



## TERMS OF SERVICE AND LICENCE AGREEMENT

**IMPORTANT—READ CAREFULLY:** These terms and conditions and licence agreement (collectively, “Agreement”) is between you and your end users (hereafter “you”, or “Customer”) and Fonality Pty Ltd ABN 32 112 795 276 (“Fonality”) for one of four versions of the Fonality\* software product identified below, which includes computer software, media, printed materials, "online" or electronic documentation, and as applicable, hosted online services ("Product"). These terms and conditions all cover any add-on Orders derived from your initial Order. By using the Product and/or any related service, application, plug-in, component, functionality, or program created by Fonality, you acknowledge and represent that you have read, understand, have the legal capacity to, and hereby agree to be legally bound by this Agreement.

### **trixbox Product versions:**

#### **trixbox Community Edition ("CE")**

The trixbox\* CE software distributed by Fonality is licenced under the GNU General Public Licence (GPL) ("Open Source Software"). The terms of this licence can be found at [gnu.org/licenses/gpl.html](http://gnu.org/licenses/gpl.html).

#### **trixbox Pro Standard Edition ("SE")**

The trixbox Pro SE software distributed by Fonality via download is a paid version of the Product and is licenced under the GNU GPL Open Source Software. The terms of this licence can be found at [gnu.org/licenses/gpl.html](http://gnu.org/licenses/gpl.html). Access to the trixbox Pro SE hosted service is subject to the terms and conditions set forth below.

#### **trixbox Pro Enterprise Edition ("EE")**

The trixbox Pro EE software distributed by Fonality is a paid version of the Product with additional features not available in the trixbox Pro SE version. The trixbox Pro EE software distributed via download is licenced under the GNU GPL Open Source Software. The terms of this licence can be found at [gnu.org/licenses/gpl.html](http://gnu.org/licenses/gpl.html). Access to the trixbox Pro EE hosted service is subject to the terms and conditions set forth below.

#### **trixbox Pro Call Center Edition ("CCE")**

The trixbox Pro CCE software distributed by Fonality is a paid version of the Product with additional features not available in the trixbox Pro SE version. The trixbox Pro CCE software distributed via download is licenced under the GNU GPL Open Source Software. The terms of this licence can be found at [gnu.org/licenses/gpl.html](http://gnu.org/licenses/gpl.html). Access to the trixbox Pro CCE hosted service is subject to the terms and conditions set forth below.

## **1. ORDERS AND PAYMENTS**

**1.1 Orders.** Customer's signature (electronic or physical) of an Estimate 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 Free on Board (FOB) Fonality North Sydney (Incoterms 2010). Once an Order is accepted by Fonality, it may be changed or cancelled ONLY with the written consent of Fonality. Fonality may require Customer to undergo a credit assessment at any time, including prior to Fonality providing Customer with the Product. Fonality may at any time refuse to supply the Product to Customer if Customer fails such credit assessment or Fonality considers Customer represents a credit risk. If Fonality requires Customer to undergo a credit assessment, Customer must provide Fonality or its nominated credit agency with such accurate and up-to-date information as may be requested by Fonality to enable Fonality or its nominated credit agency to make a proper assessment of Customer's credit standing.

**1.2 Payments.** Fees are exclusive of any customs duties, freight, taxes (sales, use, value added, excise, federal, state, local, Goods and Services Tax ("GST"), public utility, universal service, personal property tax, or other similar taxes), all of which are your responsibility. You agree to pay all amounts due upon receipt of invoice. If amounts due remain unpaid for 7 days after Fonality has notified Customer of the non-payment then 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 15% of the outstanding balance, or the maximum amount allowed by law, whichever is higher. Fonality shall not be responsible for any third party costs incurred by Customer for exceeding credit limit, insufficient funds or other reasons.

**1.3 FINAL SALE. ALL TRIXBOX PRO SALES ARE NON-REFUNDABLE.**

**1.4 FINANCIAL HARDSHIP POLICY.**

Please see our Financial Hardship Policy for information regarding our processes to assist Customers who are experiencing difficulties paying their bill. The Financial Hardship Policy is available at [www.fonality.com.au/legal](http://www.fonality.com.au/legal).

## **2. YOUR REGISTRATION OBLIGATIONS**

To obtain and use any trixbox hosted service, you will be required to register with Fonality by completing a registration form and designating a user ID and password. When registering with Fonality you agree to provide true, accurate, current and complete

information about yourself as prompted by the registration form (such information being the "Registration Data") and to maintain and promptly update the Registration Data to keep accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or we have grounds to suspect that such information is untrue, inaccurate, not current or incomplete, we may suspend or terminate your account and refuse any and all current or future use of the Product (or any portion thereof).

You are responsible for maintaining the confidentiality of the user ID and password, and are fully responsible for all activities that occur under your user ID or password. You agree to immediately notify Fonality of any unauthorized use of your user ID or password or any other breach of security. Fonality cannot and will not be liable for any loss or damage arising from any unauthorized use of your account.

### **3. TERMS OF SERVICE**

Certain elements of Fonality'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 Fonality. This connection may be disconnected by you at any time, but such disconnection will significantly limit your ability to utilize the products.

### **4. EMERGENCY SERVICE AND PRIORITY ASSISTANCE**

Please note that Fonality does not provide telecommunications services. Your telecommunications service provider is responsible for compliance with Emergency Service and Priority Assistance services. If Customer requires a service which includes priority assistance for a life threatening medical condition, such a service may be available for Customer to obtain directly from other service providers such as Telstra Corporation Ltd ("Telstra"). Depending on your specific installation and service provider, your Product installation may not send and receive Emergency Calls (as defined in the Telecommunications (Emergency Call Service) Determination 2009), 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 Emergency Service and Priority Assistance calls. **Fonality does not provide any warranties in connection with the matters specified in this section 4.**

### **5. USER CONDUCT / ACCEPTABLE USE POLICY**

You may not use the Product in any way that violates applicable federal, state, or international law or regulation. In addition, Fonality reserves the right to terminate your access to and use of the Product if, in our view, your conduct fails to meet any of the following guidelines for User conduct:

- You may not attempt to harm, disrupt, or otherwise engage in activity that diminishes, the Fonality website, computer systems and network, or the Product.
- You may not attempt to interfere with any other person's use of the Product.
- You may not misrepresent your identity or impersonate any person.
- You may not attempt to gain access to any account, computers, or networks related to the Product without authorization.
- You may not attempt to obtain any data through any means from the Product, except if we intend to provide or make it available to you.
- You may not use the Product to participate in pyramid schemes or chain letters.
- You may not use the Product to send, either directly or indirectly, any unsolicited bulk e-mail or communications or unsolicited commercial e-mail or communications.
- You may not use the Product for defaming, abusing, harassing, stalking, threatening or otherwise violating the legal rights of others.
- You may not use the Product to send or otherwise make available, any material protected by intellectual property laws unless you own or control the rights to such material or have received all necessary consents.
- You may not use the Product to send or otherwise making available any material that contains viruses, Trojan horses, worms, corrupted files, or any other similar software that may damage the operation of another's computer or property.
- You may not use the Product to violate any code of conduct or other guidelines which may be applicable to the Product or hosted service.
- You may not use the Product to harvest or otherwise collecting information about others, including e-mail addresses.
- You may not attempt to modify, translate, adapt, edit, copy, decompile, disassemble, or reverse engineer any software used or provided by Fonality in connection with the Product.

All judgments concerning the applicability of these guidelines shall be at the sole and exclusive discretion of Fonality.

### **6. DISCLAIMERS AND LIMITATION OF LIABILITY**

#### **6.1 DISCLAIMER OF WARRANTIES.**

**6.1.1** 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 6.3 OF THIS AGREEMENT.

**6.1.2** SUBJECT TO SECTION 6.1.1, 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: (A) ANY IMPLIED WARRANTY OR CONDITION ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OR TRADE, (B) 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 (C) ANY OBLIGATION, LIABILITY OR RESPONSIBILITY FOR LOSS OF SERVICE OR DAMAGE TO ANY EQUIPMENT OR PART THEREOF, OR ANY PRODUCT OR SERVICE 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.

**6.2 DISCLAIMER OF CERTAIN DAMAGES.** 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.

**6.3 LIMITATION OF LIABILITY.** 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: (A) 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 (B) IN CONNECTION WITH THE SUPPLY OF THE PRODUCT, TO ONE OF THE FOLLOWING (AS FONALITY MAY DETERMINE), THE SUPPLYING OF THE PRODUCT AGAIN; OR THE PAYMENT OF THE COST OF HAVING THE PRODUCT 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 SERVICE OUTAGE.

**6.4 Disclaimer of Third Party Actions and Control (including your selected carrier).** Fonality does not and cannot control the flow or quality of data to or from Customer 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.

**6.5 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 Product, 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.

**6.6 Disclaimer Regarding Voicemail Transcription (if applicable).** 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.

The foregoing disclaimers and limitations 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 guarantees or 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 will not apply to you. For further Equipment warranty information, you may contact Fonality at Level 6, 56 Berry Street, North Sydney NSW, 2060. Any warranty DOES NOT apply to any beta software, software made available for testing or demonstration purposes, or any temporary software modules. To the extent permitted by law, all such software is provided "AS IS" without any warranty whatsoever.

## **7. INDEMNIFICATION.**

**7.1 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 THE INDEMNIFIED PARTY(IES) FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIM(S) RELATED TO THE FAILURE OR OUTAGE OF THE PRODUCT.

## **7.2. Finality**

**7.2.1** Finality shall defend Customer, and its officers, directors and employees, against any third party action alleging that any Finality Product or service infringe(s) any valid U.S. or Australian patent or copyright, and Finality shall pay all settlements entered into, and all costs (including reasonable attorneys' fees) in connection with such action. If any Product or service, or parts thereof, becomes, or in Finality's opinion may become, the subject of an infringement claim, Finality may, at its option, (a) procure for Customer the right to continue using such Product or service, (b) modify or replace such Product with substantially equivalent non-infringing products or (c) require the return of such Product or cease providing hosted service and refund to Customer a pro-rata portion of the fees paid in respect of such Product or service.

**7.2.2** Finality shall have no obligations under section 7.2.1 with respect to any third party action alleging that the use of any Product or service, or any part thereof, in combination with any products or services not supplied by Finality infringes any valid US or Australian patent or copyright if (a) the infringement is due solely to the combination and use of such products/services together, if the use of the Product or service independent of any product/service not supplied by Finality would not have given rise to the claim; or (b) Customer is advised by Finality either directly or by means of documentation, marketing or other published materials that the use of the Product or service in tandem with such products/services represents a risk of infringement; and (c) Customer combines and uses such products/services with the Product or service in contravention of Finality's advice to Customer.

**7.2.3** Finality's obligations pursuant to this section 7 shall be subject to Customer: (a) notifying Finality promptly in writing of such action, (b) giving Finality 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 Finality's prior written consent and (d) providing all reasonable assistance to Finality (provided that Finality reimburses Customer for its out-of-pocket expenses incurred in providing such assistance).

## **8. INTELLECTUAL PROPERTY**

**8.1** For the purpose of this section, the term "Finality 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 copyright, moral rights, and all derivative works thereof, (ii) trademark and trade or business 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, licence, 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 Finality which is licenced under the GNU General Public Licence (GPL) is specifically excluded from this definition.

**8.2** All Finality Intellectual Property is solely for use by Customer as shipped, and may not be used as a replication master or, unless otherwise permitted by law, copied without the prior written consent of Finality. Use of software delivered in conjunction with the Product or as a separate item shall be subject to this Agreement and a separate licence agreement that Customer shall be required to accept prior to delivery/installation. Customer acknowledges that all Finality Intellectual Property furnished by Finality hereunder and the contents thereof are the property of Finality, and Customer has no right or interest therein except that Customer is granted a perpetual, non-exclusive, worldwide, non-transferable, and non-sublicenceable licence for the Term to use the Finality Intellectual Property for the sole purpose of obtaining the benefit of the Product under this Agreement. This licence 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 licence granted. No other licence(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 Finality Intellectual Property. Customer shall be liable for all damages, including loss of anticipatory profits, incurred by Finality 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 Finality patents, copyrights, trademarks, intellectual property or know-how.

## **9. CONFIDENTIAL INFORMATION**

**9.1** Nondisclosure: All intellectual property and confidential information ("Confidential Information") disclosed by Finality pursuant to this Agreement shall not be distributed, disclosed, or disseminated in any way or form to anyone except your own employees who have a reasonable need to know such Confidential Information and who have been advised of the confidential nature and are required by written agreement to observe the terms and conditions hereof, nor shall Confidential Information be used by you for your own purpose, except for the purposes of exercising its rights or fulfilling its obligations under this Agreement. If you are required by a subpoena or court order to disclose Confidential Information, you shall disclose only that amount of information requested to comply with such subpoena or court order and shall provide Finality with prior sufficient notice to allow Finality to seek a protective order.

**9.2** Exclusions: The obligations of section 9.1 shall not apply, however, to any information which is already in the public domain or becomes available to the public through no breach of this Agreement by you; was in your possession prior to receipt from Finality as proven by your written records; is received independently on a non-confidential basis from a third party free to disclose

such information to you; is independently developed by you as proven by your written records prior to receipt from Fonality; or is licenced under the GNU General Public Licence ("GPL").

**9.3 Return of Confidential Information:** Upon request of Fonality, or upon any expiration or termination of this Agreement, you shall promptly return all copies and embodiments of the Confidential Information to Fonality.

## 10. REMEDIES FOR BREACH

**10.1.** 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.

**10.2.** 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.

## 11. TERMINATION

Without prejudice to any other rights, Fonality may terminate this Agreement upon notice 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 the Product and all of its component parts.

In the event that Fonality terminates a "lifetime buyout" of the trixbox Pro EE or trixbox Pro CCE, as provided for above, Fonality will prorate your upfront payment towards a three-year agreement, and you will be responsible for the payment of any remaining fees on such three-year agreement.

## 12. PRIVACY

**12.1** Fonality's Privacy Policy can be found at <http://www.fonality.com.au/legal/privacy.html>.

**12.2** Without limiting section 12.1, you consent to:

**12.2.1** Fonality and our related bodies corporate collecting, using and disclosing your information to third parties, including but not limited to CreditorWatch Pty Limited ("CreditorWatch"), for the purpose of credit assessment and credit reporting. The information disclosed to such third parties may include, without limitation, any payment defaults and information which identifies the Customer as the defaulting entity;

**12.2.2** information relating to your creditworthiness being used and disclosed by CreditorWatch in accordance with the Privacy Policy of CreditorWatch available at <https://creditorwatch.com.au/page/privacy>; and

**12.2.3** information relating to your creditworthiness being published in CreditorWatch databases available to other customers of CreditorWatch.

**12.3** To the extent permitted by law, Fonality will be under no liability to Customer in respect of any liability, loss, damage or expense which you may suffer or incur or which may arise directly or indirectly in connection with the supply of your information to Fonality, or the subsequent use or disclosure of your information by Fonality or any third parties in accordance with this section 12.

**12.4** Customer warrants that:

**12.4.1** any information it provides is accurate, complete, up to date and not misleading or deceptive; and

**12.4.2** the publication of your information in accordance with this section 12 will not infringe any rights in respect of intellectual property, privacy, confidentiality or otherwise.

## 13. 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 and, as applicable, will obtain all required U.S. and local authorizations, permits, or licences. The parties agree to provide to each other information as may be reasonably required by the other in connection with obtaining authorizations or licences

## 14. GOVERNING LAW & JURISDICTION

This Agreement and the related Estimate(s), Order(s), and add-on Orders shall be governed by and construed under the laws in force in New South Wales. To the extent permitted by law, the parties disclaim the application of the 1980 U.N. Convention on Contracts for the International Sale of Goods and any successor thereto is disclaimed. You hereby irrevocably submit to the jurisdiction of the courts of New South Wales with respect to any proceeding under this Agreement or relating to the Product. You will not prosecute any action, suit, proceeding or claim arising under or by reason of this Agreement except in such courts.

## 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), blockade, revolution, civil commotion, lightning, fire, storm, flood, earthquake, explosion, governmental restraint, embargo, inability to obtain or delay in obtaining governmental approvals, permits, or licences.

## 16. ATTORNEY FEES

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.

#### **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**

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.

#### **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. If to Customer, the address Customer provided to Fonality in the Order. If to Fonality, Level 9, 56 Berry Street, North Sydney NSW, 2060. Notice(s) 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. Additionally, and in respect to Customer only, Notice may be sent by email to any email address Customer advises on the Order or otherwise. Notice(s) sent by email will be deemed effective at the time sent, unless Fonality is notified the email was not successfully sent.

**21. CUSTOMER SERVICE ENQUIRIES.** For customer service enquiries, please contact 02 8484 2601 between 9:00 AM and 6:00 PM EST or email us at [accounts@fonality.com.au](mailto:accounts@fonality.com.au). Our customer service hours of operation are 9:00 AM and 6:00 PM EST.

#### **21A. CUSTOMER COMPLAINTS AND OTHER ISSUES.**

**21A.1** Complaint handling process. Fonality will handle Customer complaints in relation to the provision of the Service in accordance with (a) chapter 8 of the Telecommunications Consumer Protections Code 2012, where it applies; and (b) the applicable Fonality Complaints Handling Policy (found at [www.fonality.com.au/legal](http://www.fonality.com.au/legal)) in all other circumstances.

**21A.2** Parties not to commence proceedings. Neither party may institute a claim or a proceeding against the other party in respect of any dispute in connection with the operation or interpretation of this Agreement ("a Dispute") unless and until the parties have exhausted the process specified in this section. The previous sentence will not limit the rights of (i) Customer to refer a valid dispute to the Telecommunications Industry Ombudsman or other external dispute resolution procedure in accordance with an applicable industry code; or (ii) Fonality to commence credit management or debt recovery action in connection with a Service provided under this Agreement.

**21A.3** Notification of Dispute. Where a Dispute arises, either of the parties may, by written notice, notify the other party of the existence of that Dispute. The parties will use their reasonable endeavours to resolve that Dispute within 10 business days after the notice of Dispute is given.

**21A.4** Payments not affected. Customer is not relieved of its obligations to make payments due and owing under this Agreement (other than bona fide disputed amounts) because of the existence of a Dispute.

**21A.5** Costs. Each party will bear its own costs of complying with this section.

#### **22. 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.AU/LEGAL](http://WWW.FONALITY.COM.AU/LEGAL) (THE "WEBSITE") AND CUSTOMER MUST CHECK THE WEBSITE FOR ANY ALTERATIONS TO THESE TERMS AND CONDITIONS ON A REGULAR BASIS. 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 11 AND 21 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](mailto:INFO@FONALITY.COM).

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