



FONALITY BETA PROGRAM TERMS OF SERVICE AND LICENSE AGREEMENT

This Beta Program Agreement (the "Agreement") is made between Fonality Pty Ltd ABN 32 112 795 276, with its principal place of business located at Level 9, 56 Berry Street, North Sydney NSW, 2060 ("Fonality") and you ("Customer") for the purpose of testing a beta version of certain Fonality software or service ("Product").

1. NATURE OF AGREEMENT

The Product is a release of Fonality software that is not generally available for distribution or sale at the time it is made available to Customer and may contain updates, enhancements, improvements and other modifications to the generally available production versions of the Product. The Product shall be used by Customer for testing purposes only and within the parameters as mutually determined by the parties. The purpose of the Beta Program ("Program") shall be to facilitate the commercial compatibility of the Product and to obtain information about Customer's experience with such. In no event shall Fonality be obligated to provide the Customer a copy or instance of the ultimate commercial release version of the Product. Fonality is not obligated to make the Product commercially available.

2. FEEDBACK

a) Notwithstanding the terms of any existing non-disclosure or confidentiality agreement between Customer and Fonality, in consideration for receiving a copy of the Product for testing, Customer agrees to inform Fonality of all problems and ideas for enhancements which come to Customer's attention during the period of this Program, and hereby assigns to Fonality all right, title and interest to such ideas and enhancements and all property rights therein including without limitation all patent, copyright, trade secret, mask work, trademark, moral right or other intellectual property rights. Customer agrees that the feedback prepared by Customer and delivered to Fonality may be used by Fonality for all business purposes without any further consent or accounting in the development, manufacture, marketing, and maintenance of the Product and other Fonality products and services, including reproduction and preparation of derivative works based upon such feedback, as well as distribution of such derivative works.

b) The Customer agrees not to publish, post, upload, distribute or disseminate any inappropriate, profane, defamatory, obscene, indecent or unlawful topics about the Product in a private/public environment.

3. RESERVATION OF RIGHTS

Fonality retains all right, title and interest in the Product and in all materials delivered in connection with such. Customer has no rights in the Product except that Customer is granted a limited, non-exclusive, non-transferable, and non-sublicenseable license to use the Product during the Program period.

4. CONFIDENTIAL INFORMATION

"Confidential Information" shall be defined to include the Product, any software, source code, object code, documentation, Program test results, and any proprietary tools, proprietary knowledge or proprietary methodologies disclosed by Fonality to Customer. Under this Agreement, Customer shall observe complete confidentiality with respect to the Confidential Information, and shall use its best efforts and take all reasonable steps to protect such from any use, reproduction, publication, disclosure, or distribution except as specifically authorized by this Agreement. Customer shall promptly notify Fonality of any known unauthorized use or disclosure of the Confidential Information and will cooperate with Fonality in any litigation brought by Fonality against third parties to protect its proprietary rights. Customer may not permit a third party access to, or use of, the Confidential Information without Fonality's prior written authorization. Customer expressly agrees not to disclose to persons in its own organization who do not have a need to know the existence or contents of (i) the Product(s); (ii) the Program and its results, or (iii) this Agreement. Customer's reports must be marked "Fonality Confidential". Customer further agrees to treat the Product and any other versions of the software (the "Software") as confidential and will not without the express written authorization of Fonality (1) demonstrate, copy, sell or market the Product to any third party; or (2) publish or otherwise disclose information relating to performance or quality of the Product to any third party; or (3) modify, reuse, disassemble, decompile, reverse engineer or otherwise translate the Product or any portion thereof.

5. DISCLAIMERS & LIMITATIONS OF LIABILITY

a) UNDER THE AUSTRALIAN CONSUMER LAW, IF THE AMOUNT PAID FOR THE PRODUCTS OR SERVICES DOES NOT EXCEED \$40,000 OR THE PRODUCTS AND SERVICES PROVIDED TO CUSTOMER ARE OF A KIND ORDINARILY ACQUIRED FOR DOMESTIC, PERSONAL OR HOUSEHOLD USE, CERTAIN GUARANTEES IN RESPECT OF THE PRODUCTS AND SERVICES PROVIDED CANNOT BE EXCLUDED OR LIMITED INCLUDING, IN RESPECT OF PRODUCTS, GUARANTEES AS TO ACCEPTABLE QUALITY, FITNESS FOR ANY DISCLOSED PURPOSE, REPAIRS AND SPARE PARTS, AND EXPRESS WARRANTIES, AND IN RESPECT OF SERVICES, GUARANTEES AS TO DUE CARE AND SKILL, FITNESS FOR A PARTICULAR PURPOSE, AND REASONABLE TIME FOR SUPPLY. WHERE FONALITY IS PERMITTED BY LAW TO LIMIT ITS LIABILITY IN RESPECT OF ANY STATUTORY GUARANTEE UNDER THE AUSTRALIAN CONSUMER LAW, FONALITY DOES SO IN ACCORDANCE WITH SECTION c) BELOW.

b) SUBJECT TO SECTION a) ABOVE, FONALITY PROVIDES THE PRODUCT "AS IS" AND WITH ALL FAULTS. TO THE EXTENT PERMITTED BY LAW, 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 LAW, EQUITY, CONTRACT, TORT, UNDER STATUTE, UNDER WARRANTY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO: (1) ANY IMPLIED WARRANTY OR CONDITION ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OR TRADE, (2) 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 (3) ANY OBLIGATION, LIABILITY OR RESPONSIBILITY FOR LOSS OF

SERVICE OR DAMAGE TO ANY EQUIPMENT OR PART THEREOF, OR ANY PRODUCT DELIVERED OR PROVIDED UNDER THIS AGREEMENT OR THE ORDER. FURTHER, TO THE EXTENT PERMITTED BY LAW, FONALITY DOES NOT WARRANT THAT THE PRODUCT WILL BE FREE OF BUGS, ERRORS, VIRUSES OR OTHER DEFECTS. NOTHING IN THIS AGREEMENT IS INTENDED TO EXCLUDE, LIMIT OR MODIFY RIGHTS WHICH CUSTOMER MAY HAVE UNDER THE AUSTRALIAN CONSUMER LAW OR ANY OTHER STATUTE WHICH MAY NOT BE EXCLUDED, LIMITED OR MODIFIED BY AGREEMENT.

c) WITHOUT LIMITING THE FOREGOING, WHERE ANY GUARANTEE IS IMPLIED BY THE AUSTRALIAN CONSUMER LAW AND CANNOT LAWFULLY BE EXCLUDED, FONALITY (INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES) LIMITS ITS LIABILITY FOR BREACH OF THAT IMPLIED GUARANTEE, SUBJECT TO THE QUALIFICATIONS IN SECTION 64A OF THE AUSTRALIAN CONSUMER LAW OR ANY OTHER LAW IN CONNECTION WITH: (1) THE SUPPLY OF GOODS, TO ANY ONE OR MORE OF THE FOLLOWING (AS FONALITY MAY DETERMINE)- THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS; THE REPAIR OF THE GOODS; THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; OR THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; AND (2) IN CONNECTION WITH THE SUPPLY OF PRODUCTS, TO ONE OF THE FOLLOWING (AS FONALITY MAY DETERMINE), THE SUPPLYING OF THE PRODUCTS AGAIN; OR THE PAYMENT OF THE COST OF HAVING THE PRODUCTS SUPPLIED AGAIN; AND OTHERWISE, TO THE EXTENT PERMITTED BY LAW. FURTHER, TO THE EXTENT PERMITTED BY LAW, CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT FONALITY (INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES) WILL NOT BE LIABLE FOR ANY PRODUCT OUTAGE, INCLUDING ANY INABILITY TO DIAL ANY EMERGENCY TELEPHONE NUMBER USING THE PRODUCT OR TO ACCESS AN EMERGENCY SERVICE OPERATOR.

d) TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL FONALITY OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, VENDORS AND CONTRACTORS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, AGGRAVATED, PUNITIVE, CONSEQUENTIAL OR SIMILAR DAMAGES OR LIABILITIES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO LOSS OF SOFTWARE OR 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 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.

e) The Product may not be at the level of performance, compatibility or reliability of generally available Fonality products and services. The Product may not operate correctly and may be substantially modified prior to first commercial shipment. The entire risk arising out of the use or performance of the Product remains with Customer. Customer understands and agrees that Fonality makes no representation or warranties regarding use of the Product.

f) Fonality agrees to use its reasonable efforts to correct errors associated with the Product within a reasonable time.

g) Customer understands and agrees that all linked servers and live backup servers must be migrated to the Program and that such servers cannot operate on varying levels of the Product.

h) Customer understands that the Product may contain fundamental changes to the commercially available product that prohibit the ability to roll back to a prior release. Fonality will not be liable for any costs or damages that may arise from any attempt to roll back to prior release, and Customer understands and acknowledges that any such attempt may result in irretrievable loss of data and/or service interruption.

i) Fonality shall have the right (but not the obligation), at its sole discretion, to update the Product and/or provide Customer with updates, modifications, and/or patches to the Product to address issues such as security, interoperability, and performance (collectively "Updates"). Any Updates provided by Fonality are subject to all of the terms and conditions in this Agreement. Fonality may deliver, at any time and without notice to Customer, automated Updates to Customer's computer system or other device upon which the Product is installed. By using the Product, Customer consents to such automated updating. Customer's use of the Updates shall be governed by the terms of this Agreement.

6. TERMINATION

a) Due to the roll back constraints outlined in 5(f), above, Customer understands that roll back to prior versions may not be possible and, therefore that Fonality may not be able to grant the Customer's request to terminate Customer's participation in the Program without data loss or other potential system damage.

b) Should a Customer wish to terminate participation in the Program, the Customer must provide Fonality with written notice of this intent. Fonality will then remove the Customer from the Program effective the next Program testing cycle provided that testing has not already commenced.

c) In all cases of termination, the Customer is obliged to remove or return all media containing the product and/or all files built with Customer's help back to Fonality. All items must be removed from storage devices in a way that guarantees non-recoverability and, upon demand by Fonality, to confirm the complete removal through a declaration in lieu of oath.

7. GENERAL

a) This Agreement shall be governed, construed and enforced in accordance with the laws of New South Wales. Any notice required by this Agreement shall be given by prepaid, first class, certified mail, return receipt requested to above address or such other address as may be given from time to time under the terms of this notice provision.

b) Except for a contemporaneous statement of work that may accompany the Product and Program, this Agreement constitutes the entire agreement between the parties for the Product and all other prior negotiations, representations, agreements, and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties.

c) Customer shall comply with all applicable laws, regulations, and ordinances in connection with its activities pursuant to this Agreement.

d) Failure of Fonality to enforce a right under this Agreement shall not act as a waiver of that right or the ability to later assert that right relative to the particular situation involved.

e) If any provision of this Agreement shall be found by a court to be void, invalid or unenforceable, the same shall be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

f) **FONALITY RESERVES THE RIGHT TO CHANGE THESE TERMS AND CONDITIONS FROM TIME TO TIME AS IT SEES FIT AND THE CUSTOMER'S CONTINUED USE OF THE PRODUCT WILL SIGNIFY THEIR ACCEPTANCE OF ANY ADJUSTMENT TO THESE TERMS. ANY CHANGES TO THE AGREEMENT WILL BE POSTED IN THIS LIVING DOCUMENT LOCATED ON THE BETA PROGRAM WEBSITE (WWW.FONALITY.COM.AU/BETA-terms). CUSTOMERS ARE THEREFORE ADVISED TO RE-READ THIS STATEMENT ON A REGULAR BASIS. CONTINUED USE OF THE SERVICE FOLLOWING THE POSTING OF MODIFICATIONS WILL CONSTITUTE YOUR ACCEPTANCE OF THE REVISED TERMS AND CONDITIONS.**

The parties have caused this Agreement to be executed in duplicate by their duly authorized representatives.

NAME _____

Fonality Pty Ltd.

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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