



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 Fonality* products and services identified on the Quote or Order, which may include software, telephone and other equipment, certain telecommunications services, associated hosted online services, media, printed materials, and online or electronic documentation (collectively, the “Product(s)”). These terms and conditions 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. TERM

1.1 Subject to section 4 herein, Customer agrees to purchase the Product for Initial Contract Term and subsequent renewal Term at the plan/rates indicated on the Quote/Order (that certain document to which Customer has agreed and accepted, either by electronic or physical signature which contains a detailed description of Customer’s ordered Product) (“Initial Contract Term”), payable in accordance with the payment schedule in the Quote/Order. If Customer’s Quote/Order does not indicate the Initial Contract Term, it shall be one (1) year. The Initial Contract Term shall commence upon installation of all Service contained on Customer’s Quote/Order. After the Initial Contract Term or preceding renewal Term, this Agreement shall automatically renew for an equivalent renewal Term (“Term”) unless the Customer cancels the Product in accordance with section 1.2 below. “Term” shall mean the Initial Contract Term and any renewal “Term” collectively. Customer acknowledges that the rates indicated on the Quote/Order are dependent on the plan and payment schedule initially chosen by Customer. During the Initial Contract Term or any Term thereafter, should Customer choose to reduce/modify seats (licenses) or Product features, Fonality may adjust the rates for Customer’s Product for the remainder of the Initial Contract Term or any Term thereafter.

1.2 End of term cancellation. Customer may terminate the Product by providing thirty (30) days written notice prior to the end of the Initial Contract Term or next renewal Term to billing@fonality.com.

2. EQUIPMENT.

2.1 If Customer has chosen to LEASE Equipment from Fonality for use with the Product (subscription service), Fonality will provide to Customer (during the Initial Contract Term or Term(s)) certain equipment, including but not limited to telephone handsets, components, cables, manuals and documents, routers and other network equipment (the “Equipment”) for use in Customer’s business sites. Provided Equipment may be new, like-new, or refurbished, and is the property of Fonality. Fonality will provide replacement Equipment during the term of the Agreement on the following basis:

2.1.1 Any Equipment which is not performing to original manufacturer specifications will be replaced by Fonality with like equivalent that will be in a like new or refurbished condition, subject to the following



limitations. Fonality 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, Fonality may decide in its sole reasonable 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.

2.1.2 Shipping Costs: Fonality 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. Fonality will not 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, should replacement terms be agreed to between Fonality and Customer. Customer should ship via certified mail or retain tracking information when returning Equipment. Fonality will not assume liability for lost or missing return shipments without a proof of delivery from the carrier used.

2.1.3 RMA Process: Customer must contact Fonality to obtain a Return Material Authorization Number ("RMA Number") before taking any return or replacement action. No return of Equipment will be accepted by Fonality without an RMA Number obtained from Fonality. All returned Equipment must be shipped 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 Fonality. Missing Equipment items may incur further charges or, if applicable, less of a refund.

2.2 If Customer has chosen to PURCHASE Equipment from Fonality (per Quote/Order) for use with the Product, such Equipment shall have a one (1) year replacement warranty as follows:

2.2.1 Any equipment which is not performing to original manufacturer specifications will be replaced by Fonality with like equivalent equipment (new, like new, or refurbished condition). Fonality 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, Fonality may decide in its sole reasonable 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;

2.2.3 Shipping Costs. See 2.1.2 above;

2.2.4 RMA Process. See 2.1.3 above.

2.3 Unless provided through a separately purchased support agreement (section 7) or equipment manufacturer warranty, no warranty is provided by Fonality after the one (1) year limited warranty. All other obligations of Fonality to provide warranty repair or replacement shall terminate at the end of the one (1) year limited warranty.

2.4 Equipment that is lost or stolen while in the care, custody and control of Customer shall not be replaced by Fonality in the manner described above and Fonality shall have no liability for such



Equipment. In such instances, Customer will need to procure replacement Equipment from Fonality at the then current Fonality retail price. The occurrence of lost or stolen Equipment does not extinguish Customer's obligations in this Agreement.

2.5 Fonality shall extend to Customer, on a 'pass through' basis, any warranty provided by the manufacturer of any purchased equipment to the extent permissible. Fonality may assist Customer with such pass-through warranty service at Fonality's discretion. Fonality may require a security deposit, pre-payment or prior return of any products or components covered under such a pass-through warranty. Fonality 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 Fonality, or with damage resulting from misuse or other actions

2.6 The Product is intended for use with Fonality-provided or Fonality-certified equipment only. Fonality reserves the right to terminate or suspend the Product or service if other equipment is used by Customer without prior written approval by Fonality.

3. 911 & PRODUCT LIMITATIONS

3.1 The e911 service provided by Fonality works differently than traditional wire line 911 emergency services. These characteristics may make e911 services unsuitable for some customers. For example, Customer should not expect mobile or nomadic Fonality VoIP-enabled devices or applications to provide automatic location identification ("ALI") technology that would assist first responders in identifying Customer's location in the event of an emergency. For this reason, Fonality recommends Customer always maintain an operational and accessible alternative phone service, such as traditional wire line or cellular wireless service, to make calls to traditional 911 or e911. Customer acknowledges that it is Customer's responsibility to determine the technology or combination of technologies best suited to meet Customer's emergency calling needs, and to make the necessary provisions for access to emergency calling services.

3.2 e911 Considerations:

3.2.1 Limited Availability. Customer acknowledges that the Product, including e911 service, will not function in all conditions, including but not limited to the following:

Absence of Electrical Power. If there is a power outage, Customer may be required to reset or reconfigure the Equipment before being able to use the Product and e911 service.

Internet Access. The Product and e911 service will not function if there is an interruption of Customer's broadband or high-speed internet access service.

Configuration and Availability. Customer's e911 service will not function if Customer's phone fails or is not configured correctly or if the Product is not functioning for any reason, including suspension or disconnection of Product because of billing or other issues.



Network Issues. Due to technical factors in network design, and in the event of network congestion on the Fonality network, there is a possibility that an e911 call will produce a busy signal or will experience unexpected answering wait times and/or take longer to answer than standard 911 calls placed via traditional, legacy, circuit-switched telephone networks.

Non-Voice Systems. The Product and e911 service may not function without-dialing systems including home security systems, medical monitoring equipment, TTY equipment, and entertainment or satellite television systems. Customer has no claim against Fonality for interruption or disruption of such systems by the Product, including e911 service.

3.2.2 Cost. Fonality passes through to Customer a mandatory e911 service fee of \$25 per use to cover the costs associated with providing this service. This fee will be charged to Customer for each occurrence.

3.3 Physical Location. Customers who subscribe to e911 service will be required to register the physical location of their Equipment with Fonality, and agree to update the location whenever the physical location of their Equipment changes. Administrative options in the Product's online control panel allows you to modify an emergency response address for your main office location, alternate locations, or even down to a specific DID. It is Customer's responsibility to verify each of these emergency response addresses to ensure first responders are able to assist Customer in case of an emergency. Customer acknowledges that the only mechanism for routing e911 calls to the correct emergency call taker is the physical location(s) currently registered for the account. There may be some delay before the automatic number and location information is passed to the local emergency service operator. In the event that the physical location has not been updated or is not complete, Fonality may attempt to route an e911 call based upon the bill-to or ship-to addresses associated with the customer's account or initial Order.

3.4 Warning Labels. Fonality will provide Customer with warning labels regarding the limitations or unavailability of e911 service. Customer agrees to place a label on and/or near each telephone or other Customer premise equipment on which the services may be utilized. Customer should apprise guests, home service and care providers about the limitations set forth on the warning labels relating to the e911 service and inform them of alternative means of accessing e911 or traditional 911 services, such as traditional wire line or cellular wireless service.

3.5 911 Acknowledgement: Customer acknowledges and accepts that the Product does not support 911 emergency dialing or other emergency functions in the same way that traditional wire line 911 services operate. The differences are detailed in this section and you agree to notify any potential user of the services, who may place calls using your telephone/communication system(s), of the e911 limitations described herein. Customer hereby acknowledges that it has been advised of the circumstances under which e911 service may not be available or may be limited in comparison to traditional 911 emergency dialing.



CUSTOMER SHOULD MAINTAIN AN ALTERNATIVE MEANS OF ACCESSING e911 or TRADITIONAL 911 SERVICES. Please note that if you have not chosen Fonality to provide your telecommunications services or “voice”, 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 responsibility of you and your telecommunications service provider to ensure compliance with all local codes, and to inform users of any limitations or issues regarding 911 use. Fonality is not liable for any resulting damages related to 911 use.

4. BILLING & PAYMENTS

4.1 Orders. Customer’s signature (electronic or physical) of a Quote is a non-cancellable Order by Customer for Product. Orders are not binding until accepted by Fonality, in its sole discretion. All Orders and/or shipments shall be FOB Fonality.

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

4.4 Customer acknowledges and agrees that the Product is provided "AS IS", as described in section 10. Credit allowances for interruption of Product is not required or warranted and shall be provided at the sole discretion of Fonality and as further defined in the Hosted VoIP Services SLA, which is located on the current company website, hereby incorporated by reference.

4.5 From time to time in its sole discretion, Fonality may offer promotions or discounts of activation or other fees. Customer shall not be entitled to a subsequent credit for such promotions or discounts, if not available and/or issued at the time of purchase.

4.6 Billing. Fonality will bill all fees and charges (described below) to Customer. Payment is due upon receipt of the invoice.

4.6.1 Monthly Recurring Fees. Monthly service fees including any associated taxes and fees are paid in advance of each month's service.

4.6.2 Non-Recurring Charges. Toll charges (as defined in section 4.9), and any other applicable charges which may include, but are not be limited to, usage charges, fax charges, activation fees, shipping charges, disconnection fees, equipment charges, cost recovery, and any other applicable charges, are billed subsequent to the end of each month's service. Customer will be charged prior to the end of the month if at any time Customer’s cumulative Non-Recurring Charges exceed two hundred fifty dollars (\$250.00). Customer will be charged for any additional Non-Recurring Charges at the end of the month.



4.6.3 Add-on Orders. Any additional Orders, software or licenses added after the commencement of Product will be billed pro-rata for the initial month. There are no refunds or prorated charges for services terminated prior to the end of the current Term.

4.7 Non-Payment.

4.7.1 By Customer. If timely payment is not received for any reason then, without any notice to Customer, Fonality reserves the right to either suspend or terminate Customer's access to and/or use of the Product and to terminate this Agreement. Delinquent payments are subject to a late-payment charge of the greater of 5% of the outstanding balance, or the maximum amount allowed by law. Fonality shall not be responsible for any third party costs incurred by Customer for insufficient funds or other similar reasons. An activation fee may be imposed prior to reinstatement of any suspended or terminated Product.

4.7.2 By Reseller. If Customer purchased the Product through a Fonality reseller and paid any amount to reseller for the Product or products/services related to the Product, reseller shall remit to Fonality the required amounts due for Customer's Product. At any time, should Customer's reseller not remit amounts due to Fonality for the Product or products/services related to the Product, Fonality may notify reseller and Customer of the non-payment breach and upon Fonality's reasonable discretion, require that Customer cause it's account to become current with Fonality and require Customer to become a direct Customer of Fonality by accepting Fonality's terms and conditions for the Product and apply a late fee of 5% of the outstanding balance. Customer shall hold Fonality harmless in such events and seek redress from the reseller for amounts not paid by reseller to Fonality (or applicable 3rd party). Fonality shall not be liable to Customer for any reseller non-performance that may cause Customer's Fonality Product/account to be suspended or terminated due to reseller non-performance.

4.8 Taxes and Fees

4.8.1 Taxes. Amounts contained in the Quote may not include any customs duties, sales, use, value added, excise, federal, state, local, public utility, universal service or other similar taxes. All such taxes shall be paid by Customer and will be added to any amounts otherwise invoiced to Customer, and Customer will be liable for and will pay in full all such amounts.

4.8.2 e911. All Customers (where Fonality provides the voice) are required to subscribe to Fonality's e911 service and will be subject to a monthly e911 service charge. The monthly e911 service fee shall be included in the applicable business plan charges for the associated line and Customer shall reimburse Fonality for the direct costs it incurs in providing e911 service, including state, county and municipal e911 surcharges, e911 automatic location information (ALI) database storage, line information database and caller id (LIDB/CNAM) expenses, and any other taxes or surcharges directly or indirectly associated with the provision of e911 service. Fonality reserves the right to adjust the level of charges associated with the provision of e911 service to reflect increases or decreases in the costs Fonality incurs. Other fees may apply for usage of e911 service as outlined in section 3 herein.



4.8.3 Onsite Installation and Training. If onsite installation and/or training was 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 invoiced to Customer upon completion of installation and/or training.

4.9 Toll Charges. Every call to or from Equipment using the Product that originates or terminates in the Public Switched Telephone Network ("PSTN"), including other VoIP networks and inbound toll free number calls to Customer's toll free number (if applicable), is considered a Toll Call. The duration of each call is to be calculated in one-minute increments and rounded up to the nearest one-minute increment for any fraction of minutes used. If the computed charge for a call includes a fraction of a cent, the fraction is rounded up to the nearest whole cent. Subject to section 4.11 and section 5 below, Customers who are on an Unlimited Plan (defined below) shall not be charged for telephone calls to inclusive countries. The current list of inclusive countries (and related exclusions to the types of call covered) can be found at <http://www.fonality.com/legal/international-service.html>. As noted therein, certain types of calls, including but not limited to mobile phones and premium rate phones, will not be included in the unlimited calls program, and will be billed in accordance with section 4.10.

4.10 International rates. When Customer dials an international PSTN phone number or mobile phone number, charges may apply regardless of whether the party on the other line answers the call. Calls made by a Customer to an international mobile or premium rate international telephone number may result in higher toll charges. International rates vary by destination country, city, and band, and are subject to change by Fonality from time-to-time without prior notice. You will be charged for all calls to any international destination, excluding inclusive countries, in full-minute increments at Fonality's then-current rate as posted at <http://www.fonality.com/legal/rates.html>. Note that certain limitations apply to Customer's ability to place calls to certain international destinations and types of phones, including but not limited to, satellite phones. Contact billing@fonality.com for details or to make arrangements to pre-pay for such services.

4.11 Price Changes and other Modifications. Changes to charges, fees or taxes for the Product (other than international calling rates which are updated from time to time at <http://www.fonality.com/legal/rates.html>) are effective after 10 days' notice has been sent to Customer via email to the authorized email address for Customer's account. Fonality may decrease prices without providing advance notice.

4.12 Customer must dispute mistakes in charges, fees or taxes in writing within thirty (30) days of the date of the charge, fee or tax by Fonality. After thirty (30) days from the date of the charge, fee or tax, Customer waives any objection and further recourse. Written statements disputing charges must be sent to: billing@fonality.com. The existence of a validly filed dispute shall in no way relieve Customer of its obligation to pay all amounts billed by Fonality, including any disputed amounts.

5. REASONABLE USE, PROHIBITED USE, AND FRAUD (HOSTED)



5.1 Reasonable Business Use. Any of Fonality's Products that offer unlimited minutes of PSTN calls ("Unlimited Plans") are for reasonable business use of Customer only. Activities such as: autodialing, continuous or extensive call forwarding, use of virtual extensions for regular business use, continuous connectivity, fax broadcast, fax blasting, unlawful or unauthorized telemarketing, junk faxing, fax spamming, calling/faxing any person (through the use of distribution lists or otherwise) who has not given specific permission to be included in such a process, AND where Customer's average outbound minutes per user (defined as the total number of outbound minutes used by Customer divided by the number seats/licenses purchased by Customer) exceed 1500 minutes a month, are NOT Reasonable Business Use as intended for the Product. If Fonality determines that Customer use of the Product is not within the scope of Reasonable Business Use, Fonality reserves the right to invoice Customer for any additional users or usage at the then current per-minute rate and/or to terminate or modify the terms of Customer's Product.

5.2. Prohibited Use. Any use of the Product or any other action that causes a disruption in the network integrity of Fonality or its vendors, whether directly or indirectly, is strictly prohibited and may result in termination of the Product at the sole discretion of Fonality. Customer understands that neither Fonality nor its vendors are responsible for the content of the transmissions that may pass through the Internet and/or the Product. Customer agrees that it will NOT use the Product in ways that violate any law or regulation (including but not limited to laws prohibiting transmission of unsolicited fax advertisements), infringe the rights of others, or interfere with the users, services, or equipment of the network. Customer shall not transmit through the Product any unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind or nature. Customer further agrees not to transmit any material that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law or regulation. Any use found to be inconsistent with this restriction will result in termination of the Product. Customer agrees and represents that it is purchasing the Product for its own internal use. Customer shall not sell, resell, transfer or assign, or make a charge for the Product without the advance written permission of Fonality.

5.3. Fraud: It is the express intention of the parties that Customer, and not Fonality, shall bear the risk of loss arising from any unauthorized or fraudulent usage of the Product. Fonality reserves the right, but is not required, to take any and all action it deems appropriate (including blocking access to particular calling numbers or geographic areas) to prevent or terminate any fraud or abuse in connection with the Product, or any use thereof, provided, however, that any such action shall be consistent with applicable federal and state laws, rules, and regulations and provided further that the failure to take any such action shall not limit Customer's responsibility for all usage of the Product.

6. TELEPHONE NUMBER.

6.1 Ownership. Any telephone number provided by Fonality (a telephone number brought to Fonality from Customer not included) to the Customer ("Number") shall be available for Customer's use of the



Product during the term of this Agreement. Fonality reserves the right to change, cancel or move the Number at its sole discretion. Where customer wishes to port in telephone number(s) for use with the Product, Customer should NOT cancel service with the current/previous service provider(s) until Fonality confirms to Customer that the numbers have been successfully ported to Fonality. Customer is responsible for the timely termination of all services with current/previous service provider and the settlement of any charges owed to their current/previous service provider. Additionally, Customer is responsible for the verification that the Number(s) provided to Customer meet the necessary requirements of Customer (i.e., such Number will be considered a local number to Customer in Customer's area or such number is sufficiently different from a customer competitor's number, etc.). Fonality will reasonably accommodate Customer with a particular number selection, prefix or sequence, as available and able to accommodate. Fonality accepts no responsibility or liability in the number ultimately issued or selected for the Product.

6.2 Listing. Additionally, Customer's Number will likely NOT be listed in any local or regional telephone book unless Customer has taken independent steps to pay for telephone number or business advertisement. Numbers associated with the Product are not utilized with a traditional wire line/carrier. Fonality makes no warranty and accepts no responsibility or liability for Customer's Number(s) NOT being listed in telephone books or other directories.

6.3 Porting. Customer's porting away of a telephone number does not extinguish Customer's obligations and/or limitations under this Agreement, including the notice requirements in sections 1 and 8.

7. SUPPORT AND SCHEDULED MAINTENANCE

7.1 Support. Fonality support for the Product is described at the company website. Fonality provides a Service Level Agreement which is located at the company website and is hereby incorporated by reference.

7.2 Scheduled Maintenance. From time-to-time, Fonality performs maintenance to update servers and software that are part of the Product. Fonality performs scheduled maintenance between 8:00 pm to 2:00 am PST/PDT every Tuesday and Thursday. Fonality may, in certain circumstances, need to perform maintenance at other times. At any time that Fonality is required to perform emergency or un-planned maintenance, Fonality will make reasonable efforts to notify the account contact that has been listed by the Customer under the "Options" tab of Customer's online administrative control panel or via email to such Customer email address on file. However, at times, emergency or un-planned maintenance may have to be done before Fonality can give any notice to Customer. In any event, Fonality will not be liable (under this Agreement or any Service Level Agreement) for service interruptions where maintenance is prudent to perform.

8. TERMINATION



8.1 By Customer. Customer may terminate this Agreement in accordance with section 1 of this Agreement. Customer is responsible for Termination Charges, and all Product related charges, including usage, until the termination date or end of the current Term, whichever is later in time. In the event of an unauthorized cancellation or abandonment of service by the customer in the contract Term, Customer shall remain liable for the Monthly Recurring Fee and any applicable taxes, fees or charges, for the remainder of the contract Term plus the retail price of the Equipment (if leasing), if not returned utilizing a valid RMA Number described below.

8.2 By Fidelity. Fidelity reserves the right, at its sole discretion, to suspend or terminate the Product without advanced notice for Customer's breach of this Agreement or Support Terms (including misuse of the Product), Customer's failure to pay any sum due hereunder, suspected fraud or other activity by Customer that adversely affects the Product or the Fidelity network/customer base, or upon the conclusion of the contract Term.. Fidelity reserves the right to determine, at its sole discretion, what constitutes misuse of the Product and Customer agrees that Fidelity's determination is final and binding on Customer. Fidelity may charge an activation fee to reactivate a terminated (or suspended) service. Additionally, in the event of early termination during the contract Term due to a Customer breach, Customer shall remain fully obligated for the payment of all taxes, fees, and charges for Product ordered for the remainder of the contract Term.

8.3 Termination Charges. Upon Termination (a timely termination as described in section 1), in addition to any outstanding balance incurred or due on your account, Customer shall pay the full amount of the monthly recurring charges for the terminated Product for the month of the effective termination (regardless of whether the termination date is mid-billing cycle), in addition to any additional liquidated damages incurred under this Agreement.

8.4 Liability after Termination. Termination or expiration of this Agreement will not extinguish Customer's obligations or liability arising prior to such termination or expiration. Notwithstanding, and after the effective date of any termination, Fidelity shall not be liable to Customer for any obligations under this Agreement, including continued provision of Product.

8.5 Return of Fidelity Equipment (leased). Within fourteen (14) business days of termination of the Product for any reason or expiration of Product, Customer shall return the Equipment at Customer's expense utilizing a valid RMA Number, and in accordance with the return and shipping requirements described in section 2.1.3 herein. The Equipment must be returned to Fidelity in good working order. If the Equipment is not received within fourteen (14) business days of termination or expiration of Product and as required herein, Customer will be charged for the current full list value of such Equipment. Additionally the Customer shall delete all Fidelity software. For return of Equipment after fourteen (14) business days from the RMA Number issue date, please contact Fidelity prior to shipment. Any late return of Equipment agreed to by Fidelity will be subject to a 30% (of Equipment list value) restocking fee.



9. INDEMNIFICATION

9.1 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 PRODUCT, INCLUDING THOSE RELATED TO E911 SERVICE.

9.2. Fonality.

9.2.1 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.

9.2.2 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.

9.2.3 Fonality’s indemnification obligations pursuant to this section 9 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).

10. DISCLAIMERS AND LIMITATION OF LIABILITY



10.1 DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH HEREIN, FONALITY PROVIDES THE PRODUCT "AS IS" AND WITH ALL FAULTS. FONALITY 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 FONALITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES, AND (D) ANY OBLIGATION, LIABILITY OR RESPONSIBILITY FOR LOSS OF PRODUCT OR DAMAGE TO ANY EQUIPMENT OR PART THEREOF, OR ANY PRODUCT DELIVERED OR PROVIDED UNDER THIS AGREEMENT OR THE ORDER. FURTHER, FONALITY DOES NOT WARRANT THAT THE PRODUCT WILL BE UNINTERRUPTED, FREE OF BUGS, ERRORS, VIRUSES OR OTHER DEFECTS, CYBERSECURITY ATTACKS, POWER OR INTER-RELATED OUTAGES, OR THAT THE PRODUCT WILL BE COMPATIBLE WITH CUSTOMER'S EXISTING INTERNET CONNECTION, NETWORK, OR COMMUNICATIONS INFRASTRUCTURE OR ENVIRONMENT.

10.2 DISCLAIMER OF CERTAIN DAMAGES. IN NO EVENT WILL FONALITY 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, INCLUDING BUT NOT LIMITED TO THE ABILITY TO PLACE OR RECEIVE TELEPHONE CALLS TO ANY PARTY OR SERVICE RELATING TO ANY KIND OF EMERGENCY OR EXIGENT CIRCUMSTANCES, 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.

10.3 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, 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 PRODUCT 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 DUE TO THE E911 DIALING CHARACTERISTICS, REQUIREMENTS, AND LIMITATIONS SET FORTH IN THIS AGREEMENT.

10.4 Disclaimer of Third Party Actions and Control.

10.4.1 Fonality does not and cannot control the flow or quality of data to or from the network and other portions of the Internet. Such flow depends in large part on the performance of Internet services (and carrier) 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 Product and/or connection to the Internet (or portions thereof) may be impaired or disrupted.

10.4.2 Fonality does not warrant your use of independent, third party technical/installation support. Fidelity shall not pay such third party or reimburse you for such third party unless previously approved and agreed to by Fidelity in writing. Fidelity 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.

10.4.3 Third party application or add-on services (section 12 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 Fidelity and Fidelity shall not be liable for their use, operation, or reliability.

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

10.6 Disclaimer Regarding Voicemail Transcription (if feature is provided as part of Customer Product selection). Fidelity is not responsible for external communications received through Fidelity's voicemail transcription service. Fidelity 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 dropouts, language, or simple transcription error. Accordingly, Fidelity disclaims any and all liability resulting from or related to mistranscription and you agree to hold Fidelity harmless in such events.

10.7 Disclaimer Regarding Call Recording (if feature is provided as part of Customer Product selection). The call recording feature of the Product 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. Fidelity shall not be liable to Customer or third party(s) involving "call recording" feature(s) of the Product, 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 Equipment 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.

11. INTELLECTUAL PROPERTY

11.1 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. Any software distributed by Fonality which is licensed under the GNU General Public License (GPL) is specifically excluded from this definition.

11.2 All Fonality Intellectual Property is solely for Product 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. Initial use of Fonality software may require Customer to accept a separate license agreement (click-through) 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. 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>

13. EXPORT CONTROLS. 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.

14. U.S. GOVERNMENT LICENSE RIGHTS. All Product 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.

15. 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) and terrorism (including cybersecurity attacks and hacking), blockade, revolution, civil commotion, lightning, fire, storm, flood, earthquake, explosion, power outages, governmental restraint, embargo, inability to obtain or delay in obtaining governmental approvals, permits, or licenses.

16. GOVERNING LAW, JURISDICTION, AND FEES. This Agreement is deemed to be entered into in the State of Texas. 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. The parties agree that any dispute arising under this Agreement shall be governed by and construed in accordance with the laws of the State of Texas without giving effect to its choice of law principles. Customer consents to personal jurisdiction and agrees the exclusive forum for any disputes arising out of or relation to this Agreement will be the state or federal courts in the state of Texas, county of Tarrant.

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 QUOTE(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(s') fees.



17. 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.

18. ENTIRE AGREEMENT. This Agreement, the Quote/Order, Hosted VoIP Services SLA, and the Service Publication, as defined on the current company website, and hereby incorporated by reference, 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.

19. 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.

20. 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.

21. 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/TERMS (THE "WEBSITE"). SUCH MODIFICATIONS SHALL BECOME EFFECTIVE IMMEDIATELY UPON POSTING SUCH TO THE WEBSITE. IF YOU DO NOT AGREE TO THE POSTED, REVISED TERMS AND CONDITIONS, YOUR SOLE RECOURSE IS TO TERMINATE THIS AGREEMENT, SUBJECT TO SECTIONS 1, 8, AND 20 OF THIS AGREEMENT. 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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