

# DictationApp

End User License Agreement

## End User License

## Agreement

YOU ACKNOWLEDGE THAT YOU ARE BEING GRANTED THE RIGHT TO INSTALL AND USE THE CLIENT SOFTWARE AND ACCESS THE SERVER SOFTWARE (AS THOSE TERMS ARE DEFINED IN THE EULA BELOW) PURSUANT TO YOU BEING DESIGNATED AS AN AUTHORIZED USER (AS DEFINED IN THE EULA BELOW). AS AN AUTHORIZED USER, BY CLICKING THE “I ACCEPT” BUTTON BELOW, YOU AGREE THAT YOUR ACCESS AND USE OF THE SOFTWARE WILL BE IN ACCORDANCE WITH THE TERMS OF THE EULA POSTED BELOW.

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END USER LICENSE AGREEMENT (“EULA”)

Zuzis LLC.

DictationApp (“Software”)

**IMPORTANT—PLEASE READ CAREFULLY:** Your acceptance of the terms of this End User License Agreement (“Agreement”) is required before your use of the Software.

This Agreement is between you (either an individual or a single entity, hereinafter referred to as “Licensee” or “you”) and Zuzis LLC, developer of DictationApp.

(collectively, “DictationApp”). BY INSTALLING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT INSTALL OR USE THE SOFTWARE, AND PRESENT YOUR RECEIPT OR OTHER PROOF OF PURCHASE, TOGETHER WITH THE SOFTWARE PACKAGE, TO THE ENTITY FROM WHICH YOU OBTAINED THE SOFTWARE PACKAGE WITHIN 30 DAYS TO REQUEST A REFUND. THIS AGREEMENT IS ENFORCEABLE AGAINST ANY PERSON OR ENTITY (E.G., SYSTEM INTEGRATOR, CONSULTANT OR CONTRACTOR) THAT INSTALLS OR USES THE SOFTWARE OR ANY COMPONENT OF THE SOFTWARE PACKAGE ON ANOTHER PERSON’S OR ENTITY’S BEHALF.

THIS IS A LICENSE TO USE SOFTWARE AND NOT A SALE OF SOFTWARE CODE.

Your rights under this Agreement may be subject to additional terms and conditions in a separate written software license agreement with DictationApp or with any of DictationApp’s authorized resellers, intended to govern the use of the Software Package, which supplements or supersedes all or portions of this Agreement.

## **Definitions**

“Administrator License” means a limited right to use the Server Software web portal to set up licensed users, manage the user options, and perform maintenance tasks on the Server Software, and to use the Client Software for the sole purpose of testing to support licensed users. For the avoidance of doubt, the Software cannot be used, pursuant to an Administrator License, for clinical dictation.

“Authorized User” means an employee or contractor of Licensee who is permitted to access and use the Software subject to the terms and restrictions contained in this Agreement.

“Authorized User License” means Licensee’s limited right to allow a single employee or contractor (for each such license purchased, as indicated in the Order) to use the Software in a manner commensurate with its intended use.

“Device” means a personal computing device as specified in the accompanying Documentation.

“Documentation” means the user manuals and/or technical publications, as applicable, supplied with the Software in printed or electronic form, relating to the installation, use and administration of the Software.

“Instance”. An “instance” of the Software is created by executing the Software’s setup or install procedure. An instance of the Software is also created by duplicating an existing instance. References to the Software in this Agreement include “instances” of the Software.

“License Duration” means the duration of the license grant specific to a particular Software license, which duration is either a Perpetual License or a Term License.

“Maintenance Services” are services that DictationApp provides pursuant to an Order to maintain the Software and equipment (as applicable). The description of these Maintenance Services purchased by Licensee is posted online on DictationApp website at the URL- DictationApp.com. DictationApp may update the URL from time to time.

“Non-Physicians” means employees or contractors of Licensee who are not Physicians, but provide medical services on behalf of the Licensee, including, but not limited to, nurses, physician assistants and psychologists.

“Non-Physician Client License” means a license grant as per Section 1(b) of this Agreement, limited for use to only a Non-Physician, as indicated in the Order, pursuant to the terms of this Agreement. For the avoidance of doubt, Software licenses pursuant to a “Non-Physician Client License” cannot be used by Physicians.

“Order” means a purchasing document placed by Licensee hereunder for Software licenses, equipment and Maintenance Services, which indicates, among other things, the number and type of Software license(s) and services purchased by you.

“Operating System Environment”. An “operating system environment” is one instance of an operating system and instances of applications, if any, configured to run on that operating system instance. There are two types of operating system environments, physical and virtual. A physical operating system environment is configured to run directly on a physical hardware system. A virtual operating system environment is configured to run on a virtual (or otherwise emulated) hardware system. A physical hardware system can have either or both of the following:

(a) one Physical Operating System Environment

(b)one or more Virtual Operating System Environments

A “Physical Operating System Environment” is an environment that uses physical processors. A physical processor is a physical processor occupying one socket on a systems motherboard in a physical hardware system.

A “Virtual Operating System Environment” is one that uses virtual processors. A virtual processor is a processor in a virtual (or otherwise emulated) hardware system. A virtual processor is considered to have the same number of threads and cores as a physical processor on the underlying physical hardware system.

“Perpetual License” means a license grant that is not limited in duration, subject to early termination pursuant to this Agreement.

“Physicians” means physicians (including, but not limited to: full time and part time physicians, attending physicians, D.O.s and residents working on behalf of the Licensee.

“Physician Client License” means a license grant as per Section 1(b) of this Agreement, limited for use to only a Physician, as indicated in the Order, pursuant to the terms of this Agreement.

"Run-time Engine" means the programmed access of the Software by a Licensee application or a third party application integrated with the Software.

“Server License” means the limited right defined in Section 1(a).of this Agreement

“Software Package” means the Software, the associated media, and the Documentation.

“Speech Data” means the audio files, associated transcriptions and log files provided by you hereunder or generated in connection with the Software.

“Term License” means a license grant that is limited in duration, which duration is as indicated in the Order, subject to early termination pursuant to this Agreement.

“User Profile” refers to the record of speaker-specific data that provides a consistent dictation experience across successive dictation sessions.

“Software” shall also include any modified versions, updates, or upgrades of the Software licensed to you by DictationApp. You may install and use a modified version, update, or upgrade of the Software only if you have a validly licensed existing version of the Software being modified, updated, or upgraded. If you download, install, copy, or otherwise use a modified version, update, or upgrade of the Software, then your license terminates as to the previous version or edition of the Software that was the basis for your eligibility to such modified version, update or upgrade, and you have a license only to such modified version, update, or upgrade or edition of the Software under the terms of this Agreement.

The Software contains the following components:

(a)“Server Software” means the component of the Software that provides services or functionality on your server (your physical hardware systems capable of running Server Software are “servers”. A hardware partition or blade is considered to be a separate physical hardware system);

(b)“Client Software” means the component of the Software that provides functionality on a Device to utilize the functionality in conjunction with accessing or utilizing Server Software.

## **1. Grant of License**

Subject to the terms and conditions of this Agreement, DictationApp grants Licensee a non-exclusive license to use the Software subject to the following:

(a) Server Software. Licensee may install and run, at any one time, one Instance of the Server Software in one compatible Physical Operating System Environment or one Virtual Operating System Environment, whereby, to “run an Instance” means to load the Server Software into memory and execute one or more of its instructions. Once running, an Instance is considered to be running (whether or not its instructions continue to execute) until it is removed from memory. One Instance of the Server Software is only licensed for use with one database.

(b) Client Software. Licensee may allow a single employee or contractor, for each Authorized User License purchased, to use the Client Software solely in conjunction with Server Software, in a manner commensurate with its intended use. Pursuant to such right, you are authorized to reproduce and install copies of Client Software on any number of Devices, for use solely by the Authorized Users.

A separate Authorized User License must be purchased for each user whose User Profile(s) is/are being used by the Software. An Authorized User is permitted to create and use multiple User Profiles under a single Authorized User License.

Licensee may authorize a third party to use the Software in connection with any of Licensee's User Profiles solely for the purpose of performing editing or correcting functions for Licensee; however, such third party must purchase a separate Authorized User License to create his or her own User Profile.

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(e) If you have purchased an Administrator License, as indicated in the Order, you are granted a limited right to use the Server Software web portal to set up licensed users, manage the user options, and perform maintenance tasks on the Server Software, and to use the Client Software for the sole purpose of testing to support

Authorized Users. For the avoidance of doubt, the Software cannot be used, pursuant to an Administrator License, for clinical dictation.

## **2. DictationApp's Rights**

Licensee acknowledges that the Software Package consists of proprietary information and products of DictationApp (or other third parties) protected under United States or other patent, copyright, or trade secret laws. Licensee further acknowledges and agrees that all right, title and interest in and to the Software Package, and each component thereof, are and shall remain with DictationApp. This Agreement does not convey to Licensee an interest in or to the Software Package, but only a limited right to use, revocable in accordance with the terms of this Agreement. DictationApp reserves all rights not expressly granted to you in this Agreement.

## **3. Term and Termination**

(a) This License is effective upon Licensee's first installation and/or use of the Software and shall continue for the License Duration. Licensee may terminate this Agreement at any time by uninstalling the Software and returning the Software Package to DictationApp. DictationApp may terminate this Agreement at any time upon breach by Licensee of any terms hereof including non-payment of applicable fees, as indicated in the Order, to DictationApp or its reseller, as applicable. Upon such termination by DictationApp, Licensee agrees to uninstall the Software and promptly return the Software Package to DictationApp.

(b) Termination of this Agreement shall not relieve Licensee of its payment obligations incurred prior to such termination, including all remaining (and subsequently invoiced) monthly payments of license fees with respect to a Term License purchased under this Agreement.

## **4. Other Restrictions**

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(g) This license for the Software Package does not allow Licensee to use the Software as a Run-time Engine.

## **5. Proprietary Rights**

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## **6. Limited Warranty**

DictationApp warrants that the Software will perform substantially in accordance with the accompanying Documentation for a period of 90 days from the date of receipt ("Limited Warranty").



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YOUR EXCLUSIVE REMEDY. DictationApp's and its suppliers' liability and your exclusive remedy shall be, at DictationApp's option from time to time exercised subject to applicable law, (a) return of the price paid (if any) for the Software, or (b) a repair or replacement of the Software that does not meet this limited warranty and that is returned to DictationApp with a copy of your receipt. You will receive the remedy elected by DictationApp without charge, except that you are responsible for any expenses that you may incur (example: cost of shipping the Software to DictationApp). This Limited Warranty is void if failure of the Software has resulted from accident, abuse, misapplication, abnormal use or a virus. Any replacement software will be warranted for the remainder of the original warranty period or thirty days, whichever is longer.

## **7. Disclaimer of Warranty**

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**8. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL DictationApp OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY, INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE, THE PROVISION OF OR FAILURE TO

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**9. LIMITATION OF LIABILITY AND REMEDIES.** NOTWITHSTANDING ANY DAMAGES THAT YOU MIGHT INCUR FOR ANY REASON WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ALL DAMAGES REFERENCED ABOVE AND ALL DIRECT OR GENERAL DAMAGES), THE ENTIRE LIABILITY OF DictationApp AND ANY OF ITS SUPPLIERS UNDER ANY PROVISION OF THIS AGREEMENT AND YOUR EXCLUSIVE REMEDY FOR ALL OF THE FOREGOING (EXCEPT FOR ANY REMEDY OF REPAIR OR REPLACEMENT ELECTED BY DictationApp WITH RESPECT TO ANY BREACH OF THE LIMITED WARRANTY) SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS (INCLUDING SECTIONS 6, 7 AND 8 ABOVE) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

#### **10. Assignment**

In no event may Licensee assign its rights or obligations hereunder or subcontract any portion of its performance hereunder without DictationApp's prior written consent.

#### **11. Remedies**

If Licensee breaches this Agreement, Licensee shall promptly return the Software Package to DictationApp. A breach by Licensee will irrevocably harm DictationApp, and DictationApp shall be entitled to injunctive and/or other equitable relief, in addition to any other remedies afforded by law.

#### **12. Governing Law**

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

#### **13. Severability**

Should any term of this Agreement be declared void or unenforceable by any court of competent jurisdiction, such declaration shall have no effect on the remaining terms hereof.

#### **14. No Waiver**

The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

#### **15. United States Government End Users**

This Section applies to all acquisitions of the Software by or for the Federal government or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement, or other activity with the Federal government. By accepting delivery of the Software, the government hereby agrees that this software qualifies as “commercial” computer software within the meaning of the acquisition regulation(s) applicable to the procurement. The terms and conditions of this Agreement shall pertain to the government’s use and disclosure of the Software and shall supersede any conflicting contractual terms or conditions. If this Agreement fails to meet the government’s needs or is inconsistent in any respect with Federal law, the government agrees to return the Software, unused, to DictationApp. The following additional statement applies only to acquisitions governed by DFARS Subpart 227.4 (October 1988): “Restricted Rights—Use, duplication, and disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (Oct. 1988).” In the event any of the above referenced agency regulations is amended or replaced, the equivalent successor regulation shall apply instead.

**16. Licensee expressly agrees that DictationApp is not a licensed health care provider and that the Software is not a substitute for independent medical decision making by a qualified health care practitioner.** Licensee is solely responsible for its own conduct with respect to patient care and any reliance upon the Software shall not diminish License's responsibility for patient care that you may be involved or associated with.

**17. Export Restrictions.** You acknowledge that the Software Package is subject to U.S. export jurisdiction. You agree to comply with all applicable laws that apply to the

Software Package, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the U.S. government.

**18. Consent To Use Of Speech Data.** The Software has a feature by which you may enable DictationApp to collect Speech Data. By turning on the feature to provide DictationApp with Speech Data, you acknowledge, consent and agree that DictationApp may collect and use the Speech Data as provided hereunder. The parties agree that Speech Data shall only be used by DictationApp or third parties acting under the direction of DictationApp, pursuant to confidentiality agreements, to tune, enhance and improve the speech recognition and other components of the Software, and other DictationApp services and products. DictationApp will not use the information elements in any Speech Data for any purpose except as set forth above.

**19. Refunds.** Service begins as soon as your initial payment is processed. Your subscription will continue without renewal notice until you cancel. If you cancel within 7 days of your initial order, you'll be fully refunded. Should you cancel after 7 days, your payment is non-refundable and your service will continue until the end of that month's billing period. Because there's no annual contract, your monthly rate is subject to change, but you will be notified of any change in your monthly rate with the option to cancel in accordance with these terms.