



TERMS OF SERVICE AND LICENSE AGREEMENT

IMPORTANT—READ CAREFULLY: These terms and conditions and license agreement (collectively, "Agreement") is between you, your end users (hereafter "you", or "Customer") and Fonality, Inc. ("Fonality") for the Fidelity* software, products (including PBXtra*) and services identified on the Estimate and Order, which may include one or more of the following: computer software (including HUD*), telephone and other equipment, certain telecommunications services, and access to same, media, printed materials, and online or electronic documentation (collectively, the "Product"). These terms and conditions all cover any add-on orders derived from your initial Order. By agreeing to purchase the Product, you acknowledge and represent that you have read, understand, have the legal capacity to, and hereby agree to be legally bound by this Agreement.

1. ORDERS

Customer's signature (electronic or physical) of an Estimate is a non-cancellable Order by Customer for the Product. Orders are not binding until accepted by Fidelity, in its sole discretion. Once an Order is accepted by Fidelity, it may be changed or cancelled ONLY with the written consent of Fidelity.

2. PAYMENTS

2.1 The full purchase price for the Product is due before shipment unless otherwise agreed in writing by Fidelity. Prices may not include any customs duties, sales, use, value added, excise, federal, state, local, public utility, universal service or other similar taxes, freight, activation fees, toll charges, duties or imposts ("Fees"). All such Fees shall be paid by Customer and will be added to any amounts otherwise charged to Customer, and Customer will be liable for and will pay in full all such amounts. If payment is made via credit card, Customer authorizes Fidelity to charge the Customer's credit card for all charges arising from Customer's purchase of the Product. Customer agrees to notify Fidelity of any change to the credit card information including, but not limited to, changes in account number, expiration date or billing address. Otherwise, Customer agrees to pay all amounts due upon receipt of invoice. Balances not paid within 10 days of the due date are subject to a late-payment charge of the greater of 1.5% of the outstanding balance, or the maximum amount allowed by law, whichever is higher. Fidelity shall not be responsible for any third party costs incurred by Customer for exceeding credit limit, insufficient funds or other reasons. Notwithstanding any partial payment by Customer, title to goods shipped shall remain with Fidelity until the entire price has been paid; and, if Customer defaults in the payment of any charges hereunder when due, Fidelity may remove and repossess any and all such Product delivered, terminate access to any remotely hosted services (if applicable), and terminate the software licenses delivered in conjunction with such Product, in addition to any other legal remedies it may have.

2.2 All purchases related to the Product contained in the Order, including but not limited to Fees are non-refundable. Upon receipt of an Order from Customer that is accepted by Fidelity, we will begin the process of setting up the Product for you. Therefore, once an Order has been made, and accepted by Fidelity, no refund will be given of any activation fees, setup charges, or other fees incurred, regardless of whether or not such Product was kept or used.

2.3 Customer must dispute any charges for the Product in writing within thirty (30) days of the date of the charge by Fidelity. After thirty (30) days from the date of the charge, Customer waives any objection and further recourse. Written statements disputing charges must be sent to billing@fidelity.com. The existence of a validly filed dispute shall in no way relieve Customer of its obligation to pay all amounts billed by Fidelity, including any disputed amounts.

2.4 Credit allowances for an interruption of service in any of Customer's systems at any time is not required or warranted by Fidelity.

3. DELIVERY

All Orders and/or shipments shall be FOB Fidelity, and Customer shall bear the cost of delivery and handling. Risk of loss shall transfer to Customer upon delivery of goods to the carrier. Fidelity will make every reasonable effort to complete shipment on or before the dates set forth in its Estimate or the Order, as applicable; however, Fidelity shall not be liable for delay in performance or inability to perform occasioned by Force Majeure (described herein). If performance is delayed by a Force Majeure event, Fidelity shall notify Customer, and time of performance shall be extended for the period of such contingency.

4. SUPPORT

4.1 During the Acceptance Period, Fidelity will provide remote installation and configuration support to Customer. This support is limited to telephone and email support necessary to remotely get the system performing to specification at Customer's location, including the identification, but not resolution, of changes required in the Customer's network or communications services. Following successful installation, Fidelity support is only available to Customers who purchase such support under separate annual Software and Support Agreement(s). Customers not electing to purchase a Software and Support Agreement will be entitled to 2 hours of support during the first 30 calendar days subsequent to receiving the Product (or 35 days from the Fidelity ship date, whichever comes first) to aid in phone system installation, but will not be eligible to receive technical support beyond this period.

4.2 If onsite installation and/or training is purchased (see Order or Estimate), Customer shall also be responsible for reasonable and customary travel and travel-related expenses ("T&E costs"). T&E costs are not included in the onsite installation or onsite training fee and shall be charged to Customer's credit card (or invoiced) upon completion of installation and/or training.

5. TERMS OF SERVICE

Certain elements of Fidelity's products are delivered as an ongoing service via an Internet connection. Maintenance of a working connection to the Internet is mandatory to have full access to the products and services provided by Fidelity. This connection may be disconnected by you at any time, but such disconnection will significantly limit your ability to utilize the products.

6. 30-DAY ACCEPTANCE PERIOD, RETURN POLICY & LIMITED WARRANTY

6.1. Acceptance Period. During the 30-day period following shipment of the Product, or such other period specifically set forth in writing by Fidelity (the "Acceptance Period"), Customer shall inspect the Product, including the performance of such Product in their network environment, after which time the Product, will be deemed accepted. CUSTOMER WAIVES THE RIGHT OF REJECTION, UNLESS FONALITY RECEIVES A WRITTEN NOTICE OF REJECTION DURING THE ACCEPTANCE PERIOD.

6.2. Return Policy. During the Acceptance Period, Customer may return the Product for any reason. Notification of intent to return must be received by Fidelity in writing during the Acceptance Period, and must be approved by an appropriate Fidelity representative in writing. **No automatic returns will be accepted after the Acceptance Period.**

6.3. Complete Orders. This Return Policy applies only to completed orders. Returns of partial orders will be at Fidelity's discretion.

6.4. Restocking Fee. All returns will be subject to a 15% reconfiguration/restocking fee.

6.5. Shipping Charges: All shipping and handling fees are non-refundable. Customer is responsible for the cost of return shipping to Fidelity.

6.6. Breakage / Damaged Goods. All items must be returned in "like new" condition and Customer must ship back all materials including, but not limited to, boxes, wires, manuals, and packing materials. Items that are not returned in "like new" condition will not be refunded, and will be returned to the Customer at the Customer's expense.

6.7. Return Procedure. If, during the Acceptance Period, Customer has notified Fidelity in writing of intent to return the Product, a Return Material Authorization Number (RMA Number) will be issued. All returned goods must be shipped prepaid, clearly marked with an RMA number, and be accompanied by a complete description of the nature of the defect. **No return of goods will be accepted by Fidelity without a RMA Number obtained from Fidelity.**

6.8. Equipment and Limited Warranty Beyond the Acceptance Period.

6.8.1. Equipment. If Customer purchases Fidelity telephone or other equipment at the time of their Product purchase, such telephone and/or equipment shall have a one (1) year replacement warranty as follows:

a) any equipment which is not performing to original manufacturer specifications will be replaced by Fidelity with like equivalent equipment (new, like new, or refurbished condition). Fidelity shall have the right to reject any request for replacement equipment where the returned Equipment has failed due to normal wear and tear or Customer's reckless or unreasonable use. Further, Fidelity may decide in its sole discretion to reject any request for replacement equipment where Customer is not acting in good faith, or where the Customer has a history of excess failures or requests for replacement;

b) Fidelity will pay for return and replacement shipping for any equipment failures that are due to manufacturer defects or otherwise through normal business use of the equipment. Customer will be responsible for the shipping costs to and from Customer site for equipment which has failures caused through accidental damage or lack of reasonable care. Customer should ship via certified mail or retain tracking information when returning equipment. Fidelity will not assume liability for lost or missing return shipments without a proof of delivery from the carrier used;

c) Customer must contact Fidelity to obtain a Return Material Authorization Number ("RMA Number") before taking any return or replacement action. No return of equipment will be accepted by Fidelity without an RMA Number. All returned equipment must be clearly marked with an RMA Number, and be accompanied by a complete description of the nature of the defect. All equipment must be returned as originally provided by Fidelity. Missing equipment items may cause Customer to incur further charges.

d) Equipment that is lost or stolen while in the care, custody and control of Customer shall not be replaced by Fidelity in the manner described above and Fidelity shall have no liability for such Equipment. In such instances, Customer will need to procure replacement Equipment from Fidelity at the then current Fidelity retail price. The occurrence of lost or stolen Equipment does not extinguish Customer's obligations in this Agreement.

6.8.2. Limited Warranty. Unless provided through a separately purchased maintenance, support or warranty agreement, no warranty is provided by Fidelity after the one (1) year limited warranty. All other obligations of Fidelity to provide warranty repair or replacement shall terminate at the end of the one (1) year limited warranty.

7. MANUFACTURER WARRANTY(IES)

Fidelity shall extend to Customer, on a 'pass through' basis, any warranty provided by the manufacturer of any purchased equipment to the extent permissible. Fidelity may assist Customer with such pass-through warranty service at Fidelity's discretion. Fidelity may require a security deposit, pre-payment or prior return of any products or components covered under such a pass-through warranty. Fidelity reserves the right to reject any returned products or components which it determines not to be covered under a pass-through warranty, beyond the limited warranty period, not purchased from Fidelity, or with damage resulting from misuse or other actions not covered under the manufacturer's warranty. Such equipment will be returned to the Customer at the Customer's expense.

8. 911 LIMITATIONS

Please note that Fidelity does not provide your telecommunications services. Your telecommunications service provider is responsible for compliance with e911 services. Depending on your specific installation and service provider, your Product installation may not send and receive e911 calls reliably, and may not pass correct location information to emergency services. It is the sole responsibility of the installer and user to ensure compliance with all local codes, and to inform users of any limitations or issues regarding 911 use. Fidelity is not liable for any resulting damages related to 911 use.

9. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY

9.1. DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH HEREIN, FIDELITY PROVIDES THE PRODUCT "AS IS" AND WITH ALL FAULTS. FIDELITY HEREBY EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY WAIVES, RELEASES AND RENOUNCES ALL OTHER REMEDIES, WARRANTIES, GUARANTEES, OBLIGATIONS, REPRESENTATIONS AND LIABILITIES, EXPRESS OR IMPLIED, ARISING IN FACT, LAW, EQUITY, CONTRACT, TORT, UNDER STATUTE, UNDER WARRANTY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO: (A) ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (B) ANY IMPLIED WARRANTY OR CONDITION ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OR TRADE, (C) ANY OBLIGATION, LIABILITY RIGHT, CLAIM OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM ACTIVE, PASSIVE OR IMPUTED NEGLIGENCE, CONTRIBUTORY NEGLIGENCE, VICARIOUS LIABILITY OR STRICT PRODUCTS LIABILITY OF FIDELITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES, AND (D) ANY OBLIGATION, LIABILITY OR RESPONSIBILITY FOR LOSS OF SERVICE OR DAMAGE TO ANY PRODUCT, EQUIPMENT OR PART THEREOF, OR ANY PRODUCT DELIVERED OR PROVIDED UNDER THIS AGREEMENT OR THE ORDER. FURTHER, FIDELITY DOES NOT WARRANT THAT THE PRODUCT WILL BE FREE OF BUGS, ERRORS, VIRUSES OR OTHER DEFECTS, OR THAT THE SERVICE WILL BE COMPATIBLE WITH CUSTOMER'S EXISTING INTERNET CONNECTION, NETWORK, OR COMMUNICATIONS INFRASTRUCTURE OR ENVIRONMENT.

9.2. DISCLAIMER OF CERTAIN DAMAGES. IN NO EVENT WILL FIDELITY OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, VENDORS AND CONTRACTORS BE LIABLE FOR THE COST OF COVER OR FOR ANY INCIDENTAL, INDIRECT, SPECIAL, AGGRAVATED, PUNITIVE, CONSEQUENTIAL OR SIMILAR DAMAGES OR LIABILITIES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO LOSS OF DATA, INFORMATION, REVENUE, PROFIT OR BUSINESS) ARISING OUT OF OR RELATING TO THE USE OR INABILITY TO USE THE PRODUCT OR OTHERWISE UNDER

OR IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING IN FACT, LAW, EQUITY, CONTRACT, TORT (INCLUDING NEGLIGENCE AS DESCRIBED ABOVE), STRICT LIABILITY, UNDER STATUTE, UNDER WARRANTY OR OTHER THEORY EVEN IF FONALITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.3. LIMITATION OF LIABILITY. WITHOUT LIMITING THE FOREGOING, FONALITY'S (INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES) LIABILITY ARISING OUT OF OR RELATING TO THE PRODUCT AND THIS AGREEMENT IS LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE PRODUCT REGARDLESS OF THE AMOUNT OF DAMAGES CUSTOMER MAY INCUR AND WHETHER SUCH DAMAGES ARISE IN FACT, LAW, EQUITY, CONTRACT, TORT (INCLUDING NEGLIGENCE AS DESCRIBED ABOVE), STRICT LIABILITY, UNDER STATUTE, UNDER WARRANTY OR OTHER THEORY. FURTHER, CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT FONALITY (INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES) WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE, INCLUDING E911 SERVICE OUTAGE AND/OR INABILITY TO DIAL 911 OR ANY OTHER EMERGENCY TELEPHONE NUMBER USING THE PRODUCT OR TO ACCESS AN EMERGENCY SERVICE OPERATOR.

9.4. Disclaimer of Third Party Actions and Control.

9.4.1 Fonality does not and cannot control the flow or quality of data to or from a network or the Internet. Such flow depends in large part on the performance of Internet services selected by you and provided or controlled by third parties. At times, the quality of carrier, and/or the actions or inactions caused by third parties can produce occurrences in which Customer's Service and/or connection to the Internet (or portions thereof) may be impaired or disrupted.

9.4.2 Fonality does not warrant your use of independent, third party technical/installation support. Fonality shall not pay such third party or reimburse you for such third party unless previously approved and agreed to by Fonality in writing. Fonality selected and arranged third party technical/installation support shall be governed by the agreed upon terms of a work order or statement of work for such third party support.

9.4.3 Third party application or add-on services (section 14 herein) selected by you to use in conjunction with the Product shall be governed by the respective terms and conditions for such application. Third party applications and add-ons are not warranted by Fonality and Fonality shall not be liable for their use, operation, or reliability.

9.5. Security and Fraud Prevention. Fonality maintains fraud and security monitoring protocols. However, Fonality cannot and does not warrant complete security and fraud prevention of its Service, including any server, equipment or the Fonality network. Accordingly, Fonality disclaims any and all liability resulting from or related to unauthorized intrusions or access and related security events.

9.6 Disclaimer Regarding Voicemail Transcription. Fonality is not responsible for external communications received through Fonality's voicemail transcription service. Fonality does not control the content and is therefore not responsible for any errors or omissions in any transcription content provided. Some voicemail messages may be mis-transcribed. This may occur because of poor dictation, noisy environment, poor phone connection or drop-outs, language, or simple transcription error. Accordingly, Fonality disclaims any and all liability resulting from or related to mis-transcription and you agree to hold Fonality harmless in such events.

9.7 Disclaimer Regarding Call Recording. The call recording feature of the Service is provided to Customer "as is" with no proscription or restriction(s) of its use by Customer. Customer is responsible and liable for legal compliance of "call recording," such as lawful use and requisite notice to employees, agents or third parties. Fonality shall not be liable to Customer or third party(s) involving "call recording" feature(s) of the Service, as selected by Customer. Accordingly, Fonality disclaims any and all liability, claims, or damages resulting from or related to call recording and you agree to hold Fonality harmless in such events.

The foregoing disclaimers and limitation of liability will apply to the maximum extent permitted by applicable law. The laws of some states/jurisdictions do not allow the exclusion of implied warranties or the exclusion or limitation of certain damages. To the extent that those laws apply to this Agreement, the exclusions and limitations set forth above may not apply to you. For further Product warranty information, you may contact Fonality at 6900 North Dallas Parkway, Suite 250, Plano, Texas 75024. Any warranty DOES NOT apply to any beta software, software made available for testing or demonstration purposes, or any temporary software modules. All such software is provided "AS IS" without any warranty whatsoever.

10. INDEMNIFICATION

10.1. CUSTOMER

CUSTOMER AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS FONALITY, AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, VENDORS AND CONTRACTORS ("INDEMNIFIED PARTY" OR "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, INJURIES AND JUDGMENTS (INCLUDING RELATED COSTS AND EXPENSES AND REASONABLE ATTORNEY'S FEES AND OTHER LITIGATION EXPENSES) ("CLAIM" OR "CLAIMS") INCURRED BY THE INDEMNIFIED PARTY(IES) ARISING OUT OF OR RELATING TO CUSTOMER'S (A) VIOLATION OR BREACH OF ANY TERM OF THIS AGREEMENT, OR (B) MISUSE OF THE PRODUCT. FURTHER, CUSTOMER AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS INDEMNIFIED PARTY(IES) FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIM(S) RELATED TO THE FAILURE OR OUTAGE OF THE SERVICE, INCLUDING THOSE RELATED TO E911 SERVICE.

10.2. Fonality

10.2.1 Fonality shall defend Customer, and its officers, directors and employees, against any third party action alleging that the Product infringe(s) any valid U.S. patent or copyright, and Fonality shall pay all settlements entered into, and all costs (including reasonable attorneys' fees) in connection with such action. If any Product, or parts thereof, becomes, or in Fonality's opinion may become, the subject of an infringement claim, Fonality may, at its option, (a) procure for Customer the right to continue using such Product, (b) modify or replace such Product with substantially equivalent non-infringing products, or (c) require the return of such Product and refund to Customer a pro-rata portion of the purchase price of such Product based on a three-year straight line amortization of the purchase price.

10.2.2 Fonality shall have no indemnification obligations with respect to any third party action alleging that the use of any Product, or any part thereof, in combination with products not supplied by Fonality infringes any third party intellectual property right provided that the infringement is (a) due solely to the combination and use of such products together, if the use of the Product independent of any product not supplied by Fonality would not have given rise to the claim; or (b) Customer is advised by Fonality either directly or by means of Documentation, marketing or other published materials that the use of Fonality Product in tandem with such products represents a risk of infringement; and (c) Customer combines and uses such products with Fonality's Product in contravention of Fonality's disclaimer.

10.2.3 Fonality's indemnification obligations pursuant to this section 10 shall be subject to the indemnified party (a) notifying the indemnifying party promptly in writing of such action, (b) giving the indemnifying party exclusive control and authority over the defense or settlement of such action, (c) not entering into any settlement or compromise of any such action without the indemnifying party's prior written consent and (d) providing all reasonable assistance to the indemnifying party (provided that the indemnifying party reimburses the indemnified party for its out-of-pocket expenses incurred in providing such assistance).

11. INTELLECTUAL PROPERTY

For the purpose of this section, the term "Fonality Intellectual Property" shall include but is not limited to any and all tangible and intangible: (i) rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof, (ii) trademark and trade name rights and similar rights, (iii) trade secret rights, (iv) patents, designs, algorithms and other industrial property rights, (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise, and (vi) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing), including software or programming delivered hereunder. Some software distributed by Fonality is licensed under the GNU General Public License (GPL) ("Open Source Software"). The terms of this license can be found at <http://www.gnu.org/licenses/gpl.html>. Any software distributed by Fonality which is licensed under the GNU General Public License (GPL) is specifically excluded from this definition.

All Fonality Intellectual Property is solely for use by Customer as shipped, and may not be used as a replication master or otherwise copied without the written consent of Fonality. Use of software delivered in conjunction with the Product or as a separate item shall be subject to this Agreement and a separate license agreement that Customer shall be required to accept prior to delivery/installation. Customer acknowledges that all Fonality Intellectual Property furnished by Fonality hereunder and the contents thereof are the proprietary property of Fonality, and Customer has no right or interest therein except that Customer is granted a perpetual, non-exclusive, worldwide, non-transferable, and non-sublicenseable license to use the Product (including the applicable Fonality Intellectual Property) for Customer's internal business purposes. This license shall terminate or expire in the same manner this Agreement may expire or be terminated, according to the applicable provisions. All Customer employees may exercise the license granted. No other license(s) are granted by implication, estoppel or otherwise. Customer agrees not to directly or indirectly reproduce, decompile or provide or otherwise make available to any third party any Fonality Intellectual Property. Customer shall be liable for all damages, including loss of anticipatory profits, incurred by Fonality as a result of such unauthorized use, copy or replication. The rights granted hereunder or use of Product (including the equipment) does not convey any rights or ownership in Fonality patents, copyrights, trademarks, intellectual property or know-how.

12. REMEDIES FOR BREACH

12.1. If Customer shall be in material breach of this Agreement and fails to cure said breach within 30 days of written notice thereof from Fonality, Fonality shall thereupon have the right without further notice to (1) bill and declare due and payable the aggregate purchase price for all undelivered products under this Agreement, (2) defer shipment hereunder until such default, breach or repudiation is removed, and/or (3) cancel the undelivered portion of this Agreement in whole or in part, with Customer remaining liable for damages. Further, if Customer fails to pay any amount hereunder as it becomes due or wrongfully rejects goods hereunder, in addition to any other remedies it may have in law or equity or hereunder, Fonality shall have the right to recover, in addition to the purchase price of such goods, all costs incurred by Fonality to collect the same.

12.2. No delay or omission to exercise any right, power, or remedy upon a breach or default under this Agreement shall impair any such right, power, or remedy of Fonality or be construed as a waiver of any such breach or default.

13. TERMINATION

Without prejudice to any other rights, Fonality may terminate this Agreement if you do not abide by the terms and conditions contained herein. Upon termination of this Agreement, you must cease use of the Product and destroy all copies of any software provided. Termination of this Agreement will not extinguish Customer's obligations or liability arising prior to such termination.

[Applicable to previous trixbox Pro Customers: In the event that Fonality terminates a "lifetime buyout" of the trixbox Pro EE or trixbox Pro CCE, Fonality will prorate your upfront payment towards a five-year agreement.]*

14. THIRD PARTY APPLICATIONS USED IN CONJUNCTION WITH THE PRODUCT(S). You acknowledge and agree to the end user terms and conditions for the following third applications/add-ons if you selected/purchased such third party services as reflected on your Fonality Quote or Order.

- » Video Collaboration powered by Zoom – <https://zoom.us/terms>
- » Fonality for Intellinote – <https://www.intellinote.net/terms-service/>
- » Fonality for ZipWhip - <https://zipwhip.com/legal>

15. EXPORT RESTRICTIONS

You acknowledge that the Product is subject to export controls under the laws and regulations of the U.S. and any other applicable countries' laws and regulations. You agree to comply with all applicable laws and regulations that apply to the Product, including without limitation the U.S. Export Administration Regulations and, as applicable, will obtain all required U.S. and local authorizations, permits, or licenses. The parties agree to provide to each other information as may be reasonably required by the other in connection with obtaining authorizations or licenses.

16. U.S. GOVERNMENT LICENSE RIGHTS

All service provided to the U.S. Government is provided with the commercial license rights and restrictions described in this Agreement. The U.S. Government has deemed that by installing, copying or using the Product, the Product is "commercial computer software" or "commercial computer software documentation" within the meaning of DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction release, performance, display or disclosure of the Product by the U.S. Government shall be governed solely by the term of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

17. FORCE MAJEURE

Fonality will not be liable for delay or failure to furnish the Product(s) contemplated by this Agreement when the delay or failure is caused by circumstances that are not reasonably within Fonality's control, including an act of God, strike or lockout or other labor dispute, act of the public enemy, war (declared or undeclared), blockade, revolution, civil commotion, lightning, fire, storm, flood, earthquake, explosion, governmental restraint, embargo, inability to obtain or delay in obtaining governmental approvals, permits, or licenses.

18. GOVERNING LAW, JURISDICTION, AND FEES

This Agreement, the related Estimate(s), Order(s), add-on Orders, and the entire relationship of the parties, shall be governed by and construed under the laws of the State of Texas without giving effect to its choice of law principles. The parties disclaim the application of the 1980 U.N. Convention on Contracts for the International Sale of Goods or any successor thereto is disclaimed. Any litigation arising directly or indirectly out of this Agreement, the related Estimate(s), Order(s), add-on Orders, and/or the entire relationship of the parties will be litigated in the Texas State Courts, Dallas County, Texas or, if original jurisdiction can be established, in the United States District Court for the Eastern District of Texas, Plano Division. THE PARTIES VOLUNTARILY, KNOWINGLY AND

IRREVOCABLY WAIVE THEIR RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING TO WHICH THEY MAY BE A PARTY INVOLVING ANY THE AGREEMENT, THE RELATED ESTIMATE(S), ORDER(S), ADD-ON ORDERS, AND/OR THE RELATIONSHIP OF THE PARTIES. In any formal action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and reasonable attorney fees.

19. ENGLISH LANGUAGE

It is the express wish of the parties that this Agreement and all related documents are drawn up in English and that the English version of any document will govern.

20. ENTIRE AGREEMENT

The Agreement and the Estimate set forth the entire agreement of Fonality and you with respect to the Product, and the subject matter hereof, and supersedes all prior and contemporaneous understandings and agreements, including, without limitation, purchase orders and specifications, whether written or oral. No amendment, modification or waiver of any of the provisions of this Agreement by Customer will be valid unless set forth in a written instrument signed by the parties.

21. SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void, or unenforceable, the remainder of this Agreement will remain in full force and effect and shall control.

22. NOTICES

Any notice required or permitted to be sent under this Agreement shall be delivered by first class mail, return receipt requested, or via an international courier service (e.g. FedEx, DHL, UPS, etc.) to the addresses of the parties: 1) if Customer, the address Customer provided to Fonality in the Order; 2) if to Fonality, 6900 North Dallas Parkway, Suite 250, Plano, Texas 75024. Notice so sent will be deemed effective three days following deposit in the mail, proper postage prepaid or one day following delivery to an international courier, prepaid for overnight delivery.

23. MODIFICATIONS

FONALITY RESERVES THE RIGHT, AT FONALITY'S SOLE DISCRETION, TO CHANGE, MODIFY OR OTHERWISE ALTER THESE TERMS AND CONDITIONS AT ANY TIME. YOU CAN FIND THE MOST RECENT VERSION OF THESE TERMS AND CONDITIONS AT WWW.FONALITY.COM/LEGAL (THE "WEBSITE"). SUCH MODIFICATIONS SHALL BECOME EFFECTIVE IMMEDIATELY UPON POSTING SUCH TO THE WEBSITE. CONTINUED USE OF THE PRODUCT FOLLOWING THE POSTING OF MODIFICATIONS WILL CONSTITUTE YOUR ACCEPTANCE OF THE REVISED TERMS AND CONDITIONS. SHOULD YOU HAVE ANY QUESTIONS, PLEASE CONTACT US AT: INFO@FONALITY.COM.

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