



TERMS OF SERVICE AND LICENSE AGREEMENT

IMPORTANT—READ CAREFULLY: These terms and conditions and license agreement (collectively, "Agreement") is between you and your end users (hereafter "you", or "Customer") and Fonality, Inc. ("Fonality") for one of four versions of the Fonality* software product identified below, which includes computer software and may include associated hosted online services and access to same, media, printed materials, and "online" or electronic documentation ("Product"). By using the Product or the associated hosted service, and 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 licensed under the GNU General Public License (GPL) ("Open Source Software"). The terms of this license can be found at 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 licensed under the GNU GPL Open Source Software. The terms of this license can be found at 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 licensed under the GNU GPL Open Source Software. The terms of this license can be found at 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 licensed under the GNU GPL Open Source Software. The terms of this license can be found at 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 Service. Orders are not binding until accepted by Fonality, in its sole discretion. Once an Order is accepted by Fonality, it may be changed or cancelled ONLY with the written consent of Fonality.

1.2 Payments. You have the option to pay for your use of the trixbox Pro EE or trixbox Pro CCE software in the form of a monthly recurring fee or a "lifetime buyout". You must choose your payment option at the time you download the Product. Fees are exclusive of any freight, taxes (sales, use, personal property tax, etc.), duties or imposts, all of which are your responsibility. To the extent you choose to incur monthly recurring fees for your use of the trixbox Pro EE or trixbox Pro CCE, you agree to

pay all amounts due upon receipt of invoice. Balances not paid within 10 days of the due date are subject to a late-payment charge of the greater of 1.5% of the outstanding balance, or the maximum amount allowed by law, whichever is higher. Failure to pay all amounts when due may result in termination of your access to the hosted service.

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

2. YOUR REGISTRATION OBLIGATIONS

To obtain and use the 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:

2.1 provide true, accurate, current and complete information about yourself as prompted by the registration form (such information being the "Registration Data")

2.2 maintain and promptly update the Registration Data to keep it true, 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 hosted service (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. e911 SERVICE

Please note that Fonality does not provide telecommunications services. Your telecommunications service provider is responsible for compliance with E911 services. Depending on your specific installation and service provider, your Product installation may not send and receive E911 calls reliably, and may not pass correct location information to emergency services. It is the sole responsibility of the installer and user to ensure compliance with all local codes, and to inform users of any limitations or issues regarding 911 use. Fonality is not liable for any resulting damages related to 911 use.

5. USER CONDUCT/ACCEPTABLE USE POLICY

You may not use the hosted service in any way that violates applicable federal, state, or international law, or for any unlawful purpose. In addition, Fonality reserves the right to terminate your access to and use of the Services 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 or hosted service.
- You may not attempt to interfere with any other person's use of the Product or hosted service.
- 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 or hosted service without authorization.
- You may not attempt to obtain any data through any means from the Product or hosted service, except if we intend to provide or make it available to you.
- You may not use the Product or hosted service to participate in pyramid schemes or chain letters.
- You may not use the Product or hosted service 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 or hosted service for defaming, abusing, harassing, stalking, threatening or otherwise violating the legal rights of others.
- You may not use the Product or hosted service 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 or hosted service 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 or hosted service 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 or hosted service 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 or hosted service.

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. 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 SERVICE OR DAMAGE TO ANY PRODUCT, 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 FREE OF BUGS, ERRORS, VIRUSES OR OTHER DEFECTS.

6.2 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, 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.

6.3 LIMITATION OF LIABILITY. WITHOUT LIMITING THE FOREGOING, FONALITY'S (INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES) LIABILITY ARISING OUT OF OR RELATING TO THE PRODUCT AND THIS AGREEMENT IS LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE PRODUCT REGARDLESS OF THE AMOUNT OF DAMAGES CUSTOMER MAY INCUR AND WHETHER SUCH DAMAGES ARISE IN

FACT, LAW, EQUITY, CONTRACT, TORT (INCLUDING NEGLIGENCE AS DESCRIBED ABOVE), STRICT LIABILITY, UNDER STATUTE, UNDER WARRANTY OR OTHER THEORY. FURTHER, CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT FONALITY (INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES) WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE, INCLUDING E911 SERVICE OUTAGE AND/OR INABILITY TO DIAL 911 OR ANY OTHER EMERGENCY TELEPHONE NUMBER USING THE PRODUCT OR TO ACCESS AN EMERGENCY SERVICE OPERATOR.

6.4 Disclaimer of Third Party Actions and Control. 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 provided or controlled by third parties. At times, actions or inactions caused by these third parties can produce situations in which Customer's connection to the Internet (or portions thereof) may be impaired or disrupted. Accordingly, Fidelity disclaims any and all liability resulting from or related to such events.

The foregoing disclaimers and limitation of liability will apply to the maximum extent permitted by applicable law. The laws of some states/jurisdictions do not allow the exclusion of implied warranties or the exclusion or limitation of certain damages. To the extent that those laws apply to this Agreement, the exclusions and limitations set forth above may not apply to you. For further Product warranty information, you may contact Fidelity at 5601 Granite Parkway, Suite 500, 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.

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 INDEMNIFIED PARTY(IES) FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIM(S) RELATED TO THE FAILURE OR OUTAGE OF THE SERVICE, INCLUDING THOSE RELATED TO E911 SERVICE.

7.2. Fidelity

7.2.1 Fidelity 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 Fidelity 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 Fidelity's opinion may become, the subject of an infringement claim, Fidelity 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.

7.2.2 Fidelity 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 Fidelity 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 Fidelity would not have given rise to the claim; or (b) Customer is advised by Fidelity either directly or by means of Documentation, marketing or other published materials that the use of Fidelity Product in tandem with such products represents a risk of infringement; and (c) Customer combines and uses such products with Fidelity's Product in contravention of Fidelity's disclaimer.

7.2.3 Fonality's indemnification obligations pursuant to this section 7 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).

8. INTELLECTUAL PROPERTY

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

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

9. CONFIDENTIAL INFORMATION

9.1 Nondisclosure: All intellectual property and confidential information ("Confidential Information") disclosed by Fonality 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 Fonality with prior sufficient notice to allow Fonality 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 Fonality 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 licensed under the GNU General Public License ("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 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. EXPORT RESTRICTIONS

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

13. U.S. GOVERNMENT LICENSE RIGHTS

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

14. GOVERNING LAW & JURISDICTION

This Agreement and the related Estimate(s) and Order(s) shall be governed by and construed under the laws of the State of Texas without regard to any conflict of law principles to the contrary. 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. You hereby irrevocably submit to the jurisdiction of the state and federal courts located in Collin County, Texas 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 licenses.

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: 1) if Customer, the address Customer provided to Fonality in the Order; 2) if to Fonality, 5601 Granite Parkway, Suite 500, 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/LEGAL (THE "WEBSITE"). SUCH MODIFICATIONS SHALL BECOME EFFECTIVE IMMEDIATELY UPON POSTING SUCH TO THE WEBSITE. YOUR 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.

© 2011 Fonality, Inc. All rights reserved. Unauthorized duplication is a violation of applicable laws.

*Unregistered or registered trade-mark(s) of Fonality, Inc. or its subsidiaries.