



LICENSE & SUPPORT AGREEMENT

This License & Support Agreement ("Agreement") is made as of the ___ day of _____, 2005, ("Effective Date"), by and between CallMiner, Inc., Inc. ("CallMiner"), a Florida corporation with its principal place of business at 4310 Metro Parkway, Suite 210 Ft. Myers, FL 33916, and _____ with its principal place of business located at _____ ("Customer"), In consideration for the mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS The following terms shall have the meanings stated:

1.1 Affiliate: Any entity which now or in the future controls, is controlled by, or is under common control with Customer, with "control" defined as a more than fifty percent (50%) ownership interest. For each System Order signed by or on behalf of an Affiliate, "Customer" and "party" as used herein shall mean the Affiliate identified therein.

1.2 Confidential Information: Confidential or proprietary information, other than Trade Secrets, of value to its owner, generally not known to the public and any data or information defined herein as a Trade Secret but which is determined by a court of competent jurisdiction not to rise to the level of a trade secret under applicable law. Notwithstanding the foregoing, the following will not constitute Confidential Information or Trade Secret for purposes of this Agreement: (a) information or data which is or becomes generally available to the public other than as a result of a disclosure by the receiving party or its representatives; (b) information or data which was already known to the receiving party on a nonconfidential basis prior to being furnished to the receiving party by the owner; or (c) information or data which becomes available to the receiving party on a nonconfidential basis from a source other than the owner if such source was not subject to any prohibition against transmitting the information to the receiving party.

1.3 Customer's Environment: The computing environment for use and operation of the System which meets CallMiner' then-current minimum requirements.

1.4 Designated Employees: Up to three of Customer's employees per Site who have received training from CallMiner. Designated Employees may be changed by notice to CallMiner.

1.5 Documentation: CallMiner' instructions on Software use in hard copy and/or electronic form.

1.6 Error: A failure of the Software to substantially conform to the Documentation that CallMiner can replicate.

1.7 Error Corrections: Revisions, modifications, alterations, and additions to the Software, bug fixes, or workarounds provided by CallMiner to Customer to resolve Errors.

1.8 Expenses: All reasonable out-of-pocket expenses incurred by CallMiner in performing hereunder, excluding those expenses incurred while performing under Support in Section 4 and the warranty in Section 5.1.

1.9 License Fee: In US Dollars, the amount specified in each System Order for the licensing rights to the System.

1.10 Proprietary Information: Collectively, Confidential Information and/or Trade Secrets of CallMiner, Customers or a third party providing such information to either of the foregoing parties.

1.12 Server: Each Server on which a System is installed and for which the applicable License Fee is listed in an Order

1.13 Site: The physical location of each Customer Server.

1.14 Software: Computer application programs in object code form identified in a System Order.

1.15 Support: The specific support services described in Section 4.

1.16 Support Fee: In US Dollars, the amount specified in each System Order for Customer's right to receive Support for that System during the Initial Term.

1.17 System: Collectively, Software, Documentation, and Updates and all copies of any of the foregoing identified in a System Order.

1.18 System Order: An order for the Software and documentation substantially in the form of Exhibit A.

1.19 Term: Annual or Initial Term, defined as follows:

a. **Annual Term:** Each one (1) year period following the Initial Term unless earlier terminated as provided in Section 8 below.

b. **Initial Term:** The one (1) year period beginning on the execution of each System Order unless earlier terminated as provided in Section 8 below.

1.22 Trade Secrets: Information, constituting a trade secret under the Uniform Trade Secret Act.

1.23 Updates: Periodic improvements or additional functionality to the Software, including Error Corrections, but excluding optional feature(s) subject to additional license fees and/or terms.

1.24 Version: The System configuration identified by a number to the right of a decimal point (e.g., 5.2, 6.0). The then-current Version contains all Updates issued by CallMiner.

2. LICENSE CallMiner grants to Customer, and Customer accepts, a nonexclusive, nonassignable, and nontransferable limited license to use one copy of each System specified in the applicable System Order solely by Customer's employees for its internal business operations subject to the terms of this Agreement. Customer and Affiliate(s) may execute System Orders. The number of Seats connected to and terminated Channels in each applicable Server shall at no time exceed the number specified in the applicable System Order. Customer may also make a reasonable number of copies of the Software solely as needed for back-up, archival and testing purposes, and of the Documentation solely as needed for Customer's business purposes as granted herein.

3. PAYMENT

3.1 License Fee. CallMiner shall invoice and Customer shall pay as set forth in Exhibit A hereto.

3.2 Support Fee. Call Miner shall invoice Customer for one hundred percent (100%) of the Support Fee(s) for the second year on the anniversary of the execution of this agreement by both parties. The Support Fee for any Annual Term shall be payable annually in advance at the then-current rate.

3.3 Payments; Other Charges. Customer shall pay all fees and Expenses upon receipt of CallMiner' invoice. Shipments shall be FOB origination, and Customer shall be responsible for all shipping and handling charges.

3.4 Late Payments. CallMiner' obligations and Customer's rights are contingent on full timely payment of all amounts required to be paid hereunder. OVERDUE AMOUNTS SHALL BEAR INTEREST AT EIGHTEEN PERCENT (18%) PER ANNUM, OR THE MAXIMUM LEGAL RATE IF LESS. Customer shall reimburse CallMiner for all collection costs (including reasonable attorneys' fees). With advance notice, CallMiner has the right to enter the Site(s) during regular business hours to verify that System usage is in compliance herewith.

3.5 Taxes, Etc. All amounts specified are net of, and Customer shall pay all additional sums for, any sales and use taxes, duties, and other similar assessments related to the System, Support, and this Agreement (exclusive of taxes based on CallMiner' net income). Customer shall promptly provide CallMiner copies of all documents confirming governmental tax designations (e.g., exemption, self-assessment rights). Customer shall indemnify and hold harmless CallMiner from all claims and liability arising from Customer's failure to comply with the requirements of this Section 3.5.

4. SUPPORT

4.1 Support. Subject to Section 5 below, during any Term, CallMiner' Support includes the following:

- a. **Standard Telephone Support.** For all Support requests, direct access by Designated Employees via telephone to CallMiner' support center Monday 9:00 AM ET through Friday, 5:00 pm ET, US holidays excluded.
- b. **Error Correction.** CallMiner shall use commercially reasonable efforts to provide Error Corrections and to utilize remote diagnostic procedures.
- c. **Updates; Versions.** CallMiner shall provide Customer Updates and Versions that CallMiner generally offers in its sole discretion to its supported customers. All such Updates and Versions become part of the System.

4.2 Version Support. CallMiner shall provide Support only for the then-current Version, or for the immediately preceding Version for a period of six (6) months after the then-current Version is made generally available.

4.3 Exclusions. Notwithstanding CallMiner' warranty and support obligations hereunder, CallMiner shall have no responsibility or liability of any kind, whether for breach of warranty or otherwise, arising or resulting from:

- a. Customer's failure to prepare Customer's Environment prior to Software installation or to maintain same thereafter.
- b. Customer's failure to grant security authorization or to provide necessary dial-in communications mechanisms; or Internet connection problems.
- c. Errors resulting from misuse, abuse, negligence, or improper use of all or any part of the System; or problems to or caused by products or services not provided by CallMiner.
- d. System modification, amendment, revision, or change by any party other than CallMiner or CallMiner' authorized representatives.
- e. Data or data input, output, integrity, storage, and back-up, which shall be deemed under Customer's exclusive control. Any use of or reliance on data or data output is Customer's sole responsibility.

5. LIMITED WARRANTY AND DISCLAIMERS

5.1 Limited Performance Warranty. CallMiner warrants to Customer that the Software as initially shipped under a System Order shall operate in Customer's Environment substantially in accordance with the Documentation for a period of ninety (90) days after its installation. It is understood that speech recognition accuracy can vary widely based audio source, speakers, and model tuning. Accuracy may vary over time. CallMiner does not warrant final accuracy

5.2 Disclaimer. THE LIMITED WARRANTY SET FORTH IN SECTION 5.1 IS MADE FOR THE BENEFIT OF CUSTOMER ONLY AND IS EXPRESSLY SUBJECT TO SECTIONS 4.2 AND 4.3, AND CALLMINER MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES OR REPRESENTATIONS OR CONDITIONS, WHETHER WRITTEN OR ORAL, EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SUBJECT MATTER HEREOF, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE. CALLMINER DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SYSTEM SHALL BE UNINTERRUPTED OR ERROR-FREE.

6. LIMITATION OF LIABILITY

6.1 Exclusive Remedy. Customer's exclusive remedy under Sections 4.1 and 5.1 shall be for CallMiner to use commercially reasonable efforts to either, in its sole discretion, correct such Error or replace the nonconforming portion of the Software; provided, however, if CallMiner cannot provide either remedy for an Error reported during the applicable warranty period specified in Section 5.1, upon receipt of the nonconforming portion of the Software, CallMiner shall refund Customer a pro-rata amount of the License Fee paid for same.

6.2 Limitation of Liability. CallMiner' maximum liability arising out of or in any way connected to this Agreement shall be in the aggregate and limited to Customer's direct actual damages not to exceed the actual License or Support Fee paid to CallMiner hereunder for the nonconforming System or Support, reduced by any amount due CallMiner. **IN NO EVENT SHALL EITHER PARTY HERETO, ANY PARENT, SUBSIDIARY, OR AFFILIATE, OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES OR REPRESENTATIVES, BE LIABLE TO ANY THIRD PARTY FOR DAMAGES OF ANY KIND OR NATURE OR IN ANY MANNER WHATSOEVER, OR TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, INCIDENTAL, OR SPECIAL DAMAGES OR COSTS (INCLUDING ATTORNEYS' FEES) REGARDING THIS AGREEMENT OR RESULTING FROM OR IN CONNECTION WITH THE USE, MISUSE, OR**

INABILITY TO USE THE SYSTEM, SUPPORT, OR OTHER PRODUCTS OR SERVICES, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. This Section 6 shall survive termination and continue in full force and effect despite any failure of essential purpose, consideration, or an exclusive remedy. This Section 6 shall not apply with respect to claims arising under Section 7.5 hereof.

7. INTELLECTUAL PROPERTY; CONFIDENTIALITY

7.1 Ownership. Customer acknowledges CallMiner owns or has the right to license the System, and that all right, title, and interest in the System and all information and materials related to the System and CallMiner' business, regardless of form, including all copyrights, trademarks, service marks, logos, patents, Proprietary Information, and other intellectual property rights pertaining thereto (collectively, "CallMiner IP"), are and shall remain vested in CallMiner or its licensor(s). Customer further acknowledges that the Software and Documentation are unpublished and constitute CallMiner copyrights and Trade Secrets. Customer does not claim any ownership or other proprietary rights in or to any CallMiner IP.

7.2 Protection of CallMiner IP. Customer shall not itself nor permit any other party to:

- a. Disassemble, decompile, decrypt, or reverse engineer, or in any way attempt to discover or reproduce source code for any part of the System; alter, modify, or prepare derivative works based on any CallMiner IP; or use any CallMiner IP to create any computer program or other material that performs, replicates, or utilizes the same or substantially similar functions as the System.
- b. Demonstrate or display the System or its operation; or use the System in a service bureau or time sharing environment.
- c. Alter, remove or suppress any copyright or other proprietary notices or marks or any confidentiality legends embedded or otherwise appearing in or on any CallMiner IP; or fail to ensure that all such notices and legends appear on all full or partial copies of CallMiner IP or any related material.
- d. Sell, sublicense, lease, assign, transfer, distribute, encumber, or otherwise transform any CallMiner IP, this Agreement or any of Customer's rights hereunder.

7.3 Confidentiality. The unauthorized disclosure or use of Proprietary Information of the other party would cause great injury and harm to its owner. Therefore, each party agrees to take all appropriate action to ensure the confidentiality and security of the other party's Proprietary Information, but in any event no less than the same standard of care it uses to protect its own Proprietary Information of like kind and value. Without limiting the generality of the foregoing, and in addition to Customer's obligations in Section 7.2, Customer and CallMiner each agree that it: (a) shall maintain the other's Proprietary Information in the strictest confidence, including compliance with reasonable remote access security requirements; (b) shall not disclose, display, publish, transmit, or otherwise make available such Proprietary Information or the benefit thereof, in whole or in part, except in confidence to its own employees on a need-to-know basis; (c) except as expressly permitted hereunder, shall not copy, duplicate, replicate, transform, or reproduce such Proprietary Information.

7.4 Applicability. The restrictions set forth shall apply during the term of this Agreement, and shall remain in full force and effect after any termination: (a) for Trade Secrets and any Confidential Information that rises to the level of a Trade Secret, as long as such information qualifies as a Trade Secret under applicable law; and (b) for all other Confidential Information, during a period of five (5) years after initial disclosure.

8. TERM AND TERMINATION

8.1 Agreement Term. This Agreement shall commence on the Effective Date and continue unless earlier terminated as provided in Section 8.4.

8.2 Termination of System Order. A System Order may be terminated only:

- a. By CallMiner if any payment owed under a System Order remains unpaid seven (7) days after CallMiner' notice thereof.
- b. By either party if the other party fails to perform any material obligation set forth in a System Order, and such nonperforming party does not cure such failure within thirty (30) days after notice of such failure. Permitted termination of a System Order shall not terminate this Agreement.

8.3 Termination of Support. Support shall automatically renew for successive Annual Terms at CallMiner's then current support rates unless either party provides notice to the other at least thirty (30) days prior to the expiration of the then-current Term of its decision not to renew Support.

8.4 Termination of Agreement. This Agreement may be terminated only:

- a. By CallMiner immediately for any breach of Section 7; or
- b. By a party for material breach hereof by the other which remains uncured thirty (30) days after notice of such breach.

8.5 Effects of Termination.

a. **System Order.** Upon termination of a System Order, CallMiner shall have no further responsibility or liability thereunder; provided, however, all other provisions, including licensed uses and payment obligations under other System Orders, shall remain in full force and effect.

b. **Support.** Termination of Support shall not constitute termination of the Agreement or any System Order.

c. **Agreement.** Upon termination of this Agreement for any reason: (i) all outstanding amounts shall be immediately remitted to CallMiner; (ii) Customer shall immediately cease all uses of the System, remove all copies from any equipment on which they have been installed, return them with all Documentation and other CallMiner Proprietary Information, and provide CallMiner written certification of the foregoing; and (iii) the license and all other rights and obligations of the parties shall immediately terminate except for the provisions hereunder that by their sense and context are intended to survive termination, including Sections 3, 5.2, 6, 7, 9, and 10, which provisions shall so survive.

d. A remedy period exercised hereunder shall not serve to toll, release, or reduce the parties' respective obligations or liability.

9. GOVERNING LAW; REMEDIES This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Florida without regard to its principles governing conflict of laws. Each party hereto shall comply with all laws, rules, and regulations directly or indirectly applicable to use and possession of the System, including regulations under the US Export Administration Act and the US Foreign Corrupt Trade Practices Act, and shall indemnify and hold harmless the other party for any failure by it to do so. Customer represents that it will not export or otherwise remove the System or any portion thereof from the US or Canada, either directly or indirectly, without the consent of CallMiner and without first obtaining any licenses or approvals as may be required from the applicable agency or department of the US Government or from any other competent governmental authority. The United Nations Convention on Contracts for the International Sale of Goods shall not apply hereto in any respect. If Customer breaches or threatens to breach any **IN WITNESS WHEREOF**, CallMiner and Customer have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives, and each represents and warrants to the other that it is legally free to enter in to this Agreement.

provision hereof, which breach jeopardizes the confidential and/or proprietary nature of CallMiner IP, in addition to any other remedies it may have at law or in equity, CallMiner shall be entitled to seek a restraining order, injunction, or other similar remedy without posting bond as a condition of such relief.

10. GENERAL Section headings are for convenience only. Wherever consent or other approval is required, such consent shall not be unreasonably withheld or delayed; provided, however, it shall not be considered unreasonable for CallMiner to withhold its consent if consent could serve to jeopardize the confidentiality of and/or CallMiner' property interests in and to CallMiner IP. Except for obligations of confidentiality and payment, neither party shall be liable for any delay or failure in performing hereunder if caused by any factor beyond its reasonable control, and performance shall be deferred until such cause of delay is removed. Nothing herein shall make either party the agent of the other for any purpose whatsoever. Notices and other communications required hereunder must be in writing, delivered by hand delivery or nationally recognized overnight courier, and addressed to the addressees set forth on the first page hereof, and if to CallMiner, with a copy to the attention of the Legal Department, or to such other address or title by giving proper notice thereof. Notices will be deemed given when delivered, if hand delivered, and on the next business day after deposit if sent by nationally recognized overnight courier. Notices may only be sent in this manner. Any failure or delay by either party in exercising any right or remedy shall not be deemed a waiver of any further, prior, or future right or remedy hereunder. If any provision is declared invalid or unenforceable, the other provisions shall remain in full force and effect, and this Agreement shall be deemed amended to replace, to the extent legally permitted, the rights and obligations contained in the invalid or unenforceable provision. The invalidity or unenforceability of any provision shall not constitute a failure of consideration hereunder. This Agreement and its Exhibits together constitute the entire agreement between CallMiner and Customer, and supersede all prior agreements and understandings, whether oral or written, relating to the subject matter hereof. No other agreements shall be effective to change, modify, or terminate this Agreement in whole or in part unless in writing specifically referencing this Agreement and duly signed by authorized representatives of both parties. CallMiner reserves all rights not expressly granted to Customer hereunder. CallMiner will accept a purchase order provided by Customer; however, any purchase order terms in addition to or conflicting with the terms of this Agreement, a System Order, or Service Order as defined in the Services Agreement entered into between CallMiner and Customer shall not be effective. In case of any conflict between this Agreement and any Exhibit or other attachment hereto, the provisions of this Agreement shall control.

**ACCEPTED:
CALLMINER, INC.**

ACCEPTED:
_____(CUSTOMER)

AUTHORIZED REPRESENTATIVE

AUTHORIZED REPRESENTATIVE

NAME & TITLE PRINTED

NAME & TITLE PRINTED

DATE

DATE

THE TERMS, CONDITIONS, AND FEES CONTAINED IN THIS AGREEMENT AND SYSTEM ORDER ARE VALID PROVIDED both are executed by Customer and received by CallMiner on or before _____ 2005.