

[Call Annie] Terms of Service
Last Updated: May 24th 2023

Please read these Terms of Service (“**Terms**”), our Privacy Policy ([https://callannie.ai/callannie_privacy_policy_5_24_2023.pdf]) (“**Privacy Policy**”) and these Terms carefully because they govern your use of our AI-powered assistant services provided by Animato, Inc. (“**Animato**”) accessible via our mobile application (“**App**”) and by phone. To make these Terms easier to read, the Site, our services and App are collectively called the “**Services**.”

IMPORTANT NOTICE REGARDING ARBITRATION FOR U.S. USERS: WHEN YOU AGREE TO THESE TERMS YOU ARE AGREEING (WITH LIMITED EXCEPTION) TO RESOLVE ANY DISPUTE BETWEEN YOU AND ANIMATO THROUGH BINDING, INDIVIDUAL ARBITRATION RATHER THAN IN COURT. PLEASE REVIEW CAREFULLY SECTION 16 “DISPUTE RESOLUTION” BELOW FOR DETAILS REGARDING ARBITRATION.

- 1. Agreement to Terms.** By using our Services, you agree to be bound by these Terms. If you don’t agree to be bound by these Terms, do not use the Services. If you are accessing and using the Services on behalf of a company (such as your employer) or other legal entity, you represent and warrant that you have the authority to bind that entity to these Terms. In that case, “you” and “your” will refer to that entity.
- 2. Privacy Policy.** Please review our Privacy Policy, which also governs your use of the Services, for information on how we collect, use and share your information.
- 3. Changes to these Terms or the Services.** We may update the Terms from time to time in our sole discretion. If we do, we’ll let you know by posting the updated Terms on the Site, to the App and/or may also send other communications. It’s important that you review the Terms whenever we update them or you use the Services. If you continue to use the Services after we have posted updated Terms it means that you accept and agree to the changes. If you don’t agree to be bound by the changes, you may not use the Services anymore. Because our Services are evolving over time we may change or discontinue all or any part of the Services, at any time and without notice, at our sole discretion.
- 4. The Services.** Our Services provide a proprietary platform that allows users to interact with and receive services from an AI-powered assistant (“**Annie**”) via (i) phone call; (ii) in-App voice call; or (iii) other App features
- 5. Who May Use the Services?** You may use the Services only if you are at least 18 years of age or older and capable of forming a binding contract with Animato, and not otherwise barred from using the Services under applicable law. To use certain features of the Services, you’ll need to register and create an account. It’s important that you provide us with accurate, complete and current account information and keep this information up to date. If you don’t, we might have to suspend or terminate your account. To protect your account, keep the account details and password confidential, and notify us right away of any unauthorized use. You’re responsible for all activities that occur under your account.
- 6. Feedback.** We appreciate feedback, comments, ideas, proposals and suggestions for improvements to the Services (“**Feedback**”). If you choose to submit Feedback, you agree that we are free to use it without any restriction or compensation to you.
- 7. Intellectual Property**
 - (a) User Content.** Our Services may allow you (i) engage in text-based interactions with Annie (together with transcriptions of audio interactions with Annie, “**Transcripts**”) and (ii) upload or otherwise make content such as audio, graphics, geographical data, text, files, data, calendar information, video and images available to Annie; and (iii) grant Annie access to the camera functionality

on your personal computer, mobile handset, tablet, and/or other device(s) from which you access the App. Anything (other than Feedback) that you upload, submit or otherwise make available to Annie through the Services is referred to as “**User Content.**” Animato does not claim any ownership rights in any User Content and nothing in these Terms will be deemed to restrict any rights that you may have to your User Content.

(b) Permissions to Your User Content. By uploading any User Content to the Services you hereby grant to Animato a non-exclusive, transferable, worldwide, royalty-free, license, with the right to sublicense, to use, copy, modify, create derivative works based upon your User Content solely in connection with operating, providing and improving the Services. In addition, to the extent that your (or any third party’s) name, voice, image, likeness, and performance (any and all an “**Appearance**”), is embodied or contained in your User Content, you grant Animato a non-exclusive, transferable, worldwide, royalty-free, permission and consent, with the right to sublicense, to use such Appearance as embodied in your User Content in connection with operating, providing and improving the Services.

(c) Your Responsibility for User Content; No Minor Content. You are solely responsible for all your User Content. You represent and warrant that you have (and will have) all rights that are necessary to grant us the license rights in your User Content under these Terms. You represent and warrant that neither your User Content, nor your use and provision of your User Content to be made available through or otherwise processed via the Services, nor any use of your User Content by Animato on or through the Services will infringe, misappropriate or violate a third party’s intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation. You further represent and warrant that your User Content does not contain images or personal data of minors or persons under the age of 18, and you understand that submission of such content via the Services is strictly prohibited. To the maximum extent permitted by law, we are not responsible or liable for the removal or deletion of (or the failure to remove or delete) any of your User Content you may choose to post, distribute or publish to any third party websites, social media services or otherwise.

(d) Storage and Use of User Content. Except as set forth in this Agreement, Animato will not store or use any User Content. Notwithstanding the foregoing, Animato will store Transcripts and will use such Transcripts solely to operate, provide and improve the Services. If you do not want Animato to store Transcripts of your voice and text interactions with Annie, you may disable this feature in the App.

(e) OpenAI Terms. Annie is powered in part by machine learning models and services provided by OpenAI, LLC (the “**Technology**”). You agree to be bound by the terms of the OpenAI Terms of use available at <https://openai.com/policies/terms-of-use>, including with respect to the terms of Section 3 which provide that OpenAI may use User Content provided to the OpenAI services to help develop and improve the OpenAI services.

(f) Annie Output. As between you and Animato, Animato retains all right, title, and interest in and to the output, including any text, images or audio, generated by Annie (“**Annie Output**”). Subject to your compliance with these Terms, Animato hereby grants to you a limited, non-exclusive, worldwide, royalty-free, revocable license, to use, copy, distribute, modify, creative derivative works of, perform and display the Annie Output for your own personal, non-commercial use (e.g., your own personal display or use).

Animato’s Intellectual Property. To the extent that you own or control (presently or in the future) any intellectual property rights that may be necessary for Animato to exercise of any ownership rights in the Annie Output (“**Related Rights**”), you agree to and do hereby grant to Animato, or will cause to be granted to Animato, a worldwide, perpetual, irrevocable, non-exclusive, royalty-free and fully-paid up, assignable, sublicensable right and license to use, reproduce, modify, distribute, prepare derivative

works of, perform publicly, display publicly and otherwise exploit any such Related Rights to the extent necessary to enable Animato's exercise of any ownership rights in the Annie Output.

For clarity, if you violate any provision of these Terms, your license to the Annie Output will automatically terminate, and you may no longer use the Annie Output.

8. Rights and Terms for Apps.

(a) App License. If you comply with these Terms, Animato grants to you a limited non-exclusive, non-transferable license, with no right to sublicense, to download and install the App on your personal computers, mobile handsets, tablets, and/or other devices and to run the App solely for your own personal non-commercial purposes. Except as expressly permitted in these Terms, you may not: (i) copy, modify or create derivative works based on the App; (ii) distribute, transfer, sublicense, lease, lend or rent the App to any third party; (iii) reverse engineer, decompile or disassemble the App (unless applicable law permits, despite this limitation); or (iv) make the functionality of the App available to multiple users through any means.

(b) Additional Information: Apple App Store. This Section 8(b) applies to any App that you acquire from the Apple App Store or use on an iOS device. Apple has no obligation to furnish any maintenance and support services with respect to the App. In the event of any failure of the App to conform to any applicable warranty, you may notify Apple, and Apple will refund the App purchase price to you (if applicable) and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App. Apple is not responsible for addressing any claims by you or any third party relating to the App or your possession and use of it, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third-party claim that your possession and use of the App infringe that third party's intellectual property rights. Apple and its subsidiaries are third-party beneficiaries of these Terms, and upon your acceptance of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third-party beneficiary thereof. You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a terrorist-supporting country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. You must also comply with any applicable third-party terms of service when using the App.

9. General Prohibitions and Animato's Enforcement Rights. You agree not to do any of the following:

(a) Post, upload, publish, submit or transmit any User Content, or use the Services to generate any Annie Output that: (i) infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) is defamatory, threatening, obscene, pornographic, vulgar or offensive; (iv) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (v) is violent or threatening or promotes violence or actions that are threatening to any person or entity; or (vi) promotes illegal or harmful activities or substances;

(b) Use, display, mirror or frame the Services or any individual element within the Services, Animato's name, any Animato trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Animato's express written consent;

- (c) Use the Services or any Annie Output in a manner that violates the OpenAI Usage Policies located here (<https://openai.com/policies/usage-policies>);
- (d) Access, tamper with, or use non-public areas of the Services, Animato's computer systems, or the technical delivery systems of Animato's providers;
- (e) Attempt to probe, scan or test the vulnerability of any Animato system or network or breach any security or authentication measures;
- (f) Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Animato or any of Animato's providers or any other third party (including another user) to protect the Services;
- (g) Attempt to access or search the Services or download content from the Services using any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Animato or other generally available third-party web browsers;
- (h) Use the Services in connection with sending any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation;
- (i) Use the Services, or any portion thereof, for any commercial purpose or for the benefit of any third party or in any manner not permitted by these Terms;
- (j) Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Services to send altered, deceptive or false source-identifying information;
- (k) Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Services;
- (l) Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Services;
- (m) Collect or store any personally identifiable information from the Services from other users of the Services without their express permission;
- (n) Misrepresent your affiliation with any person or entity;
- (o) Violate any applicable law or regulation; or
- (p) Encourage or enable any other individual to do any of the foregoing.

Animato is not obligated to monitor access to or use of the Services or to review or edit any content. However, we have the right to do so for the purpose of operating the Services, to ensure compliance with these Terms and to comply with applicable law or other legal requirements.. We have the right to investigate violations of these Terms or conduct that affects the Services. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

10. Links to Third Party Websites or Resources. The Services (including the App) may allow you to access third-party websites or other resources. We provide access only as a convenience and are not responsible for

the content, products or services on or available from those resources or links displayed on such websites. You acknowledge sole responsibility for and assume all risk arising from, your use of any third-party resources.

11. Termination. We may suspend or terminate your access to and use of the Services, including suspending access to or terminating your account, at our sole discretion, at any time and without notice to you. You may cancel your account at any time by sending us an email at support@callannie.ai. Upon any termination, discontinuation or cancellation of the Services or your account, the following Sections will survive: **Error! Reference source not found., Error! Reference source not found., Error! Reference source not found., 11, 11, 11, 14, 15, 16, 17, and 18.**

12. Warranty Disclaimers. THE SERVICES AND ANY ANIMATO CONTENT ARE PROVIDED “AS IS,” WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, WE EXPLICITLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WE MAKE NO WARRANTY THAT THE SERVICES OR ANY ANNIE OUTPUT WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE, OR ERROR-FREE BASIS. WE MAKE NO WARRANTY REGARDING THE QUALITY, ACCURACY, TIMELINESS, TRUTHFULNESS, COMPLETENESS OR RELIABILITY OF ANY INFORMATION OR CONTENT ON THE SERVICES, INCLUDING ALL ANNIE OUTPUT.

13. Artificial Intelligence Disclaimer. Customer understands and agrees that the Technology, like many large language models, may produce output that is inaccurate, incorrect, harmful, offensive, personal, confidential (or have the appearance of confidentiality) or is otherwise undesirable, or appears accurate because of its detail or specificity that may still contain material inaccuracies. You should evaluate the accuracy of any Annie Output as appropriate for your use case, including by using human review of the Annie Output.

14. Indemnity. You agree to release, indemnify and hold Animato and its officers, directors, employees and agents, harmless from and against any claims, disputes, demands, liabilities, damages, losses, and costs and expenses, including, without limitation, reasonable legal and accounting fees arising out of or in any way connected with (a) your access to or use of the Services and any Annie Output, (b) your User Content, or (c) your violation of these Terms.

15. Limitation of Liability.

(a) TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER ANIMATO NOR ITS SERVICE PROVIDERS INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES AND ANNIE OUTPUT WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST SAVINGS, LOST BUSINESS OPPORTUNITY, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANIMATO OR ITS SERVICE PROVIDERS HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

(b) TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL ANIMATO’S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES EXCEED THE AMOUNTS YOU HAVE PAID OR ARE PAYABLE BY YOU TO ANIMATO FOR USE OF THE SERVICES OR ONE HUNDRED DOLLARS (\$100), IF YOU HAVE NOT HAD ANY PAYMENT OBLIGATIONS TO ANIMATO, AS APPLICABLE.

(c) THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN ANIMATO AND YOU.

16. Governing Law and Forum Choice. These Terms and any action related thereto will be governed by the Federal Arbitration Act, federal arbitration law, and the laws of the State of California, without regard to its conflict of laws provisions. Except as otherwise expressly set forth in Section 16 “Dispute Resolution,” the exclusive jurisdiction for all Disputes (defined below) that you and Animato are not required to arbitrate will be the state and federal courts located in the County of Santa Clara, California and you and Animato each waive any objection to jurisdiction and venue in such courts.

17. Dispute Resolution.

(a) Mandatory Arbitration of Disputes. We each agree that any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Services (collectively, “Disputes”) will be resolved **solely by binding, individual arbitration and not in a class, representative or consolidated action or proceeding.** You and Animato agree that the U.S. Federal Arbitration Act governs the interpretation and enforcement of these Terms, and that you and Animato are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision shall survive termination of these Terms.

(b) Exceptions. As limited exceptions to Section 17(a) above: (i) we both may seek to resolve a Dispute in small claims court if it qualifies; and (ii) we each retain the right to seek injunctive or other equitable relief from a court to prevent (or enjoin) the infringement or misappropriation of our intellectual property rights.

(c) Conducting Arbitration and Arbitration Rules. The arbitration will be conducted by the American Arbitration Association (“AAA”) under its Consumer Arbitration Rules (the “AAA Rules”) then in effect, except as modified by these Terms. The AAA Rules are available at www.adr.org or by calling 1-800-778-7879. A party who wishes to start arbitration must submit a written Demand for Arbitration to AAA and give notice to the other party as specified in the AAA Rules. The AAA provides a form Demand for Arbitration at www.adr.org.

Any arbitration hearings will take place in the county (or parish) where you live, unless we both agree to a different location. The parties agree that the arbitrator shall have exclusive authority to decide all issues relating to the interpretation, applicability, enforceability and scope of this arbitration agreement.

(d) Arbitration Costs. Payment of all filing, administration and arbitrator fees will be governed by the AAA Rules, and we won’t seek to recover the administration and arbitrator fees we are responsible for paying, unless the arbitrator finds your Dispute frivolous. If we prevail in arbitration we’ll pay all of our attorneys’ fees and costs and won’t seek to recover them from you. If you prevail in arbitration you will be entitled to an award of attorneys’ fees and expenses to the extent provided under applicable law.

(e) Injunctive and Declaratory Relief. Except as provided in Section 17(b) above, the arbitrator shall determine all issues of liability on the merits of any claim asserted by either party and may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party’s individual claim. To the extent that you or we prevail on a claim and seek public injunctive relief (that is, injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the public), the entitlement to and extent of such relief must be litigated in a civil court of competent jurisdiction and not in arbitration. The parties agree that litigation of any issues of public injunctive relief shall be stayed pending the outcome of the merits of any individual claims in arbitration.

(f) Class Action Waiver. **YOU AND ANIMATO AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, if the parties' Dispute is resolved through arbitration, the arbitrator may not consolidate another person's claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this Dispute Resolution section shall be null and void.

(g) Severability. With the exception of any of the provisions in Section 17(f) of these Terms ("**Class Action Waiver**"), if an arbitrator or court of competent jurisdiction decides that any part of these Terms is invalid or unenforceable, the other parts of these Terms will still apply.

18. General Terms.

(a) Reservation of Rights. Animato and its licensors exclusively own all right, title and interest in and to the Services, including all associated intellectual property rights. You acknowledge that the Services are protected by copyright, trademark, and other laws of the United States and foreign countries. You agree not to remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services.

(b) Entire Agreement. These Terms constitute the entire and exclusive understanding and agreement between Animato and you regarding the Services, and these Terms supersede and replace all prior oral or written understandings or agreements between Animato and you regarding the Services. If any provision of these Terms is held invalid or unenforceable by an arbitrator or a court of competent jurisdiction, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect. Except where provided by applicable law in your jurisdiction, you may not assign or transfer these Terms, by operation of law or otherwise, without Animato's prior written consent. Any attempt by you to assign or transfer these Terms absent our consent or your statutory right, without such consent, will be null and void. Animato may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

(c) Notices. Any notices or other communications provided by Animato under these Terms will be given: (i) via email; or (ii) by posting to the Services. For notices made by email, the date of receipt will be deemed the date on which such notice is transmitted.

(d) Waiver of Rights. Animato's failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Animato. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

19. **Contact Information**. If you have any questions about these Terms or the Services, please contact Animato at support@callannie.ai.