

General Terms and Conditions

These General Terms and Conditions ("Terms") govern the Customer's and its Users' access to, and use of, the Services offered by Calibo. By using the Services, Customer acknowledges that it has read, understood, and agreed to be bound by these Terms.

1. Definitions.

"Additional Services" means those additional professional services requested by Customer but are outside the scope and pricing of Customer's then current SOW(s). Additional Services are delivered through separately executed SOWs.

"Affiliate" means an entity that, directly or indirectly, owns or controls, is owned or is controlled by, or is under common ownership or control with a Party. As used in this definition, "control" means the power to direct the management or affairs of an entity and "ownership" means the beneficial ownership of more than fifty percent (50%) of the voting equity securities or other equivalent voting interests of an entity.

"Agreement" means collectively, the General Terms and Conditions, the Order Form, any applicable SOW, the SLA, and any other documents as are set forth on the Customer's Order Form.

"Cloud Ecosystem" means the Cloud server system on which the Platform is installed and maintained.

"Customer Data" means: (a) all data that is in the possession of, or controlled by, Customer and all data summarizing, aggregating, concerning or indexing such data (regardless of whether or not owned by the Customer or generated or compiled by Customer); and (b) all other records, data, files, input materials, reports, forms and other such items that may be received, computed, developed, used or stored by Calibo from, for or on behalf of Customer, or in connection with the Services.

"Documentation" means any operator and user manuals, training manuals, technical materials, proposals, and other information provided by Calibo.

"Integrations" means the external third-party software or APIs configured to work with Calibo natively.

"Law" or "Laws" means any laws promulgated by any foreign, federal, state, provincial, municipal, local, or other governmental unit, including any applicable regulations, decrees, administrative orders, and ordinances therefrom, that has jurisdiction and applicability in the given circumstances.

"Malware" means any virus, worm, Trojan horse, time bomb, spyware or other contaminants (all of which are detectable by industry-standard virus protection software), including commands, instructions, devices, techniques, bugs, web bugs or design flaws that may be used to access, alter, delete, threaten, infect, assault, vandalize, disrupt, damage, disable, or shut down Customer or Calibo, as the case may be, systems, databases, Software, servers, or hardware.

"Materials" means documents, summaries, reports, analysis, studies, or other information to be created and/or delivered by Customer using Calibo's Platform and Integrations.

"Order Form" means the document by which Customer has ordered the Services from Calibo.

"Personal Data" means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.

"Platform" means the digital architecture or framework Calibo has constructed for the Customer that the Customer will use on Customer's Cloud Ecosystem to host Customer's Data.

"Services" means the platform-as-a-service offered by Calibo. The Services offered include "Managed Services," which means that Calibo will implement and manage all the Integrations on the Calibo Platform. The Customer can also select "Non-Managed Services," which means that the Customer alone will implement and manage all the Integrations on the Calibo Platform.

“Service Level Agreement” or “SLA” means the metrics related to operational performance of Services that Calibo agrees to meet as set forth in the Service Level Agreement appended to Customer’s Order Form.

“Software” means computer programs, together with input and output formats, source and object codes, program listings, data models, flow charts, outlines, narrative descriptions, operating instructions and supporting documentation, and includes the tangible media upon which such programs and documentation are recorded, including all authorized reproductions, corrections, updates, new releases, and new versions of such programs.

“Statement of Work” or “SOW” means the detailed description and/or specifications of the Services as requested and authorized by Customer.

“Support” means those services Calibo will perform as described in the SLA and elsewhere in this Agreement

“Term” means the term of Calibo’s Services identified in the applicable Order Form, including all renewals.

“Third-Party Materials” means third-party products, tools, software, documents, and other materials.

“User(s)” means the individual(s) Customer authorizes to use the Services.

2. Term and Termination.

2.1 Term. The Term will continue unless earlier terminated in accordance with the provisions of the Agreement (“Initial Term”). Upon mutual agreement, the Customer shall have the option to exercise multiple year extensions (each extension, a “Renewal Term”). A writing signed by a duly authorized representatives of each Party must evidence any Renewal Term. The Agreement will terminate upon expiration of the applicable Term, unless expressly stated otherwise. Fees for both the Initial Term and any Renewal Term are outlined in the Pricing Schedule in the Order Form or applicable SOW. If any SOW is outstanding upon the expiration of the Agreement, then the Agreement will survive with respect to such SOW until the expiration of the SOW.

2.2 Termination. Either Party will have the right, but not the obligation, to terminate the Agreement or an applicable SOW upon thirty (30) days’ prior written notice if (a) the other Party materially breaches the Agreement or SOW, as applicable, and fails to cure such breach within thirty (30) days or a mutually agreed period of time; (b) the other Party ceases operation without a successor; or (c) the other Party seeks protection under any bankruptcy, receivership, trust deed, creditors’ arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that Party and is not dismissed within sixty (60) days. Additionally, Calibo will have the right, but not the obligation, to terminate the Agreement or any applicable SOW if Customer fails to pay amounts owed to Calibo when due, and Customer fails to cure such failure within ten (10) days after receipt of written notice from Calibo. For any termination of the Agreement by Customer for cause in accordance with this Section, Customer shall be entitled to a refund of any prepaid unused Fees for the Services.

2.3 Termination Fees. If Calibo terminates for cause, then Customer may be required to pay a termination fee under the terms set forth in the applicable SOW.

2.4 Effect of Termination. Termination of the Agreement or any SOW for any reason under this Section will not affect (a) any liabilities or obligations of either Party arising before such termination or out of the events causing such termination or (b) any damages or other remedies to which a Party may be entitled under the Agreement, at law or in equity arising from any breach. If the Agreement is terminated for any reason other than termination by Customer for Calibo’s material breach of the Agreement under this Section, then Customer will pay Calibo: (a) charges for Services provided up through the effective date of such termination and (b) all termination fees (if any).

2.5 Customer Data Retrieval Upon Termination. Upon written notice to Calibo, Customer will have up to thirty (30) calendar days from termination or expiration of the Agreement to access the Service solely to the extent necessary to retrieve Customer Data (“Retrieval Right”). If Customer exercises its Retrieval Right, the Agreement and the applicable Order Form shall continue in full force and effect for the duration of the Retrieval Right. Calibo shall have no further obligation to make Customer Data available after the latter of (a) the effective date of termination of the Agreement, or (b) the Retrieval Right period, if applicable, and thereafter Calibo shall promptly delete the Customer Data. After the Retrieval Right period, Customer will have no further access to Customer Data and shall cease use of and access to the Platform and Services (including any related Calibo Technology) and delete all copies of Customer Software, Documentation, any associated passwords or access codes, and any other Calibo Confidential Information in its possession. Notwithstanding any termination or anything to the

contrary in the Agreement or any Order Form, Customer shall pay for all Services received prior to any termination.

2.6 Survival. The following sections will survive any expiration or termination of the Agreement: 1 (Definitions), 2 (Term and Termination), 4 (Fees and Payment; Taxes; Payment Disputes), 5 (Intellectual Property), 6 (Representations and Warranties), 7 (Indemnification), 8 (Limitation on Liability), 11 (Confidentiality), 13 (Miscellaneous Provisions).

2.7 Suspension of Services. In addition to any of its other rights or remedies (including, without limitation, any termination rights) set forth in the Agreement, Calibo reserves the right to suspend the Services: (a) if any undisputed Fees are thirty (30) days or more overdue; (b) if Calibo deems such suspension necessary as a result of Customer's material breach of the Agreement; (c) if Calibo reasonably determines suspension is necessary to avoid material harm to Calibo or its other customers, including if the Service is experiencing denial of service attacks, mail flooding, or other attacks or disruptions outside of Calibo's control; or (d) as required by Law or at the request of a governmental entity with jurisdiction.

3. **Calibo Services.**

3.1 License Grant and Limitations on Use. Calibo grants to Customer, and Customer accepts, a non-exclusive, non-transferable, world-wide, license for use during the Term of this Agreement and as described in this Agreement. Customer's use shall begin on the Effective Date (set forth in the Order Form) and may be renewed on terms set forth in Section 2.1. Unless otherwise specified, the Services are solely for Customer's internal business operations and use. Neither Customer nor its Users may copy, rent, lease, sell, sublicense, assign, loan, time-share or otherwise transfer or distribute passwords to access the Calibo Platform or results derived therefrom, to others, except as set forth in this Agreement. Customer shall access results derived from the use of the Platform and its Integrations in accordance with this Agreement. Customer shall not decompile, disassemble, or otherwise reverse engineer the Services, Platform or Integrations, and Customer will use Customer's best efforts to prevent Customer's Users, from doing so. Customer may not modify, adapt, create a derivative work, merge, or translate the Services, Platform, or Integrations without the prior written consent of Calibo. In the event that Customer is acquired by another entity, all terms and conditions of this Agreement shall apply to the acquiring entity. The Services, Platform, and Integrations are for use only for purposes pertaining to the business of the Customer, and under no circumstances may Customer use the Services, Platform, or Integrations for purposes pertaining to the business of entities other than the Customer.

3.2 Affiliates. Customer Affiliates may purchase Services from Calibo or an authorized Calibo Affiliate, as applicable, by executing an Order Form which is governed by the terms of the Agreement. This will establish a new and separate agreement between the Customer Affiliate and the Calibo entity signing the Order Form. If the Customer Affiliate resides in a different country than Customer, then the Order Form may include modifications applicable to the country of origin for that Customer Affiliate's transaction(s), including, but not limited to, taxation, data transfer, and governing law.

3.3 Modifications. Calibo will retain the unilateral right to modify the Services; provided, however, that any such modifications will not impair the ability of Calibo to meet the SLAs appended to Customer's Order Form or materially adversely affect the Services. Calibo will post a notice of such modifications to Calibo's customer portal on the Calibo website, and Customer will be subject to such modifications as of the effective date of the posted notice.

3.4 Support. Calibo shall provide support as indicated in the release notes of each Integration. Release notes are posted in the online help at help.calibo.com. Release notes are sent to all Customer Representative Contacts listed in the Order Form on an at least quarterly release cycle. Customer will receive an end of support notice two release notes in advance, or six months in advance of end of support. Customer will receive end of life notice one release note in advance, or three months prior to end of life, meaning no updates, no modification, and no fixes. Depending on Customer's Order Form, Calibo shall provide additional Support as more fully described in the Customer's SOW and SLA.

3.5 Security. Calibo shall provide security measures as more fully described in the Platform Security and Data Protection Addendum referenced and attached as **Appendix F** to the Order Form.

3.6 Use of Customer Data.

(a) Generally. Subject to these Terms and for the term of the Agreement, Customer grants Calibo, its Affiliates, agents and subcontractors, a limited, royalty-free, nonexclusive, worldwide license during the term of the Agreement to use, reproduce, transmit, display, publish, and distribute Customer Data as necessary to

enhance the performance of the Services as contemplated under the Agreement. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and copyright of Customer Data. Customer represents that it has the legal right to digitize, transmit, and copy all Materials that are submitted to Calibo for processing under the Agreement. Customer represents that any Personal Data that is included in Customer Data has been collected by Customer and posted to Customer's Cloud Ecosystem in compliance with all applicable Laws.

(b) HIPAA Data. Customer agrees not to use the Service to process any Customer Data governed by the Health Insurance Portability and Accountability Act ("HIPAA") (collectively, "HIPAA Data") unless Customer has entered into a Business Associate Agreement ("BAA") with Calibo. Calibo will have no liability to Customer under the Agreement for any non-compliance with HIPAA or any other Laws unless a BAA has been executed by the Parties. If Customer is permitted to process HIPAA Data in the Service, then Customer may process HIPAA Data in the Service only by providing it as Customer Data. Upon mutual execution of the BAA, the BAA is incorporated by reference into the Agreement and is subject to its terms.

3.7 Data Privacy. The Parties shall comply with all applicable Laws pertaining to privacy and data protection.

3.8 Maintenance. A monthly maintenance window is required for the introduction to the Services of major new features, major parameter changes, and the application of critical infrastructure updates, excluding operating systems. All maintenance, regular updates, service levels, and service level credits are described and defined in the SLA.

3.9 Customer Responsibility. Customer and its Users may use the Platform and Services only as described in the Documentation and the Agreement. Customer shall remain responsible for any violation of the Agreement by any User.

3.10 Restrictions. In addition to other restrictions set forth in the Agreement, Customer may not: (a) reverse assemble or decompile the Software, or otherwise examine the Software for purposes of reverse engineering; or (b) remove the labels or any proprietary legends from the Software or any Documentation. Customer may use the Services as part of Customer's services that it provides to its Users, including its Affiliates, subsidiaries, joint ventures, and partners.

3.11 Backup of Customer Data. Customer has sole responsibility for backing up its Customer Data. Calibo shall not be responsible for Customer's failure to back up Customer Data.

3.12 Title. Calibo reserves all right, title and interest in the Software, Documentation, and Materials and grants only those rights described in Section 3.1.

3.13 Customer Service Representative(s). From time to time during the Initial Term and any Renewal Term, Customer may designate to Calibo in writing one or more individuals as Customer's representative(s) for the arrangement of all Services under the Agreement (the "Customer Service Representative(s)"). For so long as any written designation by Customer is in effect, Calibo shall take direction from, and shall consult exclusively with, the Customer Service Representative(s) in connection with the provision of the Services under the Agreement; provided, however, that Calibo shall not take, or omit to take, any action at the direction of any Customer Service Representative(s) in contravention of any terms of the Agreement. Unless otherwise expressly agreed in writing by a duly authorized representative of Customer, the Customer Service Representative shall not have the authority to bind Customer to any amendment, modification, waiver, extension, or renewal of the Agreement.

4. Fees and Payment; Taxes; Payment Disputes.

4.1 Fees and Payment. Fees for all Services and payment terms are set forth in the Pricing Schedule in the Order Form or applicable SOW. Calibo will not be obligated to provide any administration, scheduling, or support of Customer's Cloud Ecosystem, operating system, or Integrations unless specifically defined in an SOW. Except as expressly set forth in the Agreement, all payment obligations are non-cancellable and Fees are non-refundable. If Customer issues a purchase order upon entering into an Order Form, then: (i) any such purchase order submitted by Customer is for its internal purposes only, and Calibo rejects, and in the future is deemed to have rejected, any purchase order terms to the extent they add to or conflict in any way with the Agreement or the applicable Order Form and such additional or conflicting terms will have no effect; (ii) it shall be without limitation to Calibo's right to collect outstanding Fees; (iii) it shall be for the total Fees owing under the applicable Order Form; and (iv) on request, Calibo will reference the purchase order number on its invoices (solely for administrative convenience), so long as Customer provides the purchase order reasonably in advance of the invoice date. Calibo will invoice Customer using

the billing contact information set forth in the applicable Order Form. If Customer prefers to use any other billing platform for invoicing and payment, then the Parties will reasonably work together to facilitate the same, provided that such platform is: (i) able to accommodate the Services payable hereunder; and (ii) operational without cost to Calibo (i.e., use of such platform is either without out-of-pocket cost to Calibo, including for any related set-up fees, or Customer promptly reimburses Calibo for any such additional costs or fees).

4.2 Taxes.

(a) The fees for Services are described in the Project Description in Customer's Order Form, **Appendix B**, and, if applicable, the Fees Section in Customer's SOW.

(b) Customer shall pay all sales, use, excise, registration, VAT and other taxes and fees that may be levied upon either Party in connection with the Agreement, except for taxes based on Calibo's net income, even if such taxes are levied after the termination of the Agreement.

4.3 Payment Disputes. Calibo will not exercise its rights under Section 2.2 (Termination for Cause) or Section 2.7 (Suspension of the Calibo Services) with respect to non-payment by Customer if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute. If the Parties are unable to resolve such a dispute within thirty (30) days, each Party shall have the right to seek any remedies it may have under the Agreement, at law or in equity, irrespective of any terms that would limit remedies on account of a dispute. For clarity, any undisputed amounts must be paid in full.

5. **Intellectual Property Rights and Obligations**

5.1 Customer Data.

(a) Ownership of Customer Data. All Customer Data will remain the property of Customer. Except as otherwise provided in the Agreement, Customer Data will not be (i) used by Calibo other than pursuant to the limited license granted in Section 3.1 above, (ii) disclosed, sold, assigned, leased, or otherwise provided to third parties by Calibo, and/or (iii) commercially exploited by or on behalf of Calibo, its subsidiaries, Affiliates, employees, or agents. The Parties acknowledge and agree that Customer will be and will remain the controller of the Customer Data for purposes of applicable privacy Laws and all other Customer regulatory requirements, and nothing in the Agreement will restrict or limit in any way Customer's rights or obligations as owner and/or controller of the Customer Data for such purposes or Calibo's rights or obligations in providing Services. To the extent that Calibo makes any changes to the Customer Data, Calibo irrevocably assigns, transfers, and conveys to Customer without further consideration all right, title, and interest, including all intellectual property rights, in and to any Customer Data to Customer.

(b) Return of Data. Except as may be required by applicable Law, Calibo has no obligation to return Customer Data placed on Calibo's Platform, and Calibo has no obligation to back-up or archive Customer Data.

(c) Accuracy of Customer Data and Processing. Customer has sole responsibility for the accuracy and completeness of any Materials or Customer Data that Customer or its Affiliates or third parties store with and/or transmit to Calibo. Calibo is responsible only for the accuracy and completeness of Calibo systems' electronic receipt of any such Materials or Customer Data, and for the accuracy and completeness of Materials or Customer Data, as furnished by Customer, that Calibo transmits. To be clear, Calibo is not responsible for the accuracy or completeness of the content within Materials or Customer Data, but solely for the accuracy and completeness of the receipt and transmittal by Calibo's systems. Customer acknowledges and agrees that the foregoing is not intended to obligate Calibo to correct any errors in Customer systems, Materials, Customer Data, or Software which causes such errors or inaccuracies. Calibo is not responsible for errors in or the delay or non-performance of its responsibilities or obligations under the Agreement to the extent primarily caused or directly contributed to by the inaccuracy and/or incompleteness of Materials or Customer Data provided by Customer, its Affiliates, third-party providers, or by the failure of Customer, its Affiliates, or third-party providers to furnish Materials or Customer Data.

5.2 Calibo Software and License. Unless otherwise established in an Order Form or applicable SOW, as between Customer and Calibo, all Software will remain Calibo's property, and Customer will have no rights or interest in the Software. To the extent any component of the Platform or Service is licensed to Calibo by a third party, Calibo will obtain all consents necessary to permit Calibo (and any subcontractors of Calibo engaged in accordance with the Agreement) to access such third-party software in connection with the performance of the Services and will pay all associated costs and expenses. Calibo grants to Customer and its Users a non-exclusive, non-perpetual, nontransferable license to use the Software as necessary for the receipt of the Services.

5.3 Development Tools and Residual Knowledge. Calibo (a) will retain all right, title, and interest in and to all software development tools, know-how, methodologies, processes, technologies, or algorithms created and/or

used in providing the Services which are based on the intellectual property rights of Calibo, including trade secrets or proprietary information of Calibo or are otherwise owned or licensed by or to Calibo and (b) will be free to use the ideas, concepts, know-how, methodologies, processes and technologies, retained in the unaided mental impressions of Calibo personnel relating to the Services which Customer, individually or jointly, develops or discloses under the Agreement, provided that in doing so Calibo does not infringe the intellectual property rights of Customer or third parties who have licensed or provided Materials to Customer. No licenses will be deemed to have been granted by either Party to any of its patents, trade secrets, trademarks, or copyrights, except as otherwise expressly provided in the Agreement. Nothing in the Agreement will require Calibo or Customer to violate the proprietary rights of any third party in any Software or otherwise.

5.4 **Customer Reference.** Calibo may identify Customer as its customer to other Calibo customers or prospective customers, including for purposes of facilitating customer-controlled data sharing. Without limiting the foregoing, Calibo may use and display Customer's name, logo, trademarks, and service marks on Calibo's website and in Calibo's marketing materials in connection with identifying Customer as a customer of Calibo. Upon Customer's written request, Calibo will promptly remove any such marks from Calibo's website and, to the extent commercially feasible, Calibo's marketing materials.

6. Representations and Warranties.

6.1 **Service Limitations, Disclaimer.** CALIBO MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE OF THE SUITABILITY OF THE PLATFORM OR SERVICES FOR CUSTOMER'S PURPOSES, THAT THE USE OF THE PLATFORM OR SERVICES SHALL BE SECURE, UNINTERRUPTED OR ERROR-FREE, OR THAT THE PLATFORM OR SERVICES SHALL FUNCTION PROPERLY IN COMBINATION WITH ANY THIRD-PARTY TECHNOLOGY, HARDWARE, SOFTWARE, SYSTEMS, OR DATA. THE PLATFORM OR SERVICES MAY BE SUBJECT TO INTERRUPTION, LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF INTERNET APPLICATIONS AND ELECTRONIC COMMUNICATIONS AND CALIBO IS NOT RESPONSIBLE FOR ANY SUCH DELAYS, DELIVERY FAILURES, OR ANY OTHER DAMAGE RESULTING FROM EVENTS BEYOND CALIBO'S REASONABLE CONTROL. THE PLATFORM OR SERVICES ARE PROVIDED "AS IS," WITHOUT ANY WARRANTY OF ANY KIND AND, WITHOUT LIMITING THE FOREGOING, ALL CONDITIONS, REPRESENTATIONS, AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, ARE DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

6.2 **Calibo Warranty.** Calibo represents, covenants, and warrants to Customer that it has the skills, resources, and expertise to provide and shall provide the Platform and Services in accordance with the terms of the Agreement. Without limiting the generality of the foregoing, Calibo represents, covenants, and warrants to Customer that the Platform and Services provided under the Agreement shall be provided in a timely, professional, and skillful manner consistent with industry standards. This warranty will not apply if the error or non-conformance was caused by: (i) Customer's misuse of the Platform or Service; (ii) modifications to the Platform or Service by Customer or any third party; (iii) third-party applications; or (iv) any services or hardware of Customer or any of its third parties used by Customer in connection with the Platform or Service. This warranty will not apply unless Customer provides written notice of a claim within thirty (30) days after expiration of the applicable SOW.

6.3 **Customer Warranty.** Customer represents, warrants, and covenants that it owns or has all the necessary rights in its Customer Data and that in Calibo's provision of its Services, Calibo will not infringe or misappropriate any third party's intellectual property or other proprietary rights. Customer represents and warrants that any Customer Data will comply with all Laws and be free of any Malware that causes the substantial interruption, destruction, or loss of functionality that will interfere with or impede the delivery of Services. In the event Calibo is required to modify or use any Customer provided Software, Customer represents and warrants that it has acquired the necessary approvals and license rights for Calibo to provide such Software. For the sake of clarity, Customer provided Software shall not include that third-party Software that is procured or used by Calibo for use in the provision of Services.

7. Indemnification.

7.1 **Non-Compliance Indemnification.** Each Party will indemnify, defend, and hold harmless the other Party, and its respective affiliates, officers, directors, employees, successors, and assigns, from and against any and all liability, loss, damage, cost, claim, or demand, including without limitation reasonable attorney's fees, government fines, penalties, sanctions, interest, or other remedies resulting from such Party's failure to comply with

applicable Laws.

7.2 **Indirect or Contributory Infringement.** Calibo will not be liable to Customer for claims of indirect or contributory infringement. In particular, Calibo will have no liability to the Customer if any claim of infringement is based upon the use of Customer's Cloud Ecosystem in connection or in combination with equipment, devices or Software not supplied by Calibo or used in a manner for which the Service was not designed. Calibo will have no liability if Customer modifies the Platform or Service and such infringement would not have occurred but for such modification, uses the Platform or Service in the practice of a patented process and there would be no infringement in the absence of such practice, or such claim arises out of Calibo's compliance with specifications provided by Customer and such infringement would not have occurred but for such compliance.

7.3 **Mechanics of Indemnities.** The indemnitor's obligations are conditioned upon the indemnitee: (i) giving the indemnitor prompt written notice of any claim, action, suit or proceeding for which the indemnitee is seeking indemnity; (ii) granting control of the defense and settlement to the indemnitor; and (iii) cooperating with the indemnitor at the indemnitor's expense. Failure of the indemnitee to give notice of a claim as required in this Section shall excuse and discharge the indemnitor's obligations unless the indemnitee can prove both good cause for failing to give notice and an absence of unfair prejudice to the indemnitor. The indemnitee may participate in any defense at its sole expense. Notwithstanding any other provision in this Section to the contrary, the indemnitor shall not consent to the entry of any judgment or enter into any settlement that provides for injunctive relief against the indemnitee without the indemnitee's written consent, which will not be unreasonably withheld.

8. **Limitation on Liability.** TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, CALIBO DISCLAIMS LIABILITY FOR AND IN NO EVENT BE LIABLE FOR, INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, AND EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CALIBO'S CUMULATIVE LIABILITY FOR ANY AND ALL DAMAGES ARISING OUT OF OR RELATING TO THE AGREEMENT, INCLUDING BUT NOT LIMITED TO ITS PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES WILL NOT EXCEED THE TOTAL FEES PAYABLE TO CALIBO FOR THE SERVICES PROVIDED UNDER THE SOW FOR ONE (1) CALENDAR MONTH IMMEDIATELY PRECEDING THE MONTH IN WHICH THE EVENT GIVING RISE TO THE LIABILITY OCCURRED.

9. **Audit Rights and Controls.** Calibo will keep accurate records in support of the charges for Services performed under the Agreement and shall, upon reasonable written request, but not more often than once per year, make such records available to Customer for audit. Such records shall be kept for a period of one (1) year following the invoice date for services performed to which such records apply (or for such longer period as required by applicable Law). Notwithstanding the foregoing, Calibo shall not be required to disclose information deemed by Calibo to be confidential or proprietary. In addition, Customer will: (i) provide at least sixty (60) days written notice to Calibo prior to any audit being conducted; (ii) ensure that any audit, inspection or verification is conducted during the hours of normal operation of Calibo's location (or as otherwise agreed by the Parties from time to time); (iii) as far as is commercially practicable, minimize disruption to Calibo's business; and (iv) limit such audits to once per year.

10. **Export Control.** Customer acknowledges that it will have exclusive responsibility for compliance with US and multilateral export controls applicable to the Customer Data it uploads to Calibo's Servers. This responsibility extends to the controls applicable to the computations and derivations (output) from the use of the Services. Calibo assumes no responsibility to screen the Customer or its own employees from access to such Customer Data and their output, or to track or control their export or transfer. Customer agrees to strictly prevent access, export, or transfer of its Customer Data and related output on Calibo's Servers that is controlled under the mentioned regimes to countries and individuals sanctioned by the US Office of Foreign Assets Control (OFAC), the US Export Administration Regulations (EAR), the US International Traffic in Arms Regulations (ITAR), and other related laws and regulations, as applicable. Customer also agrees to prevent its Customer Data from being used in the development, production, use, or proliferation of weapons of mass destruction (as defined by applicable Laws), to include chemical, biological or missile technologies. Any violation of these and other applicable Laws will be the exclusive responsibility of Customer. Customer will indemnify Calibo in the event of investigation or prosecution by any government or government agency responsible for such controls and compensate Calibo for any costs and hardship incurred during

and as a result of such an event.

11. Confidentiality.

11.1 Definition. Each Party shall keep confidential and disclose it only to those employees who need to know such information disclosed to the other Party (collectively, "Confidential Information"), which includes without limitation, pricing and other terms of the Agreement, technical "know-how," specifications, formulas, Customer Data, compositions, designs, sketches, photographs, samples, prototypes, manufacturing, packaging or shipping methods and processes, computer software and programs (including object code and source code), protocols, strategic business plans, results of testing, systems, financial information, product information, methods of operation, customer information, supplier information and other compilations of data. The receiving Party's confidentiality obligations shall survive termination of the Agreement, for so long as the Confidential Information remains confidential. Receiving Party agrees that, in addition to any other remedies that the disclosing Party may possess, the disclosing Party shall be entitled to seek injunctive or other equitable relief in the form of a preliminary and permanent injunction or other appropriate equitable remedies, in the event of an actual or threatened breach of these confidentiality obligations.

11.2 Exceptions. Receiving Party shall have no obligation with respect to Confidential Information that: (a) is or becomes publicly available without breach of this Agreement; (b) can be reasonably demonstrated to have been known to receiving Party at the time of its receipt from disclosing Party; (c) is rightfully received from a third party who did not acquire or disclose such information by a wrongful or tortious act; (d) can be reasonably demonstrated to have been independently developed by receiving Party without reference to any Confidential Information; or (e) required to be disclosed by law, court order or other lawful governmental action, or other mandatory disclosure required by applicable law, but only to the extent so ordered or compelled by law, and provided that receiving party shall notify disclosing party so that disclosing party may attempt to obtain a protective order unless such notice is prohibited by Law.

11.3 Compliance with Laws. Because Customer may include Personal Health Information ("PHI") in its Customer Data, the Parties agree to comply with all Laws governing the privacy and security of such Customer Data, including without limitation, HIPAA and related regulations, and shall remain in compliance with these Laws as they may be amended from time to time, including the requirement for the Parties to execute a form of BAA, along with any other agreements as may be necessary to comply with applicable Laws.

12. Independent Contract Relationship. The relationship between Customer and Calibo under the Agreement is that of independent contractor. Nothing in the Agreement shall be construed as creating a relationship between Customer and Calibo of joint venturers, partners, employer-employee, or agent. Neither Party has the authority under the Agreement to create any obligations for the other Party, or to bind the other Party to any representation or document.

13. Miscellaneous Provisions.

13.1 Entire Agreement; Amendment. The Agreement constitutes the complete and exclusive statement of the agreement between the Parties with respect to the subject matter and supersedes all prior agreements, understandings, promises, and arrangements, oral or written, between the Parties. The provisions of the Agreement may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. The Agreement may be amended or modified only by an instrument in writing signed by duly authorized representatives both of the Parties.

13.2 Third Parties. Nothing in the Agreement, express or implied, is intended to or shall be construed to confer upon or give any person other than the Parties and their respective successors and permitted assigns, any legal or equitable right, remedy or claim under or with respect to the Agreement.

13.3 Notices. All notices, consents, waivers and other communications required or permitted under the Agreement shall be sufficiently given for all purposes if in writing and (a) hand delivered, (b) sent by certified or registered mail, return receipt requested and proper postage prepaid, (c) sent by a nationally recognized overnight courier service, or (d) sent by email, with delivery and read receipt, in each case to the address and to the attention of the Customer Service Representative set forth in the Order Form Customer's SOW (or to such other address and to the attention of such other person as a Party may designate by written notice to the other Party). The date of giving of any such notice, consent, waiver, or other communication shall be (i) the date of delivery if hand delivered, (ii) the date of receipt for certified or registered mail, (iii) the day after delivery to the overnight courier service if

sent thereby, and (iv) the date of email delivery receipt on by the machine from which the email was sent.

13.4 Public Announcements. Neither Party shall make, or cause to be made, any press release or public announcement with respect of the Agreement or the transactions contemplated by the Agreement or otherwise communicate with any news media without the prior written consent of a duly authorized representative of the other Party unless otherwise required by Law, and the Parties shall cooperate as to the timing and contents of any such press release, public announcement, or communication.

13.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns; provided, however, Customer shall not assign any of its rights or delegate any of its obligations under the Agreement without the express prior written consent of Calibo.

13.6 Construction; Order of Precedence. Captions, titles and headings to articles, sections or paragraphs of the Agreement are inserted for convenience of reference only and shall not affect the construction or interpretation of the Agreement. All references in the Agreement to a "Party" or "Parties" refer to the Parties signing the Agreement. All defined terms and phrases used in the Agreement are equally applicable to both the singular and plural forms of such terms. Nouns and pronouns will be deemed to refer to the masculine, feminine or neuter, singular and plural, as the identity of the person or persons may in the context require. The term "person" as used in the Agreement means an individual, firm, corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, estate, trust, pension or profit-sharing plan, or any other entity, including any governmental entity. This Agreement describes the general terms and conditions that apply to all Services performed by Calibo. Calibo has no obligation to perform Services except as described in the SOW as executed by Customer, or as Customer may request as Additional Services in a separately executed SOW. At any point during the term of the Agreement, the Parties may agree to Additional Services.

13.7 Cumulative Remedies. The rights and remedies of the Parties under the Agreement are cumulative and not alternative and are in addition to any other right or remedy set forth in any other agreement between the Parties, or which may now or subsequently exist at law or in equity, by statute or otherwise.

13.8 Waiver. Neither any failure nor any delay by either Party in exercising any right, power or privilege under the Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable Law, (a) no claim or right arising out of the Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by a duly authorized representative of the other Party; (b) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one Party will be deemed to be a waiver of any obligation of that Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in the Agreement.

13.9 Severability. In the event that a court or arbitral body of competent jurisdiction holds any provision of the Agreement invalid, illegal or unenforceable, such decision shall not affect the validity or enforceability of any of the other provisions of the Agreement, which other provisions shall remain in full force and effect, and the application of such invalid, illegal or unenforceable provision to persons or circumstances other than those as to which it is held invalid, illegal or unenforceable shall be valid and be enforced to the fullest extent permitted by Law. To the extent permitted by applicable Law, each Party waives any provision of Law that renders any provision of the Agreement invalid, illegal, or unenforceable in any respect.

13.10 Governing Law; Jurisdiction; Venue. This Agreement shall be governed by and construed in accordance with the Laws of the State of Michigan without regard to conflicts-of-law principles that would require the application of any other Law. Subject to the arbitration provisions of Section 13.11, the Parties consent to the exclusive jurisdiction of the appropriate state or federal courts in the State of Michigan for any legal or equitable action or proceeding arising out of, or in connection with, the Agreement. Each of Calibo and Customer specifically waives all objections to venue in such courts.

13.11 Dispute Resolution. Any dispute or controversy between the Parties with respect to the interpretation or application of any provision of the Agreement or the performance by Calibo or Customer of their respective obligations hereunder will be resolved as provided in this Section.

(a) Informal Dispute Resolution. Prior to the initiation of any action or proceedings under the Agreement to resolve disputes between the Parties, the Parties shall make commercially reasonable efforts to resolve any such disputes by means of internal escalation and negotiation between senior representatives of the Parties with decision-making authority. Either Party may initiate negotiation proceedings by writing a notification

letter to the other Party setting forth the particulars of the dispute, the terms of the Agreement involved and the suggested resolution of the dispute.

(b) Injunctive Relief. The Parties agree that in the event of any breach or threatened breach of any provision of the Agreement concerning (i) Confidential Information, (ii) intellectual property rights or (iii) other matters for which equitable rights are expressly provided in the Agreement, money damages would be an inadequate remedy. Therefore, the provisions of this dispute resolution section shall not preclude either Party from seeking immediate preliminary, temporary, or permanent injunctive relief in addition to liquidated damages and all other available remedies in law or in equity without the need to first exhaust the dispute escalation procedures set forth therein.

(c) Arbitration. Except for those disputes that can be resolved under Section 13.11(a) above or which would be subject to the provisions of Section 13.11(b) above, all disputes arising under or in connection with the Agreement or any other document pertaining to the Agreement shall be finally settled by arbitration in a location subject to the mutual agreement of the Parties, before a single arbitrator appointed by the American Arbitration Association ("AAA") which arbitration shall be conducted under AAA's commercial arbitration rules then in effect at the time of the Agreement provided, however, that discovery shall be permitted in accordance with the United States Federal Rules of Civil Procedure. The decision of the arbitrator shall be final and binding upon Calibo and Customer, shall not be appealable, and judgment on the award rendered may be entered in any court of competent jurisdiction. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing Party's actual damages. Each Party will bear equally the costs and expenses of AAA and of the arbitrator. Each Party will bear its own costs and expenses. The failure by one Party to pay its share of arbitration fees constitutes a waiver of such Party's claim or defense in the arbitration. All arbitration proceedings shall be confidential, except to the extent that disclosure is necessary to enforce an arbitration award in a court of competent jurisdiction. Notwithstanding anything to the contrary, Customer shall have the right, without waiving any remedy under the Agreement, to seek from any court of competent jurisdiction (i) equitable relief and (ii) any interim or provisional relief that is necessary to protect the rights or property of Customer.

(d) Charges and Costs. In any legal action, the prevailing Party will be entitled to recover, in addition to its damages (subject to limitations stated elsewhere in the Agreement), its reasonable attorneys' fees, expert witness fees, and other ordinary and necessary costs of litigation, as determined by the arbitrators or court. Such costs include, without limitation, costs of any legal proceedings brought to enforce a judgment or decree.

13.12 Compliance with Laws. Each Party shall comply with all applicable Laws. These include, without limitation, those laws related to data privacy and data transfer, international communications, and the exportation of services, without regard to Customer's particular use of the services and subject to Customer's use of the services in accordance with the Agreement.

13.13 Force Majeure. Neither Party shall be liable for failure to perform any obligation, except payment obligations, under the Agreement to the extent such failure is caused by any event beyond the control of the affected Party including, but not limited to, wars, acts of terrorism, reasonable threats of terrorism, hostilities, revolutions, riots, civil commotion, national emergency, strikes, lockouts, unavailability of supplies, unavailability of the Internet or Internet Service Provider, epidemic, fire, flood, earthquakes, force of nature, explosion, embargo, or any act of God, or any law or order of any court or government with jurisdiction. Such failure to perform shall include infeasibility, which may arise when a Force Majeure event renders an obligation under the Agreement to become economically impracticable to perform.

13.14 Limitations on Action. All legal actions against Calibo must be filed with the appropriate judicial jurisdiction within two (2) years after the cause of action first arose.

13.15 Survival. Any provision of the Agreement which contemplates performance or observance subsequent to any termination or expiration of the Agreement, will survive termination of the Agreement.