

CallMiner Master Services Agreement

These terms form an agreement (the "Agreement") between you or the entity that you represent and its affiliates ("You" or "Your") and CallMiner, Inc. ("CallMiner") governing Your use of CallMiner's web-based software application (the "Software") delivered as a service (the "Service"). By: (i) using the Service, and/or (ii) executing an Order that references this Agreement or, clicking a box indicating acceptance, You agree to be bound by these terms and conditions and that you have the legal right and authority to enter into this Agreement on behalf of Yourself and the entity that you represent and its affiliates. If you do not agree to these terms and conditions or you do not have the requisite right and authority to enter into this Agreement, you are not permitted to use the Service. CallMiner may amend the terms of this Agreement from time to time by posting amended terms here. By continuing to use the Service after the effective date of any such amendment You agree to accept the amended terms. It is Your responsibility to check this site regularly for any such amendments.

1. **Right to Use.** CallMiner grants You a non-exclusive, nontransferable, non-assignable, limited term right to use the Service in the United States in accordance with this Agreement, the Documentation, and any Order entered into between You and CallMiner. "Order" means the ordering documents representing Your purchase of the Software, Service, Professional Services, maintenance or support services agreed to between You and CallMiner in writing from time to time. "Documentation" means our user and technical documentation, as updated from time to time by CallMiner. "Professional Services" means installation, training or other professional services identified in an Order. Such Orders shall be deemed incorporated into and a part of this Agreement. The term of Your right to use the Service shall be as provided in the applicable Order. The term of this Agreement shall begin upon Your execution of an Order and will continue for so long as the license for the Software is in effect or the right to use the Service is being provided pursuant to any Order or renewal thereof (the "Term"). CallMiner may audit Your use of the Software to confirm compliance with this Agreement. You agree to provide reasonable assistance and access to information in the course of such audit and permit CallMiner to report the audit results to CallMiner's Licensor(s).

2. **Restrictions and Limitations.** Your use of the Software or Service is subject to the following:

- (a) The Software or Service shall be used (i) only by Your Representatives who are authorized to use the Software, provided that such Representatives are not competitors of CallMiner and that Representatives have agreed in writing to use restrictions and obligations of confidence and nondisclosure no less stringent than those set forth in this Agreement (each a "User"); (ii) only for the maximum amount of capacity licensed; and (iii) solely for Your internal business purpose, including those of Your unincorporated divisions and majority owned subsidiaries, but excluding processing the data of or for any other third parties, with the exception of data for Your clients, if any. As used herein, "Representatives" means the employees, consultants, contractors, potential investors or agents of a party.
- (b) By using the Service, You may not:
 - (i) engage in any activity or transmit any information that, in our sole discretion:
 - 1) is illegal, or violates any federal, state, or local law or regulation;
 - 2) is harmful, threatening, abusive, harassing, tortious, indecent, defamatory, sexually explicit or pornographic, discriminatory, vulgar, profane, obscene, libelous, hate speech, violent or inciting violence, inflammatory, or otherwise objectionable;
 - 3) Violates any third-party right, including, but not limited to, right of privacy, right of publicity, copyright, trademark, patent, trade secret, or any other intellectual property or proprietary rights;
 - 4) Distributes computer viruses or other code, files, or programs that interrupt, destroy, or limit the functionality of any computer software or hardware or electronic communications equipment;
 - 5) Interferes with, disrupts, disables, overburdens, or destroys the functionality or use of any features of the Service, or the servers or networks connected to the Service; or
 - 6) Removes, circumvents, disables, damages, or otherwise interferes with security-related features, or features that enforce limitations on use of the Service;
 - (ii) reverse engineer, reverse assemble, decompile, or disassemble the Software or Service or otherwise attempt to derive, reconstruct, identify or discover any source code, underlying ideas, or algorithms of the Software or Service by any means;
 - (iii) modify, distribute, translate, or create derivative works based on the Software or Service;
 - (iv) remove, alter, cover or distort any copyright, trademark or other proprietary rights notices on the Software or Service;
 - (v) sublicense, distribute, lease, rent, offer under timesharing or application services providers' agreements or otherwise transfer the Software or Service to other third parties;
 - (vi) access the Software or Service for the purposes of monitoring its availability, performance, functionality, or for any competitive purposes; or

(vii) authorize or permit any person or entity to do any of the foregoing.

- (c) You are solely responsible for compliance with all applicable legal and regulatory requirements associated with Your use of the Software or Service.

3. Your Content and Account.

- (a) By using the Service, You grant CallMiner a worldwide, non-exclusive, transferrable, irrevocable, sub-licensable, fully paid up, right and license to use, process, store and transmit all electronic data or information submitted by You to the Service, excluding the Aggregated Data as provided below, ("Your Data") during the term of the Agreement for purposes of providing and improving the Service and Software and conducting research and development related thereto.
- (b) You acknowledge and agree that the input of Your Data and the accuracy and adequacy thereof, including the output generated as a result of such input, is under Your exclusive control. Any use made by You of the data output, or any reliance thereon, is Your sole responsibility.
- (c) You acknowledge and agree that You are responsible for (i) all use of the Software and Service associated with Your account; (ii) maintaining the confidentiality of Your account names and password(s); and (iii) immediately notifying CallMiner of any unauthorized use of your account of which You become aware. You agree that CallMiner will not be liable for any losses incurred as a result of a third party's use of Your account, regardless of whether such use is with or without Your knowledge and consent. CallMiner is not responsible for acts or omissions of Your Representatives that result in a failure or disruption to the Software or the Service nor a breach of the Confidential Information contained within.
- (d) You represent and warrant that (i) You have the legal right and authority to enter into this Agreement, to grant the rights granted by You herein, and to perform Your obligations under this Agreement, (ii) You have obtained all necessary rights and licenses necessary for use of Your Data by You and CallMiner as contemplated in this Agreement, and (iii) the performance of Your obligations and use of the Software and the Service will not violate any applicable laws, regulations, or cause a breach of any agreements with any third parties.
- (e) CallMiner owns all right, title and interest (including, without limitation, all intellectual property rights) in and to the aggregated and statistical data derived from the operation of the Service, including, without limitation, the number of records in the Service, the number and types of transactions, configurations, and reports processed in the Service, the performance results for the Service, and Your Data which has been anonymized to remove any: (i) any information identifying You, (ii) personally identifiable information, or (iii) protected health information (collectively, the "Aggregated Data"). The Aggregated Data is the proprietary and Confidential Information of CallMiner. Nothing herein shall be construed as prohibiting CallMiner from sharing the Aggregated Data with third parties or utilizing the Aggregated Data for purposes of operating CallMiner's business or in any other manner. You obtain no right, title or interest in or to the Aggregated Data under this Agreement and hereby assign any right, title and interest in and to the Aggregated Data to CallMiner.
- (f) Within sixty (60) days of the effective date of termination of this Agreement, CallMiner shall securely delete Your instance, and no longer perform backup activities on the instance. During such period until Your instance is deleted, CallMiner agrees to provide You with reasonable access to Your Data. If CallMiner is required to retain a copy by law, to the extent legally permitted CallMiner shall inform You what it is retaining and the legal reason why it needs to be retained.

4. Availability, Maintenance and Support Services.

- (a) CallMiner shall use commercially reasonable efforts to make the Service generally available 24 hours a day, 7 days a week except for: (i) planned downtime which includes weekly maintenance (ii) emergency maintenance if deemed necessary, and (iii) down time caused by an event of force majeure
- (b) CallMiner will use all commercially reasonable efforts to provide the following support to You:
- (i) Phone and Email Support. CallMiner will provide support via email and telephone during CallMiner's standard support hours. ("Support Hours"). For material Service outages that occur outside of Support Hours, a twenty-four (24) hour, seven day a week hotline will be provided.
- (ii) Standard Support. Support will be provided via email and phone during Support Hours. Unless otherwise stated in an Order, all support will be conducted in English.
- (iii) Additional Support. Any additional support-related assistance requested by You and provided by CallMiner, beyond email and phone support, will be provided at CallMiner's then-current rates. This includes custom programming, data conversion and consulting.
- (c) CallMiner's ability to perform the support services contemplated herein is dependent upon Your full, good faith cooperation and Your provision of such information as may be required by CallMiner, including: (1) specific detailed information concerning Your and Your Users' use of the Service as maybe required for the performance of the support services; (2) the individual contacting CallMiner support being generally knowledgeable regarding the applicable CallMiner Service; and (3) all necessary computer services information and access to key personnel needed to provide the support services. If You fail or delay Your performance of any of the foregoing responsibilities, CallMiner will be relieved of its obligations hereunder to extent such obligations are dependent upon such performance.

5. **Intellectual Property.** Title to and ownership of all intellectual property rights including, without limitation, any patent, trademark, copyright or intellectual or industrial property right, relating to the Software and Service shall at all times remain with CallMiner or its licensors. You expressly acknowledge that you do not have and shall not, by virtue of this Agreement, acquire any title or proprietary rights whatsoever of any kind in or over the Software or Service or any improvements, updates, adaptation, modification, research, development, derivation, addition, extension, changes, or other intellectual property related to the Software or Service ("Modification"), whether made by CallMiner or You, and that Your sole right to the Software or Service is as set forth in this Agreement. To the extent that You create any Modification, You agree that such Modification shall be owned by CallMiner or its licensors. This Agreement does not authorize You to use CallMiner's name or any of its trademarks or those of its suppliers and/or licensors in any manner whatsoever, without CallMiner's prior written approval. Additionally, any feedback provided by You to CallMiner related to the features and functionality of the Software or Service, while remaining confidential, may be used without restriction by CallMiner in the further development of its products.

6. **Fees.** You must pay all fees specified in an Order hereunder plus all applicable taxes, duties, custom charges and shipping charges. Except as otherwise provided in an Order, all amounts payable to CallMiner under this Agreement are stated and shall be paid in U.S. dollars. Invoices will be delivered electronically to You.

- (a) **Payment.** All fees are due net thirty (30) days from the invoice date. Fees for the Software or Service will be invoiced annually in advance unless otherwise specified in the relevant Order. Fees for Professional Services are invoiced fifty percent (50%) upon acceptance by CallMiner of the Order and the remainder upon completion of such services unless otherwise specified in the relevant Order. If You reasonably and in good faith dispute all or any portion of any invoice, You must notify CallMiner in writing of Your objection within ten (10) days from the date of Your receipt of the invoice, provide a detailed description of the reasons for the objection, and pay the portion of the invoice which is not in dispute. Any undisputed amounts not paid within the period set forth above shall bear interest at a rate equal to the lower of one point five percent (1.5%) per month or the maximum rate of interest allowable under applicable law. All costs incurred for outside collection and related bank charges shall be paid by You. You must pay any sales, use or other taxes of any nature, assessed upon or with respect to the Software, Service and/or Professional Services which are imposed by any entity, but excluding taxes based on CallMiner's net income. If it is determined subsequent to original invoicing that additional taxes should have been charged, then You must remit such taxes to CallMiner within thirty (30) days of presentation of a valid invoice for such taxes to the extent that such taxes were not self-assessed as use tax by You.
- (b) **Invoice Delivery.** Invoices will be delivered electronically to You.
- (c) **Suspension.** CallMiner reserves the right to immediately suspend Your license to the Software, the right to use the Service, the provision of any maintenance and support services, and/or Professional Services, as applicable, without liability to You, if: (i) Your account is more than thirty (30) days overdue until all overdue amounts are paid in full (ii) Your use of the Service violated the terms of the agreement or any applicable laws, or (iii) Your use of the Service has the potential to negatively impact CallMiner's other customers. Suspension shall not relieve You of Your obligation to pay the entirety of the fees due.

7. **Confidential/Proprietary Information.** The parties acknowledge that, in the course of their dealings, each party may acquire Confidential Information (as defined below) of the other party. Neither party shall use or disclose any Confidential Information of the other party except as permitted by or in furtherance of its performance under this Agreement. Confidential Information of a party will be maintained under secure conditions by the other party using reasonable security measures and in any event not less than the same security measures used by the receiving party for the protection of its own Confidential Information of a similar kind. You agree to make any of Your Representatives having access to the Software or Service aware of, and such Representatives are subject to, the terms and conditions set forth herein.

- (a) **Definition of Confidential/Proprietary Information.** As used herein, "Confidential Information" means trade secrets, Your Data, the Software and other non-public information of or concerning a party or its business, products, or services. Information will be considered to be Confidential Information if it (a) is marked as confidential, proprietary, or the equivalent, (b) is identified by the disclosing party as confidential or proprietary before, during, or promptly after the presentation, communication, or other disclosure thereof, or (c) reasonably should be understood to be confidential or proprietary based on the circumstances surrounding disclosure and/or the manner such information is treated in the industry. Notwithstanding the foregoing, information shall not be considered to be Confidential Information to the extent that it (i) is already known to the receiving party on a non-confidential basis at the time it is first obtained from the disclosing party, (ii) is or becomes publicly known through no wrongful act of the receiving party, (iii) is rightfully received by the receiving party from a third party without restriction on use or disclosure, or (iv) was independently developed by the receiving party without the use of any Confidential Information of the disclosing party.
- (b) **Compelled Disclosure.** If the receiving party is compelled by law to disclose Confidential Information of the disclosing party, it shall (i) provide the disclosing party with prior notice of such compelled disclosure (to the extent legally permitted), (ii) only disclose such portion of the Confidential Information as the receiving party is advised by counsel it is legally required to, and (iii) cooperate with the disclosing party, at disclosing party's cost, if the disclosing party wishes to contest the disclosure or seek a protective order or other disclosure limitation.
- (c) **Remedies.** If the receiving party discloses or uses (or threatens to disclose or use) any Confidential Information of the disclosing party in breach of this Section 8, the disclosing party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies may be inadequate.

8. Indemnification. You agree to indemnify, defend, and hold harmless CallMiner against any claim, suit, action or proceeding (each, an "Action") brought against CallMiner by a third party arising from: (a) Your failure to use of the Software or Service, in accordance with this Agreement or in accordance with the Documentation, (b) modification of the Software or Service by You, or Your use of the Software or Service in combination with any hardware or software not provided by CallMiner, and (c) Your failure to comply with applicable law in connection with Your use of the Software or Service.

9. Limited Warranty.

- (a) Your use of the Software and Service is at Your own risk. Conversation analytics and speech recognition are complex areas and the results in any particular installation are dependent on a wide range of variables. Therefore, to the fullest extent allowed by applicable law, the Software and Service are provided on an "as is," "with all faults," and "as available" basis without warranty of any kind, whether express, implied, statutory, or otherwise. CALLMINER AND ITS LICENSORS DISCLAIM ANY AND ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE SOFTWARE, THE SERVICE, THE MAINTENANCE AND SUPPORT SERVICES, AND PROFESSIONAL SERVICES, WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT CALLMINER KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), OR NON-INFRINGEMENT.
- (b) The Service may contain links to third-party websites and applications for Your convenience and information. CallMiner does not control those third-party websites and applications and does not endorse or make any representations about those third-party websites and applications. You acknowledge and agree that CallMiner is not responsible for the accuracy, copyright compliance, legality, decency, or any other aspect of such websites and applications that are not under its control, and that You will not hold CallMiner responsible for any harm that may arise based on Your access to or use of any linked website or application.

10. Limitation of Liability.

TO THE EXTENT PERMITTED BY APPLICABLE LAW: (I) THE TOTAL CUMULATIVE LIABILITY OF CALLMINER FOR ANY BREACH OR DEFAULT UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF YOUR DIRECT DAMAGES RESULTING FROM SUCH BREACH OR DEFAULT, NOT TO EXCEED THE AMOUNTS PAID OR PAYABLE TO CALLMINER BY YOU WITH RESPECT TO THE SOFTWARE, THE SERVICE, THE MAINTENANCE AND SUPPORT SERVICES, OR PROFESSIONAL SERVICES GIVING RISE TO SUCH BREACH OR DEFAULT WITHIN THE LAST TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE; AND (II) IN NO EVENT SHALL CALLMINER HAVE ANY LIABILITY TO YOU FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR PROFITS OR FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS) ARISING FROM OR RELATED TO THIS AGREEMENT OR THE OPERATION OR USE OF THE SOFTWARE, THE SERVICE, THE MAINTENANCE AND SUPPORT SERVICES, OR THE PROFESSIONAL SERVICES, EVEN IF CALLMINER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.

11. Suspension and Termination.

- (a) CallMiner may terminate this Agreement, including any Order, (i) upon any actual or suspected breach of this Agreement by You, including, but not limited to, upon a breach by You of the applicable right, license, or limitations on use of the Software; or (ii) if You become the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- (b) Upon termination of the Agreement for any reason (including expiration of your license), You must: (i) cease all use of the Service, and/or in the case of licensees of the Software, the license shall terminate, (ii) return any Software in Your possession to CallMiner, (iii) delete the Software from Your servers, and (iv) certify in writing to CallMiner that You have complied with the foregoing obligations. Upon termination of the Agreement, each party shall return Confidential Information of the other party in its possession to the other party. Termination of this Agreement shall not relieve You of the obligation to pay any fees accrued or payable to CallMiner prior to the effective date of termination.

12. General.

- (a) Waiver and Severability. Any provision of this Agreement, other than the provisions regarding payment obligations, that is held to be invalid, illegal or unenforceable by a court of competent jurisdiction shall be severed from this Agreement, and the remaining provisions shall remain in full force and effect. No failure or delay by either party to exercise any right or remedy specified herein shall be construed as a current or future waiver of such remedy or right, unless said waiver is in writing signed by a duly authorized representative of the party issuing such waiver.
- (b) Relationship of the Parties. The parties' relationship, as established by this Agreement, is solely that of independent contractors. This Agreement does not create any partnership, joint venture or similar business relationship between the parties. Neither party is a legal representative of the other party, and neither party can assume or create any obligation, representation, warranty or guarantee, express or implied, on behalf of the other party for any purpose whatsoever.

- (c) Relationship Acknowledgement. The parties agree the existence of this business relationship is not itself considered Confidential Information. CallMiner may upon execution of this Agreement or Orders hereunder issue a news release showcasing the pertinent benefits of the business relationship.
- (d) Force Majeure. Except for the obligation to make payments, neither party shall be liable for delays or breaches in its performance under this Agreement due to causes beyond its reasonable control, such as acts of vendors, acts of god, acts or omissions of civil or military authority, government priorities, fire, earthquakes, strikes or other labor problems, floods, epidemics, quarantine restrictions, riots, war, acts of terror, computer or telecommunications failures, network intrusions or denial of service attacks and delays of transportation.
- (e) No Third Party Beneficiaries. Except as may be otherwise provided herein, this Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.
- (f) Surviving Provisions. The following provisions of this Agreement shall survive any termination or expiration hereof: Sections 2, 3, 5, 6, 7, 8, 9(a), 9(b), 10, 11, and 12.
- (g) Assignment. You may not assign or transfer this Agreement to any party without the written consent of CallMiner.
- (h) Notices. Any notice required to be given to CallMiner under this Agreement shall be given by personal delivery to CallMiner, or mailed by registered or certified mail, return receipt requested, postage prepaid, or shipped by a nationally-recognized overnight carrier, shipping prepaid, to CallMiner at 200 West Street, Waltham, MA 02451, Attn. Legal Department. Notices from CallMiner to You may be delivered electronically (to the email address on file for your account) or by registered or certified mail, return receipt requested, postage prepaid, or shipped by a nationally-recognized overnight carrier, shipping prepaid, to Your address as provided in an Order.
- (i) Governing Law and Jurisdiction. This Agreement will be interpreted and construed in accordance with the laws of the Commonwealth of Massachusetts, exclusive of its rules governing conflict of laws and choice of laws. The parties consent to the exclusive jurisdiction of the state or federal courts of the County of Middlesex, Commonwealth of Massachusetts.
- (j) Export. This Agreement is subject to all United States government laws, regulations, orders or other restrictions regarding export from the United States of services, commodities, software, technology or derivatives thereof, as such laws, regulations, orders, or other restrictions may be enacted, amended or modified from time to time. Notwithstanding anything to the contrary in this Agreement, You will not directly or indirectly, separately or as part of a system, export or reexport any CallMiner services, commodity, software, technology or derivatives thereof or permit the shipment of same without: (i) the express written consent of CallMiner and (ii) obtaining, at Your sole expense, any required prior authorization from the United States Department of Commerce or other applicable authority as may be required by law. Each party will reasonably cooperate with the other and will provide to the other promptly upon request any end-user certificates, affidavits regarding reexport or other certificates or documents as are reasonably requested to obtain approvals, consents, licenses and/or permits required for any payment or any export or import of products or services under this Agreement. The provisions of this Section will survive the expiration or termination of this Agreement for any reason.
- (k) Government Use. The Software consist of "commercial items," as defined at FAR 2.101. In accordance with FAR 12.211-12.212 and DFARS 227.7102-4 and 227.7202-4, as applicable, the rights of the U.S. Government to use, modify, reproduce, release, perform, display, or disclose commercial computer software, commercial computer software documentation, and technical data furnished in connection with the Software shall be only as provided in this Agreement, except that, for U.S. Department of Defense end users, technical data customarily provided to the public is furnished in accordance with DFARS 252.227-7015. If a government agency needs additional rights, it must negotiate a mutually acceptable written addendum to this Agreement specifically granting those rights.
- (l) Anti-Corruption. Neither You nor, to the best of Your knowledge, any of Your Representatives, is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA") and any other applicable anti-bribery or anti-corruption rules or regulations (together with the FCPA, the "Anti-Corruption Rules"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the Anti-Corruption Rules or using any funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; and You and Your Representatives have conducted Your and their businesses in compliance with the Anti-Corruption Rules and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.
- (m) Entire Agreement. This Agreement, including all attachments and addenda hereto, along with all Orders executed hereunder, constitutes the entire agreement between the parties as to its subject matter, and supersedes all previous and contemporaneous agreements, proposals or representations, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. Notwithstanding any language to the contrary therein, no terms or conditions stated in a purchase order issued by You or in any other order documentation issued by You shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void. If any of the terms or

conditions of this Agreement conflict with any of the terms or conditions of any Orders, then, unless otherwise provided herein, the terms and conditions of such Order will control.