



CALABRIO

G-Cloud 15 – Terms and Conditions

Version 1.0

SVL Business Solutions
Info@svl.co.uk



SVL BUSINESS SOLUTIONS LIMITED
TERMS AND CONDITIONS FOR PURCHASE OF CLOUD SUBSCRIPTION SERVICES

1. **Interpretation**

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions (excepting the EULA).

Affiliate: any entity, firm, partnership, corporation, or other legal entity controlling, controlled by, or under common control with a party to the Agreement, where control means the ownership or control, directly or indirectly, of more than fifty percent (50%) of all the voting power of the shares or other securities or rights entitled to vote for the election of directors or other governing authority

Agreement: the agreement constituted by the Order Form, these terms and conditions and any SOW.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Cloud Subscription Services and the Documentation.

Burst Usage: use of the Cloud Subscription Cloud Subscription Services in excess of the monthly minimum commitment of the Authorised Users described on the Order Form.

Business Day: a day other than a Saturday, Sunday or public holiday in England or Scotland when banks in London and Glasgow are open for business.

Calabrio: Calabrio, Inc., a company incorporated in the United States of America (CIK 0001418026) and having its business address at 605 Highway 169 North Suite 800 Minneapolis MN 55441 and any successor-in-interest following a change in ownership, merger, acquisition, or corporate restructuring of Calabrio.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.5 or clause 10.6.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Cloud Subscription Services: any access to the cloud-based services provided by SVL as identified on an Order Form. Cloud Subscription Services specifically include storage and, where applicable, access to Calabrio's master server.

Customer Data: the data inputted by the Customer, Authorised Users, or SVL on the Customer's behalf for the purpose of using the Cloud Subscription Services or facilitating the Customer's use of the Cloud Subscription Services.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Documentation: the functionality specification setting out a description of the Cloud Subscription Services appended to these terms and conditions.

EULA: the Calabrio end user licence agreement appended to these terms and conditions as Annex A.

Go-Live: the date on which the Customer receives valid URL and sign-on credentials to the Cloud Subscription Services from SVL.

Initial Subscription Term: the initial term of this agreement as set out in the Order Form.

Order Form: the order form detailing the Cloud Subscription Services and Support Services signed by SVL and the Buyer incorporating these terms and conditions.

Professional Services: implementation, installation, training, or other services ordered by the Customer and performed by SVL pursuant to a Statement of Work.

Renewal Period: the period described in clause 13.1.

Services; the combination of Support Services and Professional Services.

Statement of Work or SOW: a document executed by both parties that references the Agreement and describes the scope of Professional Services to be performed by SVL.

Subscription Term: has the meaning given in clause 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Support Services: the ongoing support provided by SVL to the Customer pursuant to the Support Services Policy.

Support Services Policy: Calabrio's policy for providing support in relation to the Cloud Subscription Services as made available at <https://success.calabrio.com/s/contactsupport>, the latest version of which is appended to these terms and conditions as Annex C.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

1.7 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.

1.8 A reference to writing or written includes faxes and email.

2. Licence

2.1 SVL hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to use the Cloud Subscription Services and the Documentation during the Subscription Term subject to the terms of the EULA and solely for the Customer's internal business operations. In entering into the Agreement, the Customer accepts the terms and conditions of the EULA.

2.2 The Customer shall not (i) modify the Cloud Subscription Services or create derivative works thereof; (ii) decompile, disassemble, or otherwise attempt to derive the source code for the Cloud Subscription Services; (iii) disclose to third parties the results of any bench tests performed on the Cloud Subscription Services without SVL's prior written consent; or (iv) otherwise use, copy or distribute the Cloud Subscription Services except as expressly authorised hereunder.

2.3 The rights provided under this **Error! Bookmark not defined.** are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

2.4 The Customer shall not be permitted to decrease the number of Authorised Users during any Subscription Term.

3. Professional Services and Support Services

3.1 SVL will perform Professional Services for implementation to the Customer in connection with a valid Statement of Work that has been executed by an authorised representative from each party. Each SOW shall identify the technical requirements for the implementation and any additional or differing payment terms. The Customer acknowledges that, unless otherwise

agreed to by SVL in writing, SVL payment terms for Professional Services are as follows: fifty percent (50%) of the fees for Professional Services shall be due and payable upon receipt of the signed SOW and the remaining fifty percent (50%) shall be due and payable upon production. Training fees shall be paid one hundred percent (100%) upon placement of an order for training.

3.2 Support Services will be performed in accordance with the then-current Support Services Policy. SVL shall have no obligation to provide Support Services to the Customer if payment for Support Services is overdue. SVL reserves, in its sole discretion, the right to modify the terms and conditions of the Support Services Policy with or without notification to the Customer, provided that such modifications do not materially degrade the terms of such policy. **4. Service Level Availability**

4.1 SVL warrants that Calabrio's master server will be available 99.9% of the time as measured on a monthly basis ("Uptime Availability"), excluding routine maintenance; reasonable downtime due to any interruption, termination, or failed operation of: (i) the internet, (ii) any private intranet, (iii) third party telecommunication services; and force majeure events. If SVL is not in compliance with this warranty in any 30-day period during the Subscription Term, the Customer can request credits in the amounts set forth below for the applicable month.

Uptime Availability	Credit to Customer
Less than 99.9% but greater than 99.7%	5% of the monthly fee
Less than 99.7% but greater than 99.4%	10% of the monthly fee
Less than 99.4% but greater than 99.1%	20% of the monthly fee
99.1% or less	30% of the monthly fee

4.2 If the Uptime Availability warranty at clause 4.1 is breached in three (3) consecutive months, in addition to the credits, the Customer shall have the right to terminate the Agreement and shall not be liable for any payments that were first invoiceable after the termination date. Such termination right must be exercised, if at all, by providing written notification to SVL within thirty days from the end of the third consecutive month in which a

failure has occurred, and the notification shall provide a termination date no later than ninety (90) days after the date of the notice. With the exception of Customer's right to terminate the Agreement as described in the foregoing sentence, the credits referenced herein are Customer's sole and exclusive remedy for failure to maintain the Uptime Availability standards.

5. Customer data

5.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

5.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

5.3 The parties acknowledge that:

- (a) if SVL processes any personal data on the Customer's behalf when performing its obligations under this agreement, the Customer is the controller and SVL is the processor for the purposes of the Data Protection Legislation.
- (b) Annex D sets out the scope, nature and purpose of processing by SVL, the duration of the processing and the types of personal data and categories of data subject.
- (c) the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and SVL's other obligations under this agreement.

5.4 Without prejudice to the generality of clause 5.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to SVL for the duration and purposes of this agreement so that SVL may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf.

5.5 Without prejudice to the generality of clause 5.2, SVL shall, in relation to any personal data processed in connection with the performance by SVL of its obligations under this agreement:

- (a) process that personal data only on the documented written instructions of the Customer unless SVL is required by the laws of any member of the European Union or by the laws of the European Union applicable to SVL and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**). Where SVL

is relying on Applicable Laws as the basis for processing personal data, SVL shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit SVL from so notifying the Customer.

- (b) not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
 - (i) the Customer or SVL has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) SVL complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) SVL complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- (c) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (d) notify the Customer without undue delay on becoming aware of a personal data breach;
- (e) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use); and
- (f) maintain complete and accurate records and information to demonstrate its compliance with this clause 5_ and immediately inform the Customer if, in the opinion of SVL, an instruction infringes the Data Protection Legislation.

- 5.6 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring

that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it). The measures put in place by Calabrio and Calabrio's privacy policy are detailed at <https://www.calabrio.com/calabrio-is-committed-to-information-security/>.

- 5.7 The Customer consents to SVL appointing Calabrio as a third-party processor of personal data under this agreement. SVL confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 5 and in either case which SVL confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and SVL, SVL shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 5.
- 5.8 Either party may, at any time on not less than 30 days' notice, revise this clause 5 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

6. SVL's obligations

6.1 SVL represents and warrants that Services will be performed in a professional and workmanlike manner, in material accordance with all policies and procedures presented to the Customer from time to time. The foregoing warranty, together with the warranty set out at clause 4.1 above, is in lieu of all other warranties with respect to the Services.

6.2 This agreement shall not prevent SVL from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

6.3 SVL warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

7. Customer's obligations

The Customer shall:

- (a) provide SVL with:
 - (i) all necessary co-operation in relation to this agreement; and

- (ii) all necessary access to such information as may be required by SVL; in order to provide the Services and Cloud Subscription Services, including but not limited to Customer Data, security access information and configuration services;
- (b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, SVL may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that its users use the Cloud Subscription Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any breach of this agreement by its users;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for SVL, its contractors and agents to perform their obligations under this agreement, including without limitation the Cloud Subscription Services; and
- (f) ensure that its network and systems comply with the relevant specifications provided by SVL from time to time.

8. Charges and payment

8.1 SVL will invoice the Customer for the fees specified in the Order Form according to the invoicing events specified within the Order Form, including any applicable fees for Support Services and/or Professional Services. All fees are due and payable to SVL no later than thirty (30) days following the date invoiced by SVL.

8.2 The initial invoice for the Cloud Subscription Services shall coincide with the commencement of the Initial Subscription Term. Invoices for usage of the Cloud Subscription Services will include charges for the Cloud Subscription Services (which shall include Support Services) and Professional Services.

8.3 SVL may, without liability, suspend the Cloud Subscription Services if any fees owed by the Customer are thirty (30) days past due. SVL must provide the Customer at least five (5) days written notice of its intent to suspend the services in connection with this right.

8.4 If any invoiced amount is not received by SVL by the due date, then without limiting SVL's rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month or the maximum rate permitted by law (whichever is lower), commencing on the due date and continuing until fully paid.

8.5 All amounts and fees stated or referred to in this agreement:

- (a) shall be payable in pounds sterling;
- (b) are exclusive of value added tax, which shall be added to SVL's invoice(s) at the appropriate rate.

9. Proprietary rights

9.1 The Customer acknowledges and agrees that SVL and/or its licensors own all intellectual property rights in the Cloud Subscription Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Cloud Subscription Services or the Documentation.

9.2 SVL confirms that it has all the rights in relation to the Cloud Subscription Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, these terms and conditions.

10. Confidentiality

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

10.2 Subject to clause 10.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

- 10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to

do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

10.5 The Customer acknowledges that details of the Cloud Subscription Services, and the results of any performance tests of the Cloud Subscription Services, constitute SVL's Confidential Information.

10.6 SVL acknowledges that the Customer Data is the Confidential Information of the Customer.

10.7 The above provisions of this clause 10 shall survive termination of this agreement, however arising.

11. Indemnity

11.1 SVL will defend the Customer and its Authorised Users, Affiliates, directors, officers, employees, and agents (collectively, the "Customer Indemnitees") in any claim or suit brought by a third party and in connection with such a claim, will indemnify the Customer Indemnitees from any damages finally awarded in any non-appealable resolution, whether by judgment or settlement (including reasonable legal fees and court costs to the extent SVL fails to promptly assume the defence) arising out of or relating to any claim alleging the Cloud Subscription Services infringe upon or violate any third party's patent, copyright, trade secret, proprietary, or other intellectual property rights. SVL's indemnity obligations are conditioned upon: (a) the Customer's prompt written notification of any such claim, (b) the Customer's reasonable cooperation with SVL and/or Calabrio with the defence and investigation of any such claim, and (c) SVL and Calabrio having sole control of the defence of any such claim and all negotiations for its settlement. Notwithstanding the foregoing, in all events the Customer shall be permitted to participate in the defence of any such suit or proceeding with counsel of its own choosing at the Customer's sole cost and expense. If the Customer's use of the Cloud Support Services becomes or, in SVL's reasonable opinion, is likely to become the subject of such a claim, the Customer will permit SVL, at SVL's sole expense and option to: (1) procure for the Customer the right to continue to use the Cloud Subscription Services; (2) replace or modify the Cloud Subscription Services related to the allegation so the Customer's use of the Cloud Subscription Services no longer infringes upon or violates the intellectual property rights of a third party; or (3) if the options contained in items (1) or (2) are unavailable or impossible, terminate the Agreement and grant to Customer a prorated refund of all applicable prepaid fees related to the infringement allegation. This Section 11.1 reflects SVL's entire liability and the Customer's exclusive remedies for infringement of intellectual property rights of any kind.

11.2 SVL shall have no responsibility to the Customer, through indemnification obligations or otherwise, to the extent any third party infringement claim is the result of: (i) the Customer or

an Authorised User's use of the Cloud Subscription Services except as permitted under the Agreement and any applicable Documentation (including the unlicensed use of the Cloud Subscription Services by the Customer or an Authorised User); (ii) any use of the Cloud Subscription Services in combination with any third party software or products that are not expressly authorised by SVL; or (iii) any modification to the Cloud Subscription Services by the Customer, or for the Customer by any third party other than SVL (collectively, the "Exclusions").

11.3 The Customer shall defend SVL and its Affiliates, directors, officers, employees, and agents (collectively, the "SVL Indemnitees") in any claim or suit brought by any third party and in connection with such a claim indemnify the SVL Indemnitees against any damages finally awarded in a non-appealable resolution, whether by judgment or settlement (including reasonable legal fees and court costs to the extent the Customer fails to promptly assume such defence) arising out of or relating to any claim by a third party relating to any of the Exclusions set forth in Section 11.2, provided that: (a) SVL shall provide prompt written notification of any such claim; (b) SVL will reasonably cooperate with the Customer in the Customer's defense and investigation of such claim; and (c) the Customer will have sole control of the defense of any such claim and all negotiations for settlement. Notwithstanding the foregoing, in all events, SVL shall be permitted to participate in the defense of any such suit or proceeding with counsel of its own choosing at SVL's sole cost and expense.

12. Limitation of liability

12.1 SVL shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any special, indirect, punitive, incidental, consequential or similar damages, including for the sake of clarity damages for (a) error or interruption of use; (b) loss or corruption of data or information; (c) the cost of procurement of substitute goods, services or technology; or (d) loss of business or other profits.

12.2 Under no circumstances shall SVL's liability for damages under the Agreement exceed the fees paid or payable by Customer for the Cloud Subscription Services and Support Services during the twelve (12) month period immediately preceding the date on which the claim arose.

12.3 Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Cloud Subscription Services and the Documentation by the Customer, and for conclusions drawn from such use. SVL shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to SVL by the Customer in connection with the Cloud Subscription Services, or any actions taken by SVL at the Customer's direction;

- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Cloud Subscription Services and the Documentation are provided to the Customer on an "as is" basis.

12.4 Nothing in this agreement excludes the liability of SVL for fraud or fraudulent misrepresentation.

13. Term and termination

13.1 The Initial Subscription Term for the Cloud Subscription Services will commence upon Go-Live and will continue for the period of time specified within the Order Form between the parties unless the Agreement is otherwise terminated as provided in this clause 13.

13.2 A signed order that has been submitted to SVL pursuant to an Order Form may not be cancelled or otherwise terminated by the Customer unless such cancellation or termination is permitted pursuant to this clause 13.

13.3 The Initial Subscription Term will automatically renew for subsequent periods of 12 months (each, a "Renewal Subscription Term" and, collectively, the "Subscription Term") unless a party provides written notice to the other party of its intent to opt out of the renewal at least sixty (60) days in advance of the end of the Initial Subscription Term or any Renewal Subscription Term. SVL reserves the right to co-term any order placed following commencement of the Initial Subscription Term.

13.4 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole

purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in **Error! Bookmark not defined.Error! Reference source not found.** to clause 13.4(i) (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

13.5 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Cloud Subscription Services and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) SVL may destroy or otherwise dispose of any of the Customer Data in its possession; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

14. Force majeure

SVL shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of SVL or any other party), failure of a utility service or transport or telecommunications network, act of God, war, pandemic, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm, provided that the Customer is notified of such an event and its expected duration.

15. Conflict

If there is an inconsistency between any of the provisions in the main body of these terms and conditions, the Order Form, a SOW and the EULA, the provisions shall rank in the following order of priority and the provisions ranking higher in the list shall prevail:

- The Order Form;
- A SOW;
- The EULA;
- These terms and conditions.

16. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18. Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

19. Severance

19.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

19.2 If any provision or part-provision of this agreement is deemed deleted under clause 19.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. Entire agreement

20.1 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20.2 Each party acknowledges that in entering into the Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

20.4 Nothing in this clause shall limit or exclude any liability for fraud.

21. Assignment

21.1 The Customer shall not, without the prior written consent of SVL, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement.

21.2 SVL may not at any time assign, transfer, charge or deal in any other manner with all or any of its rights or obligations under this agreement without the prior written consent of the Customer. SVL may designate subcontractors to perform such tasks and functions necessary to provide the Services. SVL shall be responsible for any acts and omissions of its subcontractors to the same extent as if such act or omission were directly committed by SVL.

22. No partnership or agency

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. Third party rights.

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. Notices

24.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Order Form, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement, or sent by email to aholmes@svlbusinesssolutions.com (in the case of notice given to SVL) or [PLEASE INSERT ADDRESS] (in the case of notice given to Customer).

24.2 A notice delivered by hand shall be deemed to have been received when delivered. A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax or email shall be deemed to have been received at the time of transmission.

24.3 If deemed receipt under **Error! Bookmark not defined.**24.2 would occur on a day that is not a Business Day, it shall be deferred until 9.00am on the next Business Day.

25. Governing law

The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

26. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

Annex A - End User Licence Agreement

CAREFULLY READ THE FOLLOWING EULA. YOUR USE OR CONTINUED USE OF THE CLOUD

SERVICES INDICATES YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS EULA. IF

YOU DO NOT AGREE TO THIS EULA, YOU SHALL CEASE USE OF THE CLOUD SERVICES. YOU MAY BE REQUIRED TO CLICK AN ACCEPTANCE BOX WITHIN THE SOFTWARE UPON USE.

“You” means the person or company who is being licensed to use the Cloud Services or Documentation. “We,” “us” and “our” means Calabrio, Inc.

You and we are each individually a “Party” and collectively are the “Parties” to this EULA. This EULA governs the use of our software (as well as any upgrades, modified versions, updates, additions and copies thereof) (“Cloud Services”) and any related explanatory materials

(“Documentation”) downloaded through this site or through the Customer Success Center.

LICENSE GRANT

Subject to the terms and conditions of this EULA and only during the term of any Order we hereby grant to you a worldwide, non-exclusive, royalty-free (“License”) to use the Cloud Services and all associated Documentation provided with the Cloud Services in accordance with this EULA. You may copy the Cloud Services for back-up, test, and archival purposes.

RESTRICTIONS

The Cloud Services and Documentation are proprietary to us and we remain the owner of all right, title and interest in and to the Cloud Services and the Documentation, including all intellectual property rights in and to any of the foregoing. You are responsible for compliance with any laws or regulations for any data that you enter into the Cloud Services (“Customer Data”) and you remain the owner of all right, title and interest in and to such Customer Data.

You will not : (i) prepare derivative works of any part of the Cloud Services or the Documentation, except as expressly authorized in this EULA; (ii) resell, distribute, rent, lease, sublicense, lend, give, market, commercialize, assign or otherwise transfer rights or

usage of all or any part of the Cloud Services or Documentation to any third party, except as expressly authorized in this EULA; (iii) reverse engineer, translate, disassemble, decompile, disable security measures or cause or allow discovery of the source code (except to the extent that such a restriction would be a breach of applicable law) for any part of the Cloud Services or attempt to do so; (iv) remove, obscure or alter the copyright, trademark or other proprietary notices affixed to or contained in the Cloud Services or the Documentation; or (v) make the Cloud Services publicly available to others.

NO WARRANTY

EXCEPT AS EXPRESSLY PROVIDED IN THIS EULA, THE CLOUD SERVICES AND DOCUMENTATION

ARE PROVIDED “AS IS” WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING AND TO THE

FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, WE, OUR AFFILIATES AND OUR

LICENSORS MAKE NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR ARISING BY COURSE

OF DEALING, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE, NON-INFRINGEMENT, IN CONNECTION WITH THE CLOUD SERVICES,

THE DOCUMENTATION OR ANY RELATED PRODUCTS AND SERVICES PROVIDED TO YOU

HEREUNDER, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. FURTHER, WE AND OUR

SUPPLIERS DO NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS YOU MAY

OBTAIN BY USING THE CLOUD SERVICES OR THE DOCUMENTATION. NO EMPLOYEE, AGENT,

DEALER OR DISTRIBUTOR OF OURS IS AUTHORIZED TO MODIFY THIS LIMITED WARRANTY, OR

TO MAKE ANY ADDITIONAL WARRANTIES WITH RESPECT TO THE CLOUD SERVICES OR THE DOCUMENTATION.

GENERAL TERMS

EXCEPT WITH REGARDS TO INDEMNITY OBLIGATIONS, OR GROSS NEGLIGENCE, WILLFUL

MISCONDUCT OR RECKLESSNES, IN NO EVENT WILL WE BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING

PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE, LOSS OF DATA, PC OR

PERSONAL IDENTIFIABLE INFORMATIONN (PII) LOST PROFITS, LOST SAVINGS OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN

CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING

IN ANY WAY FROM THE USE OF OR INABILITY TO USE THE CLOUD SERVICES OR THE

DOCUMENTATION, EVEN IF WE OR ONE OF OUR AUTHORIZED DEALERS OR DISTRIBUTORS

HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGE,

AND WITHOUT REGARD TO THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES. YOU

ACKNOWLEDGE THAT WE COULD NOT MAKE THE CLOUD SERVICES AVAILABLE TO YOU ON THE

TERMS SET FORTH IN THIS EULA IF OUR LIABILITY AND THAT OF THIRD PARTIES WERE NOT

LIMITED AS SET FORTH IN THIS EULA. THE FOREGOING EXCLUSIONS SHALL NOT APPLY TO ANY LIABILITY ARISING OUT OF OR IN CONNECTION WITH ANY LIABILITY OF OURS' WHICH CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

This EULA and the rights and obligations of the parties with respect to the Cloud Services will be governed by, and construed in accordance with the laws of the State of Minnesota, USA, without reference to the choice of law principles thereof. Any disputes relating to this EULA must be brought solely in state or federal court in Minneapolis, Minnesota, USA; and, you hereby expressly consent to the venue and jurisdiction of such courts. This EULA will not be governed by the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Commercial Code (or any state's enactment thereof). If any part of this EULA is found unenforceable, it will not affect the validity or enforceability of any other provision of this EULA. Failure by either party to complain of any act or failure to act of the

other party or to declare the other party in default, irrespective of the duration of such default, will not constitute a waiver of rights hereunder. The Cloud Services may not be shipped into any country or used in any manner prohibited by law, regulation or order. You are responsible meeting any recording consent and compliance laws, regulations that apply whether by country or state. No amendment, modification, or waiver of any provision of this EULA will be effective unless it is set forth in a writing signed by an authorized officer of both parties. This EULA constitutes the complete agreement between you and us with respect to the Cloud Services and supersedes all proposals (oral or written), all previous negotiations, and all other communications, except as set forth above.

OPEN SOURCE

The Cloud Services contains open source software ("Open Source") that is subject to the license agreement identified with such Open Source. Your use of such Open Source is also subject to the identified license agreement.

Open Source	Applicable License
7zip	GNU LGPL 2.1
boost	Boost Software License 1.0
cassia	MIT License
CURL	Curl License
FiddlerCore	Eric Lawrence license
InnoSetup	Inno Setup License
libSrtyp	Cisco

libvpx	BSD-3
libwebm	Google VP8
log4net	Apache 2.0
mkclean	GNU LGPL 2.1
nss	Mozilla Public License (MPL) 1.1
openssl	Open SSL License
pthread	GNU LGPL 2.1
reSIProcate	Vovida Software License 1.0

speex	BSD-3
websocketpp	BSD Short License
WindowsDesktopSharing	Code Project Open License
WinPcap	BSD-3
xerces	Apache 2.0
zlib	zlib license

Apache Commons Collections	Apache 2.0
Apache Commons DBCP	Apache 2.0
Apache Commons IO	Apache 2.0
Apache Commons Logging	Apache 1.1
Apache Commons Pool	Apache 2.0
Hazelcast	Apache 2.0
Apache Commons HTTP Client	Apache 2.0
Apache Commons HTTP Core	Apache 2.0
Jackson	Apache 2.0
JCIFS	GNU LGPL 2.1
jDOM	Jdom License
jSch	Jsch License
json-simple	Apache 2.0

jtds	GNU LGPL 2.1
log4j	Apache 2.0
quartz	Apache 2.0
slf4j	MIT License
sshd	Apache 2.0
Tyrus	Common Development and Distribution License (CDDL) 1.1
WebSocket++	BSD Short License



 2 Orbital Court, Peel Park,
East Kilbride, Glasgow,
G74 5PH

 +44 (0)1355 900 000

 info@svl.co.uk

 www.svl.co.uk