

## **Rapport Service Terms and Conditions of Service**

### **1. Definitions**

- a. Rapport Service – means the provision of access to the Rapport Software, Rapport Cloud, Rapport Dashboard and Rapport Materials by the Licensor to the Customer
- b. Rapport Software - means the hosted software solution which is provided by the Licensor that is intended to provide a API stack for use by the Customer
- c. Rapport Cloud - means the network platform used by the Licensor to transmit audio and data on behalf of the Customer
- d. Rapport Dashboard - means the restricted web pages which provide the functionality that the Customer can use to manage their configuration of the Rapport Software and view information about their usage of the Rapport Cloud
- e. Rapport Materials -- means any information that is provided by the Licensor to the Customer in order to ease the Customers use of the Rapport Software, Rapport Cloud and Rapport Dashboard, including, but not limited to sample facial models, API and SDK documentation and other support
- f. Licensor – Speech Graphics Ltd, a company registered in Scotland at 61 Dublin Street, Edinburgh, EH3 6NL, with company number SC388915
- g. Customer – The person, persons, company, or other entity who directly licenses the Rapport Service from the Licensor
- h. Parties – the Licensor and the Customer
- i. Customer Application – The Application, Service, Interface or other form of software which is developed by the Customer using the Rapport Service and is deployed to End Users
- j. End User – The person, persons, companies, or other entities who use the Customer Application
- k. EULA – End User License Agreement. The agreement between the Customer and the End User that governs the End User’s use of the Customer Application
- l. Customer Conversational AI – The Artificial Intelligence system that the Customer uses to interact with End Users. This may be based on a Third Party Artificial Intelligence system, or have been developed by the Customer
- m. End User Data – any and all information that is entered into the Customer Application by the End User in order to operate the Customer Application. This includes, but is not limited to, speech data, location data, animated characters, user names, contact lists, hardware specifications, account data, browser settings, configuration data, and personal details
- n. Commercial Terms – The agreement between the Licensor and the Customer that governs the consideration between the parties
- o. Intellectual Property Rights – patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights

and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world

- p. Licenser Proprietary Materials – the Intellectual Property and other know how which the Licenser uses to construct, maintain and support the Rapport Service.
- q. Open-Source Software – means any software or software component, module or package that contains, or is derived in any manner in whole or in part from, any software that is distributed as free software, open-source software or similar licensing or distribution models, including, without limitation, software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (a) GNU's General Public License (GPL) or Lesser/Library GPL (LGPL); (b) the Artistic License (e.g., PERL); (c) the MIT Public License (MIT); (d) the Mozilla Public License (MPL); (e) the Netscape Public License; (f) the Sun Community Source License (SCSL); (g) the Sun Industry Standards License (SISL); (h) the BSD License; and (i) the Apache License.
- r. Purpose – to develop the Customer Application
- s. Documentation – The supporting information which helps the Customer implement the Rapport Service in the Customer Application. Link:[to be added]

## 2. License

### a. License to Use

- i. Licenser grants a non-exclusive, non-transferrable, limited License to the Customer and End User to use the Rapport Service.
- ii. The Customer and End User grant Licenser the right to collect, analyse and use data and metadata for the purpose of maintaining and operating the Rapport Service.
- iii. The Customer shall make reference to the Licence granted in 2(a)ii in the EULA.

### b. License Restrictions

- i. The license granted in 2(a)(i) does not permit the Customer or End User to:
  - 1. Copy, reverse engineer, or make derivative works from the Rapport Service or its Source Code
  - 2. Sublicense the Rapport Service in any way
  - 3. Use the Rapport Service in any way to support or promote any service which are in any way competitive to the Licenser
  - 4. Use the Rapport Service without the appropriate level of attribution
  - 5. Disrupt the operation of the Rapport Service for other Customers and End Users
  - 6. Disclose or publish any results from any test of the Rapport Service without the express permission of Licenser
  - 7. Violate any law, regulation or statute
  - 8. Use the Rapport Service for any Purpose other than that which is covered by this Agreement and any associated Commercial Terms
  - 9. Distribute the Rapport Service as Open Source Software, or do anything (including, but not limited to, the development of a Customer Application) that in any way would cause any Licenser Proprietary Software to be subject to any Open-Source Software or similar license.
- ii. The Licenser shall have the rights to restrict the Customer's access to the Rapport Service in line with this Agreement and the Commercial Terms.

- c. Personal Data
    - i. Other than as expressly stated in this Agreement, the Customer will have control over any and all Personal Data that the Customer and End User uploads through the Customer Application.
  - d. Reservation of Rights
    - i. Customer and End User acknowledge and agree that except for the rights and licenses expressly granted to Customer and End User in this Agreement, Licensor shall retain all right, title and interest in and to the Licensor Proprietary Materials and any derivatives, modifications or improvements of the foregoing; and, nothing contained in this Agreement shall be construed as conferring upon Customer and/or End User by implication, operation of law, estoppel, or otherwise, any other license or right.
- 3. Licensor Rights and Obligations
  - a. Delivery
    - i. Subject to the terms and conditions of this agreement and payment of any applicable Fees, Licensor shall provide the Customer and End Users access to the Rapport Service
  - b. Suspension of Use
    - i. Licensor shall retain the right to suspend access to any End User if there is a suspicion that the terms of use are being breached.
  - c. Integration
    - i. The Rapport Service requires specific access rights to link to the Customer Conversational AI. The Licensor will not use these specific access rights or other integration to access the Customer Conversational AI other than with the express permission of the Customer.
  - d. Intellectual Property Rights
    - i. The Customer acknowledges that all Intellectual Property Rights in the Rapport Service belong and shall belong to the Licensor, and the Licensee shall have no rights in or to the Rapport Service other than the right to use it in accordance with the terms of this Agreement.
- 4. Customer Rights and Obligations
  - a. End User Service
    - i. Except as expressly stated in this agreement the Customer shall be responsible for all aspects of service, support and communication with the End User
  - b. Compliance with all applicable laws and regulations
    - i. The Customer shall comply with all laws and regulations which may apply to the Customer Application
  - c. Notification of End User misconduct
    - i. The Customer shall notify the Licensor within 24 hours upon becoming aware of any End User either breaching the terms of this Agreement or otherwise misusing the Rapport Service in any way
  - d. End User Consents
    - i. Customer hereby represents and warrants that, prior to transmitting End User Data and Call Data using the Rapport Service, it will provide all reasonably necessary disclosures and/or obtain all reasonably necessary consents from each End User regarding the intended disclosures and uses of the End User Data.

- e. Proper Implementation
    - i. Customer shall ensure that at all times during the term of this Agreement, Customer's installation, configuration, and use of Rapport Service shall (i) conform to specifications set forth in the applicable Services Documentation, (ii) comply with all applicable laws and regulations, including without limitation the TCPA, and (iii) comply with all license and use restrictions with respect to any third party software used by, or incorporated into, the Rapport Service.
  - f. Security Measures
    - i. Customer shall maintain and adhere to all commercially reasonable security measures to protect the Rapport Service and the Customer Application and the data contained therein from unauthorized control, tampering, or any other unauthorized access, including, without limitation, compliance with applicable laws.
5. Fees
- a. Fees for use of the Rapport Service shall be set out in the Commercial Terms.
  - b. The Customer shall:
    - i. Pay the amounts agreed in the Commercial Terms within the timeframe agreed in the Commercial Terms
    - ii. Account for and pay any local sales taxes which may be due
    - iii. Request any upgrade, downgrade or cancellation in the level of access to the Rapport Service in advance of the relevant payment date
  - c. The Licensor has the right to cancel the Customer's access to the Rapport Service if Fees are not paid in line with the Commercial Terms.
  - d. No refunds shall be given in respect of the Rapport Service.
  - e. All correspondence and invoices regarding Fees shall be sent by email, unless specifically agreed in the Commercial Terms.
6. Terms of Use
- a. Presentation by Licensor
    - i. The Rapport Service is provided on an As Is basis, and it is in substantial conformance with the specifications set forth in the applicable Documentation. Licensor may amend the Rapport Service from time to time at Licensor own discretion.
    - ii. Licensor warrants that there are no outstanding claims against it relating to the use of the Intellectual Property in the Rapport Service.
    - iii. If the Rapport Service is not in conformance with the obligations in 6(a)(i) then Licensor will, at Licensor discretion, either (i) make commercially reasonable efforts to remedy the issue, or (ii) refund any pre-paid Fees received from the Customer covering the remainder of the then-current term dating from the Customer's notice of such non-conformance. THE REMEDY STATED IN THIS PARAGRAPH, CONSTITUTES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND LICENSOR'S ENTIRE LIABILITY UNDER SECTIONS 6(a) OF THIS AGREEMENT.
    - iv. The End User shall have no recourse to the Licensor in respect of conformance with the Documentation, and should address any claims around non-conformance of the Customer Application to the Customer.
  - b. Appropriate Use

- i. The Customer and End User agree that at all times their use of the Rapport Service will:
    - 1. Conform the specifications and guidance provided by Licensor and presented in the Documentation
    - 2. Comply with all applicable laws and regulations
    - 3. Comply with all license terms and restrictions with respect to any third party software used in the Customer Application or in any other use of the Rapport Service
  - ii. The Customer warrants that it will obtain all relevant and necessary consents from the End User and make all relevant and necessary disclosures to the End User regarding the intended use and disclosure of End User Data before collecting and storing any End User Data
  - iii. The Customer will maintain and adhere to all commercially reasonable security measures to protect the Rapport Service and to protect the End User Data
- c. Disclaimer
  - i. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE RAPPORT SERVICE PROVIDED HEREUNDER BY LICENSOR IS PROVIDED "AS IS" WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES. LICENSOR MAKES NO REPRESENTATION OR WARRANTY THAT THE RAPPORT SERVICE WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR-FREE. THIS DISCLAIMER OF WARRANTY EXTENDS TO CUSTOMER AND END USERS OF CUSTOMER'S PRODUCTS AND SERVICES AND IS IN LIEU OF ALL WARRANTIES AND CONDITIONS WHETHER EXPRESS, IMPLIED, OR STATUTORY, AND INCLUDES A DISCLAIMER OF THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT AND ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

## 7. Limitation of Liability

- a. Indemnification
  - i. Customer will defend and indemnify the Licensor against any claim arising from any End User or other Third Party in relation to the Customers offering, operation, or use of the Rapport Service or the End Users use of the Rapport Service in either the Customer Application or any other use cases.
  - ii. Customer will defend and indemnify the Licensor against any claim arising from the Customer's breach of any representation, warranty, or obligation of the Customer under this Agreement.
  - iii. Customer will defend and indemnify the Licensor against any claim arising from the Customer's gross negligence or wilful misconduct.
- b. Liability Cap
  - i. IN NO EVENT WILL LICENSOR BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OTHER LEGAL OR EQUITABLE THEORY FOR: (I) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE, PROFITS OR BUSINESS, COSTS OF DELAY, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING

FROM ANY SOURCE; COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, OR (II) ANY AMOUNTS IN EXCESS, IN THE AGGREGATE, OF THE FEES PAID OR PAYABLE TO THE LICENSOR HEREUNDER DURING THE SIX MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE THE CAUSE OF ACTION AROSE

8. Term and Termination

- a. This agreement shall commence from 00:01 GMT on the date that the Customer receives access to the Rapport Service by way of creating a user account, receiving a licence key, making a download, or by other means.
- b. Licensor may terminate this agreement at any time, without giving any reason.
- c. Certain terms including sections 3, 4, and 7 shall survive the termination of this agreement.
- d. Effect of Termination
  - i. Upon expiration or termination of this Agreement, all licenses granted to the Customer shall expire. Customer shall discontinue the provision of the Customer Application to all End Users at this time.
  - ii. Should the Customer develop a separate application which performs a similar function to the Customer Application, but does not use the Rapport Service, the Customer shall provide the Licensor with sufficient evidence to demonstrate that there has been no infringement of the Licensors Intellectual Property Rights in developing the new application.

9. Other Matters

- a. WAIVER
  - i. No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- b. REMEDIES
  - i. Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- c. ENTIRE AGREEMENT
  - i. This Agreement, the Commercial Terms, and any schedules and documents annexed as appendices to either the Agreement or the Commercial Terms or otherwise referred to herein contain the whole agreement between the Parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.
  - ii. Each Party acknowledges that, in entering into this licence it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a Party to this licence or not) (Representation) other than as expressly set out in this Agreement.
  - iii. Each Party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract [as expressly provided in this licence].

- iv. Nothing in this clause shall limit or exclude any liability for fraud.
- d. VARIATION
  - i. No variation of this agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- e. SEVERANCE
  - i. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
  - ii. If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- f. THIRD-PARTY RIGHTS
  - i. A person who is not a party to this agreement shall not have any rights to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available.
- g. NO PARTNERSHIP OR AGENCY
  - i. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.
  - ii. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- h. FORCE MAJEURE
  - i. No Party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations.
- i. NOTICES
  - i. Any notice given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
  - ii. Any notice shall be deemed to have been received:
    - 1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
    - 2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
  - iii. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other

method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

j. GOVERNING LAW AND JURISDICTION

- i. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.
- ii. The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).