

AI DIALER SUPPLEMENTAL TERMS

These AI Dialer Supplemental Terms (the “*Supplemental Terms*”) are between Koncert LLC (“*Koncert*”) and the Subscriber designated in an Order Form that itemizes AI Dialer as a Subscribed Service.

These Supplement Terms are in addition to, and a part of, the Koncert Terms and Conditions of Use (the “*Koncert Terms and Conditions*”). These Supplemental Terms only apply to a Subscriber’s and its User’s access and use of AI Dialer Third Party Software. Those portions of the AI Dialer that do not comprise the AI Dialer Third Party Software are governed by the Koncert Terms and Conditions and not these Supplemental Terms. Capitalized terms that are not otherwise defined in these Supplemental Terms have the meaning indicated in the Koncert Terms and Conditions. With respect to the AI Dialer Third Party Software, to the extent of any conflict between these Supplemental Terms and the Koncert Terms and Conditions, the provisions in these Supplemental Terms shall govern and control.

THE AI DIALER THIRD PARTY SOFTWARE IS PROTECTED UNDER U.S. AND INTERNATIONAL COPYRIGHT LAWS, AS WELL AS OTHER INTELLECTUAL PROPERTY LAWS AND TREATIES.

The AI Dialer Third Party Software is licensed, as part of AI Dialer, and not sold, to Subscriber for use only under the terms of these Supplemental Terms and the Koncert Terms and Conditions. Subscriber’s access and use of the AI Dialer constitutes Subscriber’s acceptance of these Supplemental Terms.

Subscriber’s access to and use of the AI Dialer Third Party Software is subject to the following Supplemental Terms and the Koncert Terms and Conditions:

1. Licenses

1.1. Subscriber License to AI Dialer Third Party Software. Subscriber’s license to use AI Dialer, as granted in Section 2.1 in the Koncert Terms and Conditions, includes Subscriber’s license to use the AI Dialer Third Party Software comprised within AI Dialer.

1.2. Third Party Licensor’s Proprietary Rights. Subscriber acknowledges that all title and Intellectual Property Rights in and to the AI Dialer Third Party Software (including but not limited to any images, photographs, animations, video, audio, music, text, and applets incorporated into such software), and any copies Subscriber is permitted to make herein are owned by Third Party Licensor. Subscriber shall not take any action to jeopardize, limit or interfere in any manner with Third Party Licensor’s or its suppliers’ or licensors’ ownership of or rights with respect to the AI Dialer Third Party Software. If AI Dialer Third Party Software contains documentation, which is provided only in electronic form, a User may print one copy of such electronic documentation. Third Party Licensor reserves all rights not expressly granted in these Supplemental Terms, including, without limitation, all Intellectual Property Rights and other proprietary rights in and to the AI Dialer Third Party Software and all copies thereof. No right, license, or interest to any trademarks is granted hereunder, and Subscriber shall not assert any right, license, or interest with respect to any trademarks of Third Party Licensor.

1.3. Subscriber License Grant. With respect to technical information Subscriber provides to Koncert or Third Party Licensor as part of any support services related to the AI Dialer Third Party Software, Subscriber agrees that Koncert and Third Party Licensor, their respective affiliates and agents, may collect, process, and use such information for its business purposes, including for product support and development. Neither Koncert nor Third Party Licensor will utilize such technical information in a form that identifies Subscriber.

2. TTS Software. Subscriber shall not distribute the saved output of the TTS Software, in any manner, including, but not limited to, audio files, as a part of applications, materials or multimedia works created by or for Subscriber or otherwise rent, resell, lease or lend the generated output to any third party. Subscriber may not play back the saved output in public or otherwise make it publicly available.

3. No Right to Reproduce or Copy. Subscriber may not reproduce or copy the AI Dialer Third Party Software or any Documentation pertaining thereto.

4. Excluded Uses. Subscriber warrants to Koncert and the Third Party Licensor that the AI Dialer and AI Dialer Third Party Software will not be used in any application such that the use of the AI Dialer Third Party Software could cause death or serious injury. Subscriber agrees to indemnify and hold harmless Koncert and the Third Party Licensor against damages resulting from such misuse of the AI Dialer Third Party Software.

5. Unlicensed Use Prevention. Subscriber agrees that the Third Party Licensor may, in its discretion, include features in the AI Dialer Third Party Software to prevent unlicensed use of such software.

6. Restrictions. Subscriber shall not (1) sell, resell, license, sublicense, distribute, rent or lease the AI Dialer Third Party Software; (2) reverse engineer, decompile, or disassemble AI Dialer Third Party Software; (3) disclose the results of any benchmark test of the AI Dialer Third Party Software to any third party without Koncert's prior written approval.

7. Confidential Information. Subscriber acknowledges that the AI Dialer Third Party Software contains proprietary, unpublished information, algorithms, innovations and concepts protected under trade secret law that shall constitute Third Party Licensor's Confidential Information. Section 9 in the Koncert Terms and Conditions shall apply to Third Party Licensor's Confidential Information.

8. WARRANTY AND DISCLAIMER

8.1. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, THE AI DIALER THIRD PARTY SOFTWARE IS PROVIDED TO SUBSCRIBER ON AN "AS IS" "WHERE AS" BASIS AND TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW. KONCERT AND THIRD PARTY LICENSOR HEREBY EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES CONCERNING THE AI DIALER THIRD PARTY SOFTWARE, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. ANY SUPPLEMENTS OR UPDATES TO THE AI DIALER THIRD PARTY SOFTWARE, INCLUDING WITHOUT LIMITATION, ANY (IF ANY) SERVICE PACK OR HOT FIXES PROVIDED TO SUBSCRIBER ARE NOT COVERED BY ANY WARRANTY OR CONDITION, EXPRESS OR IMPLIED.

8.2. THIRD PARTY LICENSOR AND KONCERT ARE NOT RESPONSIBLE IF FAILURE OF THE AI DIALER THIRD PARTY SOFTWARE HAS RESULTED FROM ACCIDENT, ABUSE, MISAPPLICATION, ABNORMAL USE, OR A VIRUS. THE AI DIALER THIRD PARTY SOFTWARE MAY NOT BE FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE WITH ONLINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE TECHNOLOGY COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL

DAMAGE. FURTHER, EXCEPT AS OTHERWISE PROVIDED IN THESE SUPPLEMENTAL TERMS, THIRD PARTY LICENSOR AND KONCERT MAKE NO REPRESENTATION, WARRANTY OR GUARANTY: (1) AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY OF THE AI DIALER THIRD PARTY SOFTWARE, DOCUMENTATION OR GENERATED OUTPUT; (2) THAT THE AI DIALER THIRD PARTY SOFTWARE WILL MEET SUBSCRIBER'S REQUIREMENTS OR EXPECTATIONS; AND (3) THAT USE OF THE AI DIALER THIRD PARTY SOFTWARE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA OF SUBSCRIBER.

9. LIMITATION OF LIABILITY AND REMEDIES.

9.1. Intellectual Property Limitation of Liability. Koncert and Third Party Licensor shall have no liability or obligation to Subscriber for any third-party claim, proceeding, lawsuit, investigation, or action (a "*Claim*"), and Subscriber agrees to indemnify, defend, and hold Koncert and Third Party Licensor, its managers, officers, directors, employees, agents, and representatives harmless from and against all costs, losses, damages, liabilities, and expenses, including, without limitation, reasonable attorneys' fees, attributable to any Claim related to or arising out of the infringement of any patent, copyright, trademark or proprietary right of any third party by the AI Dialer Third Party Software, from or in connection with (a) Subscriber's modification of the AI Dialer Third Party Software, (b) Subscriber's use of the AI Dialer Third Party Software in combination with any software or other product or material not provided by Third Party Licensor or Koncert, or (c) Subscriber's use of the AI Dialer Third Party Software other than as contemplated by these Supplemental Terms.

9.2. Limitation of All Liability and Damages. NOTWITHSTANDING ANY DAMAGES THAT SUBSCRIBER MIGHT INCUR FOR ANY REASON WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ALL DAMAGES REFERENCED ABOVE AND ALL DIRECT OR GENERAL DAMAGES), THE ENTIRE LIABILITY OF KONCERT AND THIRD PARTY LICENSOR AND ANY OF THEIR RESPECTIVE SUPPLIERS UNDER ANY PROVISION OF THESE SUPPLEMENTAL TERMS AND SUBSCRIBER'S EXCLUSIVE REMEDY FOR ALL OF THE FOREGOING SHALL BE LIMITED TO THE GREATER OF THE AMOUNT ACTUALLY PAID BY SUBSCRIBER FOR THE ACCESS AND USE OF THE AI DIALER THIRD PARTY SOFTWARE OR U.S. \$5.00. THE FOREGOING LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

10. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL, AND CERTAIN OTHER DAMAGES

10.1. Subscriber agrees that the Fees charged by Koncert for the access and use of the AI Dialer Third Party Software does not include any consideration for assumption by Koncert or Third Party Licensor of the risks of Subscriber's consequential or incidental damages which may arise in connection with Subscriber's use of the AI Dialer Third Party Software.

10.2. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THIRD PARTY LICENSOR OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, 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 AI DIALER THIRD PARTY SOFTWARE, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES APPLICABLE TO THE AI DIALER

THIRD PARTY SOFTWARE, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THESE SUPPLEMENT TERMS, EVEN IF THIRD PARTY LICENSOR, KONCERT OR ANY SUPPLIER TO EITHER OF THEM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Termination. Without prejudice to any other rights, Third Party Licensor or Koncert may terminate the Subscription Term applicable to the AI Dialer Third Party Software if Subscriber fails to comply with these Supplemental Terms or the Koncert Terms and Conditions. In such event, Subscriber must cease all use of the AI Dialer Third Party Software and corresponding Documentation.

12. GENERAL PROVISIONS

12.1. Applicable Laws. The laws of the State of California shall govern these Supplemental Terms.

12.2. Arbitration. Any disputes arising under these Supplemental Terms shall be settled by binding arbitration among Subscriber, Koncert and Third Party Licensor in accordance with the commercial arbitration rules of the American Arbitration Association. Such arbitration shall be administered by the San Diego, California office of the American Arbitration Association.

12.3. Costs of Litigation or Arbitration. If any action is brought by Koncert, Third Party Licensor or Subscriber against the other regarding the subject matter hereof, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorney fees and expenses.

12.4. Severability. Should any term in these Supplemental Terms be declared void or unenforceable by any court of competent jurisdiction, such term shall be modified to the extent necessary to render it enforceable, or, if no such modification is possible, severed from these Supplemental Terms, and all other terms of these Supplemental Terms shall remain binding and legally enforceable.

12.5. No Waiver. The failure of a party, including Third Party Licensor, to enforce any rights granted thereunder or to take action against the other party in the event of any breach thereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

12.6. Section Headings. The section headings are for convenience only and do not form a part of this License Agreement for purposes of interpretation.

12.7. Entire Agreement. The applicable Order Form, these Supplemental Terms, the Koncert Terms and Conditions and any other Related Documents are the entire agreement between Subscriber and Koncert relating to the AI Dialer Third Party Software and they supersede all prior or contemporaneous oral or written communications, proposals, and representations with respect to the AI Dialer Third Party Software or any other subject matter covered by these Supplemental Terms.

12.8. Notice. Any notice or approval required or permitted under these Supplemental Terms shall be given in writing and will be sent by email, courier or mail, postage prepaid. Any notice or approval delivered by email (with answer back) shall be deemed to have been received the day it is sent. Any notice or approval sent by courier shall be deemed received upon delivery. Any notice or approval sent by mail shall be deemed to have been received upon delivery following its date of posting.

13. Third Party Contents

13.1. Carnegie Mellon University Software. The AI Dialer Third Party Software may include software developed by Carnegie Mellon University (<http://www.speech.cs.cmu.edu/>) (the “*CMU Software*”). CMU Software was supported in part by funding from the Defense Advanced Research Projects Agency and the National Science Foundation of the United States of America, and the CMU Sphinx Speech Consortium. THE CMU SOFTWARE IS PROVIDED BY CARNEGIE MELLON UNIVERSITY "AS IS" AND ANY EXPRESSED OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED. IN NO EVENT SHALL CARNEGIE MELLON UNIVERSITY NOR ITS EMPLOYEES BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THE SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

13.2. The Apache Software Foundation. The AI Dialer Third Party Software may include software developed by the Apache Software Foundation (<http://www.apache.org/>).