

## MASTER SERVICE AGREEMENT

This Master Service Agreement (“**Agreement**”) is entered into as of the Effective Date of the Order Form to which it is attached (“**Effective Date**”) by and between Deepgram and the customer named there (“**Customer**”). Each of Deepgram and Customer may be referred to as a “**Party**,” or together, the “**Parties**.”

### 1. DEFINITIONS

The definitions of certain capitalized terms used in this Agreement are set forth below. Others are defined in the body of this Agreement. Any capitalized terms used but not otherwise defined herein have the respective meanings ascribed to them in the Order Form.

“**AI Data**” means information and data created by means of Deepgram’s use of machine learning tools and human resources to enhance the Software, create Trained Model(s), and develop and improve its products and services, on the basis of Content, Training Data, and/or Datagen Data. AI Data does not include Output or Content.

“**Content**” means the data (e.g., voice/audio content or text-based transcripts) transferred to Deepgram by Customer for creating the Output.

“**Documentation**” means the written or online documentation regarding the Software made available by Deepgram, and all modifications, updates, and upgrades thereto.

“**Hosted Software**” means the Software (defined below) when deployed as a hosted, Software-as-a-Service solution.

“**On-Premise Software**” means the Software when deployed by Customer on-premise within Customer’s data center or virtual private cloud.

“**Order Form**” means an ordering document to purchase a Subscription to the Software executed between the Parties, setting forth pertinent details regarding the Subscription and Subscription Term, including start and end dates, and agreed pricing. Each Order Form will be incorporated herein by reference.

“**Output**” means a machine created audio to text transcript of Content and associated metadata.

“**Software**” means Deepgram’s “Neural Speech Engine” which includes the ASR (Automated Speech Recognition) software in object code form, which can be deployed as On-Premise Software and/or Hosted Software, and any other software or service set forth in the Order Form. Software includes all Trained Models, Documentation, applications, databases, modules, source code, development tools, libraries and utilities that Deepgram uses, creates, and/or maintains in order to provide the Software to Customer, as well as all Updates.

“**Subscription**” has the meaning ascribed to it in Section 2.1.

“**Subscription Term**” means the length of the Subscription set forth on the applicable Order Form.

“**Token(s)**” means the basic unit of text that the Software uses to process and generate language. One Token generally corresponds to approximately four characters, so, on average, 75 words typically results in approximately 100 tokens in common English. Exact tokenization may vary.

“**Training Data**” means data (e.g., voice/audio content or text-based transcripts) transferred to Deepgram by Customer for the purpose of creating Trained Models and AI Data.

“**Trained Model**” means a customized version of Deepgram’s proprietary model for automated speech recognition for Customer’s use with the Software during the Subscription Term.

“**Updates**” means modifications, updates, upgrades and enhancements that Deepgram makes to the Software on a periodic basis.

“**User**” means an individual authorized by Customer to use the Software under its account and on its behalf.

## 2. CUSTOMER USE OF AND ACCESS TO THE SOFTWARE

**2.1** License to the Software. During each Subscription Term, Deepgram grants Customer a limited, non-exclusive, non-transferable, non-sublicensable, license to: (a) install or access, as applicable, and use the Software, in the format identified on the Order Form, for up to the number of Trained Models and/or Committed Funds identified on the Order Form; and (b) use the Documentation for Customer's internal use in connection with the Software (together, the "**Subscription**").

**2.2** Restrictions. Customer will not (and will not allow any third party to): (a) use or access the Software or Output for any penetration testing or competitive purposes without Deepgram's express written consent; (b) modify, create derivative works, decompile, reverse engineer (including using Output to reverse engineer any aspect of the Software or AI Data), attempt to gain access to the source code, or copy the Software, or any of their components; or (c) use or access the Software to submit or transmit any computer viruses, worms, defects, Trojan horses or other items of a destructive nature; (d) use the Software in a way that may damage or adversely affect server or network capacity or Software infrastructure, including by exceeding API request quotas (located here: [https://static.deepgram.com/service\\_quotas](https://static.deepgram.com/service_quotas)) (each, a "**Prohibited Use**").

## 3. CONTENT AND AI DATA; DATA PROTECTION

**3.1** Licenses to Deepgram. (a) Customer will provide, or transfer via the Software, Content to Deepgram, and Customer grants Deepgram a license to use Content for the purpose of providing the Software and related services, including the creation of AI Data, and creating the Output under this Agreement. (b) Customer grants Deepgram a license to use Training Data and Datagen Data to create Trained Model(s) and AI Data under this Agreement.

**3.2** Security. Deepgram maintains industry-standard physical, technical, and administrative safeguards in order to protect Content and Training Data.

**3.3** Privacy. Deepgram processes Content and Training Data in accordance with its Privacy Policy (located here: <https://www.iubenda.com/privacy-policy/88905781/legal>).

## 4. DEEPGRAM OBLIGATIONS

**4.1** General. Deepgram is responsible for providing the Software in conformance with this Agreement, the Order Form(s) and applicable Documentation.

**4.2** Software Delivery & Updates. Software will be delivered to Customer as stated on the Order Form and as follows: (a) On-Premise Software will be provided via electronic download, physical delivery, or other delivery mechanism where Customer will install such Software at Customer's location; and (b) Hosted Software will be made available to Customer via an API or web based interface to which Customer will connect. Deepgram will notify (email sufficient) Customer of any On-Premise Software Updates and Customer will implement such Updates in a timely fashion. If Customer fails to do so, performance of the On-Premise Software may be impacted.

## 5. TERM AND TERMINATION

**5.1** Term. The "**Term**" of this Agreement commences on the Effective Date and continues for so long as there is an active Subscription, unless terminated as provided in Section 5.2 below.

**5.2** Termination for Cause. Either Party may terminate this Agreement or any active Subscription for cause: (i) upon 30 days written notice to the other Party of a material breach if such breach remains uncured at the expiration of the 30-day period; or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**5.3** Effect of Termination. If Customer terminates this Agreement or any active Subscription in accordance with Section 5.3, then Deepgram will provide a pro rata refund of any prepaid fees allocable to the remaining Term.

**5.4** Survival. The following provisions will survive any expiration or termination of this Agreement: Sections 3.1(b), 3.2, 7, 8 and 11 thru 13.

## 6. FEES AND PAYMENT

**6.1 Fees.** Customer will pay all fees set forth on the applicable Order Form. Following execution of the Order Form, Deepgram will submit an invoice to Customer and payment will be due 30 days from receipt of an undisputed invoice unless otherwise set forth on the Order Form (“**Due Date**”).

**6.2 Early Renewal True-up:** In the event that the parties renew the Subscription prior to the end of the then-current Subscription Term (“**Early Renewal**”), the parties will reconcile the Committed Funds (as defined on the Order Form) used by Customer with the Fees received by Deepgram as of the date of the Early Renewal (“**True Up**”). If Customer has used more Committed Funds and Services than Customer has paid in Fees, a True Up invoice will be issued by Deepgram for the difference, which Customer will pay pursuant to the payment terms set forth in Section 6.1 unless otherwise agreed in the Order Form. If Customer has used less Committed Funds and Services than Customer has paid in Fees, a credit will be issued to Customer’s account, applicable against future Fees.

**6.3 Overdue Charges.** If any undisputed, invoiced amount is not received by Deepgram by the Due Date, then: (i) those charges may accrue late interest at the rate of 1.0% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower; and (ii) Deepgram may condition future Subscriptions on receipt of payment for previous Subscriptions and/or payment terms shorter than those specified on the previous Order Form.

**6.4 Taxes.** Fees do not include taxes. Customer is responsible for paying all sales taxes or similar governmental sales tax type assessments associated with its purchase, excluding any income or franchise taxes on Deepgram (collectively, “Taxes”). Unless Customer provides Deepgram with a valid tax exemption certificate authorized by the appropriate taxing authority, Customer is solely responsible for paying all Taxes associated with or arising from this Agreement and shall indemnify and/or reimburse Deepgram for all Taxes paid or payable by, demanded from, or assessed upon Deepgram. Taxes will not be deducted from payments to Deepgram, except as required by applicable law, in which case Customer will increase the amount payable as necessary so that, after making all required deductions and withholdings, Deepgram receives and retains (free from any liability for Taxes) an amount equal to the amount it would have received had no such deductions or withholdings been made.

**6.5 Billing Adjustments.** If Customer’s usage of the Software during a given period exceeds the amount Committed Funds allocable to such period by more than 15%, then Deepgram may invoice Customer for its actual usage of the Software during such period at the rates set forth on the rate tables included on the Order Form.

## **7. CONFIDENTIALITY**

**7.1 Confidential Information.** Except as explicitly excluded below, any information of a confidential or proprietary nature provided by a Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”) constitutes the Disclosing Party’s confidential and proprietary information (“**Confidential Information**”). Deepgram’s Confidential Information includes the Software, AI Data, and any information conveyed to Customer in connection with technical support. Customer’s Confidential Information includes Content and Training Data. Confidential Information does not include information which is: (i) already known by the Receiving Party without an obligation of confidentiality other than pursuant to this Agreement; (ii) publicly known or becomes publicly known through no unauthorized act of the Receiving Party; (iii) rightfully received from a third party without a confidentiality obligation to the Disclosing Party; or (iv) independently developed by the Receiving Party without access to the Disclosing Party’s Confidential Information.

**7.2 Confidentiality Obligations.** Each Party will use the Confidential Information of the other Party only as necessary to perform its obligations under this Agreement, will not disclose the Confidential Information to any third party, and will protect the confidentiality of the Disclosing Party’s Confidential Information with the same standard of care as the Receiving Party uses or would use to protect its own Confidential Information, but in no event will the Receiving Party use less than a reasonable standard of care. Notwithstanding the foregoing, the Receiving Party may share the other Party’s Confidential Information with those of its employees, agents and representatives who have a need to know such information and who are bound by confidentiality obligations at least as restrictive as those contained herein (each, a “**Representative**”). Each Party shall be responsible for any breach of confidentiality by any of its Representatives.

**7.3 Additional Exclusions.** A Receiving Party will not violate its confidentiality obligations if it discloses the Disclosing Party’s Confidential Information if required by applicable laws, including by court subpoena or similar instrument so long as the Receiving Party provides the Disclosing Party with written notice of the required disclosure so as to allow the Disclosing Party to contest or seek to limit the disclosure or obtain a protective order, unless such notice is prohibited by law. If no protective order or other remedy is obtained, the Receiving Party will furnish only that portion of the Confidential Information that is legally required and agrees to exercise reasonable efforts to ensure that confidential treatment will be accorded to the Confidential Information so disclosed.

## 8. OWNERSHIP

**8.1** Deepgram Property. Deepgram owns and retains all right, title, and interest in and to the Software, Datagen Data, and AI Data. Additionally, Deepgram owns any feedback or suggestions provided by Customer to Deepgram with respect to the Software. Except for the limited licenses granted to Customer in Section 2.1, Deepgram does not by means of this Agreement or otherwise transfer any rights in the Software to Customer, and Customer will take no action inconsistent with the Deepgram's intellectual property rights in the Software.

**8.2** Customer Property. Customer owns and retains all right, title, and interest in and to the Content and Training Data and does not by means of this Agreement or otherwise transfer any rights in the Content or Training Data to Deepgram, except for the limited licenses set forth in Sections 3.1 and 3.2.

## 9. REPRESENTATIONS AND WARRANTIES

**9.1** Mutual Representations and Warranties. Each Party represents and warrants it has validly entered into this Agreement and has the legal power to do so.

**9.2** Deepgram Limited Warranty. Deepgram warrants that the Software: (a) will conform with the Documentation; and (b) will be provided in a manner consistent with generally accepted industry standards.

**9.3** Customer Representations and Warranties. Customer represents and warrants that it has all necessary rights, licenses and consents, including with respect to any personal information contained therein, in and to the Content and Training Data as necessary to provide such Content and Training Data to Deepgram under this Agreement.

**9.4** Deepgram Disclaimer. With the exception of the limited warranties set forth in this Section 9, the Software is provided "as is" to the fullest extent permitted by law. Deepgram and its licensors expressly disclaim all other warranties, express or implied, including warranties of performance, merchantability, fitness for any particular purposes, and non-infringement. Deepgram does not warrant that the Software (i) is error-free, (ii) will perform uninterrupted, or (iii) will meet Customer's requirements. Deepgram is not responsible for any liabilities Customer incurs as a result of its use of the Output.

## 10. INSURANCE

**10.1** Deepgram will maintain in full force and effect during the Term of this Agreement:

(a) Commercial general liability insurance on an occurrence basis for bodily injury, death, property damage, and personal injury, with coverage limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage;

(b) Worker's compensation insurance as required by applicable law, including employer's liability coverage for injury, disease and death, with coverage limits of not less than \$1,000,000 per accident and employee and \$1,000,000 in disease;

(c) Umbrella liability insurance on an occurrence form, for limits of not less than \$1,000,000 per occurrence and in the aggregate;

(d) Officers and Directors liability coverage of not less than \$1,000,000 and Employer Practice liability coverage of not less than \$1,000,000; and

(e) Technology Errors & Omissions and Cyber-risk on an occurrence or claims-made form, for limits of not less than \$5,000,000 annual aggregate covering liabilities for financial loss resulting or arising from acts, errors or omissions in the rendering of the Service, or from data damage, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, virus transmission, denial of service, and violation of privacy from network security failures in connection with the Service.

**10.2** Insurance carriers will be rated A-VII or better by A.M. Best Provider. Deepgram' coverage will be considered primary without right of contribution of Customer's insurance policies. In no event will the foregoing coverage limits affect or limit in any manner Deepgram' contractual liability for indemnification or any other liability of Deepgram under this Agreement.

## 11. INDEMNIFICATION

**11.1** By Deepgram. Deepgram will indemnify, defend, and hold harmless Customer, its affiliates, and their respective owners, directors, officers, and employees (collectively, “**Customer Indemnitees**”) from and against any claim, action, demand, suit or proceeding made or brought by a third party against any of the Customer Indemnitees alleging that Customer’s use of the Software infringes or misappropriates any United States or European Union patent, trademark, copyright, or any other intellectual property of such third party. Deepgram will pay any settlement of such claims, or any damages finally awarded against any Customer Indemnitees by a court of competent jurisdiction as a result of any such claims. If Customer’s right to use the Software is, or in Deepgram’ opinion is likely to be, enjoined as the result of a claim, then Deepgram may, at Deepgram’ sole option and expense procure for Customer the right to continue using the Software under the terms of this Agreement, or replace or modify the Software so as to be non-infringing and substantially equivalent in function to the claimed infringing or enjoined Software. If Deepgram determines that neither of the foregoing is commercially reasonable, then Deepgram may terminate this Agreement and refund to Customer any prepaid fees allocable to the remainder of the Subscription Term. This Section 11.1 sets forth Deepgram’ sole and exclusive liability, and Customer’s exclusive remedies, for any claim of infringement or misappropriation of intellectual property.

**11.2** Deepgram Indemnification Exclusions. Deepgram will have no indemnification obligations under Section 11.1 to the extent that a claim is based on or arises from: (a) use of the Software in a manner other than as expressly permitted in this Agreement; (b) any alteration or modification of the Software except as expressly authorized by Deepgram; or (c) the combination of the Software with any other software, product, or services (to the extent that the alleged infringement arises from such combination).

**11.3** By Customer. Customer will indemnify, defend, and hold harmless Deepgram, its affiliates, and their respective owners, directors, officers, and employees (together, “**Deepgram Indemnitees**”) from and against any claim, action, demand, suit or proceeding made or brought by a third party against any of the Deepgram Indemnitees alleging that: (a) Customer or a User engaging in a Prohibited Use; and (b) Content or Training Data, and/or Deepgram’s use of Content or Training Data as permitted under this Agreement, violates any applicable law including, but not limited to, privacy or intellectual property rights. Customer will pay any settlement of such claims, or any damages finally awarded against any Deepgram Indemnitees by a court of competent jurisdiction as a result of any such claims.

**11.4** Process. Each indemnified Party will: (a) give the indemnifying Party prompt written notice of any claim, action or demand for which indemnity is claimed; (b) give indemnifying Party sole control over the defense and settlement of the claim, provided that indemnifying Party will not settle any claim that involves the payment of money or acknowledgement of wrongdoing on the part of indemnified Parties without indemnified Parties’ prior written approval such approval not to be unreasonably withheld, conditioned or delayed; and (c) provide indemnifying Party with reasonable cooperation, at indemnified Parties’ expense, in connection with the defense and settlement of the claim.

## 12. LIMITATIONS OF LIABILITY

**12.1** NEITHER THE OTHER PARTY NOR ITS AFFILIATES NOR THE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES OF ANY OF THEM WILL BE LIABLE TO SUCH PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, THAT MAY ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OR COSTS OCCURRING AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

**12.2** EXCEPT WITH RESPECT TO EXCLUDED CLAIMS AND UNCAPPED CLAIMS (EACH S DEFINED BELOW), IN NO EVENT WILL THE COLLECTIVE LIABILITY OF EITHER PARTY, OR THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS AND REPRESENTATIVES, TO THE OTHER PARTY FOR ANY AND ALL DAMAGES, INJURIES, AND LOSSES ARISING OUT OF, BASED ON, RESULTING FROM, OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID OR PAYABLE BY CUSTOMER TO DEEPGRAM UNDER THIS AGREEMENT IN THE PRIOR 12 MONTHS. THE EXISTENCE OF MULTIPLE CLAIMS OR SUITS UNDER OR RELATED TO THIS AGREEMENT WILL NOT ENLARGE OR EXTEND THE LIMITATION OF MONEY DAMAGES WHICH WILL BE THE CLAIMANT’S SOLE AND EXCLUSIVE REMEDY.

**12.3** “Excluded Claims” means any claim and/or liability associated with breach by Deepgram of Sections 3.3 (Security) and 3.4 (Privacy), for which Deepgram’s total, cumulative liability will be two times the total amount of fees paid or payable by Customer under this Agreement.

**12.4** "Uncapped Claims" means any claim and/or liability associated with either party's (a) breach of Section 7 (Confidentiality) (but not relating to any liability associated with Deepgram's security or privacy obligations with respect to Content or Training Data, each of which remains subject to the Excluded Claims cap), (b) indemnification obligations under Section 11, and (c) liability which cannot be limited under applicable law, including gross negligence, recklessness, or intentional misconduct.

**13. MISCELLANEOUS**

This Agreement, including all applicable Order Forms, is the entire agreement between Customer and Deepgram and supersedes all prior agreements and understandings concerning the subject matter hereof and may not be amended or modified except by a writing signed by both Parties. Customer and Deepgram are independent contractors, and this Agreement will not establish any relationship of partnership, joint venture, or agency between Customer and Deepgram. Failure to exercise any right under this Agreement will not constitute a waiver. There are no third-party beneficiaries to this Agreement. This Agreement is governed by the laws of the State of California without reference to conflicts of law rules. For any dispute relating to this Agreement, the Parties consent to personal jurisdiction and the exclusive venue of the courts in San Francisco County, California. Any notice provided by one Party to the other under this Agreement will be in writing and sent by electronic mail to the email address listed on the Order Form. If any provision of this Agreement is found unenforceable, this Agreement will be construed as if it had not been included. Neither Party may assign this Agreement without the prior, written consent of the other Party, except that either Party may assign this Agreement without such consent to an affiliate, or in connection with an acquisition of the assigning Party or a sale of all or substantially all of its assets.

The Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**Deepgram, Inc.**

**Customer**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Email: \_\_\_\_\_

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