



# On-Premises Software License & Maintenance Agreement

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## 1. Agreement

This Schedule B, Software License & Maintenance Agreement (“SL&MA”) describes the right to use Calero software pursuant to the related Master Services Agreement (“MSA”) dated \_\_\_\_\_ between Calero Software, LLC (“Calero”) and \_\_\_\_\_ (“Customer”) (together with the Schedules thereto, the “Agreement”).

## 2. Software License

Calero hereby grants and Customer accepts, according to the terms and conditions defined herein, a nontransferable, limited, non-sublicensable, non-exclusive, fully-paid, and royalty-free license for Customer to operate the software described in the SOW for the SOW Term and at the prices and payment terms set forth in the Agreement. Customer agrees to use the Licensed Software (as defined hereunder) only for its own use in processing its own data in connection with the Services provided under the Agreement. This license is valid for a single installation of the Licensed Software. Any additional concurrent installations require a separate and distinct license. Licenses are uniquely identified with a software serial number assigned by Calero, coupled with the unique network address (MAC address) of the Customer’s server. Upon prior written notice thereof, Customer agrees that Calero or a third party acting on its behalf may audit Customer’s use of the Licensed Software at such times as Customer and Calero reasonably agree. Notwithstanding the foregoing, Calero may conduct an audit no more than once a year. “Licensed Software” means Calero’s proprietary Software components as specified in the SOW offered for installation at the Customer location. Calero Licensed Software will include future releases or versions and related updates, if generally made available to all Calero licensed customers and all available documentation.

## 3. Software System Implementation and Training

The parties agree to prepare a mutually acceptable schedule for the implementation of the Software and Software training. Calero shall provide Customer with implementation and training services at the prices set forth in the SOW.

## 4. Responsibilities of Customer

Customer shall be exclusively responsible for the operation, supervision, management and control of its copies of the Licensed Software, including but not limited to:

- a) Providing the proper computer configuration, operating environment and operating methods.
- b) Establishing proper program and data backup procedures. Customer may make a reasonable number of copies of the Licensed Software for archival, disaster recovery and other emergency purposes. Those backup copies of the Licensed Software shall contain all of Calero’s restrictive and proprietary notices as they appear on the Licensed Software provided hereunder by Calero. Multiple concurrent installations of the Licensed Software are prohibited under a single license.
- c) Providing operating personnel who are trained and knowledgeable on all aspects of testing, evaluating, using and implementing the Licensed Software.
- d) Adequately protecting the Licensed Software programs, rate modules and documentation against unlawful duplication or loss.
- e) Ensuring that its use of the Licensed Software conforms to the site and server restrictions specified by Calero.



Nothing above shall be interpreted to grant any right to Customer not specifically set forth herein. All obligations of Calero are conditioned upon full and timely performance of all Customer obligations, including but not limited to payments of all amounts payable by Customer under this Agreement, reasonable access to Customer's facilities and Customer's cooperation in the implementation and installation of the Licensed Software.

## 5. Warranty

Calero warrants, for the first sixty (60) days after installation, that the installed Licensed Software will substantially conform to the functional description set forth in the SOW as of the SOW Effective Date. During and after such warranty period, Calero will provide maintenance and support for the Licensed Software pursuant to Section 6 of this SL&MA. Customer's sole remedy for breach of the sixty (60) day warranty is that Calero, at no cost to Customer (other than Calero's expenses for travel and lodging for on-site services), shall either (1) use its reasonable commercial efforts to repair the Licensed Software that is the subject of the breach so that it substantially conforms to the published functional description of the Licensed Software, (2) replace the Licensed Software to comply with such description, or (3) refund the fees paid by Customer for the non-conforming Software.

## 6. Maintenance and Support

If identified on the SOW and the applicable fees for such Services are paid by Customer, Calero will use commercially reasonable efforts to provide support and maintenance services for the Licensed Software in accordance with this Section 6 (the "LS Maintenance Services") to Customer (a "Maintenance Customer"). Fees for LS Maintenance Services shall be due and payable prior to the start of the applicable annual LS Maintenance Services term as set forth in the SOW. Calero shall have no obligation to perform any LS Maintenance Services under these SL&MA until such fees have been received by Calero. Calero may increase maintenance fees upon renewal. In the event of a lapse in annual maintenance coverage, Customer will be required to purchase a new one-year maintenance policy before any support will be provided. In addition, Customer will be assessed a fee equal to the prorated lapse in maintenance, based on then current maintenance rates.

Either party may terminate the LS Maintenance Services, for any reason and for no reason, by giving written notice to the other party at least forty-five (45) days prior to the next occurring annual renewal term. Such termination shall be effective on the last day of the then-current term in which notice is given.

### 6.1. Technical Support

Calero will provide help desk support for software inquiries to end users of a Maintenance Customer for the Licensed Software via Calero's help desk service. The Calero help desk will be available from 8:00 AM – 8:00 PM EST non-holiday weekdays via an 800 telephone number or email address. Each help desk request will be logged into Calero's help desk ticketing system. Once the help desk technician documents the request, the Calero help desk will assist the requester to resolve their issue. If issue resolution requires other Calero resources, the technician will assign the ticket to the appropriate resource(s) for follow-up with the requester for resolution.

After-hours and weekend support is available via pager service. After hours and weekend support is billable at the prevailing billable rate. Payment by credit card or purchase order will be required prior to such support being given. If a problem is reported after-hours but immediate support is not needed, a Maintenance Customer may leave a voice mail message for response the following business day.



## 6.2. Additional Support Services

A Maintenance Customer may purchase additional support services available from Calero. Prices for such Services will be defined In a SOW or a Change Order upon Customer request.

## 6.3. Maintenance Upgrades & Production Releases

Maintenance Upgrades of the Licensed Software will be made available when prepared and commercially made available by Calero. A “Maintenance Upgrade” means an upgrade to the Licensed Software to fix a Defect and which is provided to licensed users of Licensed Software receiving LS Maintenance Services from Calero. Calero also will provide Maintenance Customer with Production Releases. A “Production Release” means any modifications, additions and substitutions to the software that result in substantial performance, or structural/functional improvements in the software, which are designated as Production Releases by Calero in its sole discretion. Production Releases may be identified by a change in the numerals on the left or right side of the decimal point of the Licensed Software version number.

Calero requires the Maintenance Customer to be on the current or on the second most current version of the Licensed Software before Calero will provide LS Maintenance Services, or investigate, or repair any Customer reported Defects. Maintenance Releases and Product Releases can be obtained via Web Access.

Calero will use commercially reasonable efforts to respond to Maintenance Requests that are identified by Maintenance Customer, and to develop and implement fixes for Defects and/or workarounds thereto if it is agreed by Calero that the reported error is being caused by a Defect.

## 6.4. Monthly Updates to Area and Prefix Codes

Monthly updates to area and prefix codes will be made available via electronic download from Calero's website.

## 6.5. Web Access

Maintenance includes access to the Calero Customer Portal. The site includes Product User Guides, Video Training Center, Support Procedures, Software Downloads as well as Technical Documents. Maintenance Customers will have access to the website using their email address and product serial number. Calero reserves the right to add, modify and/or remove content from the Calero Customer Portal at its sole discretion.

## 6.6. VeraSMART Training

Maintenance includes a complimentary seat for one user in each Calero 1-day VeraSMART Call Accounting Training Class, available on a regularly scheduled basis at Calero's headquarters in Rochester, New York. Calero is not responsible for travel and living expenses associated with travel to Rochester, New York.



### 6.7. Customer Contacts:

Maintenance Customer must supply the names and contact information of the employees who are authorized to contact Calero. The maximum total number of authorized names will be equal to the number of administrative user licenses purchased. All authorized personnel contacting Calero must be trained and knowledgeable on all aspects of using and implementing the Licensed Software.

### 6.8. Maintenance Requests

A "Maintenance Request" is a request by Maintenance Customer to fix an error in Licensed Software resulting from a Defect. A Maintenance Request does not include any request for the services identified in Section 6.11 below as not being covered under this SL&MA. A "Defect" is a malfunction in Licensed Software due to Licensed Software failing to perform according to its written specifications. A "Defect" does not include any other error or malfunction or performance characteristic of Licensed Software; including an error or malfunction due to (i) the computer hardware upon which Licensed Software is operating; or (ii) actions taken by Customer outside the standard use of Licensed Software as described in its documentation such as modifications to Licensed Software not performed by Calero or its authorized agent; deleting system files, modifying configuration files or rating files without Calero's advance written approval; or renaming Calero files or directories or modifying Calero tables through SQL or other methods without Calero's advance written approval. Additionally, Calero does not provide software support services or defect fixes for 3rd party products purchased by a Customer through Calero. Support requests will be prioritized as Priority 1, Priority 2 or Priority 3 as defined in Section 7.

Calero's only obligation under this SL&MA is to perform the Services set forth in this Section 6 until the Defect that is the subject of the Maintenance Request is fixed. In the event that those services cannot be provided within a reasonable time after notification of a Maintenance Request, Customer or Calero may terminate the LS Maintenance Services and Customer's sole and exclusive remedy against Calero (whether in contract, tort or warranty) is a refund of an amount equal to the total annual maintenance fees paid by Customer for the current annual maintenance fee term that the subject Maintenance Request was given to Calero by Customer divided by three-hundred sixty-five, multiplied by the number of days beginning on the date the Maintenance Request was received by Calero through the last day of the then-current maintenance term.

### 6.9. Remote Access Support

Customer acknowledges that the services and maintenance provided under this SL&MA are subject to the Calero Remote Access Support Policy. If a Maintenance Customer elects to engage Calero's support and LS Maintenance Services under the "Non-Standard Remote Access" or "No Remote Access" options then (a) additional hourly support charges may apply, depending on the nature of the support and maintenance requested, and (b) the timelines provided under the Support Priority, Response & Resolution Guidelines would not apply.

### 6.10. Third Party Hardware and Software

Customer shall be responsible for the procurement, installation and maintenance of all required hardware and/or communications equipment not purchased from Calero. Computers and/or other



hardware peripherals supplied by Calero will be covered by the manufacturer warranties and maintenance policies. No Calero warranty will be provided on these items. Customer shall be responsible to install and maintain product and security updates for all third party software.

### 6.11. Services Not Covered under this SL&MA

The following Services are not covered under this SL&MA:

- a) Database conversion consulting or support.
- b) Project management, training, consulting, or software implementation services.
- c) Any over-the-phone training support.
- d) Support or defect fines for third party products.
- e) Operating system, network administration, support, configuration, or set-up.
- f) Database administration, support, configuration or set-up.
- g) Transfer of software or databases to different locations or servers after initial installation is complete.
- h) Support, configuration, set-up, and upgrades to new versions of the Licensed Software for any concurrent Licensed Software installations beyond the instance covered under this SL&MA unless the concurrent system is covered by a separate SL&MA.
- i) On-site services including time and material costs and travel, food and lodging expenses.
- j) Any request by Customer for changes to Licensed Software other than to fix a Defect. These would include custom modifications to Licensed Software.
- k) NO Y-CABLE SUPPORT: Calero does not support Y-Cables because a break in the connection to the secondary device would go undetected (as the device has no means of signaling back to stop the data flow), while the controlling device would keep receiving CDR. The machines would then have unmatched data, ineffectual for any type of CDR comparison / metrics.
- l) A Y-Cable is defined as an RS232 serial cable split into two: a 5-wire end that allows a full "handshake" (data transmission & flow control) and a 3-wire end that allows only data transmissions.

Calero may perform any of the above listed services for Customer, at Customer's request, on a time and material basis at Calero's then-prevailing rates. Should Calero perform services under these terms and conditions in response to a Maintenance Request and it is discovered that the problem was not the result of a Defect in Calero's Licensed Software; Customer will pay Calero's time and material charges for such Services at Calero's then prevailing rates.

## 7. Service Level Objectives

### 7.1. Introduction

The Service Level Objectives ("SLOs") are a set of minimum performance standards which if not met will trigger a mutually agreed to improvement process between a Maintenance Customer and Calero.

### 7.2. Overview.

These SLOs apply to the Calero Licensed Software provided under the terms of this SL&MA. The purpose of the SLOs is to establish service levels for:

- a) The Availability of the Licensed Software
- b) The Reliability of the Licensed Software
- c) The accuracy and timeliness of performance reporting.

### 7.3. Calero Licensed Software Problem Resolution Guidelines

For issues communicated directly by Customer to the assigned Service Delivery Manager (“SDM”) via telephone five (5) days per week, Monday through Friday 8:00am to 8:00pm Eastern Time excluding holidays (“Business Hours”), Calero will use commercially reasonable efforts to solve the problem in accordance with the Resolution Goals set forth below. A Calero representative will respond to Customer’s request within three (3) Business Hours by telephone or email to acknowledge receipt of the request and request additional information if needed (a “Response Call”). The times set forth below will be measured from the time of Calero’s Response Call. The Response Call also applies to support requests made by pager outside of Business Hours, including weekends. (After hours and weekend support is billable at the prevailing billable rate Calero charges for such Services.)

Priority Level	Examples of Priorities	Resolution Goal
<b>PRIORITY 1</b> <ul style="list-style-type: none"> <li>■ A major component or function of the software is, or becomes, inoperable.</li> <li>■ The system halts, loses significant amounts of data, or can no longer properly operate.</li> </ul>	<ul style="list-style-type: none"> <li>■ System down</li> <li>■ Unable to collect/poll data from a pollable storage unit, causing a loss of data.</li> <li>■ Unable to access major system components.</li> </ul>	To correct the problem or provide an action plan to correct the problem within eight (8) Business Hours.
<b>PRIORITY 2</b> <ul style="list-style-type: none"> <li>■ A significant (but not primary) component of the system is unusable or does not function, but does not result in data loss.</li> </ul>	<ul style="list-style-type: none"> <li>■ Inability to poll remote sites.</li> <li>■ Inability to run or distribute reports.</li> <li>■ Configuration concerns of a time sensitive nature.</li> </ul>	To correct the problem or provide an action plan to correct the problem within two (2) business days.
<b>PRIORITY 3</b> <ul style="list-style-type: none"> <li>■ A problem exists which does not affect basic system functions.</li> </ul>	<ul style="list-style-type: none"> <li>■ Administrative and general reporting questions</li> <li>■ Rating/Costing issues</li> <li>■ ASA or Cisco data import issues</li> <li>■ Enhanced explanation of information already contained in the VeraSMART Help system</li> </ul>	To correct the problem or provide an action plan to correct the problem within five (5) business days.
<b>Note:</b>		



- **The above timelines do not apply where PC remote access is not available or restricted.** Restricted remote access environments will result in increased time-frames for troubleshooting.
- **The above does not apply to instances where the Licensed Software has been misused.** Examples of misuse include (but are not limited to): changes to required user rights/permissions, locally or on the network; removal of, or restriction of access to, system directories or files; and Customer changes to user passwords without Calero's consent and participation. An additional billable charge for troubleshooting in the event of software misuse may apply.

In the event that a customer needs involvement of a third party vendor/contractor/technician to assist in troubleshooting, Calero technical support requires that the customer make arrangements with their assigned Calero technician to pre-plan or schedule a date and time where all involved parties can participate.

### 7.3.1. Customer Support Escalation Procedures

If Customer does not receive a Response Call or resolution to a problem within the intervals stated above, Customer may escalate the problem to the Manager of Technical Support:

Email: [support.manager@calero.com](mailto:support.manager@calero.com)

### 7.3.2. Calero Remote Access Support Policy

Calero's remote access support includes three option levels: Standard, Non-Standard and No Remote Access.

#### 7.3.2.1. STANDARD REMOTE ACCESS

For standard remote access of customer systems, our Customer Support team utilizes the Cisco WebEx Remote Support application. Remote control of customer computers is 100 percent permission-based, with 128-bit SSL and 256-bit AES encryption. Standard remote access is included at no extra charge to Maintenance Customers under this SL&MA.

#### 7.3.2.2. NON-STANDARD REMOTE ACCESS

Remote access methods not listed above and requested by the Maintenance Customer will be evaluated on a case-by-case basis to determine whether the requested method can be accommodated. Non-standard remote access methods require additional support time. The initial set up of the remote access session may require: additional software to be loaded, a dedicated PC, logins and passwords to be recorded, and assistance from IT to edit network configurations. Additional one-time and yearly fees will apply for Non-Standard Remote Access, which shall be identified on a Change Order. The Maintenance Customer must provide Calero any additional software required for Non-Standard Remote Access, at no cost to Calero.

### 7.3.2.3. NO REMOTE ACCESS

In the event a Maintenance Customer does not allow remote access, Calero technical support will use commercially reasonable efforts to resolve the incident without it. However, Calero may not be able provide the same level of support when the Maintenance Customer does not allow remote access, including:

- a) The time to resolve an incident may be increased. In some cases, the incident may not be possible to resolve without an on-site visit by a Calero technician.
- b) If the incident affects the collection of data, there may be loss of data until the incident is resolved.
- c) If technical support arrives at a decision that they can go no further without accessing the system server, and the Maintenance Customer insists on trying to resolve the incident over the phone, the time will be billable at Calero's prevailing rates. If the incident cannot be resolved over the phone and an on-site visit by Calero results, the on-site visit is billable at prevailing rates plus travel and expenses.

## 8. Intellectual Property Rights

Customer acknowledges that, with the exception of third-party products incorporated in the Licensed Software, the Licensed Software, including its programs, screens, database schema, concepts, and documentation, has been designed by and remains the intellectual property of Calero and is the Confidential Information (as defined in the Agreement) of Calero. The Licensed Software and all permitted copies thereof are Calero's exclusive property and may be used by Customer only in accordance with the terms of this Agreement. Calero grants Customer no rights to the Licensed Software other than as specifically set forth herein, and Calero retains, on an exclusive basis, all proprietary rights in and to the Licensed Software and all intellectual property relating thereto. Customer may not disclose or make available to the Licensed Software or any portion thereof to third parties without Calero's prior written consent, including but not limited making the Licensed Software available to any consultants or service providers working on Customer's behalf. Any and all work performed under or related to this Agreement is not a "work for hire" and Calero shall own all intellectual property rights relating to the work performed under this Agreement including any modifications to the Licensed Software (including Defect fixes, changes, additions or enhancements) or delivered materials, regardless of whether Customer or its employees or agents may have contributed to the conception, joined in its development, or paid Calero for such intellectual property and Customer acknowledges that it will execute and/or have its employees or agents execute any documents requested by Calero to vest ownership of such intellectual property in Calero. Customer shall not make, support or permit any claims adverse to Calero's rights set forth herein.

Customer will retain exclusive right to the content of all reports, the content of other work product, or content analysis to the extent that such content contains Customer information, including, but not limited to Customer Confidential Information and Customer data. Customer shall have an irrevocable and perpetual right to use and retain the Licensed Software reports generated and saved by Customer.

All third-party products incorporated in the Licensed Software are the intellectual property of their owners, as designated in their individual licenses. Electronic files containing these licenses can be found under the "..\Program Files\Calero\VeraSMART\Third Party Licenses" folder.



## 9. Limitations of Use/Indemnity

Customer agrees it will not (i) sell, rent, lease, re-license, operate, provide access, copy, duplicate or give away all or any portion of the Licensed Software to or for any other party or entity, (ii) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or on the Licensed Software, or (iii) use the Licensed Software other than in accordance with the terms of this Agreement, without prior written approval from Calero. Customer agrees that it is specifically prohibited from modifying, translating, reverse engineering, de-compiling, or disassembling the Licensed Software, or from creating derivative works based on the Licensed Software, and waives any right it may have to perform such activities. In the event that the Customer breaches this Section 7, all of the Customer's rights to use the Licensed Software will immediately terminate and Customer will cease any further operation or use of the Licensed Software and will return any documentation to Calero. Customer will, at its own expense, indemnify and hold Calero and its parent, subsidiaries, affiliates, officers, directors, employees and agents harmless from and against any and all claims, actions, liabilities, losses, damages, judgments, grants, costs and expenses (including attorneys' fees) arising out of a breach of this Section 9.

## 10. Infringement

Notwithstanding the final sentence of Section 7 of the Master Services Agreement of the Agreement, in the event that the Licensed Software infringes any U.S. copyright, patent, trademark or trade secret rights of a third party, Calero shall indemnify, defend and hold harmless Customer against any claims of such infringement and shall pay any monetary judgments, reasonable attorneys' fees, and costs awarded to the third party for such infringement, or any settlement of such claim to which Calero has agreed, provided that (i) Customer promptly gives notice to Calero of the claim against Customer alleging such infringement, (ii) Customer allows Calero to control the defense and settlement of such claim, including any litigation, arbitration, mediation and settlement negotiations, (iii) Customer reasonably cooperates with Calero in connection with the defense and settlement of such claim. For the avoidance of doubt, in the event of a claim of infringement with respect to the Licensed Software, the remedies set forth in Section 7 of the Master Services Agreement of the Agreement shall apply with respect to Customer's continued use of the Licensed Software. In lieu of the foregoing remedies Calero may, at its option, refund to Customer that portion of the license fees paid under this Agreement that can reasonably be allocated to the infringing Licensed Software, reduced by 25% for each year that it has been used by Customer.

This Section shall not apply to any services created by any third party or created by Calero to Customer's design or specifications. This Section shall also not apply to the extent the claim of infringement is caused by or contributed to by any Customer's act, omission, misuse, abuse or modification of any of the Software, Services or products made available by Calero, or Customer's use of such Software, Services or products outside the scope of the Agreement or in combination with any software, attachments, features or devices not supplied or approved by Calero.