



PointCentral® Subscription Agreement
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READ THIS SUBSCRIPTION AGREEMENT (“AGREEMENT”) CAREFULLY BEFORE INSTALLING THIS SOFTWARE. THIS AGREEMENT, BETWEEN CALYX TECHNOLOGY, INC., DBA CALYX SOFTWARE (“CALYX”) AND YOU (“YOU” OR “SUBSCRIBER”) STATES THE TERMS AND USE OF POINTCENTRAL (PREVIOUSLY SOLD SEPARATELY AS POINT® AND POINT DATA SERVER™/ PDS™) AND ALL ACCOMPANYING DOCUMENTATION. THIS AGREEMENT CONTAINS BINDING OBLIGATIONS AND RESTRICTIONS ON SUBSCRIBER’S USE OF THE SOFTWARE, DISCLAIMERS, LIMITATIONS ON CALYX’S LIABILITY, INDEMNIFICATION OBLIGATIONS, AND OTHER IMPORTANT TERMS.

THIS AGREEMENT WAS LAST UPDATED ON MAY 29, 2018. IT IS EFFECTIVE BETWEEN YOU AND CALYX AS OF THE DATE OF YOUR ACCEPTING THIS AGREEMENT.

BY CLICKING THE “I ACCEPT” BUTTON PRIOR TO INSTALLATION, SUBSCRIBER AGREES THAT SUBSCRIBER UNDERSTANDS THIS AGREEMENT AND ACCEPTS ITS TERMS. BY INSTALLING THE SOFTWARE, YOU ARE BINDING YOURSELF AND THE BUSINESS ENTITY THAT YOU REPRESENT TO THE TERMS OF THIS AGREEMENT.*

1. DEFINITIONS.

- 0.1 *Access Code(s)* means any account IDs, passwords or logins provided to Subscriber or established by Subscriber for the use of the Software.
- 0.2 *Client Software* refers to the Point software portion of the Software.
- 0.3 *Documentation* refers to user manuals provided by Calyx describing the installation, operation, use, maintenance or support of the Software.
- 0.4 *Interface(s)* refers to links within the Software to Service Providers.
- 0.5 *Retired Software* means any discontinued version of the Software.
- 0.6 *Seat* is defined as the right to access or use the Software on a computer.
- 0.7 *Server Software* is the server software (previously known as Point Data Server or PDS) portion of the Software.
- 0.8 *Service Provider(s)* refers to the companies providing services via the Interfaces.
- 0.9 *Software* refers to Client Software and Server Software collectively, and includes Documentation.
- 0.10 *Software Fee(s)* means the fees paid for use of the Software, including “Implementation Fees,” which are the start-up fees paid by Subscriber at initial purchase, “Pre-pay Fees,” which are either a six-month or one year pre-payment for use of the Software, or “Recurring Monthly Fees,” which are fees charged on a monthly basis for use of the Software.
- 0.11 *Update(s)* means modifications to the Software, including, but not limited to corrections to known issues and/or Interface updates, and enhancements or other changes in features and functionality.
- 0.12 *User(s)* means Subscriber’s approved end user(s) of the Software for whom the related Software Fees have been paid by Subscriber.

2. GRANT OF LICENSE.

1.1 Commercial License.

- 1.1.1 *Client Software*. Subject to Subscriber’s compliance with the terms and conditions of this Agreement, Calyx grants Subscriber a non-exclusive and non-transferable (except as permitted under Section 7 license to access and use the Client Software, solely for Subscriber’s internal business purposes, according to the applicable usage listed below:
 - a) If Client Software is not utilized in a remote desktop services (aka terminal services) environment, Subscriber is granted a per seat license. A per seat license allows Subscriber to access and use the Client Software, whether locally or remotely, on as many computers as the number of Seats Subscriber has purchased. A “Seat” is defined as the right to access or use the Client Software on a computer. For example, in a five per seat license, once the Client Software has been installed on five computers, the sixth installation is prohibited; or

- b) If Client Software is utilized in a remote desktop services (aka terminal services) environment, Subscriber is granted a per user license. A per user license is based on the number of users allowed access. For example, in a five per user license, once five users have been allowed access to the Client Software, the sixth user is prohibited.
 - c) Subscriber's license to use the Client Software is limited to, and Subscriber shall not use the Client Software in excess of, the number of Seats or the number of users (based upon the applicable usage listed above) for which Subscriber has paid Calyx the required license fee.
- 1.1.2 *Server Software*. Subscriber is further granted a license to install and use the Server Software on a single server, solely for internal business purposes. Subscriber may make an unlimited number of connections to the Server Software from the Client Software so long as each Client Software connecting to the Server Software is an employee or contractor of Subscriber and the appropriate number of per seat licenses or per user licenses have been acquired (based upon how the Client Software has been installed). Subscriber must purchase additional licenses if Server Software is used on additional servers.
- 1.2 *Software Updates*. Software will be periodically updated to comply with regulatory requirements, enhance delivery and use as well as improvements to operational efficiency and to meet the general business needs of Calyx and its Subscriber(s). Updates will be provided at no additional charge during the term and Calyx shall provide Subscriber with Updates as they become generally commercially available. Calyx will make reasonable commercial efforts to electronically notify Subscriber of any significant changes.
- 1.3 *Use of Third Party Hosting Company*. Subscriber may contract with a hosting company to host the Software solely for Subscriber's remote access, provided that the number of access point does not exceed the number of Seats that Subscriber has purchased. Subscriber is solely responsible for adhering to this Agreement. No license is granted to hosting company by way of this Agreement.
3. **LICENSE RESTRICTIONS**. Calyx reserves all rights in the Software not expressly granted to Subscriber in this Agreement. Except as expressly specified in Sections 2, 5 and 7, Subscriber may not: (a) copy, modify, translate, adapt, or prepare derivative works of the Software; (b) sell, license, sublicense, transfer, lease, lend, rent, publish, display, or otherwise distribute the Software to any third party; or (c) disassemble, decompile, or otherwise reverse engineer the Software, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by law notwithstanding this prohibition.
4. **LIMITED USE RESTRICTIONS**. In the event Subscriber has been given a right to use the Software for a limited purpose (i.e., approved educational institutions, approved entities in connection with criminal or civil investigations, and Calyx's Interface vendors), Subscriber is prohibited from using the Software to originate mortgage loans. Further, the following Sections of this Agreement are not applicable: Use of Third Party Hosting Company, Assignment, Interfaces, Disclosure of Information, Availability of Interfaces, and Software Refunds.
5. **OWNERSHIP**. Calyx retains ownership and all rights, title, and interest in the Software and related materials, including all worldwide patent rights, copyrights, trademarks, trade secrets, know-how and any other intellectual property rights therein. Subscriber must take reasonable steps to protect Licensor's intellectual property rights. Subscriber may not delete or in any manner alter the copyright, trademark, and other proprietary rights notices or markings appearing on the Software as delivered to Subscriber.
6. **SOFTWARE FEES**. Subscriber shall abide by the payment requirements established by Calyx which are referenced in the sales quote.
- 6.1. *Method of Payment*. Subscriber authorizes Calyx to charge the Software Fees on a recurring monthly basis (or such other payment arrangement established by the parties in writing) to the credit card provided to Calyx Subscriber.
- 6.2. *Nonpayment by Subscriber*. Calyx reserves the right to terminate this Agreement and deactivate/uninstall the Software if Subscriber's account becomes thirty (30) days past for reasons including, but not limited to, declined credit card charge, or lapsed credit card.
- 6.3. *Payment Obligations*. Subscriber shall remain obligated for all Software Fees until this Agreement is terminated by Subscriber or Calyx. Termination of this Agreement shall not relieve Subscriber of the obligation to pay any outstanding fees. No Software Fees will be refunded in the event this Agreement is terminated by Calyx due to nonpayment.
- 6.4. *Changes to Software Fees*. Calyx reserves the right to change the Software Fees. Calyx will make reasonable efforts to provide notice to Subscriber of such changes.
7. **ASSIGNMENT**. Subscriber may not assign this Agreement, in whole or in part, without Calyx's prior written consent (which consent shall not be unreasonably withheld). In order to effect an assignment, Subscriber shall work cooperatively with Calyx to complete all required paperwork. Subject to the foregoing, this Agreement shall be binding on and enforceable by the parties and Subscriber's permitted assignee.

8. **USE OF ACCESS CODES.** Subscriber shall be responsible for maintaining the confidentiality of any Access Codes provided to Subscriber or established by Subscriber for the use of Subscriber's Software. Furthermore, Subscriber is entirely responsible for any and all activities that occur under Subscriber's Access Codes. Calyx will not be liable for any loss that Subscriber may incur as a result of someone else using its Access Codes, either with or without knowledge.
9. **POINTCENTRAL SERVER URL RESOLVER/SSL CERTIFICATE.** If Subscriber chooses to use Calyx's service for server URL resolver and SSL certificate, Subscriber acknowledges and agrees that Calyx reserves the right to make changes to or discontinue such service.
10. **INTERFACES.** The Client Software includes Interfaces. In the event Subscriber intends to use or request the services and products of the linked Service Providers, Subscriber is solely responsible for reviewing and understanding the terms and conditions governing the usage of such Service Providers and their services and products. Subscriber understands that Subscriber is subject to the specific terms, fees, conditions, policies, and agreements imposed by such Service Providers. Calyx makes no representation or warranty of any kind concerning Subscriber's use of such Service Providers and their services and products or the performance or results obtained by Subscriber or its customers by using such Service Providers and their services and products.
11. **DISCLOSURE OF INFORMATION.** Interfaces enable Subscriber to send information, including, but not limited to, a consumer's personal information, directly to Service Providers. Calyx is not responsible for any information sent by Subscriber to such Service Providers and is not responsible for information requested by such Service Providers. Calyx assumes no responsibility as to whether information requested by a Service Provider is appropriate. It is Subscriber's sole responsibility to contact a Service Provider regarding what particular type of information is being shared or exchanged, the Service Provider's use and sharing practices of such information, and whether the Service Provider has updated or revised its policies regarding the Service Provider's use and sharing practices. Calyx assumes no responsibility for the disclosure, dissemination, collection, use, sale, or sharing of information about a consumer and/or Subscriber. It is Subscriber's sole responsibility to ensure that Subscriber and its employees and agents comply with any applicable laws, including but not limited to, all privacy laws, now and hereafter in effect, and to ensure that any information Subscriber (including its employees and agents) shares with Service Providers is in compliance with applicable law, Subscriber's own privacy notices and policies, and any consent or disclosure instructions provided by a consumer to Subscriber.
12. **AUTOMATIC INTERFACE UPDATES.**
 - 12.1. Calyx has the right to add, remove, or modify the Interfaces listed in the Software. For the purpose of this Agreement, changes to the listed Interfaces are considered part of the Software and are subject to the terms of this Agreement. The automatic interface updates in no way extend the limited warranty period provided in Section 19 (Warranty Disclaimer).
 - 12.2. The Software will be periodically updated to comply with regulatory requirements, enhance delivery and use, as well as improvements to operational efficiency to meet the general business needs of Calyx and its Subscriber(s). Updates will be provided at no additional charge during the term and Calyx shall provide Subscriber with Updates as they become generally commercially available. Calyx will make reasonable commercial efforts to electronically notify Subscriber of any significant changes.
13. **AVAILABILITY OF INTERFACES.** Subscriber understands that Subscriber's access to Service Providers through the Interfaces may be limited or interrupted from time to time, due to updates, maintenance, and repairs of such Interfaces by Calyx and/or Service Providers, and due to losses or interruption of access to the Interfaces due to causes beyond the control of Calyx, including, but not limited to, failure of telecommunication or digital transmission links, Internet slow-downs or failures, and unforeseen hardware or communication problems. Calyx shall not be liable to Subscriber in connection with Subscriber's inability to access Interfaces.
14. **RIGHT TO TRACK.** Calyx has the right to track all installations of the Software and the use of Interfaces (as defined above) included in the Client Software. During these processes, Calyx will not collect or store any loan data. The Software will periodically transmit this installation and usage data to Calyx via the Internet. Subscriber agrees not to disable or otherwise interfere with such network transmissions.
15. **SOFTWARE DEPLOYMENT.** Calyx reserves the right to determine the method by which the Software is deployed to Subscriber.
16. **SOFTWARE RETIREMENT.** Calyx reserves the right to discontinue production and distribution of any versions of the Software. Calyx further reserves the right to determine which Software versions Calyx considers to be Retired. Subscriber may continue to use Retired Software; however, technical support and updates will not be available. Retired Software is not available for electronic delivery and Calyx reserves the right to cease delivering retired Software via CD. Calyx's Retired Software remains the intellectual property of Calyx.

17. SOFTWARE REFUND. Calyx does not offer refunds on Implementation Fees or Recurring Monthly Fees. As to refunding on Pre-paid Fees, Calyx does not refund partial months. Calyx will deactivate and uninstall refunded Software. Calyx reserves the right to revise its refund policies at any time, without notice.
18. TERM AND TERMINATION. This Agreement will remain in force until terminated. Subscriber may terminate this Agreement at any time by providing Calyx with written notice of termination. Calyx may terminate this Agreement if Subscriber fails to comply with the terms of this Agreement, including, but not limited to nonpayment of Software Fees. In the event of termination by either party, Calyx shall deactivate and uninstall the Software and Subscriber shall be required to destroy any hard copies of the Software in its possession or control.
19. WARRANTY DISCLAIMER. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, CALYX PROVIDES NO WARRANTY, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, AND ANY WARRANTIES AND CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE, AND ANY WARRANTIES THAT THE SOFTWARE IS ERROR-FREE, WILL OPERATE WITHOUT INTERRUPTION, AND IS COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM CALYX OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT.
20. LIMITATION OF LIABILITY. CALYX'S TOTAL LIABILITY TO SUBSCRIBER FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY WILL BE LIMITED TO AND WILL NOT EXCEED THE AMOUNTS PAID TO CALYX BY SUBSCRIBER FOR THE SOFTWARE. IN NO EVENT WILL CALYX BE LIABLE TO SUBSCRIBER FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS, OR PROFITS) OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE SOFTWARE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT CALYX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE FOREGOING LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.
21. (A) INDEMNIFICATION BY LICENSEE. Licensee agrees that Licensee shall, at its expense, defend, indemnify, and hold harmless, Calyx and its affiliates (including, its officers, directors, employees, agents, attorneys, independent contractors and professional advisors) from and against any and all claims, demands, liabilities, costs, expenses (including, all reasonable attorneys' fees and costs), losses, damages, judgments, or settlements arising or resulting from any claims, demands, actions, and other proceedings by any party, including any third party, to the extent such arise out of or relate to: (a) Licensee's use of the Software (including use of the Interfaces), and any other Calyx products or services in a manner inconsistent with, or in a manner not intended by, this Agreement; (b) Licensee's use of Service Providers and their products and services; (c) any act or omission of Service Providers, and agents and employees of such Service Providers; (d) the collection, distribution, dissemination, sharing, use, or sale of information provided to Service Providers; (e) Licensee's violation of any local, state, federal, or international laws, or breach of this Agreement; (f) any act or omission by Licensee, its agents and employees, for any services agreed to be performed by any third party; and (g) to the extent not covered in the preceding sub-paragraphs, any negligent act, error or omission, or intentional misconduct of Licensee, its permitted subcontractors, or their officers, directors, agents, invitees, employees, or other persons acting on Licensee's behalf. The terms of this section shall survive the termination of this Agreement for whatever reason, but only as to acts defined in the preceding sub-paragraphs which occur during the period of this Agreement.
21. (B) INDEMNIFICATION BY CALYX. Calyx agrees that Calyx shall, at its expense, defend, indemnify, and hold harmless Licensee and its affiliates (including, its officers, directors, employees, agents, attorneys, independent contractors and professional advisors) from and against any and all claims, demands, liabilities, costs, expenses (including, all reasonable attorneys' fees and costs), losses, damages, judgments, or settlements arising or resulting from any claims, demands, actions, and other proceedings by any party, including any third party, to the extent such arise out of or relate to: (a) any suit or claim that the Software infringes or misappropriates any third party's U.S. copyright, patent, trademark or trade secret; (b) any material breach by Calyx of any of the terms or conditions of this Agreement, including, but not limited to, warranties, (except as set forth in Section 19), covenants, obligations and/or representations; or (c) to the extent not covered in the preceding sub-paragraphs, any negligent act, error or omission, or intentional misconduct of Calyx, its permitted subcontractors, or their officers, directors, agents, invitees, employees, or other persons acting on Calyx's behalf. The terms of this section shall survive the termination of this Agreement for whatever

reason, but only as to acts defined in the preceding sub-paragraphs which occur during the term of this Agreement.

22. **GOVERNING LAW/VENUE.** This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to or application of conflicts of law rules or principles. The appropriate venue for any legal action shall be exclusively the state and federal courts of California.
23. **ATTORNEYS' FEES.** In the event of any litigation of any controversy or dispute arising out of or in connection with this Agreement, its interpretation, its performance, or the like, the prevailing party will be entitled to reasonable attorneys' fees and expenses, court costs, and reasonable costs for expert and other witnesses attributable to the prosecution or defense of that controversy or dispute.
24. **EXPORT LAW.** Subscriber agrees to comply fully with all U.S. export laws and regulations to ensure that the Software, any technical data related thereto, or any direct product thereof are not exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by, such laws and regulations.
25. **GOVERNMENT USERS.** The Software is "commercial computer software" and "commercial computer software documentation," as such terms are used in FAR 12.212. Any use, duplication, or disclosure of the Software by or on behalf of the U.S. Government is subject to restrictions as set forth in this Agreement. Manufacturer is Calyx Technology, Inc. dba Calyx Software, with offices at 6475 Camden Avenue, Suite 207, San Jose, CA 95120.
26. **SUBSCRIBER CONTACT INFORMATION CHANGE.** So that Calyx may effectively provide Subscriber with Updates, Subscriber must notify Calyx of any contact information change. In order to implement a requested change, the appropriate Calyx form is required to be completed by Subscriber's primary contact and processed by Calyx.
27. **NOTICES.** All notices or approvals required or permitted under this Agreement are required to be in writing and delivered by confirmed facsimile transmission, by overnight delivery service, or by certified mail, and in each instance will be deemed given upon receipt. All notices or approvals will be sent to the addresses set forth in the applicable ordering document or invoice or to such other address as may be specified by either party to the other in accordance with this Section.
28. **NON-EXCLUSIVE REMEDY.** Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.
29. **WAIVER.** The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Any waiver, modification, or amendment of any provision of this Agreement will be effective only if in writing and signed by authorized representatives of both parties.
30. **FORCE MAJEURE.** Neither Subscriber nor Calyx shall be liable for damages, nor shall be considered to be in breach of, or in default under this Agreement due to any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond either party's reasonable control.
31. **SEVERABILITY.** If any provision of this Agreement is held to be unenforceable or invalid, that provision will be enforced to the maximum extent possible and the other provisions will remain in full force and effect.
32. **HEADINGS.** The Section headings contained in this Agreement are inserted for convenience only and should not affect in any way the meaning or interpretation of this Agreement.
33. **ENTIRE AGREEMENT.**
 - (a) This Agreement and the Privacy Policy posted at www.calyxsoftware.com constitute the complete and exclusive understanding and agreement between the parties regarding its subject matter, and supersedes all proposals, understandings, or communications between the parties, oral or written, regarding its subject matter.
 - (b) Calyx may amend the terms and conditions of this License Agreement at any time by reasonable notice, including without limitation by posting revised terms on its website at the URL www.calyxsoftware.com which amended terms and conditions shall be binding upon Subscriber.
34. **SURVIVAL.** The terms of Sections 2, 4, 10, 18-23, 27-29, and any other provisions which by their nature should survive, shall survive the termination of this Agreement.
35. **ACCEPTANCE.** Subscriber agrees that Subscriber has read this Agreement and hereby accepts its terms.

END OF DOCUMENT