

MASTER SERVICE AGREEMENT

Last Updated July 10, 2020

This Master Subscription Agreement (“**Agreement**”) is the agreement between Deepgram, Inc., (“**Deepgram**”) and the end customer and user (“**Customer**”) of Deepgram’s Software (as defined below).

By accepting this Agreement, either by clicking a box indicating its acceptance or by executing an Order Form (as defined below) that references this Agreement, or by using the Software, Customer agrees to the terms of this Agreement. If Customer and Deepgram have executed a written agreement governing Customer’s access to and use of the Software, then the terms of such signed agreement will govern and will supersede this Agreement.

This Agreement is effective as of the earlier of the date that Customer accepts the terms of this Agreement as indicated above or first accesses or uses any of the Software (“**Effective Date**”). Deepgram reserves the right to modify or update the terms of this Agreement in its discretion, the effective date of which will be the earlier of (i) 30 days from the date of such update or modification and (ii) Customer’s continued use of the Software. Each of Deepgram and Customer may be referred to as a “**Party**,” or together, the “**Parties**.”

Deepgram and Customer hereby agree as follows.

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.

“**AI Data**” has the meaning set forth in Section 3.2 below.

“**Content**” means the data (e.g., voice/audio content and information) 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 Software provided by Deepgram as a hosted, Software-as-a-Service solution for providing automated speech recognition.

“**On-Premise Software**” means Software 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. 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.

“**Training Data**” means data (e.g., voice/audio content and information) transferred to Deepgram by Customer for 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, solely for Customer’s internal use for up to the number of Trained Models and hours 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 for any benchmarking, penetration testing or competitive purposes without Deepgram’s express written consent; (b) market, sublicense, resell, lease, loan, transfer, or otherwise commercially exploit or make the Software available to any third party, except to a third party that manages Customer’s computing environment; (c) modify, create derivative works, decompile, reverse engineer, attempt to gain access to the source code, or copy the Software, or any of their components; or (d) use or access the Software to submit or transmit any computer viruses, worms, defects, Trojan horses or other items of a destructive nature or to send any commercial solicitation or spam (whether commercial in nature or not); (e) exploit the Software in any unauthorized way whatsoever, including by trespass or burden (e.g., transmitting corrupted files, spyware, adware, or any other software or programs) or deploying spiders, web-bots, screen-scrapers, or web crawlers, that may damage or adversely affect server or network capacity or Software infrastructure (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. Customer grants Deepgram a license to use Content for the purpose of providing the Software and related services and creating the Output under this Agreement. (b) Customer grants Deepgram a license to use Training Data to create Trained Model(s) and AI Data under this Agreement.

3.2 AI Data. Deepgram uses machine learning tools and human resources to enhance the Software, create Trained Model(s), and otherwise to develop and improve Deepgram’s products, services and technologies, on the basis of Content and Training Data. Information and data created by means of this process, including the Trained Models, is referred to herein as “**AI Data**.” AI Data does not include Output or Content.

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

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

4. DEEGRAM 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 otherwise terminated as provided in Sections 5.2 or 5.3 below.

5.2 Trial Period. Subject to the terms of the Agreement and Order Form, including payment of all Trial Period fees, commencing on the Effective Date and for the period set forth on the Order Form, Customer will have the right to use the Software for evaluation purposes (“**Trial Period**”). Prior to the end of the Trial Period, Customer may terminate this Agreement without further obligation upon written notice to Deepgram (“**Trial Termination Notice**”). If Deepgram does not receive a Trial Termination Notice prior to the end of the Trial Period, the Subscription Term commences upon the expiration of the Trial Period, and Deepgram will invoice Customer in accordance with Section 6.1.

5.3 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.

5.4 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.

5.5 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 Overage Fees. Unless otherwise specified in an Order Form, if Customer uses all purchased hours under a Subscription prior to the end of the Subscription Term, Customer may either: (i) continue to use the Software at the Overage Rate, which is billed monthly in arrears until the end of the Subscription Term; or (ii) execute a new Order Form for the purchase additional hours at the rates set forth on the most recent Order Form. “**Overage Rate**” means a rate of 15% more than the per hour cost set forth on the most recent Order Form with a minimum monthly fee of \$1,000.

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. The fees payable hereunder are exclusive of any sales taxes (unless included on the invoice), or similar governmental sales tax type assessments, excluding any income or franchise taxes on Deepgram (collectively, “**Taxes**”) with respect to the Software provided to Customer. Unless Customer provides Deepgram with a valid exemption certificate, 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.

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 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 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.

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 \$3,000,000 per occurrence and \$4,000,000 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 \$3,000,000 per occurrence and in the aggregate; and
- (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.

10.2 Insurance carriers will be rated A-VII or better by A.M. Best Provider. Deepgram's 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's 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's opinion is likely to be, enjoined as the result of a claim, then Deepgram may, at Deepgram's 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's 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 EACH PARTY AGREES THAT WITH THE EXCEPTION OF THEIR INDEMNIFICATION OBLIGATIONS UNDER SECTION 11, CONFIDENTIALITY OBLIGATIONS UNDER SECTION 7, AND DEEPGRAM'S BREACH OF ITS SECURITY OBLIGATIONS UNDER SECTION 3.3 (TOGETHER, "**EXCLUDED CLAIMS**"), AND ABSENT GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE OTHER PARTY, 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 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. WITH RESPECT TO EXCLUDED CLAIMS, THE AMOUNT OF SUCH LIMIT WILL BE TWO TIMES THE TOTAL AMOUNT PAID BY CUSTOMER TO DEEPGRAM UNDER THIS AGREEMENT.

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 signature page below. 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.