



## TERMS OF SERVICE

### 1. INTRODUCTION

This Terms of Service Agreement (the “Agreement”) governs the purchase and use of Talksoft Corporation, a NJ corporation (“Talksoft”) services by You (“You”) as defined below (such services referred to herein as the “Services”). For purposes of this Terms of Service, the phrase “Talksoft Supplier” shall mean a third party that provides services to You that include in part, the services contemplated under this Agreement.

Your use of the Services (excluding any services provided to You by Talksoft under a separate written agreement) is subject to the terms of a legal agreement between You and Talksoft. “Talksoft” means Talksoft Corporation, whose principal place of business is at 1800 E. State Street, Suite 134, Hamilton, NJ 08609, United States. This document explains the terms of the Agreement.

Unless otherwise agreed in writing with Talksoft, Your agreement with Talksoft will always include, at a minimum, the terms and conditions set out in this document. These are referred to below as the “Universal Terms”.

The Universal Terms, together with the Additional Terms, form a legally binding agreement between You and Talksoft in relation to Your use of the Services. It is important that You take the time to read them carefully. Collectively, this legal agreement is referred to below as the “Terms”.

If there is any contradiction between what the Additional Terms say and what the Universal Terms say, then the Additional Terms shall take precedence in relation to that Service.

### 2. ACCEPTANCE OF TERMS

In order to use the Services, You must first agree to the Terms set forth in this Agreement. You MAY NOT use the Services if You do not accept the Terms.

You can accept the Terms by:

- a) Clicking to accept or agree to the Terms, where this option is made available to You by Talksoft in the user interface for any Service; or
- b) By actually using the Services. In this case, You understand and agree that Talksoft will treat Your use of the Services as acceptance of the Terms from that point onwards.

You may not use the Services and may not accept the Terms if (a) You are not of legal age to form a binding contract with Talksoft, or (b) You are a person barred from receiving the Services under the

laws of the United States or other countries including the country in which You are resident or from which You use the Services.

### 3. TERM AND RENEWAL

The term of this Agreement begins on the day You first begin using the Services and continues indefinitely until either You or Talksoft cancels service. An Order Form is used to summarize specific terms for You during the initial process. If a discrepancy exists between the Terms and Your Order Form, the Order Form will take precedence. In certain cases, the Order Form might require the contract term to be for a period of time. When the contract term expires, this Agreement will renew automatically.

### 4. SERVICE DESCRIPTION

These Terms govern use of Talksoft's Services set forth in the applicable Order Form or used by You if no such Order Form has been executed. Talksoft may alter, expand, or reduce the features of the Services from time to time without notice to You.

Services may be purchased by: (a) executing an order form, work order or statement of work (for purposes of this Agreement each shall be referred to as an "Order Form"); or (b) using the Services.

You agree that our obligation to provide Services is conditioned upon You providing all information and assistance reasonably required to perform the Services and Your compliance with standards set forth by Talksoft regarding hardware and software compatibility and installation requirements and You hereby agree to timely provide all such information, assistance and compliance.

### 5. USE OF THE SERVICE BY YOU

In order to access certain Services, You may be required to provide information about You (such as identification or contact details) as part of the registration process for the Service, or as part of Your continued use of the Services. You agree that any registration information You give to Talksoft will always be accurate, correct and up to date.

You agree to use the Services only for purposes that are permitted by (a) the Terms and (b) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions (including any laws regarding the export of data or software to and from the United States or other relevant countries).

You agree not to access (or attempt to access) any of the Services by any means other than through the interface that is provided by Talksoft, unless You have been specifically allowed to do so in a separate agreement with Talksoft.

You agree that You will not engage in any activity that interferes with or disrupts the Services (or the servers and networks which are connected to the Services).

Unless You have been specifically permitted to do so in a separate agreement with Talksoft, You agree that You will not reproduce, duplicate, copy, sell, trade or resell the Services for any purpose.

You acknowledge and agree that while Talksoft may not currently have set a fixed upper limit on the number of transmissions You may send or receive through the Services, the length of the messages we transmit, send or record on Your behalf and in accordance with Your instructions (the "Messages"), or on the amount of storage space used for the provision of any Service, such fixed upper limits may be set by Talksoft at any time, at Talksoft's discretion.

You agree that You are solely responsible for (and that Talksoft has no responsibility to You or to any third party for) any breach of Your obligations under the Terms and for the consequences (including any loss or damage which Talksoft may suffer) of any such breach.

You agree that Talksoft may in its sole discretion suspend or terminate provision of any or all of the Services without liability or penalty at any time in the event that: (a) Talksoft is obliged to comply with an order, instruction, directive or request of a governmental body or network operator which necessitates that it do so; (b) Talksoft discovers an actual or potential breach or where Talksoft believes that You has not so complied with its obligations hereunder; or (c) one or more of the network operators upon which the provision of Services hereunder is dependent suspends its provision of those services to Talksoft.

## 6. YOUR OBLIGATIONS

You agree that Talksoft is acting solely upon Your express instructions and shall be considered Your agent for purposes of the Services provided. Talksoft shall comply with all applicable laws governing the Services, including without limitation, who may be contacted via telephone, text message, email or through the Talksoft app (or any other means), limitations on such contact, when a person may no longer be contacted via one or more of methods of communication. You acknowledge that as the agent, Talksoft does not direct access with You or Your customers (including without limitation, Your patients) for any purpose other than performing the Services and is therefore unable to confirm whether any individual has consented to receiving the Services. Moreover, You agree to ensure compliance with all applicable federal, state and local requirements of any nature or description including, without limitation, privacy requirements imposed pursuant to the privacy requirements adopted pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (the "HIPAA Privacy and Security Rules") as well as any other law or requirement of any nature or description governing the contacting of Your customers (including without limitation, Your patients) as contemplated by the Services to be provided under this Agreement.

## 7. PRIVACY

The information Talksoft holds about You will be used to provide the Services requested and for identification, account administration, analysis and fraud/loss prevention purposes. More details about how that information is used are in our privacy policy which governs Your visit to Talksoft's website and use of the Services. In addition, You agree to the terms and conditions set forth in the Business Associate Agreement set forth at <http://portal.talksoftonline.com/resources/docs/TalksoftHITECHBAAAgreement.pdf> (as may be amended from time to time) as is incorporated by reference herein. Talksoft shall maintain the confidentiality of all of your patient's protected health information ("PHI") in accordance with said Business Associate Agreement. You agree that in addition to the PHI that you provide to Talksoft for purpose of Talksoft providing the Services, Talksoft shall create, at Talksoft's discretion, recordings and other records concerning phone calls for the purposes of Talksoft's administration of the Services plus being able to provide You with information, including, without limitation, records of phone conversations and/or messages in order to assist You in any inquiries concerning Talksoft's Services.

The parties acknowledge and agree that:

(a) Talksoft may have access to Your client's personal data under applicable personal data protection and privacy laws and will: (i) use it solely for the purpose of providing the Services and in accordance with the terms and conditions of this Agreement as may be supplemented by any Order(s); (ii) process it only in accordance with Your instructions; and (iii) take appropriate technical and organizational measures to prevent unauthorized or unlawful processing, accidental loss, destruction or damage to it;

(b) personal data may be processed by Talksoft; and

(c) You are the data controller and retain full responsibility for the data processed on its behalf by Talksoft acting as data processor.

## 8. SECURITY OF YOUR ACCOUNT

You agree and understand that You are responsible for maintaining the confidentiality of passwords associated with any account You use to access the Services.

Accordingly, You agree that You will be solely responsible to Talksoft for all activities that occur under Your account.

If You become aware of any unauthorized use of Your password or of Your account, You agree to notify Talksoft immediately at support@talksoftonline.com or by calling 866.966.4700 and selecting option #3 for support.

## 9. CONTENT AND METHOD OF THE SERVICES

You acknowledge and agree that: (a) Talksoft does not provide content and You shall be solely responsible for all content and Messages for each of the services. You shall be solely responsible for providing any list of names, numbers or addresses for Talksoft to utilize in sending, transmitting or recording Messages; and (b) You shall be solely responsible for sending data that complies with communication laws, rules, regulations and any other legal or contractual requirements of any nature or description with regards to how You can communicate with Your clients including but not limited to phone, text, and email. Where necessary, You acknowledge that You have provided Your clients with a means for them to "Opt-In" to receive automated communications from You. (c) Talksoft is not expected to provide You with any analysis, interpretation or advice regarding the compliance of any aspect of Your Messages, campaigns or programs with any third party rights or laws, rules, or regulations. TALKSOFT IS MERELY YOUR AGENT IN PROVIDING THE SERVICES AND ACTS STRICTLY UPON YOUR INSTRUCTIONS. TALKSOFT DOES NOT HAVE AN INDEPENDENT RELATIONSHIP WITH ANY OF YOUR CLIENTS AND IS NOT AUTHORIZED TO CONFIRM WHETHER YOUR CLIENTS HAVE SATISFACTORILY AGREED TO ACCEPT THE MESSAGES AS DELIVERED BY TALKSOFT AS MAY BE REQUIRED BY ANY APPLICABLE LAW OR CONTRACTUAL OR OTHER REQUIREMENT. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT TO THE CONTRARY, YOU AGREE TO DEFEND, INDEMNIFY AND HOLD TALKSOFT HARMLESS IN CONNECTION WITH THE PROVISION OF THE SERVICES THAT HAVE BEEN DELIVERED/PERFORMED IN ACCORDANCE WITH YOUR INSTRUCTIONS AS MAY BE SET FORTH IN THIS AGREEMENT AND THE ORDER(S).

## 10. MODIFICATIONS TO SERVICE

Talksoft is constantly innovating in order to provide the best possible experience for its users. You acknowledge and agree that the form and nature of the Services which Talksoft provides may change from time to time without prior notice to You.

## 11. PAYMENTS AND CHARGES

Your Order form identifies Your monthly fee (“Monthly Fee”), and the number of messages this includes per month (Your “Monthly Activity Budget”). The Order Form may also include the per-message rate for any reminder calls made on Your behalf in excess of the Monthly Activity Budget or charges You incur for the service.

You will be billed monthly for services rendered, in accordance with paragraph 5 above. You agree to make payment of all invoices under this Agreement within thirty (30) days from the date of invoice. The following invoicing terms apply to You unless payment is being administered by a Talksoft Supplier, in which case payments terms and options will come from the Talksoft Supplier. Talksoft currently accepts payment via check, Visa, MasterCard, AMEX, or Electronic Funds Transfer (EFT). Credit card payments can be made by visiting <http://www.intuitbillpay.com/talksoftcorporation>. To apply for EFT payment, You can obtain the form by sending Your request to [billing@talksoftonline.com](mailto:billing@talksoftonline.com). Checks should be made out to ‘Talksoft Corporation’, and payments should be mailed to 1800 E. State Street, Suite 134, Hamilton, NJ 08609.

## 12. INVOICING

You agree to make payment of all invoices under this Agreement within thirty (30) days from the date of invoice. Unpaid invoices will be subject to a monthly service charge which is the lesser of one and one-half percent (1½%) per month, or the highest rate allowed by law. You must notify Talksoft (or the Talksoft Supplier who is billing You for Talksoft’s services) of any disputed charges within thirty (30) days from the date of the invoice, otherwise You will be deemed to agree to such charges and waive all such claims and Talksoft and/or the Talksoft Suppliers will not be subject to making adjustments to charges or invoices. Rates for the Services are set forth in the Order Form or will be charged at Talksoft’s (or Talksoft supplier’s) standard rates. You may obtain Talksoft’s standard rates through Your sales or account representative. You agree that rates may be altered on thirty (30) days prior notice to You.

## 13. UNPAID INVOICES

In the event an invoice is not paid in full, for any reason, within thirty (30) days from the invoice date, Talksoft or the Talksoft Supplier shall have the right to suspend all or any portion of the Services until such time as all invoices and applicable late fees have been paid. Following such payment, Talksoft or the Talksoft Supplier may reinstate Services only upon satisfactory assurance of Your ability to pay for Services, including modified payment terms such as prepayment. Such suspension shall not relieve You of any payment liability. You agree to reimburse Talksoft or the Talksoft Supplier for any costs, expenses, or fees expended by Talksoft or the Talksoft Supplier in connection with any collection efforts against You, including reasonable internal and outside attorneys’ fees.

## 14. TAXES, FEES, AND SURCHARGES

In addition to the rates for the Services, You shall pay all applicable fees, duties, tolls, administrative assessments, surcharges, or taxes now or hereafter attributable to the Services and included on Your current or subsequent invoice.

## 15. TERMINATION

The Terms will continue to apply until terminated by either You or Talksoft or the Talksoft Supplier(s) as set out below.

If You want to cancel services with Talksoft or with a Talksoft Supplier, You may do so by notifying Talksoft or the Talksoft Supplier in accordance with paragraph 3 ('Term and Renewal') section of this Agreement. Your notice should be sent via mail to 1800 E. State Street, Suite 134, Hamilton, NJ 08609, or by e-mailing support@talksoftonline.com or to Your Talksoft Supplier's given location.

Talksoft may at any time, terminate its legal agreement with You if:

- b) You have breached any provision of the Terms (or have acted in manner which clearly shows that You do not intend to, or are unable to comply with the provisions of the Terms); or
- c) Talksoft or the Talksoft Supplier is required to do so by law (for example, where the provision of the Services to You is, or becomes, unlawful); or
- d) the Talksoft Supplier with whom Talksoft offered the Services to You has terminated its relationship with Talksoft or ceased to offer the Services to You; or
- e) Talksoft or the Talksoft Supplier is transitioning to no longer providing the Services to users in the state or country in which You are resident or from which You use the service; or
- f) the provision of the Services to You by Talksoft or the Talksoft Supplier is, in Talksoft's or its supplier's opinion, no longer commercially viable.

When this Agreement come to an end, all of the legal rights, obligations and liabilities that You and Talksoft or the Talksoft Supplier have benefited from, been subject to (or which have accrued over time whilst the Terms have been in force) or which are expressed to continue indefinitely, shall be unaffected by this cessation.

## 16. LICENSE

Subject to Your compliance with the terms and conditions of this Agreement, Talksoft hereby grants You a non-exclusive, non-transferable license during the applicable Subscription Term to use Subscription based Services. Except as specifically set forth herein, Talksoft or its suppliers retain all right, title, and interest, including all intellectual property rights, relating to or embodied in the Services, including without limitation all technology, telephone numbers, web addresses, software, or systems relating to the Services. You agree not to reverse engineer, decompile, disassemble, translate, or attempt to learn the source code of any software related to the Services. Other than using the Services where You are an active participant, You may not resell the Services or otherwise generate income from the Services (from an ASP model or otherwise).

## 17. DISCLAIMER OF WARRANTIES

ALL SERVICES ARE PROVIDED "AS IS" AND "WITH ALL FAULTS" AND WITHOUT ANY WARRANTY. YOU UNDERSTAND AND AGREE THAT TALKSOFT'S SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE". TALKSOFT AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. TALKSOFT MAKES NO WARRANTY OR REPRESENTATION REGARDING ANY INFORMATION, MATERIALS, GOODS OR SERVICES OBTAINED THROUGH TALKSOFT OR THE SERVICES, OR THAT THE SERVICES

WILL MEET ANY OF YOUR REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. USE OF TALKSOFT'S SERVICES ARE AT YOUR SOLE RISK. TALKSOFT IS NOT LIABLE FOR ACTS OR OMISSIONS OF OTHER SERVICE TALKSOFTS, FOR INFORMATION OR CONTENT OF COMMUNICATIONS, THIRD PARTY SERVICES, EQUIPMENT FAILURE OR MODIFICATION, OR CAUSES BEYOND TALKSOFT'S REASONABLE CONTROL.

## 18. COMPLIANCE

Upon request, You agree to provide reasonable proof of compliance with the provisions set forth in this Agreement. You agree to immediately notify us of any actual or potential breach of this Agreement by You.

## 19. FORCE MAJEURE

No Party shall be liable for any failure to perform its obligations where such failure is as a result of Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service, and no other Party will have a right to terminate this Agreement under Clause 15 (Termination) in such circumstances.

Any Party asserting Force Majeure as an excuse shall have the burden of proving that reasonable steps were taken (under the circumstances) to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other Party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

## 20. ENTIRE AGREEMENT

This Agreement, in conjunction with the applicable Order Form constitutes the entire agreement between the parties to such Order Form with respect to the subject matter of this Agreement and the applicable Order Form and supersedes all prior agreements, discussions, proposals, representations or warranties, whether written or oral. You agree that any terms or conditions contained in any document, including but not limited to a purchase order, acknowledgment, email, or other document that You may now or later provide to Talksoft or to the Talksoft Supplier, will have no effect and that this Agreement is the only contract between Talksoft or the Talksoft Supplier and You regarding the Services and may only be amended as set forth herein. The application of the United Nations Convention on the International Sale of Goods is hereby expressly excluded. A printed version of this Agreement and of any notice given to You in electronic form will be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. Order Forms may be executed by fax, and/or in any number of counterparts, all of which shall together be considered an original and may be evidenced by a fax or scanned electronic (e.g. .pdf, .tif) copy.

## 21. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL TALKSOFT, OR ANY TALKSOFT SUPPLIERS OR AFFILIATES, OR THEIR RESPECTIVE SHAREHOLDERS, PARTNERS, MEMBERS, OWNERS, DIRECTORS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS OR ASSIGNS BE LIABLE FOR INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, DAMAGE FOR LOSS OF

PROFITS OR DATA, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, INVESTIGATION, COST OF OR ANY OTHER PECUNIARY LOSS OR OTHER DAMAGES OR COSTS OF ANY NATURE OR DESCRIPTION) ARISING OUT OF, OR RESULTING FROM THE SERVICES OR THIS AGREEMENT WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR PRODUCT LIABILITY), CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF TALKSOFT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES., YOU AGREE THAT ALL DAMAGES ARE EXCLUDED EXCEPT FOR THE DIRECT DAMAGES THAT ARE ACTUALLY INCURRED BY YOU IN REASONABLE RELIANCE UPON THE SERVICES. IN NO CASE SHALL SUCH DAMAGES EXCEED THE GREATER OF: (i) THE TOTAL AMOUNT YOU PAID FOR SERVICES UNDER THIS AGREEMENT DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE FILING OF SUCH CLAIM REGARDLESS OF THE FORM OF ACTION OR CLAIM (E.G., CONTRACT, WARRANTY, TORT, STRICT LIABILITY, NEGLIGENCE, FRAUD, OR OTHER LEGAL THEORY) OR; (ii) ONE THOUSAND DOLLARS (US\$1,000).

## 22. INDEMNIFICATION

You shall indemnify, defend and hold Talksoft and its affiliates and their officers, director, employees and Talksoft Suppliers harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including reasonable attorneys' fees, which arise out of or relate to: (i) Your use of the Services (including without limitation, any person accessing the Services using Your accounts); (ii) any actual or alleged violation of this Agreement or law, rule or regulation by You (including without limitation, any person accessing the Services using Your accounts); (iii) any actual or alleged infringement or violation by You (including without limitation, any person accessing the Services using Your accounts) of any intellectual property, privacy or other right of any person or entity or (iv) information or content that You submit, post, transmit or make available through the Services.

## 23. CONFIDENTIALITY

Talksoft agrees to hold all Confidential Information of the other party in strict confidence. Confidential Information shall mean information that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and marked as Confidential ("Confidential Information"). The parties agree that all Confidential Information shall be disclosed only to those employees or representatives on a need-to-know basis and who agree to be bound by these confidentiality restrictions. This confidentiality obligation shall not apply to any information (i) independently developed by a party, (ii) generally available to the public other than by a party's breach of this Agreement, (iii) already known by a party at time of disclosure to that party, or (iv) rightfully received from a third party without restriction on disclosure or an obligation of confidentiality running directly or indirectly to the other party. Nothing shall prevent or prohibit the receiving party from providing access to Confidential Information as may be required by law, rule or regulation, provided that the receiving party gives as much notice as is reasonably practical and provides reasonable assistance to the disclosing party in challenging or modifying the disclosure so required. Neither party shall have any rights in the other party's Confidential Information and shall return or destroy all such Confidential Information upon the termination of the applicable Order Form or the request of the discloser. Notwithstanding the foregoing, the parties acknowledge that recipient shall not be required to return to discloser or destroy those copies of Information residing on recipient's backup, disaster recovery or business continuity systems and the obligations hereunder with respect to such Confidential Information shall survive until such Information is destroyed.

## 24. ENFORCEABILITY / WAIVER



If any part of this Agreement is determined to be invalid or unenforceable, then such invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the allocation of risks, and the remainder of the Agreement will continue in effect. If any provision(s) is found to be contrary to law, then such provision(s) will be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect. Talksoft's failure to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision unless agreed to by Talksoft in a non-electronic writing manually signed by a duly authorized representative of Talksoft.

## 25. CHANGES TO THE TERMS

Talksoft may, at any time, amend the provisions of this Agreement. Any amendment proposed by You may only be accepted by Talksoft in a non-electronic writing manually signed by authorized representatives of the parties. Notwithstanding anything in this Section to the contrary, if Talksoft posts amended terms on its Website, such terms will automatically become effective ten (10) days after they are posted on the Website. By using the Services after such revised terms are posted, You agree to be bound by any such amended provisions. Therefore, You agree to periodically visit the Website to examine the then-current Agreement.