

TERMS OF SERVICE FOR TEXTKERNEL JOBFEED SERVICES

The following Terms Of Service ("TOS") shall apply to Company's purchase and use of Textkernel Jobfeed services (hereafter referred to as the "Jobfeed", "Jobfeed Services" or "Services").

These TOS are part of the Order Form(s) for the license(s) to Jobfeed and are incorporated into the Order Form(s) as if fully set forth therein.

1. DEFINITIONS

A number of notions are handled in the Agreement, singular or plural, that start with a capital letter, and have the meaning of the italicized words as defined in this article.

Agreement: these TOS, including any executed Order Forms and SOWs, and their amendments, addendums, and attachments.

Company Content: all data, content, and information (including Personal Information) owned, held, used or created by or on behalf of the Company that is stored, or inputted into the Services.

Confidential Information: the terms of the Agreement and any information that is not public knowledge that Parties designate, either in writing or orally, as confidential, or which, under the circumstances of disclosure ought to be treated as confidential. Confidential Information includes without limitation: software, hardware, products, services, policies and practices, Intellectual Property Rights, development and marketing plans, and financial information.

Data Protection Laws: all applicable data protection and privacy laws and regulations, including the EU Directive 2016/679, as amended from time to time.

Documentation: the product specifications, integration specifications, administration guides and user manuals concerning the Services and Functionality, that may be placed at the Company's disposal by Textkernel.

Enhancements: any Feedback, changes, updates, upgrades, releases, fixes customizations, additions, translations, improvements, or modifications made to, or derivative works created from, the Services or Textkernel Content.

Feedback: ideas, comments, translations, or suggestions relating to the Services or Textkernel Content provided by Company to Textkernel.

Force Majeure Event: any event or circumstance beyond the control of the non-performing Party, that prevents the non-performing Party from complying with any of its obligations under the Agreement, other than its obligation to pay money. Force Majeure Event does not include any strike or other labor unrest that affects only one party, an increase in prices, or a change of law.

Functionality: the user functions and possibilities of the software applications that are described in the Agreement or the Documentation, whether divided in sub functionalities and / or modules.

Intellectual Property Rights: all intellectual property rights, whether those rights happen to be registered or not, and wherever in the world those rights may exist, including but not limited to associated Confidential Information, copyrights, data-base rights, trade secrets, trademarks, patents, inventions, designs and know how.

Jobfeed (Services): has the meaning ascribed to that term in Section 2.1.

Maintenance Window: scheduled time reserved for regular maintenance or system recovery testing in production environments, during which the Service may not be Available, which may be performed by Textkernel in EU on Tuesdays and Thursdays from 7 PM CET to 4 AM CET/CEST, and in US on Wednesday and Friday from 7 AM to 11 AM CET/CEST (1 AM to 4 AM EST/EDT).

Non-Standard-Support: the Support provided by Textkernel to Company that is not Standard Support.

Order Form: the form in which Parties describe the details of the Services that will be provided and the applicable prices, payment conditions, and scope of use. The Parties agree that all Order Forms shall be governed by this TOS.

Personal Information: any data or information that constitutes personal data or personal information under any applicable Data Protection Laws;

Security Breach: means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal and/or Confidential Information;

Service(s): all services identified in an Order Form or SOW or otherwise performed or made available by Textkernel under this Agreement, such as software services, API's, the making available of the Functionality, work performed by Textkernel, data enrichment projects, ontologies and taxonomies operated and licensed by Textkernel, delivery of data sets; all of which including Enhancements, implementation, Support, Training and Documentation.

Standard Hourly Rate: the hourly rate charged by Textkernel for Services performed at the request of the Company, either for Non-Standard Support activities or other activities at this rate as mutually agreed by the Parties in one or more Order Forms or SOWs. If no Standard Hourly Rate is detailed in the SOW(s) or Order Form(s), the Standard Hourly Rate of € 125 excluding VAT will be applicable.

Standard Support: is Support provided during Working Hours, as further defined in section 4.4 of the TOS.

Statement of Work (“SOW”): describes all mutually agreed work to be done by Textkernel for Company, including but not limited to implementation activities, technical or functional consultancy, project management, Training, custom development, and Non-Standard Support. The Parties agree that all SOW’s shall be governed by the applicable Order Form and TOS.

Support: the rendering of assistance and advice by Textkernel to Company concerning the usage of Functionality, as well as the rendering of assistance with the tracking of causes, also including deficiencies, in the form of Standard Support or Non-Standard Support, as the case may be and the context requires.

Terms of Service (“TOS”): these specific terms and conditions, and their attachments, for Services committed under an Order Form, including but not limited to: terms of use, policies or service level agreements, that will be attached to the respective Order Form(s). The Parties agree that the TOS shall be governed by the applicable Order Form.

Term: any period during which the Agreement is in force and effect.

Textkernel Content: any data, content, and information that is provided or stored by Textkernel, or that is retrieved from the Service. Content includes Enhancements, and does not include Third Party Content, Company Content, or information that Company obtained independent of Textkernel.

Third Party Content: means third party software, programs, applications, websites, or products, of which the Intellectual Property Rights and control rest with the third party, and that may be licensed under separate terms that become applicable to the Company when the Company elects to use such Third Party Content via the Services. The Services may enable Company to access and use Third Party Content, but Third Party Content is not part of the Services. Third Party Content may include, without limitation:

- 1) Third party applications, websites, products, and services allowing Textkernel to retrieve, search and download data on behalf of a User from an external database or system;
- 2) Content from third party websites collected, or linked to via the Services.

Training: service consisting of a form of knowledge transfer, with the purpose of getting Users acquainted with the Functionality and the proper usage of it, and to ensure that the Service is used in accordance with the Documentation.

User: a person under the responsibility of Company, who has been given access to the Functionality with the Company’s consent or authority;

Working Hours: EU: 8:30 AM CET to 6 PM CET/CEST, Monday till Friday. US: 7 AM EST to 5 PM EST, Monday till Friday.

2. DESCRIPTION OF SERVICES

- 2.1. The Jobfeed Service (or “Jobfeed”) is a Service that consists of access to a structured job ad database, which is created by using a software program that constantly and systematically crawles the internet, locating and indexing websites that publicly display job ads. Textkernel processes the found job ads by classifying, de-duplicating and enhancing them with meta-information, in order to provide the Company and its Users with structured access, efficient searching functionalities, and, when agreed upon in an Order Form, analytics functionalities.
- 2.2. Access to the Jobfeed Services is subject to the terms and conditions of the Agreement.
- 2.3. Textkernel complies with robots.txt instructions and any other direct communications that it receives from a crawled website’s owner. Textkernel offers no guarantees in relation to the completeness of Jobfeed or the continuity of the supply of job ads from specific sources.
- 2.4. Company is aware that the job ads are harvested from the internet using automatic classification methods, which means that Textkernel Content may be supplied that does not contain any job ad, is incorrectly coded, is not correctly up-to-date, or is in duplicate.

3. TERMS OF USE

- 3.1 Unless otherwise agreed upon in a signed Order Form, Company shall:
 - a. only use Jobfeed for Company’s lawful internal business purposes;
 - b. always verify the job ad on the original website, for its current status and correctness;
 - c. not sell, transfer, distribute, sublicense or assign any of the Services or Textkernel Content or its rights to any of the Services or Textkernel Content to any third party, or use them in any other way for public or commercial purpose;
 - d. not alter, reverse engineer, decompile, disassemble or otherwise attempt to derive or obtain information about the functioning, composition or operation of the Services, including the Textkernel Content therein;
 - e. not use or access the Services or Textkernel Content to: (i) build a competitive product or service, (ii) make or have made a product or service with similar features, functions, text, graphics or other content, (iii) make derivative works based upon the Services or Textkernel Content, (iv) copy any features, functions, text, or graphics of the Services or Textkernel Content;
 - f. not attempt to view, access or copy any material or data other than the Company is authorised to, and only to the extent necessary for the Company and its Users to use the Service in accordance with the Agreement;
 - g. not impersonate another person or misrepresent authorisation to act on behalf of others or Textkernel;
 - h. maintain the confidentiality of any login or access credentials provided by Textkernel for use of the Services;

- i. not attempt to undermine the security or integrity of the Services;
 - j. not use, or misuse, the Service or Textkernel Content in any way which may impair the Availability or Functionality, or impair the ability of any other User to use the Service- for example by sending a virus, overloading, flooding, spamming, or mail-bombing any part of the Services;
 - k. neither use the Service in a manner, nor transmit, input or store any Company Content, that breaches any third party rights (including Intellectual Property Rights and privacy rights), or is unlawful, incorrect or misleading.
- 3.2 Textkernel may temporarily set and enforce limits on Company's use of Textkernel's infrastructure (e.g. limiting the number of requests or size of requests), to avoid slow performance and to ensure a good overall user experience. Textkernel shall make reasonable effort to contact Company first, to allow Company to address its use of Textkernel's infrastructure. However, Textkernel reserves the right to act without notice when necessary to avoid negative impact on the larger user community. Company agrees not to attempt to circumvent such limitations, once set. If Company would like to use the Services beyond any applicable limits, then Company must obtain Textkernel's express consent. Textkernel may decline such requests, or post additional terms and/or charges for such requests.
- 3.3 Company shall indemnify and hold harmless Textkernel against claims from third parties caused by acts of Company that conflict with this section 3.

4. AVAILABILITY AND SUPPORT

- 4.1. Textkernel attempts to make access to the Jobfeed portal available 24 hours x 7 days a week, excluding Maintenance Windows.
- 4.2. Although Textkernel attempts to prevent disruptions or delays in the availability and performance of access to Jobfeed during Maintenance Windows, some downtime may occur during those windows.
- 4.3. Training materials, tutorials, tips & tricks and answers to frequently asked questions are available for Company's Users on help.jobfeed.com.
- 4.4. If a User's question or issue cannot be answered or resolved on the help.jobfeed.com portal, Company is entitled to request from Textkernel the following Standard Support:
- Telephone support: during Working Hours Textkernel shall provide advice and assistance to Company by telephone to diagnose suspected problems concerning the availability or performance of Jobfeed;
 - E-mail support: e-mails can be sent to Jobfeed support e-mail address (service@jobfeed.com) at any time and will be answered during Working Hours, based on priority and the order in which the requests are received;
 - Support portal: Company may be given access to a support portal in which support requests can be registered at any time directly into Textkernel's support ticket system. Support tickets will be answered during Working Hours, based on priority and the order in which the requests are received.
- 4.5. Any Non-Standard Support activities from Textkernel requested by Company will - after written confirmation by Company - be charged at Textkernel's Standard Hourly Rate. Any Non-Standard Support performed outside of Working Hours at Company's request will be charged at a surcharge of 50% on top of Textkernel's Standard Hourly Rate.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1. The Intellectual Property to the Services and Textkernel Content is fully vested in Textkernel and/or its licensors. Textkernel shall retain license, title, and all ownership rights to the Services and Textkernel Content. Should further action be necessary in this respect, the Company will cooperate fully with Textkernel to secure title and ownership.
- 5.2. Intellectual Property Rights to Third Party Content made available via Jobfeed remains with the third party.
- 5.3. The Intellectual Property Rights of Company Content remains the property of the Company. The Company grants Textkernel a worldwide, fully paid up, licence to use, store, copy, and modify Company Content for any purpose in connection with the exercise of its rights and the performance of its obligations in accordance with the Agreement.
- 5.4. Textkernel shall indemnify Company for all damages finally awarded against Company, arising out of, or relating to claims stating that the Services infringe the Intellectual Property Rights of any third party, provided that:
- a. Company promptly notifies Textkernel in writing of any such claim;
 - b. Company does not make any admission of liability, or prejudices or settles such claim without Textkernel's prior written permission;
 - c. Textkernel has sole control of the defense and all related settlement negotiations, and Company gives reasonable cooperation and all information required to defend such claims.
- 5.5. The indemnity in section 5.4 does not apply to the extent the claim is based upon:
- a. modifications to the Services if such modifications were not made or expressly authorized by Textkernel or were made by Textkernel in compliance with Company's designs, specifications or instructions; or
 - b. use of the Services by Company in a manner for which the Services were not designed or intended by Textkernel, or otherwise in a manner not reasonably foreseeable by Textkernel; or

- c. Company's combination of the Services with other products or devices not specified or supplied by textkernel to the extent the infringement would not have resulted from the use of the Service alone.
- 5.6. If at any time a claim as mentioned in section 5.4 is made, or in Textkernel's reasonable opinion is likely to be made, then in defence or settlement of such claim, Textkernel may (at Textkernel's discretion):
- a. obtain for the Company the right to continue using the items which are the subject of such claim; or
 - b. modify, re-perform or replace the items which are the subject of such claim so they become non-infringing.
- 5.7. The rights granted to Company under this article 5 shall be Company's sole and exclusive remedy for any alleged infringement of any third party Intellectual Proprietary Rights.
- 5.8. Company shall indemnify and will defend and hold Textkernel harmless against all claims from third parties related to:
- a. User's use of the Services and Textkernel Content pursuant to the Agreement, that are not claims arising out of or related to section 5.4;
 - b. Company Content infringing the Intellectual Property Rights of that third party;
 - c. Company Content that is unlawful, incorrect or misleading.

6. CONFIDENTIALITY

- 6.1. Each Party shall retain all right, title and interest to such Party's Confidential Information disclosed to the other Party.
- 6.2. Each Party must, unless it has the prior written consent of the other Party:
- a) keep confidential at all times the Confidential Information of the other Party; and
 - b) not violate any rights, title and interests of the disclosing Party to the Confidential Information; and
 - c) effect and maintain adequate security measures to safeguard the other Party's Confidential Information from unauthorised access or use; and
 - d) disclose the other Party's Confidential Information to its personnel or professional advisors on a need to know basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other Party's Confidential Information is aware of, and complies with, the provisions this article 6; and
 - e) not reverse engineer, disassemble, copy or decompile any prototypes, software, data, or other tangible objects which embody Confidential Information; and
 - f) not otherwise attempt to derive or obtain information about the functioning, composition or operation of the Services/services and the Confidential Information therein; and
 - g) not use the Confidential Information to inform or create a product or service that is similar to the other Party's product or service.
- 6.3. The obligation of confidentiality in this article 6 does not apply to any disclosure or use of Confidential Information:
- a) for the purpose of performing the Agreement or exercising a Party's rights under the Agreement;
 - b) required by law;
 - c) which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
 - d) which was rightfully received by a Party to the Agreement from a third party without restriction and without breach of any obligation of confidentiality.
- 6.4. Each Party shall immediately inform the other Party of any Security Breach. The Parties agree that such breaches entitle the non-breaching Party to seek injunctive relief, in addition to any other legal or equitable remedies available to it.

7. PRIVACY AND DATA PROTECTION

- 7.1. Each Party acknowledges and agrees that any Personal Information transferred under the Agreement was and is obtained, held, stored, deleted, processed and - if relevant - transferred in accordance with the Data Protection Laws.
- 7.2. Subject to section 7.1, the Company agrees that Textkernel may store Company Content (including any Personal Information) in secure servers in the Netherlands, Germany or the United States of America.

8. INVOICING AND PAYMENT

- 8.1. Unless otherwise agreed in the Order Form(s), access to Jobfeed is charged on the basis of a periodic license fee, based on the number of Users or accounts that have access to Jobfeed and/or the level of access and functionality.
- 8.2. All fees quoted in the Agreement or an Order Form exclude any taxes.
- 8.3. All fees are firm for the term specified in the Order Form or SOW, or - if no term is determined - for a term of 12 months. If Parties agree to auto-renew the Agreement for the Services, Textkernel shall not increase the price of the Services with more than four percent (4%) per year.

- 8.4. The Parties shall comply with the payment schedule specified in the Order Form or SOW. If the Order Form or SOW does not contain a payment schedule, Textkernel shall issue invoices for licenses or subscriptions on an Order Form per 12-month term in advance, and for work included on a SOW after performance of such work.
- 8.5. Invoices will contain an itemized description of all expenses, charges, costs, Service descriptions, and all state, federal, sales, or other applicable taxes separately.
- 8.6. Unless specifically stated otherwise in the Order Form or SOW, Company shall pay the invoice(s) within thirty (30) days after the invoice date.
- 8.7. If Company wholly or partially disputes the invoice, it must notify Textkernel accordingly within fourteen (14) calendar days of invoice date in writing, carefully stating the reasons. Disputing the invoice does not discharge Company from its obligation to pay the invoice. Textkernel and Company shall use their best efforts to resolve any disputes over an invoice carefully and without any undue delay.
- 8.8. In the event Company fails to pay any amount payable by it under the Agreement, Textkernel shall be entitled, but not obliged, to charge Company interest on the overdue amount, payable by Company forthwith on demand, from the due date up to the date of actual payment, at the rate of 1% per month on the outstanding sum with any part of the month being calculated as a full month.
- 8.9. If Company has arrears in payment of more than six (6) weeks, Textkernel has the right to suspend the fulfillment of its obligations pursuant to all Order Forms or SOW's, without being liable for damages in connection with this suspension or cancellation. All reasonable costs that Textkernel incurs as a result of Company's non-compliance with its obligations pursuant to this provision shall be borne by Company in full.

9. TERM AND TERMINATION

- 9.1. The Agreement shall be effective from the date of mutual execution of an Order Form, for the Term as set out in the Order Form. Thereafter the Agreement will be automatically renewed annually unless terminated with 30 days written notice, unless otherwise agreed upon in the Order Form.
- 9.2. Unless any pending Order Forms/SOWs are also expressly terminated as permitted by the Agreement and/or the relevant Order Form/SOW, upon expiration or termination of the Agreement for any reason, all Order Forms/SOW's then in effect hereunder and all license rights granted pursuant to the Agreement and/or any Order Form/SOW will continue in accordance with their terms, in which case the Agreement will continue in effect with respect to such pending Order Forms/SOWs until the completion of such Order Forms/SOWs.
- 9.3. Either Party may, by notice to the other Party, immediately terminate the Agreement if the other Party:
 - i breaches any material provision of the Agreement and the breach is not:
 - a. remedied within 20 business days of the receipt of a notice from the first Party requiring it to remedy the breach; or
 - b. capable of being remedied.
 - ii becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason; or
 - iii is unable to perform a material obligation under the Agreement for 30 days or more due to a Force Majeure Event;
 - iv has arrears in payment of more than six (6) weeks under the Agreement.
- 9.4. Textkernel may suspend or terminate Company's access to and use of Services and terminate this Agreement without notice if Textkernel determines that Company is in breach of article 3 of this Agreement.
- 9.5. Upon termination or expiry of the Agreement, or upon the request of the disclosing Party, the receiving Party must promptly return or destroy all Confidential Information of the disclosing Party, and provide a written certification of such return or destruction.
- 9.6. Except as otherwise set forth in the Agreement, Company shall return all licensed Intellectual Property, and all tangible embodiments thereof, to Textkernel. Upon the expiration or other termination of the Agreement, Company shall have no further rights of use thereof.
- 9.7. Termination or expiry of the Agreement does not affect either Party's rights and obligations that accrued before that termination or expiry. This includes Parties accrued rights and obligations regarding indemnity, confidentiality, liability, data protection, Intellectual Property rights, and governing law.

10. LIABILITY

- 10.1. The maximum aggregate liability of the Parties under or in connection with the Agreement or relating to the Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall not exceed the amount paid or payable by the Company during the twelve (12) months before the liability arose.
- 10.2. Neither Party is liable to the other under or in connection with the Agreement or the Services for any:
 - a. loss of profit, revenue, savings, business, use, data, and/or goodwill; or
 - b. consequential, indirect, incidental or special damage or loss of any kind.

- 10.3. Section 10.1 shall not apply to limit a Party's liability under the Agreement with respect to:
- a. Indemnities;
 - b. Intellectual Property;
 - c. Breach of Data Protection Laws or Data Protection provisions in the Agreement;
 - d. Confidentiality;
 - e. Death or personal injury;
 - f. Fraud or willful misconduct;
 - g. Any other losses which cannot be excluded or limited by applicable law.

11. MISCELLANEOUS

- 11.1. Textkernel's provision of the Services to the Company is non-exclusive. Nothing in the Agreement prevents Textkernel from providing the Services to any other party.
- 11.2. Company shall not assign, sub-license, subcontract, charge or otherwise encumber any of its rights or obligations under the Agreement without the prior written consent of Textkernel.
- 11.3. Textkernel has the sole right to verify compliance of the Agreement by Company, through an audit during the Term of the Agreement. Textkernel agrees to bear all costs incurred by it in relation to the audit, unless the audit results show material errors in the compliance of the Agreement by Company.
- 11.4. Any variation to the Agreement must be in writing and signed by both Parties.
- 11.5. Verbal statements, promises or agreements connected to the execution of the Agreement have no legal effect unless these are confirmed in writing by both Parties.
- 11.6. Any notice or other communication will be deemed to be properly given only when sent via a recognized courier or confirmed e-mail. The Party giving the notification carries the risk of proof if a notification is not received according to the other Party.
- 11.7. Upon occurrence of a Force Majeure Event, the non-performing Party shall promptly notify the other Party of occurrence of that Force Majeure Event, its effect on performance, and how long that Party expects it to last. Thereafter the non-performing Party shall update that information as reasonably necessary. During a Force Majeure Event, the non-performing Party shall use reasonable efforts to limit damages to the other Party and to resume its performance under the Agreement.
- 11.8. The fact that a Party does not demand fulfillment or exercise a right or authority it has under the Agreement, to demand from any stipulation within a mentioned Term of the Agreement, does not affect the right to still demand fulfillment or exercise such right, unless this Party expressly and in writing has waived such right.
- 11.9. If any provision of the Agreement is, or becomes, illegal, unenforceable, or invalid, the relevant provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If modification is not possible, the provision must be treated for all purposes as severed from the Agreement without affecting the legality, enforceability, or validity of the remaining provisions of the Agreement.
- 11.10. The Agreement shall be governed by, interpreted, and construed in accordance with the laws of the Netherlands. Any disputes arising out of or in connection with the Agreement shall be exclusively submitted to the competent court in The Hague, The Netherlands. This leaves unimpaired the obligation of both Parties to make supreme effort to solve disputes connected to the Agreement, as much as possible amicably, by mutual agreement.
- 11.11. During the Term of the Agreement, Textkernel can mention the cooperation with Company as a reference case in the market and can place Company's logo and a short summary of the cooperation on the Textkernel website(s). Textkernel will inform and get approval from Company (including approval as to content) in advance of any other public references. Company will not unreasonably deny such approval. Neither Party shall use the other Party's name, marks, codes, drawing or specifications in any advertising, promotional efforts, or any publicity of any kind other than detailed above without the prior written permission of such other Party.