

TEMPO AI VENTURES, LLC
Terms of Service
Last Updated: June 1st, 2023

BY CLICKING “I AGREE”, REGISTERING AS A CUSTOMER WITH US, OR ACCESSING OR USING TEMPO AI VENTURES, LLC (“**COMPANY**” “**US**”, “**WE**”, OR “**OUR**”) SERVICE(S), CHAT BOT(S), OR RELATED TOOL(S) OR TECHNOLOGY (COLLECTIVELY, THE “**SERVICES**” OR “**PLATFORM**”), YOU AGREE TO THESE TERMS OF SERVICE (“**TOS**”). THESE TOS ALONG WITH ANY REGISTRATION INFORMATION OR ORDERING SELECTIONS YOU MAKE ON THE PLATFORM FORM A LEGALLY BINDING AGREEMENT (COLLECTIVELY, THE “**AGREEMENT**”). “**YOU**” OR “**CUSTOMER**” MEANS THE ENTITY IDENTIFIED AS OUR CUSTOMER ON THE PLATFORM OR THROUGH OUR REGISTRATION OR ORDERING PROCESS, AND THE APPLICABLE INDIVIDUAL ASSOCIATED WITH SUCH CUSTOMER REPRESENTS AND WARRANTS HE/SHE HAS AUTHORITY TO BIND SUCH CUSTOMER.

From time to time, Company may modify this Agreement. Unless otherwise specified by Company, changes become effective upon renewal or 60 days after posting on the Platform, whichever is earlier. Company will use reasonable efforts to notify Customer of the changes through communications via Customer's account, email or other means. Customer may be required to click to accept or otherwise agree to the modified Agreement before renewing, and in any event continued use of the Service after the update will constitute Customer's acceptance of such modifications and the updated version of the Agreement. If Company specifies that changes to the Agreement will take effect prior to Customer's next renewal and Customer objects to such changes within 60 days after the posting, Customer may terminate as its sole recourse and remedy by providing prompt notice of such termination during that period.

IF YOU DO NOT AGREE TO THIS AGREEMENT, PLEASE DO NOT ACCESS OR USE ANY SERVICES. FOR CLARITY, EACH PARTY EXPRESSLY AGREES THAT THIS AGREEMENT IS LEGALLY BINDING UPON IT. PLEASE READ IT CAREFULLY.

1. SERVICES

1.1. **Services.** Subject to the other provisions of this Agreement, Company will make available to Customer on a non-exclusive and non-transferable basis access and use of the Services in accordance with Company's then current published documentation and policies solely for Customer's end-customer or user support functions and interactions. The Services are designed to (a) facilitate and automate certain end-customer or user support functions and interactions, and (b) reduce the number of interactions requiring a live representative.

1.2. **ChatBot – AI, ML, NLP.** The Services include and utilize a chat bot that uses artificial intelligence (“**AI**”) and machine learning (“**ML**”) for natural language processing (“**NLP**”). Customer will (a) be responsible for connecting to and using the Services made available to it in accordance with this Agreement, (b) cooperate with Company to facilitate the provision of the Services, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and notify Company promptly of any such unauthorized access or use, (d) use the Services only in accordance with this Agreement and applicable laws and regulations, and (e) obtain any required consents, and provide any required disclosures or notices, to individuals interacting with the Services. The Services are not intended for, or capable of, handling all functions or interactions with end-customers or users, and Company should only use the Services as appropriate for it and its business and provide individuals other ways to contact the Company and its live representatives, as appropriate or required by law or regulation. The Services, including the chat bot and related AI, ML, and NLP technologies, are rapidly evolving. Company and its licensors and suppliers are working to improve the Services to make them more accurate, reliable, safe, and beneficial. However, given the probabilistic nature of AI and ML underlying the Services, use of the Services may in some situations result in errors or omissions and not accurately reflect real people, language, events, or facts. Customer should evaluate the accuracy and reliability of the Services as appropriate for it and its use cases and applications.

1.3. **Restrictions.** Customer will not (and will not permit any of its affiliates, contractors, customers, users to): (a) make the Services, or any component of the Services available to any third party other than as contemplated by this Agreement or expressly authorized in writing by Company, (b) resell, lease, distribute, transfer or otherwise make available the Services on a time-sharing or service bureau basis, (c) use or access the Services (including any component of the Services) in any way that threatens the integrity, performance, or availability of the Services or other customers, users, or individuals, (d) attempt to gain unauthorized access to the Services, including any data stored or processed therein, (e) decompile, disassemble, or reverse engineer the Services, in whole or in part, (f) use or reference the Services to develop or offer a competing service or product, (g) use the Services to misrepresent a live human or anything else, or in any way that violates any law or regulation, or (h) obtain, process, or transmit sensitive or highly regulated personal data in connection with the Services, including without limitation data related to minors under the age of 13,

personal health information, sensitive financial or payment processing information, or otherwise, unless expressly agreed otherwise by Company in writing.

1.4. **Ownership.** Except for Customer's limited right to access and use the Services under this Agreement, Company (or its licensors) owns and reserves all other rights, title, and interest in and to the Services (except for Customer Data). The Services are being made available on a strictly confidential and limited use basis. This Agreement is not an agreement of sale, and no ownership rights to the Services or any portion thereof are transferred to Customer. Any derivative works, modifications, or enhancements relating to the Services or any component thereof (whether created alone or jointly) will be solely and exclusively owned by Company (or its licensors). Customer hereby assigns and agrees to assign to Company any rights, title and interest in and to any feedback, suggestions, ideas, derivative works, modifications, enhancements, or improvements to the Services that Customer or its representatives provide or develop. Customer will execute and deliver (or cause its representatives to execute and deliver) any additional documents deemed reasonably necessary or appropriate to perfect, maintain, protect, or enforce Company's rights described above and the intent of this Section.

1.5. **Third Party Materials.** Certain items relating to the Services, including software code, data, models, or content provided with, or needed to access or use, the Services may be subject to "open source," "free software," "creative common" or similar licenses or agreements ("**Third Party Material**"), a list of which is available on the Platform and/or in the applicable documentation relating to the Services, if required. Third Party Materials may include application program interfaces associated with OpenAI, LLC (ChatGPT) or other third parties. Third Party Materials are not subject to the terms and conditions of this Agreement, except for this Section, the disclaimer of warranties and the limitations of liability, and as expressly provided. Instead, each item of Third Party Material is licensed under the terms of the license that accompanies such Third Party Material. Nothing in this document limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable license for the Third Party Material, including any rights to copy, modify, or distribute Third Party Material under the applicable license. If Company makes modifications to such Third Party Material and if the applicable license requires that such modifications be made available and Company does not already publish such modifications via the applicable Third Party Material community, then Company will make its modifications available on its website or as otherwise required.

2. CUSTOMER DATA.

2.1. **General.** Customer acknowledges and understands that use of the Services will permit or require Customer to provide certain Customer related data, content, materials, and other information ("**Customer Data**") to Company. All Customer Data will be considered proprietary to Customer by Company, unless otherwise agreed in writing. Company may use Customer Data for performing the Services or as authorized under this Agreement. Customer is responsible for obtaining any required third party consents relating to Customer Data and the legality of such Customer Data; however, without limiting Customer's responsibility, Company may, but is not obligated to, provide individuals interacting with the Services, disclaimers, notices, policies, terms, or addenda in connection with their use of the Services to mitigate compliance and other risks.

2.2. **De-Identified Data and Learnings.** Company (or its licensors or designees) may analyze, aggregate, and anonymize any data or information relating to the Services or Customer Data ("**De-Identified Data**") for analytical purposes and to monitor, improve, or expand the Services (or its components) or other commercial offerings, and/or use Customer Data (whether or not De-Identified) in data sets to train and improve AI or ML models ("**AI Learnings**") during and after the term of this Agreement. De-Identified Data and AI Learnings are Company's (or its licensors or designees) sole and exclusive property and may be combined and analyzed with other data and learnings and for general benchmarking purposes during and after the term of this Agreement.

2.3. **Data Safeguards and Data Processing Addendum.** Company will maintain reasonable and appropriate data safeguards, policies, and/or data processing addenda governing the processing of Customer Data, which include procedures designed to mitigate unauthorized use or disclosure of Customer Data in Company's possession or control, and which are incorporated in this Agreement by reference ("**Data Safeguards**").

2.4. **Cloud and Third Party Processing.** Company may use nationally recognized third party cloud service providers, such as Amazon Web Services or Microsoft Azure, to provide the Services and process Customer Data in accordance with industry standards. Company may also use OpenAI, LLC or its affiliates and other similar entities to process and analyze Customer Data, and they may use and retain certain rights in and to such Customer Data unrelated to the Services.

2.5. **Data License and Transfer.** Customer hereby grants Company an irrevocable perpetual royalty-free license to Customer Data for the use and purposes described and permitted above. Upon the termination or expiration of the Agreement and subject to payment of all amounts then due and owing, Company will transfer a copy of Customer Data in Company's possession or control to

Customer within thirty (30) days following any termination or expiration (or otherwise upon Customer's reasonable request), and may continue using Company Data, De-Identified Data, and AI Learnings as described herein.

3. **CONFIDENTIAL INFORMATION.** All confidential information will be held in confidence, and the receiving Party will take all steps reasonably necessary to preserve the confidentiality of the confidential information of the other Party. The disclosing Party's confidential information will not be used or disclosed by the receiving Party for any purpose except (a) as necessary to exercise rights or perform obligations under this Agreement, or (b) as required by law, provided that the other Party is given a reasonable opportunity to obtain a protective order. The receiving Party will limit its use of and access to the disclosing Party's confidential information to only those of its employees or representatives whose responsibilities require such use or access. The receiving Party will advise all such employees and representatives, before they receive access to or possession of any of the disclosing Party's confidential information, of the confidential nature of the confidential information and require them to abide by the terms of this Section. Either Party may disclose this Agreement to its actual or potential investors, creditors, professional advisors, or attorneys who are subject to a duty of confidentiality. Company's confidential information includes the Platform and Company's related non-public documentation and materials.

4. **PAYMENTS.** In consideration for the rights granted, Customer will pay to Company, without offset or deduction, the fees and expenses described on the Platform or otherwise identified during the registration or ordering process by Company. Unless otherwise provided, all fees will be due and payable immediately to Company, and subscription fees may be invoiced in advance. Fees may increase on each renewal term or upon 30 days' notice by Company; notification may occur on the Platform, by email, or through an invoice. The fees and other amounts payable by Customer to Company do not include any taxes of any jurisdiction that may be assessed or imposed upon the Services, excluding only taxes based upon Company's net income. Customer will directly pay any such taxes assessed. Customer will promptly reimburse Company for any taxes payable or collectable by Company (other than taxes based upon Company's net income). All fees and other amounts paid or payable by Customer under this Agreement are non-refundable and non-cancellable, except as otherwise expressly provided. In the event that Customer's account is overdue, Company will have the right, in addition to its remedies under this Agreement or pursuant to applicable law, to suspend Customer's access to or use of the Services, without further notice to Customer, until Customer has paid the full balance owed, plus any interest due at the rate of 18% per annum.

5. **DISCLAIMERS, LIMITED WARRANTY, INDEMNITY, AND LIMITATION OF LIABILITY**

5.1. **BETA SERVICE DISCLAIMER.** Services (or components of the Services) identified as being provided on a free, beta, trial or evaluation basis may not be appropriate for all customers and may be unreliable and contain errors or omissions. Customer's sole remedy for any defect, error or omission relating to a free, beta, trial, or evaluation Services is to stop accessing or using such Services.

5.2. **LIMITED WARRANTY.** Company warrants that it will use commercially reasonable efforts to provide the Services using industry accepted practices and methodologies relating to AI, ML, and NLP, but does not guarantee or warrant any specific results or savings from the Services. If Customer believes the Services are deficient or defective, Customer will timely notify Company. Company will thereafter use good faith efforts to analyze such issue and improve the Services, as and if commercially reasonable as determined in Company's reasonable discretion.

5.3. **DISCLAIMER.** CUSTOMER IS SOLELY RESPONSIBLE FOR THE RESULTS OBTAINED FROM THE SERVICES, AND ITS RELIANCE AND DECISIONS RELATING TO, AND USE OF, THE SERVICES, INCLUDING ANY ERRORS OR OMISSIONS MADE BY THE SERVICES, WHICH CAN OCCUR FROM TIME TO TIME DUE TO THE PROBABILISTIC NATURE OF AI, ML, AND NLP. EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, THE SERVICES ARE PROVIDED "AS IS" AND COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INTERFERENCE, ACCURACY, OR NON-INFRINGEMENT. THE SERVICES ARE NOT INTENDED OR DESIGNED FOR CRITICAL USE CASES OR FOR SITUATIONS POTENTIALLY INVOLVING EMERGENCIES, DANGER, OR LOSS TO PERSON OR PROPERTY.

5.4. **INDEMNITY.** Company will indemnify, defend, and hold Customer harmless from any third party claim of direct intellectual property infringement caused solely by Company's intellectual property provided under this Agreement, except to the extent caused by Customer's unauthorized use thereof or Customer Data. Customer will indemnify, defend (at Company's option), and hold Company and its affiliates, successors, and assigns harmless from any third party claim and any related damages, losses, costs and expenses relating to Customer's relationship or transactions with its customers or users, Customer Data, Customer's policies and scripts, or Customer's products or services, except to the extent caused by Company's willful misconduct.

5.5. **LIMITATION OF LIABILITY.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION ANY

LOSS OF OPPORTUNITIES, EFFICIENCIES, REVENUE, OR SAVINGS) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES BASED ON ANY THEORY OF CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT OR RELATING TO THE SERVICES OR DATA SAFEGUARDS WILL UNDER NO CIRCUMSTANCES EXCEED THE FEES ACTUALLY PAID BY THE CUSTOMER TO COMPANY DURING THE PRIOR TWELVE (12) MONTHS UNDER THIS AGREEMENT FROM THE LAST EVENT GIVING RISE TO LIABILITY OR \$50, WHICHEVER IS HIGHER (THE "**CAP**") THE FOREGOING LIMITATIONS OF LIABILITY WILL NOT APPLY TO A PARTY'S WILLFUL MISCONDUCT, CUSTOMER'S UNAUTHORIZED USE OR DISCLOSURE OF THE SERVICES OR RELATED INTELLECTUAL PROPERTY OR INFORMATION, OR INDEMNIFICATION OBLIGATIONS.

6. **TERM AND TERMINATION.** The initial term of the Services will be as specified in the registration process. If an initial term is not specified, the initial term will be one month. The term will automatically renew for the duration of the initial term, unless a Party provides the other Party at least 30 days' written notice of non-renewal or if otherwise provided in this Agreement. Either Party may terminate for the uncured material breach of the other Party or as expressly provided otherwise in this Agreement. Any terms and conditions, including without limitation disclaimers and limitations of liability, indemnity obligations, and the rights and obligations in Section 2, will continue to apply after termination or expiration as necessary to give effect to the intent of this Agreement. Upon termination or expiration, Customer will cease using or access the Services. Customer will remain responsible for paying the fees for the then current subscription term, unless Customer is terminating for Company's uncured material breach or as expressly provided otherwise.

7. **MISCELLANEOUS.** The relationship between the Parties under this Agreement is that of independent contractors and not partners, joint venturers or agents. Customer may not assign this Agreement or its rights without the prior written approval of Company. This Agreement states the entire understanding between the Parties with respect to its subject matter, and supersedes all prior proposals, marketing materials, negotiations and other written or oral communications between the Parties with respect to the subject matter of this Agreement. No waiver of any breach of this Agreement, will be effective unless in writing and signed by an authorized representative of both Parties. If any portion of any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, then such unenforceable portion of the provision will be deemed severed from this Agreement, the validity and enforceability of the remaining portion of the provision and the other provisions of this Agreement will not be affected or impaired, and this Agreement will be amended in order to effect, to the maximum extent allowable by law, the original intent of such provision. This Agreement will be construed and enforced in accordance with the laws of the State of New York excluding choice of law; provided, however, that the terms of any applicable law now or hereafter enacted that is based on or similar to the uniform computer information transactions act drafted by the national conference of commissioners on uniform state laws will not apply. CUSTOMER AGREES TO SUBMIT AND CONSENT TO THE PERSONAL AND EXCLUSIVE JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE STATE AND FEDERAL COURTS LOCATED WITHIN NEW YORK, NEW YORK AND HEREBY WAIVES ITS RIGHT TO A JURY TRIAL. Except with respect to Customer's payment obligations, neither Party will be liable for, nor will either Party be considered in breach of this Agreement due to any failure to perform its obligations under this Agreement as a result of a cause beyond its control, including any act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications (including the Internet or other networked environment), power or other utility, labor problem, unavailability of data or supplies or any other cause which could not have been prevented by the non-performing Party with reasonable care. Customer authorizes Company to use Customer's name in any routine list of Company Customers and as a reference. Company may not use Customer's name in any advertising or press release without the prior written consent of Customer.