”).

- **ACCESS AND USE OF THE SERVICES:**
- **1.1. Right to use services.** You agree to use the services in accordance with the use levels by which we measure, price and offer our services as posted on our websites, your order, or the service descriptions (“**use levels**”). You may use our services only as permitted in these terms, and you consent to our privacy policy at <https://www.telaworks.com/legal>, which is incorporated by reference. We grant you a limited right to use our services only for business and professional purposes. Technical support for the services is described in the service descriptions. If your affiliates use our services, you warrant that you have the authority to bind those affiliates and you will be liable if your affiliates do not comply with the agreement. “**Service(s)**” means our software-as-a-service offerings and our audio/video services (including any related hardware, which is offered by Telaworks, Inc. You understand that your personal data may be processed in connection with your use of our services, software, and websites which are provided via equipment and resources located in the United States and other locations throughout the world.
- **1.2. Limitations on use.** By using our services, you agree on behalf of yourself, your users and your attendees, not to (i) modify, prepare derivative works of, or reverse engineer, our services; (ii) knowingly or negligently use our services in a way that abuses or disrupts our networks, user accounts, or the services; (iii) transmit through the services any harassing, indecent, obscene, fraudulent, or unlawful material; (iv) market, or resell the services to any third party; (v) use the services in violation of applicable laws, or regulations; (vi) use the services to send unauthorized advertising, or spam; (vii) harvest, collect, or gather user data without their consent; or (viii) transmit through the services any material that may infringe the intellectual property, privacy, or other rights of third parties.

- **ACCESS AND USE OF THE SERVICES – CONTINUED:**
- **1.3. Changes to services.** We reserve the right to enhance, upgrade, improve, or modify features of our services as we deem appropriate and in our discretion. We will not materially reduce the core functionality or discontinue any services unless we provide you with prior written notice. We may offer additional functionality to our standard services or premium feature improvements for an additional cost.
- **1.4. Proprietary rights and Telaworks, Inc.** You acknowledge that we or our licensors retain all proprietary right, title and interest in the services, our name, logo or other marks (together, the “**Telaworks, Inc.**”), and any related intellectual property rights, including, without limitation, all modifications, enhancements, derivative works, and upgrades thereto. You agree that you will not use or register any trademark, service mark, business name, domain name or social media account name or handle which incorporates in whole or in part the Telaworks, Inc. or is similar to any of these. You agree to comply with our branding guidelines.
- **ORDERS, FEES AND PAYMENT:**
- **2.1. Orders.** You may order services using our then-current ordering processes (“**order**”). All orders are effective on the earlier of (i) the date you submit your order, or (ii) the date on the signature block of the order (“**effective date**”). Acceptance of your order may be subject to our verification and credit approval process. Each order shall be treated as a separate and independent order. A purchase order is required for non-credit card transactions over \$25.00 USD, or equivalent, unless customer does not require a purchase order as part of its purchasing process.
- **2.2. Fees and payment.** You agree to pay all applicable, undisputed fees for the services on the terms set forth on the invoice. Except as set forth in Section 3.3 below or in the service descriptions, any and all payments you make to us for access to the services are final and non-refundable. You are responsible for all fees and charges imposed by your voice and data transmission providers related to your access and use of the services. You are responsible for providing accurate and current billing, contact and payment information to us or any reseller. You agree that we may take steps to verify whether your payment method is valid, charge your payment card or bill you for all amounts due for your use of the services, and automatically update your payment card information using software designed to do so in the event your payment card on file is no longer valid. You agree that your credit card information and related personal data may be provided to third parties for payment processing and fraud prevention purposes.

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- **2.2. Fees and payment – continued.** We may suspend or terminate your services if at any time we determine that your payment information is inaccurate or not current, and you are responsible for fees and overdraft charges that we may incur when we charge your card for payment. We will not agree to submit invoices via any customer procure-to-pay online portal or electronic data interchange (EDI) portals. We reserve the right to update the price for services at any time after your initial term, and price changes will be effective as of your next billing cycle. We will notify you of any price changes by publishing on our website, emailing, quoting or invoicing you.
- **2.3. Sales, promotional offers, coupons and pricing.** Sales, promotions and other special discounted pricing offers are temporary and, upon the renewal of your subscription, any such discounted pricing offers may expire. We reserve the right to discontinue or modify any coupons, credits, sales and special promotional offers in our sole discretion.
- **2.4. Disputes; delinquent accounts.** You must notify us of any fee dispute within 15 days of the invoice date, and once resolved, you agree to pay those fees within 15 days. We may, on notice to you, suspend or terminate your services if you do not pay undisputed fees, and you agree to reimburse us for all reasonable costs and expenses incurred in collecting delinquent amounts.
- **2.5. Taxes and withholding.** You are responsible for all applicable sales, services, value-added, goods and services, withholding, tariffs, universal services fund (USF) fees or any other similar fees as may be applicable in the location in which the services are being provided (if applicable to the services only) and similar taxes or fees (collectively, “**taxes and fees**”) imposed by any government entity or collecting agency based on the services, except those taxes and fees based on our net income, or taxes and fees for which you have provided an exemption certificate. Additionally, if you do not satisfy your tax and fees obligations, you agree that you will be required to reimburse us for any taxes and fees paid on your behalf, and we may take steps to collect taxes and fees we have paid on your behalf. In all cases, you will pay the amounts due under this agreement to us in full without any right of set-off or deduction.
- **TERM AND TERMINATION:**
- **3.1. Term.** The initial term commitment for your purchase of services will be as specified on an order (“**initial term**”) and begins on the effective date, automatically renews for additional 12-month period, unless either party provides notice of non-renewal at least 30 days before the current term expires. You may provide notice of non-renewal for each service you do not wish to renew at admin@telaworks.com. We may agree to align the invoicing under multiple orders but this will not reduce the term of any order. Terminating specific services does not affect the term of any other services still in effect. If we permit you to reinstate services at any time after termination, you agree that you will be bound by the then-current terms and the renewal date that was in effect as of the effective termination date.

- **TERM AND TERMINATION – CONTINUED:**
- **3.2. Termination for cause.** Either party may terminate the agreement (i) if the other party breaches its material obligations and fails to cure within 30 days of receipt of written notice, or (ii) if the other party becomes insolvent or bankrupt, liquidated or is dissolved, or ceases substantially all of its business, and we may suspend access or terminate immediately if you breach **Section 1.2, 4 or 5**.
- **3.3. Effect of termination.** If the agreement or any services are terminated, your account may be converted to a “free” or “basic” version of the service, if available, at our discretion. Otherwise, you will immediately discontinue all use of the terminated services, except that upon request, we will provide you with limited access to the services for a period not to exceed 30 days, solely to enable you to retrieve your content from the services. We have no obligation to maintain your content after that period. Neither party will be liable for any damages resulting from termination of the agreement, nor will termination not affect any claim arising prior to the effective termination date. If we discontinue services or materially reduce the core functionality in accordance with **Section 1.3** above, the related order will be terminated and we will provide you with a pro rata refund of any prepaid, unused fees. You agree to pay for any use of the services past the date of expiration or termination which have not been converted to a free version of the service.
- **3.4. Survival.** These provisions survive any termination of the agreement:
- **Sections 2** Orders, fees and payment
- **Section 3.3** Effect of termination
- **Section 4** Your content and accounts
- **Section 7** Indemnification
- **Section 8** Limitation on liability
- **Section 9.6** No class actions
- **Section 9.11** Notices
- **Section 9.14** Contracting party, choice of law and location for resolving disputes

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- **YOUR CONTENT AND ACCOUNTS:**

- **4.1. Your content.** You retain all rights to your content (defined below) and we do not own or license your content. We may use, modify, reproduce and distribute your content in order to provide and operate the services. You warrant that (i) you have the right to upload or otherwise share content with us, and (ii) your uploading or processing of your content in the context of our services does not infringe on any rights of any third party. Each party agrees to apply reasonable technical, organizational and administrative security measures to keep content protected in accordance with industry standards. We will not view, access or process any of your content, except: (x) as authorized or instructed by you or your users in this agreement or in any other agreement between the parties, or (y) as required to comply with our policies, applicable law, or governmental request. You agree to comply with all legal duties applicable to you as a data controller by virtue of the submission of your content within the services. If your content, including any personal data (as defined under applicable law, which includes, but is not limited to, the general data protection regulation EU 2016/679 or “**GDPR**” and data protection laws of the European Union, European Economic Area, Switzerland (collectively, the “**EEA+**”), and the United Kingdom) and is processed by us as a data processor acting on your behalf (in your capacity as data controller), we will use and process your content in order to provide the services and fulfill our obligations under the agreement, and in accordance with your instructions as represented in this agreement. Notwithstanding anything to the contrary, this **Section 4.1** expresses the entirety of our obligations with respect to your content. “**Content**” means any files, documents, recordings, message logs, transcripts, and similar data that we maintain on your or your users’ behalf, as well as any other information you or your users may upload to your service account in connection with the services.
- **4.2. Your accounts.** You are solely responsible for (i) all use of the services by you and your users, (ii) maintaining lawful basis for the collection, use, processing and transfer of content, and (iii) providing notices or obtaining consent as legally required in connection with the services. We do not send emails asking for your usernames or passwords, and to keep your accounts secure, you should keep all usernames and passwords confidential. We are not liable for any loss that you may incur if a third party uses your password or account. We may suspend the services or terminate the agreement if you, your users, or attendees are using the services in a manner that is likely to cause harm to us. You agree to notify us immediately and terminate any unauthorized access to the services or other security breach.

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- **COMPLIANCE WITH LAWS:** In connection with the performance, access and use of the services under the agreement, each party agrees to comply with all applicable laws, rules and regulations including, but not limited to export, privacy, and data protection laws and regulations. Each party represents that it is not named on any U.S. government denied-party list. Further, customer shall not permit its users to access or use any service or content in a U.S. embargoed country or in violation of any U.S. export law or regulation. If necessary and in accordance with applicable law, we will cooperate with local, state, federal and international government authorities with respect to the services. Notwithstanding any other provision in these terms, we may immediately terminate the agreement for noncompliance with applicable laws.
- **WARRANTIES:** WE WARRANT THAT THE SERVICES WILL CONFORM TO THE SERVICE DESCRIPTIONS UNDER NORMAL USE. WE DO NOT REPRESENT OR WARRANT THAT (i) THE USE OF OUR SERVICES WILL BE TIMELY, UNINTERRUPTED OR ERROR FREE, OR OPERATE IN COMBINATION WITH ANY SPECIFIC HARDWARE, SOFTWARE, SYSTEM OR DATA, (ii) OUR SERVICES WILL MEET YOUR REQUIREMENTS, OR (iii) ALL ERRORS OR DEFECTS WILL BE CORRECTED. USE OF THE SERVICES IS AT YOUR SOLE RISK. OUR ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY UNDER THIS WARRANTY WILL BE, AT OUR SOLE OPTION AND SUBJECT TO APPLICABLE LAW, TO PROVIDE CONFORMING SERVICES, OR TO TERMINATE THE NON-CONFORMING SERVICES OR THE APPLICABLE ORDER, AND PROVIDE A PRO-RATED REFUND OF ANY PREPAID FEES FROM THE DATE YOU NOTIFY US OF THE NON-CONFORMANCE THROUGH THE END OF THE REMAINING TERM. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES AND CONDITIONS, THEREFORE SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMERS LOCATED IN THOSE JURISDICTIONS.

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- **INDEMNIFICATION:** You will indemnify and defend us against any third party claim resulting from a breach of **Section 1.2** or **4**, or alleging that any of your content infringes upon any patent or copyright, or violates a trade secret of any party, and you agree to pay reasonable attorney's fees, court costs, damages finally awarded, or reasonable settlement costs with respect to any such claim. We will promptly notify you of any claim and cooperate with you in defending the claim. You will reimburse us for reasonable expenses incurred in providing any cooperation or assistance. You will have full control and authority over the defense and settlement of any claim, except that: (i) any settlement requiring us to admit liability requires prior written consent, not to be unreasonably withheld or delayed, and (ii) we may join in the defense with our own counsel at our own expense.
- **LIMITATION ON LIABILITY:**
- **8.1. LIMITATION ON INDIRECT LIABILITY.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSS, EXEMPLARY OR OTHER SUCH DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING OUT OF OR RELATING TO: (i) LOSS OF DATA, (ii) LOSS OF INCOME, (iii) LOSS OF OPPORTUNITY, (iv) LOST PROFITS, OR (v) COSTS OF RECOVERY, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR VIOLATION OF STATUTE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY.
- **8.2. LIMITATION ON AMOUNT OF LIABILITY.** EXCEPT FOR YOUR BREACH OF SECTIONS 1.2 OR 4 AND YOUR INDEMNIFICATION OBLIGATIONS, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY AND THEIR RESPECTIVE LICENSORS AND SUPPLIERS ARISING OUT OF THIS AGREEMENT IS LIMITED TO THE SUM OF THE AMOUNTS PAID FOR THE APPLICABLE SERVICE DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY. THE FOREGOING DOES NOT LIMIT YOUR OBLIGATIONS TO PAY ANY UNDISPUTED FEES AND OTHER AMOUNTS DUE UNDER ANY ORDER.

- **ADDITIONAL TERMS:**
- **9.1. Supplemental data processing addendum.** If you are located in or are subject to the applicable laws of the EEA+ and/or the United Kingdom, including the **GDPR**, you may complete a Telaworks, Inc. data processing addendum (“**DPA**”) online at <https://www.telaworks.com/legal>.
- **9.2. Free services and trials.** Your right to access and use any free services is not guaranteed for any period of time and we reserve the right, in our sole discretion, to limit or terminate your use of any free versions of any services by any individual or entity. If you are using the services on a trial or promotional basis (“**trial period**”), your trial period and access to the services will terminate (i) at the end of the trial period stated in your order, or (ii) if no date is specified, 30 days after your initial access to the services, (iii) or upon your conversion to a subscription. During the trial period, to the extent permitted by law, we provide the services “AS IS” and without warranty or indemnity, and all other terms otherwise apply. We may modify or discontinue any trials or promotions at any time without notice.
- **9.3. Third party features.** Services may provide the capability for you to link to or integrate with third party sites or applications (“**third party services**”). We are not responsible for and do not endorse third party services. You have sole discretion whether to purchase or connect to any third party services and your use is governed solely by the terms for those third party services.
- **9.4. Beta services.** We may offer you access to beta services that are being provided prior to general release, but we do not make any guarantees that these services will be made generally available (“**beta services**”). You understand and agree that the beta services may contain bugs, errors and other defects, and use of the beta services is at your sole risk. You acknowledge that your use of beta services is on a voluntary and optional basis, and we have no obligation to provide technical support and may discontinue provision of beta services at any time in our sole discretion and without prior notice to you. These beta services are offered “AS-IS”, and to the extent permitted by applicable law, we disclaim any liability, warranties, indemnities, and conditions, whether express, implied, statutory or otherwise. If you are using beta services, you agree to receive related correspondence and updates from us, and acknowledge that opting out may result in cancellation of your access to the beta services. If you provide feedback (“**feedback**”) about the beta service, you agree that we own any feedback that you share with us. For the beta services only, these terms supersede any conflicting terms and conditions in the agreement, but only to the extent necessary to resolve conflict.
- **9.5. Copyright.** If you believe that our services have been used in a way that constitutes copyright infringement, you can contact our legal department here: legal@telaworks.com
- **9.6. No class actions.** You may only resolve disputes with us on an individual basis and you agree not to bring or participate in any class, consolidated, or representative action against us or any of our employees or affiliates.

- **ADDITIONAL TERMS – CONTINUED:**
- **9.7. Security emergencies.** If we reasonably determine that the security of our services or infrastructure may be compromised due to hacking attempts, denial of service attacks, or other malicious activities, we may temporarily suspend the services and we will take action to promptly resolve any security issues. We will notify you of any suspension or other action taken for security reasons.
- **9.8. High-risk use.** You understand that the services are not designed or intended for use during high-risk activities which include, but are not limited to use in hazardous environments requiring fail-safe controls, weapons systems, aircraft navigation, control, or communications systems, and/or life support systems.
- **9.9. Recording.** Certain services provide functionality that allows you to record audio and data shared during sessions. You are solely responsible for complying with all applicable laws in the relevant jurisdictions while using recording functionality. We disclaim all liability for your recording of audio or shared data, and you agree to hold us harmless from damages or liabilities related to the recording of any audio or data.
- **9.10. Assignment.** Neither party may assign its rights or delegate its duties under the agreement either in whole or in part without the other party's prior written consent, which shall not be unreasonably withheld, except that either party may assign the agreement to an affiliated entity, or as part of a corporate reorganization, consolidation, merger, acquisition, or sale of all or substantially all of its business or assets to which this agreement relates. Any attempted assignment without consent will be void. The agreement will bind and inure to the benefit of each party's successors or assigns.
- **9.11. Notices.** Notices must be sent by personal delivery, overnight courier or registered or certified mail. We may also provide notice to the email last designated on your account, electronically via postings on our website, in-product notices, or our self-service portal or administrative center. Unless specified elsewhere in this agreement, notices should be sent to us at the address for your applicable contracting entity, with a copy to support, and we will send notices to the address last designated on your account. Notice is given (a) upon personal delivery; (b) for overnight courier, on the second business day after notice is sent, (c) for registered or certified mail, on the fifth business day after notice is sent, (d) for email, when the email is sent, or (e) if posted electronically, upon posting.
- **9.12. Regional terms.** If you are located in regions outside the United States and are purchasing the services. Legal terms apply accordingly.

- **ADDITIONAL TERMS – CONTINUED:**
- **9.13. Entire agreement; order of precedence.** The agreement, including any applicable DPA, sets forth the entire agreement between us relating to the services and supersedes all prior and contemporaneous oral and written agreements, except as otherwise permitted. If there is a conflict between an executed order, these terms, the DPA if applicable, and the service descriptions, the conflict will be resolved in that order, but only for the specific services described in the applicable order. Nothing contained in any document submitted by you will add to or otherwise modify the agreement. We may update the terms from time to time, which will be identified by the last updated date.
- **9.14. General Terms.** If any term of this agreement is not enforceable, this will not affect any other terms. Both parties are independent contractors and nothing in this agreement creates a partnership, agency, and fiduciary or employment relationship between the parties. No person or entity not a party to the agreement will be a third party beneficiary. Our authorized distributors do not have the right to modify the agreement or to make commitments binding on us. Failure to enforce any right under the agreement will not waive that right. Unless otherwise specified, remedies are cumulative. The agreement may be agreed to online, or executed by electronic signature and in one or more counterparts. No party will be responsible for any delay or failure to perform under the agreement due to force majeure events (e.g. natural disasters; terrorist activities, activities of third party service providers, labor disputes; and acts of government) and acts beyond a party's reasonable control, but only for so long as those conditions persist.
- **9.15. Contracting party, choice of law and location for resolving disputes.** The Telaworks, Inc. contracting entity, contact information, and governing law for your use of the services will depend on where you are and the specific services you have ordered.

In order to resolve a complaint regarding the services or to receive further information regarding use of the services, please contact us by email at legal@telaworks.com or via postal mail at:

Telaworks, Inc.
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