



## End-User License Agreement

Version 20.0

Dated April 11, 2024

AI Software, LLC, d/b/a LumenVox (“LumenVox”) has updated our End-User License Agreement (“Agreement”) between LumenVox and you (“You”). If you are a new subscriber, then this License Agreement will be effective as to your order entered into after April 11, 2024. If you are an existing subscriber as of April 11, 2024, then LumenVox is providing you with prior notice of the changes to our License Agreement which will be effective as of May 11, 2024. For the previous version of our License Agreement, please click [here](#).

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For avoidance of doubt, the Software Products covered by this License Agreement are our Software Products installed by You on your premises or in your cloud instance, which are referred to as subscription, consumption-based or perpetual licenses in our service order form or quote. A separate services agreement is applicable to the license of our Software under a SaaS model beginning in 2024.

THE SOFTWARE PRODUCT IS PROTECTED UNDER U.S. AND INTERNATIONAL COPYRIGHT LAWS, AS WELL AS OTHER INTELLECTUAL PROPERTY LAWS AND TREATIES.

## 1. DEFINITIONS.

The following definitions apply to this Licensing Agreement:

- 1.1. **“License Agreement”** and **“Agreement”** shall mean the terms and conditions described herein as well as any attachments and appendices and all future addenda, if any.
- 1.2. **“Licensed System”** shall mean the specific computer or computer system on which the Software that You are licensing under this Agreement is intended to run.
- 1.3. **“Party”** shall mean LumenVox and You, the parties to this Agreement.
- 1.4. **“Server”** shall mean a computer system comprising one or more computer processors and an administrative program that controls access to all or part of a group of interconnected computers and associated devices.

- 1.5. **“Software”** shall mean the software licensed by LumenVox hereunder, including associated media.
- 1.6. **“Software Product”** shall mean collectively Software and User Documentation.
- 1.7. **“User Documentation”** shall mean the electronic documentation with respect to the Software.
- 1.8. **“You”** and **“Your”** refer to the individual or legal entity that enters into this License Agreement (the licensee or subscriber) with LumenVox.

## 2. GRANT OF LICENSE.

- 2.1. **Grant of License.** LumenVox hereby grants to You a non-transferable, nonexclusive right, without the right to sublicense, to: (i) install, load, copy, or transmit the Software, in whole or in part, in object-code-only form; (ii) use the Software with the Licensed System, the specific computer or computer system on which the Software under this Agreement is licensed to run; or (iii) copy the User Documentation, only as authorized in this License Agreement. Your service order form or quote indicates what type of license term you have purchased (such as subscription, consumption-based or perpetual).
- 2.2. **Updates or Supplements.** Any Software provided to You which updates or supplements the original version of Software Product is part of the Software Product and is governed by this License Agreement, unless other terms of use are provided with such updates or supplements, and this Agreement terminates as to the previous version of the Software. You may install and use a modified version, update, or upgrade of the Software only if you have a validly licensed full version of the Software being modified, updated, or upgraded.
- 2.3. **Limited License Software.** If the Software Product is labelled “Not for Resale,” “NFR,” “Eval,” or “Developer Version,” then Your use of the Software Product is limited to use for demonstration, test, or evaluation purposes and You may not use for commercial purposes, resell, derive revenue from, or otherwise transfer or use for value, the Software Product.
- 2.4. **No Configurations to Bypass Restrictions.** You may not configure the Server that manages the Software on a machine configuration, virtual machine configuration, or otherwise to duplicate or bypass LumenVox’s licensing restrictions and requirements. You may not operate software or hardware in a manner that reduces the number of devices directly accessing or utilizing the Software (sometimes called “multiplexing” or “pooling” software or hardware); the required number of Licenses hereunder equals the number of distinct inputs to the multiplexing or pooling software or hardware. Unless Your license is as a reseller under a Reseller Agreement, You may not the resale, rental, lease or lend or other transfer of our Software or otherwise use the LumenVox Software in Multi-Tenant Usage environments or any architecture in which a single instance of a software application serves multiple customers or tenants.

- 2.5. **Text-to-Speech (“TTS”) Software.** If you have licensed TTS Software, then You may use such TTS Software only on the Server for which you have paid the applicable License Fee, for only the Voices licensed, and for only the maximum number of concurrent TTS Ports, as specified and within boundaries of this License Agreement. As used in the context of TTS Software, "Port" means an audio connection from the TTS software and a live person or other agent to receive and not store audio. TTS software is licensed for the maximum number of simultaneous outbound ports enabled to deliver the output of the TTS software configured in the system. You cannot distribute the saved output of the TTS, in any manner, including, but not limited to, audio files, as a part of applications, materials or multimedia works created by or for you or otherwise rent, resell, lease, or lend the generated output to any third party. You may not play back the saved output in public or otherwise make it publicly available.
- 2.6. **Backup/Archival Copies.** You may make archival copies of the Software as provided in the copyright law of the United States. Any such copies of the Software or the User Documentation shall include copyright and all other legal notices, including but not limited to other proprietary notices and notices mandated by governmental entities, on all complete or partial copies or transmissions of the Software, except as authorized under this paragraph, no copies of the Software or User Documentation or any portions thereof may be made by You or any person under Your authority or control.

### 3. **ACTIVATION.**

According to its discretion, LumenVox may include features in the Software to prevent unlicensed use of the Software. You agree that LumenVox may do so. In particular, use of the Software may require that You activate the Software through the Internet (this process may be more fully described during the installation set up of the Software). During such activation, LumenVox may collect certain non-personal technical information from your computer concerning your computer or network. You agree that LumenVox may do so.

### 4. **LICENSING AND NOTIFICATIONS**

When the Software runs, it will automatically communicate with cloud- based LumenVox Licensing Nodes via an Internet connection at predetermined intervals. Usage reports are sent to these Nodes, and updated information regarding the licenses allowed to be used by each System will be returned. This communication channel needs to be maintained or the Software will eventually stop working. The Software may be configured to allow usage to exceed the purchased license count, at LumenVox's discretion. LumenVox will identify and report any excess usage and will notify You of any over consumption. You are responsible to pay for the additional license usage within 30 days, as needed to resolve the deficiency. Deficiency is the difference in license count between what is purchased or rented and installed in a given Installation instance and what is used.

## 5. OTHER RIGHTS AND LIMITATIONS.

- 5.1. **Limitation on Reverse Engineering, Decompilation, and Disassembly.** You may not reverse engineer, decompile, or disassemble the Software.
- 5.2. **Performance or Benchmark Testing.** You may not disclose the results of any benchmark test of the Software to any third party without LumenVox's prior written approval.
- 5.3. **Usage Data.** LumenVox may generate and maintain information based on Your use of the Software Products and collect and maintain account information, provided that such information does not identify You or any user or include any of your personal information (collectively "Usage Data"). As between LumenVox and You, LumenVox owns all right, title, and interest, including all intellectual property rights, in and to all Usage Data and may use any Usage Data for any purpose. LumenVox may also collect and maintain billing records, call, text or messaging logs and traffic routing information, as well as the content of communications sent through or integrated with our Software Products, such as audio recordings, message bodies, and call recording transcriptions.
- 5.4. **Suggestions.** LumenVox owns any suggestions, ideas, enhancement requests, feedback, processes, recommendations or other information suggested or provided by You relating to the features, functionality or operation of the Software Products ("Suggestions"). To the extent that LumenVox does not for any reason own such Suggestions, LumenVox may, but is not obligated, to use such Suggestions for any purpose with no financial, credit, confidentiality or other obligation to You.
- 5.5. **Support Services.** LumenVox offers technical support for versions of our software released within the last two years (i.e. the last 24 months) or 2 major releases, whichever is greater. Technical support includes help with installation, configuration, licensing, etc. It also includes help working around technical issues, where possible. All releases which are no longer supported are deprecated and should be considered unsupported. See our [Technical Support Guide](#) for more information. LumenVox technical support does not provide end-user application development or troubleshooting; help with non-LumenVox systems, the network or deployment environment or application tuning, grammar development, application development or training. Technical Support services are available for purchase separately and are provided as a pre-paid service by the hour.

## 6. TITLE AND INTELLECTUAL PROPERTY RIGHTS.

You understand that all title and intellectual property rights in and to the Software Product (including but not limited to any images, photographs, animations, video, audio, music, text, and applets incorporated into the Software Product), and any copies that You are permitted to make herein are owned by LumenVox.

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## **7. CONFIDENTIAL INFORMATION.**

You acknowledge that the Software Product contains proprietary, unpublished information, algorithms, innovations and concepts (collectively "Confidential Information") protected under trade secret law.

You agree to hold such information in confidence and to take all reasonable precautions necessary to protect the confidentiality of such information. You further agree not to disclose, provide or otherwise make available such information in any form to any person other than Your employees or LumenVox's employees. This provision shall survive any cancellation or termination of this License Agreement.

Your obligations with respect to Confidential Information under this License Agreement shall continue for five (5) years from the date of termination of this License Agreement. This License Agreement does not restrict or impair the right of You to use or disclose any technical information or data which (i) is or becomes generally available to the public through no wrongful act or breach by You; (ii) was in Your possession prior to acquiring the Software Product from LumenVox, and was not acquired directly or indirectly from LumenVox or others under an obligation of confidentiality; or (iii) is independently made available to You by a third party without an obligation of secrecy, provided the third party did not acquire it directly or indirectly from LumenVox.

## **8. WARRANTY, IP INDEMNIFICATION, DISCLAIMERS, LIMITATIONS.**

- 8.1. **Mutual Representations and Warranties.** Each Party represents, warrants, and covenants to the other Party that it has and will maintain the legal power and authority to enter into this Agreement.
- 8.2. **LumenVox Representations and Warranties.** LumenVox represents, warrants, and covenants to You that it owns or otherwise has and will maintain sufficient rights to grant to You the license to use the Software Products granted herein.
- 8.3. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN SECTION 8.2, ALL SOFTWARE AND SOFTWARE PRODUCTS ARE PROVIDED TO

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- 8.4. **IP Indemnification by LumenVox.** Subject to this Agreement, LumenVox shall defend You against any claims, demands, suits or proceedings made or brought by a third party ("Claims") against You alleging that the use of the Software Products as permitted hereunder directly misappropriates or infringes any U.S. patent, copyright, trademark or other intellectual property rights of such third party. Further, LumenVox shall indemnify and hold harmless You against all losses, costs and expenses (including reasonable attorneys' fees) finally awarded against You by a court of competent jurisdiction or an arbitrator or agreed to in a written settlement agreement signed by LumenVox, in connection with such Claims. If the Software Products are held or likely to be held infringing, LumenVox shall have the option, at its expense to (a) replace or modify the Software Products as appropriate without materially diminishing functionality, (b) obtain a license for You to continue using the Software Products, (c) replace the Software Products with a functionally equivalent service; or (d) terminate the Software Products and refund any prepaid, unused fees applicable to the remaining portion of the Term following the effective date of termination. This Section states LumenVox's entire liability and Your exclusive remedy for any Claim of intellectual property infringement of misappropriation. LumenVox will have no obligation or liability relating to any Claim that is based on: (i) Your modifications or customizations of the Software Products; (ii) Your use of the Software Product in combination with any software or other product or material not provided by LumenVox; (iii) any changes made to the Software Product by LumenVox to comply with Your specifications, designs or modifications, (iv) Your use of the Software Product other than as contemplated by this Agreement; or (v)

compliance with any laws or regulations applicable to Your industry that are not applicable to software providers generally.

- 8.5. **Indemnification Procedures.** Promptly upon receiving notice of a Claim, You shall (a) give LumenVox prompt written notice of the Claim; (b) give LumenVox sole control of the defense and settlement of the Claim; and (c) provide to LumenVox all reasonable assistance in the defense or settlement of such Claim.
- 8.6. **Limitation of Liability.** EXCEPT DAMAGES FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR EXCEPT FOR FAILURE TO PAY FEES, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY AND DUE FROM YOU IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.
- 8.7. **Exclusion of Consequential and Related Damages.** EXCEPT FOR DAMAGES FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 8.8. **Limitations on Usages.** THE SOFTWARE PRODUCT IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR RESALE AS 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.
- 8.9. **No Change to Obligations.** NO RESELLER OF LUMENVOX IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OR INDEMNIFICATION OBLIGATIONS OF LUMENVOX AS SET FORTH HEREIN.

## 9. **TERM; TERMINATION.**

The term of Your license is set forth in Your service order form or quote. Without prejudice to any other rights, LumenVox may terminate this License Agreement, if You fail to comply with the terms and conditions of this License Agreement. Upon



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## **10. UNITED STATES GOVERNMENT RESTRICTED RIGHTS.**

## **11. GENERAL PROVISIONS.**

- 11.1. **Governing Law.** This Agreement and any disputes arising out of or related hereto shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to its conflicts of laws rules.
- 11.2. **Assignment.** Neither Party may assign this Agreement without the prior written consent of the other Party (which consent shall not unreasonably withheld), except that either Party may assign this Agreement in its entirety, with written notice to the other Party, but without the consent of the other Party, if (a) to an affiliate, or (b) in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other Party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, and their respective successors and permitted assigns. No assignment or delegation shall relieve the assigning or delegating party of any of its obligations hereunder.
- 11.3. **No Waiver.** The failure of either party 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.
- 11.4. **Section Headings.** The section headings are for convenience only and do not form a part of this License Agreement for purposes of interpretation.
- 11.5. **Publicity.** Either Party may describe its role in relation to the other Party and, if applicable, the Software Product on its website and promotional materials.
- 11.6. **Changes to this Agreement.** THIS AGREEMENT SUBJECT TO CHANGE BY LUMENVOX IN ITS SOLE DISCRETION AT ANY TIME. LumenVox will take reasonable steps to notify You of any material changes or modifications to this Agreement by way of prominent notice on our website or the software application or by email, but You agree to review the website periodically to be aware of any changes or modifications. Your continued use of the Software Products will be deemed to be conclusive acceptance of such changes or modifications.
- 11.7. **Entire Agreement.** This Agreement (including any addendum or amendment to this License Agreement which is included with the Software Product) is the entire agreement between You and LumenVox relating to the Software Product and the Support Services (if any) and supersedes all prior or contemporaneous oral or

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- 11.8. **Restricted Rights; Third Party Contents.** This documentation and the related Software Product are provided with Restricted Rights. Use, duplication or disclosure is subject to restrictions as set forth in contract subdivision (c) (1) (ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (a) through (d) of the Commercial Computer Software Restricted Rights clause at 48 CFR 52.227-19 or 52.227-14, as applicable, in addition to the limitations set forth in this Agreement. Furthermore, the Software Product includes software licensed from various third-parties and open source software. A list is available upon Your request.
- 11.9. **No Third-Party Beneficiaries.** Nothing in this Agreement shall confer any right, remedy or obligation upon anyone other than the Parties hereto.
- 11.10. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "**notice**") shall be in writing and addressed to the Parties at the addresses set forth in the Service Order (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), e-mail (with a copy promptly sent by mail) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective for e-mail on the day received unless sent after business hours, then the next day, for courier on the day of receipt and on the 3<sup>rd</sup> day after mailing any notice by certified or registered mail. A copy of any notice to LumenVox shall be sent to [legal@capacity.com](mailto:legal@capacity.com).