

NovelVox: End User License Agreement

IMPORTANT READ CAREFULLY: This End User License Agreement (the "Agreement") is a legal agreement between the Licensee of software product (the "Licensee") and [NovelVox EMEA Limited] (hereinafter "Licensor" or "Novelvox"). By downloading, installing, and activating the software product (hereinafter referred to as "Licensed Product"), Licensee agrees to be bound by the terms of this Agreement. The date on which the Licensed Product has been downloaded or installed to Licensee's server or activated (whichever is earlier) on any Client (as defined below) shall constitute the effective date of the license (the "Effective Date"). Licensee and any Authorized User (as defined below) shall treat the Licensed Product like a reasonably prudent person or entity would treat proprietary material. Neither Licensee nor any Authorized User shall copy or use the Licensed Product except as is expressly permitted below. Moreover, the Licensed Product(s) as provided to Licensee shall be deemed "confidential" as is set forth herein. Licensee or Licensor may be referred to individually as a "Party" or collectively as the "Parties."

BEFORE DOWNLOADING AND INSTALLING THE LICENSED PRODUCT, LICENSEE SHOULD CAREFULLY READ THE TERMS OF THE AGREEMENT SET FORTH HEREUNDER. BY DOWNLOADING, INSTALLING, OR ACTIVATING ANY LICENSED PRODUCT, LICENSEE IS BOUND BY AND HAS BECOME A PARTY TO THIS AGREEMENT. IF LICENSEE DOES NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN THE LICENSED PRODUCT SHOULD NOT BE DOWNLOADED OR INSTALLED BY OR ON BEHALF OF LICENSEE.

1. Licensed Product

Licensed Product is any software product licensed by NovelVox to the Licensee. The Licensed Product may be wholly developed and owned by NovelVox or may include third party software. The Licensed Product may be organized into modules offering different functions. NovelVox shall specify to the Licensee the Licensed Modules and the Licensed Capacity of Clients that are licensed for use by the Licensee as specified in the Software License Delivery Email. The Licensee should not use the Licensed Product beyond the Licensed Modules or the Licensed Capacity and any such use would constitute a material breach of this Agreement. "Licensed Module" means modules that may be provided with and/or used in conjunction with the Licensed Product for which the Licensee has paid the applicable license fee and accepted any applicable license terms. "Client" shall mean the specifically identified physical computer or virtual computer accessing the Licensed Product. "Licensed Capacity" shall mean the limitation on the use of the Licensed Product and/or Licensed Module in terms of number of clients licensed to access the Licensed Product and/or Licensed Module as set forth in the Software License Delivery Email. "Software License Delivery Email" refers to the email from Licensor to Licensee containing the Licensed Software and authenticated by Licensor's License Certificate.

2. Intellectual Property in the Licensed Product

Licensee acknowledges that no title to the intellectual property in the Licensed Product is transferred to Licensee from Licensor under this Agreement. Licensee further acknowledges that all right, title, and interest in and to the Licensed Product and any know-how contained therein shall remain Licensor's exclusive property. Licensee agrees that neither Licensee nor any Authorized User as defined below shall remove any trademark, copyright, or other proprietary notices on or in any portion of the Licensed Product as delivered and that Licensee and Authorized Users shall reproduce all such notices on and in all authorized copies.

3. Software License

Subject to the terms and conditions herein as well as the payment of all applicable fees, Licensor grants to Licensee a non-exclusive, nontransferable license solely for its internal business purposes to (a) use, install, and display the Licensed Product on the Licensee server. The Licensee may make copies of the Licensed Product, documentation and other user information accompanying the Licensed Product solely for back-up purposes (b) to use and display the Licensed Product at the designated number of Licensee workstations for Authorized Users; (c) make a single backup copy of the Licensed Product for archival and contingency purposes only; and (c) permit Authorized Users to use the written materials and documentation accompanying the Licensed Product. Licensee's rights in the Licensed Product shall be limited to those expressly granted in this Agreement. Any use which exceeds the scope of this license grant shall be deemed to constitute a material breach of this Agreement.

For the purposes of this Section, an "Authorized User" shall be defined as any employee or independent contractor of Licensee, who is authorized by Licensee to use or display the Licensed Product or any Licensed Module on his or her workstation concurrently with other Authorized Users, in each case subject to the Licensed Capacity. Licensee agrees to assume responsibility to Licensor for the actions or inactions of its Authorized Users as if those actions or inactions were those of Licensee.

4. Restrictions

Other than as expressly permitted herein, Licensee shall not distribute, share, rent, resell, lease, sublicense or otherwise disclose or transfer the Licensed Product to any third party. The Licensed Product and Licensed Modules contain Licensor's trade secrets, and to protect those trade secrets and Licensor's interest in the Licensed Product generally, Licensee agrees that neither Licensee nor any Authorized User shall reverse engineer, decompile, translate, or disassemble the Licensed Product or any Licensed Module, in whole or in part, nor to permit any third party to do so, or to copy or distribute the documentation to any third party. Any failure to abide by the restrictions set forth in this Section shall expressly constitute a material breach of this Agreement.

5. Term; Termination

This Agreement shall commence as of the Effective Date and remain in effect perpetually ("Term"), unless otherwise terminated. Licensee may elect to terminate this Agreement at any time by destroying all copies of the Licensed Product. This Agreement will automatically terminate upon notice in the event Licensee breaches any material term or condition of this Agreement. Exceeding the scope of the license shall expressly constitute a material breach of this Agreement. Upon such termination, Licensee shall return all copies of the Licensed Product, retaining no copies of the Licensed Product on any server, workstation, or otherwise, and Licensee's non-exclusive license shall cease and terminate, so that neither Licensee nor any Authorized User will have any further right to use, install, or display the Licensed Product or any Licensed Module or to use the documentation.

For the avoidance of doubt, in the event Licensee elects to terminate or the Agreement automatically terminates as a result of a Licensee breach, Licensee will not be entitled to a refund of any fees paid under this Agreement.

The following terms and conditions shall survive any termination of this Agreement: Sections 2, 4, 5, 6, 11, 13, and 14.

6. Proprietary Information

For the Term of this Agreement and for a period of five (5) years thereafter, Licensee agrees to keep confidential and will not publish or otherwise disclose for any purposes the Proprietary Information (as defined below) furnished by Licensor to Licensee or any Authorized User pursuant to this Agreement.

For the avoidance of doubt, Proprietary Information shall include all of the proprietary, non-public information pertaining to Licensor and the Licensed Product, including but not limited to the terms of this Agreement and all of the know-how and trade secrets contained within the Licensed Product. Notwithstanding the foregoing, "Proprietary Information" shall not include any information which Licensee can demonstrate by its records (a) was in Licensee's knowledge or possession prior to Licensor's disclosure, (b) was in the public domain at the time of disclosure or subsequently entered the public domain through no fault of Licensee; (c) was disclosed to Licensee by a third party with the right to make such a disclosure; or (d) was developed independently by Licensee.

7. Support Services and Updates

Licensor will make available support services and updates to Licensee for an additional fee and pursuant to a separate technical support/annual maintenance agreement.

8. Customizations

Licensor is available to make customizations to the Licensed Product upon request for an additional fee and pursuant to a separate agreement. Licensor will own all right, title, and interest in any intellectual property arising from such customizations.

9. Limited Warranty; Remedies

Licensor warrants that the Licensed Product will be free from physical defects. If for any reason the Licensed Product is not free from physical defects, then Licensee should notify Licensor of the defect as soon as possible. Licensor's entire liability and Licensee's sole and exclusive remedy shall be to use reasonable commercial measures at Licensor's expense to correct the physical defect, replace the Licensed Product, or provide a workaround or a refund to the extent of money received by the Licensor.

10. Disclaimer of Other Warranties

The Licensed Product is provided on an "as is" basis. Use of the Licensed Product is at Licensee's own risk. Licensor can make no warranty that the use of the Licensed Product will be continuous, uninterrupted, bug-free, error-free, virus-free, free of defects, free of technical problems, nor that it will meet all of Licensee's needs.

WITH THE EXCEPTION OF THE LIMITED WARRANTY AND TO THE EXTENT PERMITTED BY LAW, WE EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, CONDITIONS, RESULTS, GUARANTEES, OR REPRESENTATIONS WITH RESPECT TO THE LICENSED PRODUCT, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY OR SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY RIGHTS, OR ARISING FROM THE COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. LICENSOR DOES NOT WARRANT THAT ALL ERRORS, BUGS, OR DEFECTS CAN OR WILL BE CORRECTED OR THAT THE LICENSED PRODUCT WILL OPERATE BUG-FREE, ERROR-FREE, CONTINUOUSLY, OR UNINTERRUPTED.

11. Limitation of Liability; Consequential Damages

Notwithstanding anything to the contrary, Licensor's liability under this Agreement shall be limited to the total fees paid by Licensee to Licensor pursuant to this Agreement. In no event shall Licensor be liable for any incidental, consequential, indirect, special, or punitive damages, or lost profits, arising out of, or related to, this Agreement, even if Licensor has been advised of the possibility thereof, and regardless of whether the claim is based on contract, tort, or another theory or cause of action.

12. Export Control

Licensee may not use, export, or re-export the Licensed Product, except as authorized by the laws of the jurisdiction in which the Licensed Product was obtained. Licensee expressly agrees that it shall not use the Licensed Product for any purpose prohibited by applicable law.

13. Miscellaneous

The relationship between Licensor and Licensee will be that of third party contractors, and neither Party will have the right, power or authority to assume, create, or incur any expense, liability, or obligation, express or implied, on behalf of the other. Licensee may not assign or transfer any of its rights or obligations under this Agreement without Licensor's prior written consent. Licensee agrees that Licensor may assign this Agreement without prior notice in the event of a merger, acquisition, or sale of all or any part of Licensor's business. No waiver of any breach of the terms of this Agreement, no matter how long continuing or how often repeated, shall be deemed a waiver of any subsequent breach thereof, nor shall any delay or omission to exercise any right, power, or privilege hereunder be deemed a waiver of such right, power, or privilege. If any provision of this Agreement is held unenforceable or in conflict with the law of any jurisdiction, the validity of the remaining provisions shall not be affected by such holding. The meaning of that provision will be construed to the extent feasible, to render the provision unenforceable. If no feasible interpretation will save such provision, it is to be severed from the remainder of the terms of this Agreement, which are to remain in full force and effect. This Agreement contains the entire understanding of the Parties with respect to the subject matter contained herein, and shall supersede all prior agreements and understandings, whether written or oral.

14. Governing Law; Dispute Resolution & Jurisdiction

This Agreement is governed by the laws of the state of Delaware, without regard to conflicts of law principles. All disputes arising under this Agreement shall be submitted to binding arbitration under the Rules of Delaware Rapid Arbitration Act ("DRAA Rules") as such Rules may be amended or changed from time to time; provided that the parties may agree to depart from the Rules by (i) adopting new or different rules to govern the Arbitration or (ii) modifying or rejecting the application of certain of the Rules. To be effective, any departure from the Rules shall require the consent of the Arbitrator and shall be in writing and signed by an authorized representative of each such party. The arbitration shall be conducted by one arbitrator to be appointed by NovelVox in accordance with the DRAA Rules.

The Arbitration shall take place in Wilmington, Delaware, or such other location as the parties and the Arbitrator may agree. All proceedings will be heard in English. Costs of the arbitration, including administrative and arbitrators' fees, shall be shared equally by the Parties. The arbitration award shall be final and each Party shall comply in good faith, and the award may be entered and enforced in any court having jurisdiction. If judicial enforcement or review of the arbitrator's decision is sought, the prevailing Party shall be entitled to costs and reasonable attorneys' fees. For the avoidance of doubt, all claims Licensee brings against Licensor must be resolved in accordance with this Section. All claims filed or brought against Licensor contrary to this Section shall be considered improperly filed.



Should Licensee file a claim contrary to this Section, Licensee agrees that Licensor may recover attorneys' fees and costs provided that Licensor has provided written notice of the improperly filed claim and Licensee has failed to properly withdraw the claim. Courts in Delaware shall have exclusive jurisdiction. In the event that Licensee or any Authorized User has a question about this Agreement, please direct all communications to: licenses@novelvox.com

NovelVox Copyright © 2016