

Terms and Conditions

1. Definitions

- a. **“Fonality”** means Fonality Pty Ltd.
- b. **“Referral Partner”** means an individual or a company that:
 - i. Has entered into the Fonality Australia Referral Partner Program Terms and Conditions.
 - ii. Provides Fonality with information about a new prospective Fonality customer.
- c. **“Referral Partner Program”** means the referral program described more fully at:
<https://www.fonality.com.au/referral/>

2. Scope

The Referral Partner Program is valid only for referrals on new service activation for customers that have not been subscribers of any Fonality service within the previous twelve months. Referred customers may not have prior or existing orders, quotes or proposals in progress with Fonality, another distributor of Fonality products and services or another Referral Partner. The Referral Partner Program is only valid for customers located in Australia and furthermore, cannot be combined with any other offers. Referral Partner has no authority to bind Fonality to any contract, representation, or understanding concerning Fonality or the Fonality Products or Services. This appointment as Referral Partner is not exclusive, and Fonality may appoint other Referral Partners and/or Referral Partners for the Products or Services within any territory that Referral Partner does business. Referral Fees will only be paid for customers sold to by Referral Partner and with whom Referral Partner has had direct personal contact and to whom Referral Partner has directly endorsed and recommended the Products. Notwithstanding any other provision of this Agreement, Fonality will not be obligated to pay the Referral Fee to Referral Partner if Referral Partner uses mass mailings and other forms of mass solicitations to potential customers.

3. Lead Registration

In order to avoid marketing conflicts, at all times, Referral Partner agrees to abide by Fonality's then-current lead registration system. Referral Partner shall submit all potential leads to Fonality. Referral Partner shall only pursue sales to those leads that have been approved in writing by Fonality (“Registered Leads”). Once a lead has been registered by Referral Partner, that lead is considered active for a period of three (3) months. Referral Partner will have the opportunity to re-register a lead at the end of such three (3) month period.

In the event that the Customer was referred to Fonality by more than one reseller, distributor, Referral Partner or the like, then Fonality will pay the Referral Fee to the reseller, distributor, or Referral Partner who provided the first referral relative to such referred customer. However, Fonality may, in its sole discretion, determine to share the Referral Fee between such resellers, distributors, or Referral Partners, as the case may be.

Fonality reserves the right to change such list prices and/or authorized discounts at any time.

4: The Referral Partner is an independent contractor. The Referral Partner agrees and acknowledges that it will not make any representations and/or warranties beyond the representations and/or warranties located at www.netfortris.com and www.fonality.com.au . Fonality and its Affiliates specifically disclaim any representation and/or warranties made by a Referral Partner to an end customer that are over and above the representations and/or warranties located at www.netfortris.com and www.fonality.com.au . The parties acknowledge that this appointment shall not establish a principal/agent relationship or create a joint venture, franchise, or partnership at law between them. Referral Partner hereby waives the benefit of any state or federal laws or regulations dealing with the establishment and regulation of franchises.

5: The Referral Partner agrees that it shall inform its customers that Referral Partner is a business that is independent from Fonality and shall not hold itself out as an agent of Fonality or attempt to bind Fonality to any third party agreement.

6: The Referral Partner Program is subject to the Fonality Terms and Conditions of service as posted and periodically updated on the Fonality website at www.fonality.com.au and www.netfortris.com.

7: The Referral Partner agrees and acknowledges that any prospective customer that becomes a customer of Fonality after being referred to Fonality by Referral Partner is deemed to be a customer of Fonality with respect to the services Fonality provides.

8: Misuse or abuse of the Products and Services or the Referral Partner Program may result in the disconnection of the Fonality service to the end customer; and/or the forfeiture by Referral Partner of any payments that may be due under these Terms and Conditions.

9: Payment

For each sale of Fonality's Premises-based product or Fonality's Trixbox Pro, Fonality shall pay Referral Partner that certain percentage (as set forth at www.fonality.com.au/referral_program) of the net amount invoiced to the Reseller, excluding discounts, taxes, shipping, bad debt, uncollectable amounts and any royalties, licensing fee or other third party payments; or Hosted solution, Fonality Connect, Fonality shall pay Referral Partner the amount, on a per seat basis set forth at www.fonality.com.au/referral_program (the "**Referral Fee**").

Referral Fee payments for valid customer referrals under the Referral Partner Program will be made via electronic funds transfer to an Australian bank or by issuing a cheque payable to the Referral Partner. Payment will not occur until the referred customer has activated service and has paid their bill for the first two billing periods. The referred customer must be in good standing for sixty (**60**) days at the time payment is issued. Payment will be forfeited if the referrer does not supply a valid tax invoice within ninety (**90**) days of the order date of referral.

10: Confidential Information

“*Confidential Information*” shall mean all documents, data files, information and other materials made available to Referral Partner or generated by Referral Partner in connection with the Referral Partner Program, including, but not limited to, all information regarding services, Fonality customers (including those customers and potential customers sold to or referred to Fonality by Referral Partner), marketing data, business plans, technical information and information relating to Fonality’s business developed by Referral Partner during the term of this Agreement.

Confidential Information shall not include information that:

- i. is already known by the Referral Partner;
- ii. becomes publicly known by Referral Partner through no wrongful conduct of Referral Partner;
- iii. is received from a third party without similar restrictions;
- iv. is required to be disclosed by law, governmental regulation or court order, as long as Referral Partner provides Fonality with timely written notice of such requirement.

The Confidential Information shall remain the exclusive property of Fonality during and after the term of this Agreement.

Referral Partner agrees that it will not use, disseminate, or in any way disclose, or permit any of its employees, agents, or representatives to disclose, any Confidential Information to any person, firm or business, except for any purpose Fonality may authorize in writing. Referral Partner agrees that it shall treat all Confidential Information with the same degree of care as Referral Partner accords its own confidential information, but in no case less than reasonable care. Referral Partner agrees that it shall disclose the Confidential Information only to those of such Referral Partner’s employees who need to know such information in order to perform the obligations under this Agreement, and Referral Partner certifies that Referral Partner’s employees have previously agreed, either as a condition of employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those terms and conditions applicable to such Referral Partner under this Agreement.

11: Intellectual Property; Sales and Marketing Materials

Referral Partner acknowledges that Fonality and its licensors retain ownership rights in and to the intellectual property of Fonality and such licensors, including without limitation any Fonality trademark, service mark, trade dress or other designation, advertising material and any associated goodwill, whether presently existing or later developed by Fonality (collectively “*Intellectual Property*”). Unless expressly stated otherwise in this Agreement, nothing contained herein shall give Referral Partner any rights to use any Intellectual Property in advertising, publicity or marketing materials.

12: Foreign Corrupt Practices Act

In conformity with the United States Foreign Corrupt Practices Act, Referral Partner represents and warrants that it shall not directly or indirectly make an offer, payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing an act or decision of an official of any government, foreign or domestic, (including a decision not to act) or inducing such a person to use his influence to affect any such governmental act or decision in order to assist Fonality in obtaining, retaining or directing any such business.

13: Miscellaneous

13.1 FONALITY DISCLAIMS ALL WARRANTIES WITH REGARD TO PRODUCTS RENDERED UNDER THIS AGREEMENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. REFERRAL PARTNER SHALL EXTEND NO WARRANTIES OR GUARANTEES IN THE NAME OF FONALITY OR WHICH WOULD BIND FONALITY WITH RESPECT TO THE PERFORMANCE, DESIGN, QUALITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PRODUCTS.

13.2 NEITHER FONALITY NOR ITS BRANCHES, SUBSIDIARIES, SUPPLIERS, OR PARENT CORPORATIONS SHALL BE LIABLE TO REFERRAL PARTNER OR ANY THIRD PARTY FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, TORT OR COVER DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM THE USE OR INABILITY TO USE THE PRODUCTS, DELAY OF DELIVERY AND IMPLEMENTATION, OR LOSS OF PROFITS, DATA, BUSINESS OR GOODWILL, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. FONALITY MAKES NO REPRESENTATION THAT THE OPERATION OF FONALITY'S WEBSITE OR SERVICE AND PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE. ANY PRODUCTS OR SERVICES OF FONALITY ARE NOT TO BE USED IN MEDICAL OR OTHER CIRCUMSTANCES WHERE FAILURE OR INTERRUPTION COULD CAUSE INJURY OR DEATH.

13.3 FONALITY'S LIABILITY FOR ALL CLAIMS OF ANY KIND ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LIMITED SOLELY TO MONEY DAMAGES AND SHALL NOT EXCEED THE AMOUNT OF REFERRAL FEES DUE TO REFERRAL PARTNER.

13.4 Neither party shall have the right to recover damages or to indemnification of any nature, whether by way of lost profits, expenditures for promotion, payment for good will or otherwise made in connection with the business contemplated by this Agreement, due to the expiration or permitted or lawful termination of this Agreement. EACH PARTY WAIVES AND RELEASES THE OTHER FROM ANY CLAIM TO COMPENSATION OR INDEMNITY FOR SUCH EXPIRATION OR TERMINATION.

13.5 Each party agrees to indemnify, defend, save and hold the other party harmless from and against all liabilities, damages, judgments, claims, costs and expenses, including, but not limited to, reasonable attorneys' fees incurred by the other party, as a result of or arising out of any breach of obligation, warranty or representation in this Agreement by the other party.

13.6 In the event that any provision of this Agreement shall be invalid, illegal or unenforceable in any respect, such a provision shall be considered separate and severable from the remaining provisions of this Agreement, and the validity, legality or enforceability of any of the remaining provisions of this Agreement shall not be affected or impaired by such provision in any way.

13.7 This Agreement shall not be assigned by Referral Partner, in whole or in part, without the express written consent of Fonality. This Agreement may be assigned by Fonality without consent of the Referral Partner.

13.8 THIS AGREEMENT AND PERFORMANCE BY THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE NEW SOUTH WALES, WITHOUT REGARD TO PROVISIONS ON THE CONFLICTS OF LAWS. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THIS AGREEMENT.

14: Term

This Agreement will remain in place for a term of twelve (12) months.

Please sign and return this confirmation of acceptance of the Fonality Referral Partner Program Terms and Conditions.

This confirmation becomes effective upon Fonality's receipt and acceptance of the signed agreement.

Signature _____

Date _____

Referral Partner Information

By _____

Name _____

Company Name _____

Address _____

City/State/Province _____

Phone Number _____

Email Address _____

Fonality Representative _____

