

TalkJS Terms of Service

Terms of Service of Klets B.V., operating under the name TalkJS, with its principal office located at Bogert 1, 5612 LX Eindhoven, the Netherlands, registered at the trade register of the chambers of commerce with file number 63001217 ;

hereinafter referred to as "**TalkJS**",

Scope of the Terms of Service

All the offers, agreements or services of whatever nature of TalkJS are subject to the terms of service (this document) which TalkJS has correctly provided to Licensee.

1. Definitions

For the purposes of these terms of service, the following terms, whenever used with a capital, in both the single and plural form, shall have the meaning as defined hereinafter:

- 1.1. "Additional Services" services as described in article 6;
- 1.2. "Agreement" these terms of service, including **Commercial Terms**;
- 1.3. "Availability" the TalkJS Services is considered available when no priority 1 or priority 2 Defects are open, as described in article 14;
- 1.4. "Changes" all changes to the TalkJS Services as classified in Article 14;
- 1.5. "Contact persons" the natural person(s) who represent TalkJS in this Agreement and the natural person(s) that are capable of legally representing TalkJS;
- 1.6. "Commercial Terms" the commercial terms that are agreed between TalkJS and Licensee, which are agreed in Writing or online to form an integral part of the Agreement.
- 1.7. "Documentation" any manuals, instructions, readme files and other information concerning the TalkJS Services, made available by TalkJS on <https://talkjs.com/docs/>;
- 1.8. "Defect" a defect in the TalkJS Services that leads to impaired Functionality of the TalkJS Services;
- 1.9. "Force Majeure" a situation as described in article 16 of this Agreement;
- 1.10. "Functionality" the degree of certainty that the processing of data within the TalkJS Services is done correctly. This means that the processing takes place in accordance with the description thereof in the specifications that can be found at <https://talkjs.com/features/>;
- 1.11. "GDPR" regulation (EU) 2016/679, also known as the General Data Protection Regulation;

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- 1.12. "Incident" an alleged malfunctioning of the TalkJS Services, which can either be defined as a Defect or as a request for a Non-standard Change;
- 1.13. "Intellectual Property Rights" all intellectual property rights, including but not limited to copyrights, trademark rights, rights to software, database rights and patent rights;
- 1.14. "License Fee" the fee that the Licensee must pay to TalkJS for the use of the TalkJS Services as specified in the **Commercial Terms**;
- 1.15. Licensee the contract party of TalkJS or the party who accepted these terms of service
- 1.16. "License" the license as described in article 3 of this Agreement;
- 1.17. "Licensee Data" all data entered in and/or generated by the Licensee and/or Users connected to the Licensee via the TalkJS Services, that are not the property of TalkJS;
- 1.18. "Maintenance Window" an agreed period in which maintenance takes place that may cause disruption in the use of the TalkJS Services;
- 1.19. "Notification" the registration of an (alleged) Defect by Licensee at the Service Desk;
- 1.20. "Recovery time" the period between the time of Notification of an Incident and - if the Incident is a Defect - the remedy of that Defect by TalkJS, whether or not by means of a temporary solution. Recovery time only starts and runs during Working Days in the applicable Service Window;
- 1.21. "Request for Change" a request from the Licensee for Changes, made via the Service Desk;
- 1.22. "Response time" the time within which the Service Desk must respond adequately to a Notification regarding an Incident. Response time only starts and runs during Working Days in the applicable Service Window;
- 1.23. "Service Desk" the central point of contact at TalkJS for the Licensee as described in article 14;
- 1.24. "Service Level" the service level in article 14 as agreed upon between TalkJS and the Licensee. The Service Level is only applicable if the Commercial Terms specify that Licensee is on the Enterprise plan.
- 1.25. "Software System" the software of the Licensee in which the TalkJS Services is embedded;
- 1.26. "TalkJS Services" the software as a service solution provided by TalkJS to the Licensee;
- 1.27. "Term" the term as defined in the **Commercial Terms**;
- 1.28. "User" a natural person communicating with the chat application of the TalkJS Services;

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- 1.29. "Exceeded Waiting Time" the cumulative of the time that Response Time and Recovery Time are exceeded;
- 1.30. "Written / in Writing" also includes e-mail;
- 1.31. "Working Days" Monday to Friday, excluding Dutch national holidays.

2. Order of Precedence

- 2.1. These terms of service form an integral part of each agreement between Licensee and TalkJS, together with the Commercial terms. .
- 2.2. Any general terms or conditions of the Licensee shall not apply to the agreements between Licensee and TalkJS. Any such general terms are explicitly revoked by TalkJS.

3. Scope of the license

- 3.1. Under the terms and conditions of the Agreement and subject to payment of the applicable License Fee(s), TalkJS grants, and Licensee accepts, a non-exclusive, non-transferable, non-sublicensable and revocable license to install, copy and use the TalkJS Services.
- 3.2. The TalkJS Services and Documentation are made available to Licensee on <https://talkjs.com/docs/>, Licensee can obtain access to the TalkJS Services by signing-up at <https://talkjs.com>.
- 3.3. Any one (1) license grants Licensee the right to embed the TalkJS Services inside one (1) Software System operated by Licensee, as long as the Software System has a number of monthly active users that is less than or equal to the number of monthly active users described in the Commercial Terms.
- 3.4. Next to the Documentation, TalkJS shall provide Licensee with a reasonable level of support by means of e-mail, chat or similar mechanism in the form of consultations, assistance and advice concerning installation, configuration and use of the TalkJS Services. After the TalkJS Cloud Service is installed and working, any additional support, shall in principle fall under the agreed terms of article 6 and 7.
- 3.5. Licensee shall install and use the TalkJS Services as described in the Documentation.
- 3.6. The Licensee has no right to (sub)license, sell, assign, modify, translate, decompile, create derivative works or otherwise change or commercially exploit the TalkJS Services, and/or make available the TalkJS Services to any third party without the prior, explicit and Written approval of TalkJS.
- 3.7. Licensee is not permitted to reconstruct the source code of the TalkJS Services by means of reverse engineering.
- 3.8. If Licensee requires information to effect interoperability of the TalkJS Services with other software, Licensee will request TalkJS in Writing and with motivation for the necessary information. TalkJS will then inform the Licensee within a reasonable period of time whether Licensee can obtain the requested information and under which condition it is provided.

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4. Duration and termination

- 4.1. After expiry of the Term, the Agreement is automatically extended for an indefinite period of time. TalkJS and Licensee are entitled to terminate the Agreement with a notice period up to the next payment obligation of the Licensee with respect to the Licensee Fee (depending on the Agreement this means the end of the month or the end of the year), whereby termination can be given without reason and motivation.
- 4.2. TalkJS and Licensee are entitled to terminate the Agreement with immediate effect in whole or in part, without obtaining any obligation to compensate for any damage, if one of the following circumstances occurs:
 - the other party is granted a moratorium of payments (whether or not provisionally);
 - bankruptcy is requested for the other Party;
 - the other party is declared bankrupt;
 - a Party infringes the terms of this Agreement and does not or is unable to remedy such infringement within fourteen (14) days after given Written notice by the other Party.
- 4.3. TalkJS is entitled to terminate the Licence without any judicial intervention, without obtaining any obligation to compensate for any damage, with immediate effect and by giving Written notice to the Licensee, if (i) the Licensee infringes the rights of TalkJS, including but not limited to TalkJS's Intellectual Property Rights, (ii) the Licensee uses the TalkJS Services for unlawful purposes or for purposes contrary to public policy and public decency, (iii) the Licensee uses the TalkJS Services in such a way that the TalkJS Services is damaged, modified, interrupted, or is less efficient in any way, (iv) the enterprise of the Licensee is terminated or transferred in whole or in part to a third party or (v) the Licensee announces an action that puts TalkJS in a disadvantageous position.
- 4.4. Regardless of the above the Agreement ends only if both parties agree in Writing to terminate the Agreement.
- 4.5. Upon termination of the Agreement for whatever reason, the Licensee shall promptly delete the TalkJS Services from its Software System(s) and return or delete all copies of the TalkJS Services, including modified copies, if any. The Licensee shall certify such deletion in Writing to TalkJS.

5. Licence fees

- 5.1. All agreed fees as described in the **Commercial Terms** shall be paid in a timely manner and in compliance with the payment conditions agreed upon in the Commercial Terms and as indicated during the online order process, regardless whether the TalkJS Services is used or not.
- 5.2. All prices are exclusive VAT and other government levies that have been or shall be imposed and TalkJS has the right to increase its prices with VAT and other government levies that have been or shall be imposed.
- 5.3. All invoices and payments shall be in Euro's unless agreed otherwise in Writing.
- 5.4. Licensee shall pay invoices by means of direct debit or credit card or, if agreed in the Commercial Terms or with respect to an Additional Services fee, within thirty (30) days after receipt of the invoice.

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- 5.5. If the Licensee fails to pay the fees due in a timely manner, statutory commercial interest shall be payable by the Licensee on the outstanding amount without a demand notice of default being required. If the Licensee still fails to pay the amount due after receiving a demand or notice of default, TalkJS may refer the debt for collection, in which case the Licensee shall also be obliged to pay all in-court and out-of-court expenses in addition to the total amount due, including all costs charged by external expert.
- 5.6. In case of non-payment of any (part) of the License Fee or the Additional Services fee, the Licence may be terminated by TalkJS in accordance with article 4 of this Agreement.
- 5.7. Upon termination of the Agreement for whatever reason, the Licensee shall promptly pay all outstanding License Fees and/or other fees/amounts due.

6. Additional Services

- 6.1. Additional Services are services that can be performed by TalkJS, but that are not included in the standard services of the TalkJS Services. Additional Services come with extra costs for the Licensee.
- 6.2. TalkJS can provide these additional services such as maintenance, creation of updates, training, service or support regarding the TalkJS Services at terms to be agreed upon between Parties.
- 6.3. Before Additional Services are performed a Written price indication will first be issued for approval. Depending on the complexity, a step-by-step plan will be offered.
- 6.4. In principle TalkJS performs Additional Services against a consultancy rate of EUR 120,= (hundred twenty) per hour. This rate is an indication and TalkJS may, at its sole discretion, deviate from this rate in its offers for Additional Services.

7. Intellectual Property Rights of TalkJS

- 7.1. The Licensee acknowledges and agrees that the TalkJS Services is protected by Intellectual Property Rights. The Intellectual Property Rights relating to the TalkJS Services are and remain the exclusive property of TalkJS.
- 7.2. The Agreement does not grant the Licensee any right or title to the Intellectual Property Rights of TalkJS, other than the Licence provided by article 3 and 8 of these terms of service , nor does the Agreement in any way constitute a transfer or assignment of the Intellectual Property Rights to the Licensee.
- 7.3. In the event that TalkJS, whether or not upon request of the Licensee, incorporates any new features or functionalities into the TalkJS Services, such new features and/or functionalities shall be the sole and exclusive property of TalkJS, unless explicitly agreed otherwise in Writing.
- 7.4. TalkJS shall, at its own expense, defend any claim or proceeding brought against the Licensee based on an allegation that the TalkJS Services would constitute an infringement of Intellectual Property Rights, provided that the Licensee promptly notifies TalkJS in Writing of such claim. Licensee shall provide reasonable cooperation and assistance to TalkJS for the defence of such claim or proceeding. If the TalkJS Services, or any part thereof, as a result of any suit or proceeding so defended, is held by a court or arbitration panel to constitute infringement of Intellectual Property Rights of third parties, TalkJS shall at no cost to Licensee either (a) procure for Licensee the

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right to continue using the TalkJS Services, or any part thereof, (b) replace or modify the TalkJS Services in order to become non-infringing.

- 7.5. The Licensee shall not infringe the Intellectual Property Rights of TalkJS or its suppliers or perform any other acts by which the Intellectual Property Rights of TalkJS or its suppliers or the value of such Intellectual Property Rights could in any way be harmed or negatively affected. This means, without being exhaustive, that the Licensee shall not reproduce, multiply, modify, publish, translate, process, rent, exploit, or commercialise the Intellectual Property Rights of TalkJS, or use them in any other infringing way, entirely or partially, in the original or modified form, for commercial or non-commercial purposes.
- 7.6. Licensee is not permitted to remove any designation concerning copyrights, trademarks, trade names or other rights of (intellectual) property from the TalkJS Services, the Documentation and/or any other TalkJS material.

8. Promotion

- 8.1. Licensee is encouraged to publicly report its use of the TalkJS Services, e.g. in press releases, annual reports or environmental reports concerning its organization.
- 8.2. To this end, TalkJS hereby grants Licensee a non-exclusive, non-transferable, non-sublicensable and revocable license under its trademark(s) and copyrights concerning the name "TalkJS" and the associated logos as made available on the TalkJS website (<https://talkjs.com>) or specifically provided by TalkJS. However, Licensee must use name and logos in unmodified form and Licensee must adhere to any specific rules given by TalkJS, which rules are generally available on the TalkJS website.
- 8.3. Licensee may not create any false or misleading impressions regarding its affiliation with TalkJS.
- 8.4. Licensee may not register or apply for any trademarks or Internet domain names that contain the name "TalkJS" or any confusingly similar designation. TalkJS is entitled to demand transfer of any such trademarks or domain names by Licensee to TalkJS.
- 8.5. In light of the promotion of the TalkJS Services, TalkJS is entitled to use Licensee's name and logo in promotional material regarding the TalkJS Services, unless Licensee object against such use.
- 8.6. The license of this article terminates automatically upon termination or expiry of the Agreement, regardless of reason.

9. Data Protection

- 9.1. All the definitions and terms used in this article have the same meaning as they do in the GDPR. If a term doesn't exist in the GDPR, a meaning should be given that is closest to an existing definition in the GDPR.
- 9.2. Parties shall act in accordance with the provisions of the GDPR and any future national or European statutory and other rules on the processing of personal data that may be in force from time to time. If future statutory and other rules reveal a need to adjust the Agreement, the parties will consult with each other for the purpose of making new arrangements that reflect the meaning of the Agreement as much as possible.
- 9.3. TalkJS shall be considered as the data processor and the Licensee as the data controller. TalkJS shall only store, copy or use Licensee Data, including email

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addresses, telephone numbers and names of Users, to the extent necessary to perform its obligations under the Agreement and/or for maintenance. TalkJS does not have any control over the purposes and means of the processing of personal data. Nothing in the Agreement is intended to transfer control over personal data to TalkJS in any way. TalkJS shall inform Licensee with undue delay if, in its opinion, an instruction given by Licensee infringes any applicable privacy regulation.

- 9.4. If the Licensee processes personal data, it will only process general personal data. In no circumstance will TalkJS accept any responsibility or liability for the processing of sensitive personal data.
- 9.5. TalkJS shall take appropriate technical and organizational measures to ensure an appropriate level of security to protect personal data on the TalkJS Services against destruction, loss, alteration, unauthorized disclosure or access. The standard measures taken by TalkJS can be viewed via www.talkjs.com/security.

In determining the measures to be taken, TalkJS shall take account of the state of the art and the implementation costs as well as of the nature, scope, context and purposes of the processing operation concerned and the various risks, in terms of probability and severity, for the risks and freedoms of individuals.

- 9.6. At the first request of the Licensee, TalkJS may cooperate with the parties concerned to exercise their rights with regard to the processing of Personal Data in accordance with Articles 12 to 23 of the GDPR, including the right to information, access, removal including 'right to be forgotten', rectification, transferability, objection and rights in respect of automated individual decision making, including profiling. This cooperation will in principle be assessed as Additional Services.
- 9.7. TalkJS agrees to provide Licensee with the necessary information at the latter's request, to ensure that the Licensee is able to investigate TalkJS' compliance with the provisions of this article.
- 9.8. Licensee is entitled to engage an independent expert to investigate whether TalkJS fulfils obligations described in this article, which independent expert will be under an obligation of confidentiality in respect of the foregoing. Audits will be done maximum once per year. TalkJS shall cooperate in the audit and make all information that is reasonably relevant to the audit available as soon as possible. The costs of the audits carried out on the instructions of the Licensee must be borne by the Licensee.
- 9.9. TalkJS shall inform the Licensee immediately, but in any case within 48 hours, as soon as it finds that there has been any breach with respect to the personal data. This information provided must enable the Licensee to fulfil its obligations under Articles 33 and 34 of the GDPR.
- 9.10. TalkJS is under no obligation to perform an assessments as described under article 35 and/or 36 of the GDPR.
- 9.11. TalkJS shall be entitled to make use of sub-processors without the Licensee's prior Written permission. The list of sub-processors is available upon request. In case TalkJS engages a new sub-processor it will notify Licensee. Licensee may object against this engagement in Writing. If TalkJS persists in engaging a sub-processor after objection of Licensee, Licensee may terminate the agreement with immediate effect. TalkJS remains responsible for the performance of sub-processors it engages.

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- 9.12. TalkJS agrees to maintain confidentiality over personal data it processes and it ensures that the persons authorized to process the Personal Data undertake to maintain confidentiality.
- 9.13. Upon termination of the Agreement, TalkJS shall:
- keep available to the Licensee all personal data via the REST API for at least three (3) weeks; or
 - at request of the Licensee delete all personal data.
- 9.14. Licensee assesses and informs TalkJS about how long certain personal data may be stored on the TalkJS Cloud. Upon the Written request of Licensee TalkJS will delete requested data. TalkJS assesses, at its sole discretion, whether this deletion is deemed an Additional Service or not.
- 9.15. Licensee warrants that the data processing will be carried out in accordance with the law. This means in any case that the Licensee warrants that it is entitled to collect data or have data collected and that it is entitled to process these data and have these collected.
- 9.16. Licensee shall indemnify TalkJS for any loss or damage of personal data and costs resulting from any claims by third parties, expressly including the data subjects and supervisory authorities (such as the Dutch Data Protection Authority), relating to or arising from any unlawful processing operation and/or any other violation of the GDPR or the Agreement that can be attributed to the Licensee.
- 9.17. TalkJS shall ensure that every processing operation of personal data that is performed by or on behalf of TalkJS, including third parties engaged by it for the purposes of the execution of the Agreement, is carried out within the European Economic Area (EEA) or to or from countries that offer an adequate level of protection in accordance with the GDPR.
- 9.18. TalkJS shall ensure in-transit encryption of all data.
- 9.19. TalkJS shall ensure at-rest encryption of all data for Licensees who have chosen the Enterprise plan of the TalkJS Services. TalkJS cannot guarantee at-rest encryption of data for Licensees who have chosen any other plan of the TalkJS Services.

10. Right to audit

- 10.1. TalkJS is entitled to investigate whether Licensee uses the TalkJS Services in a manner that complies with the conditions of the Agreement. Licensee undertakes to cooperate with such an audit. TalkJS shall bear the costs of such audit, as long as no infringements of the Agreement are found. If the Licensee is found to infringe the Agreement, Licensee will bear the costs of the audit.

11. Assignment

- 11.1. The Agreement shall not be assigned or otherwise transferred by Licensee without the prior written consent of TalkJS, which shall not be unreasonably withheld. Any such assignment without such consent will be null and void.
- 11.2. The Licensee accepts that TalkJS may transfer and assign the Licence (entirely or partially) and the performance of all or some of TalkJS's rights and obligations of the Agreement to a third party at any time without the prior Written consent of the Licensee.

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12. Warranty

- 12.1. The TalkJS Services is provided "as is" and without any guarantees for Licensee, unless Licensee and TalkJS make other arrangements concerning guarantees in the Commercial Terms. TalkJS has the right to incorporate any new features or functionalities into the TalkJS Services, even if these new features or functionalities do not combine well with the Software System. Licensee cannot derive any rights with respect to these new features or functionalities or the TalkJS Services without these new features or functionalities, unless Licensee and TalkJS make other arrangements concerning guarantees in the Agreement.
- 12.2. The Licensee acknowledges having been fully informed of the characteristics of the TalkJS Services and declares that TalkJS has completely fulfilled its duty of informing the Licensee with respect to the TalkJS Services and its Functionalities.
- 12.3. The Licensee acknowledges and agrees that the TalkJS Services is provided by TalkJS with no other guarantees or obligations than those provided in the Commercial Terms. The Service Level as mentioned in article 14 of these terms of service is only available to Licensees who have chosen the Enterprise plan of the TalkJS Services.
- 12.4. The foregoing warranties are in lieu of all other warranties, expressed or implied, including but not limited to, implied warranties of fitness for a particular purpose and warranties of merchantability. Excepting the warranty expressly acknowledged hereunder and to the fullest extent permitted by law, TalkJS hereby disclaims and Licensee hereby waives all other warranties, express or implied, including but not limited to all implied warranties of fitness for a particular purpose and all implied warranties of merchantability.

13. Limitation of liability

- 13.1. Under no circumstances shall TalkJS be liable for indirect, incidental or consequential damage arising as a result of the use of the TalkJS Services or Additional Services, including but not limited to the unavailability of the TalkJS Services.
- 13.2. In any event, the maximum liability of TalkJS towards the Licensee on whatever account shall be limited to the total amount of all Licence Fees or Additional Services fees paid by the Licensee to TalkJS for the relevant TalkJS Services or Additional Services giving rise to the liability during the course of the year prior to the claim or the amount of EUR 100.000,= (hundred thousand), the lower of these two amounts always determining the limit on liability.
- 13.3. TalkJS is never liable for damages caused by:
 - i. inexpert use of the TalkJS Services or usage for other purposes than the purposes for which the TalkJS Services is intended according to the Agreement and the Documentation;
 - ii. the provision of incorrect or incomplete information by the Licensee to TalkJS;
 - iii. services delivered by third parties upon request of the Licensee without the Written consent of TalkJS, including changes made to the TalkJS Services or the Software System;
 - iv. problems with the Software System or the non-optimal functioning of the Software System

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- 13.4. The Licensee shall indemnify TalkJS from the consequences of any claims by third parties arising from the execution of the Agreement and which are caused by acts attributable to the Licensee.
- 13.5. To the extent permitted under the applicable law, TalkJS shall not be liable for any loss, damage or or fines imposed by regulatory bodies as a result of or relating to the TalkJS Services, including but not limited to loss of data, income, profit, or other economic advantages. No liability shall exist for damages or fines imposed by regulatory bodies that have not been reported to TalkJS in Writing within thirty (30) days of their occurrence, or for damages where Licensee failed to take appropriate measures to limit such damages

14. Service Level

- 14.1. The aim of this article 14 is to describe the operational services with regard to the TalkJS Services for Enterprise clients. This article gives a reference framework for the expectations with regard to service and support levels for the Licensees who have chosen the Enterprise plan for the TalkJS Services. The Licensees who have chosen any other plan for the TalkJS Services have no Service Level.
- 14.2. TalkJS will always try to resolve Incidents within the Response and Recovery times set in this article. If it appears that an Incident does not qualify as a Defect, a TalkJS employee will contact the Licensee in order to determine whether the Licensee expects Additional Services.
- 14.3. The following Service Windows apply for this article:

Description	Service Window
Availability Service Desk	Working Days between 9:00 – 17:00 Amsterdam Time
Implementation of Changes	Working Days between 9:00 – 17:00 Amsterdam Time
Plannable Changes with disruption of Functionality (Standard Changes priority 3 and Non-standard Changes)	Working Days and Saturdays between 21:00 – 07:00 and Sundays Amsterdam Time

14.4. TalkJS has the right to shorten the Service Windows temporarily in connection with maintenance resulting in disruption in the use of the TalkJS Services. If TalkJS wishes to make use of this right, it will timely inform the Licensee. The following information will be given:

- time frame with which the relevant Service Window is shortened;
- expected actual duration of the shortening;
- the services which will be affected; and
- the level in which the service is affected.

14.5. The following indications of priority are given to Defects:

Priority	Description
1.	Overall loss of the Functionality
2.	Partial or very annoying disruption of Functionality

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3.	Any other Problems which limit the Functionality
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14.6. Changes will be classified as follows:

- **Emergency Changes:** changes that must be implemented without delay in order to guarantee Functionality;
- **Standard Changes:** changes that are required for the TalkJSServices to function according to the described Functionalities. Standard Changes will be communicated with Licensee in advance and are preformed within a predefined lead time. There are two Priority levels: high and low priority Standard Changes.
- **Non-standard Changes:** changes that are customer-specific and non-essential for the functioning of the TalkJS Services in general. These changes are regarded to fall under Additional Services.

Emergency Changes and Standard Changes (with two Priorities) are performed on the basis of the Agreement. Non-standard Changes are carried out on a project basis and charged separately at the agreed prices and rates.

14.7. The priority of Incidents is classified by the person who reports the Incident with the Service Desk, this is done on the basis of the table above. The person who reports an Incident, will submit a clear substantiation of the chosen priority. In the event of a dispute, the classification given by TalkJS to the Incident will prevail.

On the basis of the priority, the reaction and Recovery times apply in accordance with the overview in the table below. Response times apply to all Incidents, Recovery times apply only to Incidents that are also a Defect. The given timeframe only starts after the Licensee has provided TalkJS with sufficient information to comprehend what the Defect is and when the given Service Window has started.

Type of change	Response time	Recovery time	Description
Emergency changes (priority 1)	1 hour	6 hours	A report of an Incident will be assessed within the Response time. When an Incident is indeed a Defect, the Defect will be resolved within the corresponding Recovery time. Response and Recovery Time only start and run during the applicable Service Window.
Standard changes with high priority (priority 2)	4 hours	16 hours	
Standard changes with high priority (priority 3)	8 hours	40 hours	
Non-standard changes	8 hours	-	The report will be assessed within the Response time, when TalkJS is able to meet the request the Recovery time will be determined in consultation between Parties.

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- 14.8. A Defect is also regarded being resolved if TalkJS realizes a temporary solution that restores the Functionality of the TalkJS Cloud Service. This temporary solution does not release TalkJS from the obligation to repair the Defect. If a notification by a temporary solution instead of priority 1 receives the character of a priority 2 Defect, the Recovery time associated with priority 2 shall apply. The same applies for priority 2 Defect being turned into priority 3 Defect.
- 14.9. In case a priority 1 or 2 Defect can be resolved with a workaround that needs to be implemented by the Licensee, Licensee is obliged to give full cooperation to this implementation. If Licensee fails to cooperate, the time between offering the workaround and this full cooperation will not account as the TalkJS Services not being Available.
- 14.10. Standard Changes and Non-standard Changes are always requested through the Service Desk. Emergency Changes can also be reported to TalkJS via telephone, when TalkJS is available via this way at the given moment.
- 14.11. TalkJS guarantees an uptime of 99,9%. The uptime is measured per month. Any down-time due to (i) pre-announced activities (ii) Standard Change requested by Licensee (Priority 3) and (iii) Non-standard Changes does not affect the uptime.
- 14.12. The uptime is calculated as follows:

$$\frac{\text{Availability} - \text{Exceeded Waiting Time}}{\text{Total time}} \times 100\% = \text{Uptime}$$

- 14.13. If TalkJS does not meet this Availability level as described in article 14.11, Licensee will receive a discount on its License Fee. The first month TalkJS does not meet the availability level, this discount is 10% of that month's fee for every 0,1% less uptime. If the guaranteed uptime is not met in the following months the Licensee is no License Fee due, which amount will be setoff against the next month's License fee.

Example

Month	Uptime	License Fee due
1	100%	100%
2	99,7%	80%
3	100%	100%
4	99,8%	90%
5	99,7%	0%
6	100%	100%
7	99,8%	90%

- 14.14. If TalkJS does not meet the agreed Service Levels, this will only lead to the consequences described in this article 14.13. Except for the assertion of any claim based on fraud or wilful misconduct, the remedies provided in this article shall be the sole and exclusive legal remedies of the Parties with respect to uptime, Availability and Functionality. TalkJS shall only be in default after the expiry of the term stated in a written notice of default.

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- 14.15. Amendments to the Service Level can only be agreed upon with Contact Persons for the Agreement in Writing.
- 14.16. The Service Desk is available at <https://talkjs.com>, under the message icon on the main screen.
- 14.17. Parties may differentiate from the provisions in this article in the **Commercial Terms**.

15. Confidentiality

- 15.1. TalkJS and the Licensee shall not disclose to third parties information that comes to their attention in the context of the Agreement and which is confidential, or under the circumstances must be considered as confidential both during and after termination or expiry of the Licence, and this for as long as the confidential information has a confidential status, with a minimum of five years after the termination or expiry of the Agreement.

16. Force majeure

- 16.1. If TalkJS is unable to satisfy his obligations under the Agreement as a result of force majeure, TalkJS shall not be liable for any delays or shortcomings in the performance of the obligations, nor for any damage arising from this for the Licensee, provided that he (i) informs Licensee as quickly as possible after the occurrence by e-mail of the nature and causes of this unforeseeable situation beyond his control, and (ii) does his best to undo such causes of non-performance as quickly as possible, and (iii) carefully continues performance as soon as the causes of the force majeure have been eliminated.
- 16.2. All causes that are beyond the reasonable control of TalkJS, including but not limited to fire, explosions, power failures, earthquakes, floods, very severe storms, strikes, embargos, labour disputes, acts by the civil or military authorities, (cyber) terrorism, natural disasters, acts or neglect of internet traffic services, acts or neglect of regulatory or government bodies and the improper performance of obligations by suppliers or contractors of TalkJS shall be considered as force majeure.

17. Miscellaneous

- 17.1. Amendments to the Agreement can only be agreed upon between Parties in Writing.
- 17.2. TalkJS reserves the right to adapt or amend the Agreement at any time. Licensee will accept these changes within the Term or otherwise terminate the Agreement after the Term.
- 17.3. Articles 7 (Intellectual Property Rights), 14 (Liability), 15 (Confidentiality), and 18 (Applicable Law) remain applicable after termination of the Agreement.
- 17.4. The fact that TalkJS does not exercise any right or does not use any legal remedy does not constitute a waiver of that right or remedy.
- 17.5. The section headings in these terms of service Agreement are for convenience only and shall not be used in construing or interpreting any of its terms.
- 17.6. In the event that any of the provisions of the Agreement shall be found to be illegal, invalid, or unenforceable, the remaining provisions of the Agreement shall remain valid, enforceable and in full effect. Moreover, in the event of the nullity, invalidity or unenforceability of one or more provisions of the Agreement, the Licensee and TalkJS

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undertake to negotiate in good faith in order to replace the provision concerned with a valid and enforceable provision that bears the closest resemblance to the intentions of the Agreement.

18. Applicable law and jurisdiction

- 18.1. The Agreement shall be solely governed (in form and substance) by and construed in accordance with the laws of the Netherlands.
- 18.2. Disputes arising from this Agreement shall be submitted to the competent court of the court Oost-Brabant ("*rechtbank Oost-Brabant*") location 's-Hertogenbosch ("*locatie 's-Hertogenbosch*"), the Netherlands.