

NON-EXCLUSIVE SOFTWARE LICENSE TERMS

The following terms (“**Terms**”) govern Company’s use of the Licensed Software. Capitalized terms not defined herein shall have the meanings given such terms in the Agreement.

1. DEFINITIONS

1.1 “Agreement” means the SONIFI STAY1000LX™ Agreement entered into by and between SONIFI and Company, as amended, restated, supplemented or otherwise modified from time to time.

1.2 “Licensed Software” means the object code versions of all operating, application, digital rights management, encryption and/or other software and technology owned by SONIFI or other third-parties installed on, embedded into, incorporated within or used in connection with the Equipment and/or other components of the STAY1000LX system, any extracts from such software, derivative works, updates and upgrades of such software or collective works constituting such software (such as subsequent releases), in each case, to the extent provided or accessible to Company or used on behalf of Company for performance under the Agreement.

2. SOFTWARE LICENSE

2.1 License. Subject to the terms and conditions of these Terms, SONIFI grants to Company a non-exclusive, non-transferable, non-sublicensable, perpetual limited right and license to use the Licensed Software, without modification, solely to support the delivery of the STAY1000LX products and services, including but not limited to the FTG Programming and iTV Content and Services, in accordance with the terms of the Agreement.

2.2 Limitations.

(a) In no event shall the Licensed Software be disclosed, made available to or used for the benefit of any third party; sold, assigned, leased or otherwise disposed of; or commercially exploited or marketed in any way, with or without charge, by Company or any of Company’s employees or agents, including, without limitation, under any time-sharing, service bureau or application service provider arrangement.

(b) Company shall not copy the Licensed Software, except for archival or backup purposes or as required by normal installation procedures specified by SONIFI. Company shall affix any proprietary markings or legends placed upon or contained within the Licensed Software to any copies of the Licensed Software permitted hereunder.

(c) Company shall not copy, modify, translate, decompile, disassemble or otherwise reverse engineer, or otherwise determine or attempt to determine source code or protocols from, the executable code of the Licensed Software, or create any derivative works based upon the Licensed Software or Licensed Software documentation (“Documentation”), and Company shall not permit or authorize anyone else to do so. Company also agrees that any works created in violation of this subsection are derivative works of the Licensed Software and/or Documentation and, as such, Company assigns all right, title and interest therein to SONIFI.

2.3 Ownership. As between SONIFI and Company, SONIFI retains all right, title and interest, including, without limitation, all patent rights, copyrights, trademarks and trade secrets, in and to the Licensed Software and Documentation and any portion thereof, including, without limitation, any copy or derivative work of the Licensed Software and Documentation (or any portion thereof) and any modification or update thereto. Company agrees to take any action reasonably requested by SONIFI to evidence, maintain, enforce or defend the foregoing. Company shall not take any action to jeopardize, limit or interfere in any manner with SONIFI’s ownership of and rights with respect to the Licensed Software and Documentation, or any derivative work thereof or modification or update thereto. Company shall have only those rights in or to the Licensed Software and Documentation and any derivative work thereof or modification or update thereto granted to it pursuant to these Terms.

2.4 Verification. SONIFI may, at any time during the Term and with 10-days prior notice, request and gain access to the Premises for the limited purpose of conducting an inspection to determine and verify that Company is in compliance with the terms and conditions hereof. Company shall promptly grant such access and cooperate with SONIFI in the inspection; provided, however, the inspection shall be conducted in a manner not intended to disrupt unreasonably Company’s business and shall be restricted in scope, manner and duration to that reasonably necessary to achieve its purpose.

3. SERVICE & SUPPORT

SONIFI will service and support the Licensed Software in accordance with the Maintenance and Support terms of the Agreement.

4. SOFTWARE LICENSED “AS IS”; DISCLAIMER

4.1 No Warranty. The Licensed Software and Documentation are not sold, but are licensed “as is.” SONIFI does not warrant that operation or use of the Licensed Software and/or Documentation shall be uninterrupted or error free.

4.2 Disclaimer. EXCEPT FOR THE MAINTENANCE AND SUPPORT TERMS EXPLICITLY SET FORTH IN THE AGREEMENT, SONIFI EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO

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THE LICENSED SOFTWARE AND DOCUMENTATION INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ACCURACY AND NON-INFRINGEMENT, AND ALL WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

5. COPYRIGHT AND TRADE SECRET INDEMNIFICATION

SONIFI shall defend, indemnify and hold Company harmless from and against any third party claim of United States copyright or trade secret infringement relating to the Licensed Software and Documentation, provided that Company promptly notifies SONIFI in writing of any such claim and allows SONIFI to control, and fully cooperates with SONIFI in, the defense of any such claim and all related settlement negotiations. In the event an injunction is sought or obtained against Company's use of the Licensed Software or Documentation as a result of any such infringement claim, SONIFI may, at its sole option and expense, (a) procure for Company the right to continue using the affected Licensed Software and/or Documentation or (b) replace or modify the affected Licensed Software and/or Documentation so that it does not infringe. SONIFI shall have no liability for and Company shall indemnify and hold SONIFI harmless from and against any claim based upon (i) use of other than the then-current, unaltered version of the applicable Licensed Software and Documentation, unless the infringing portion is also in the then-current, unaltered release; (ii) use, modification, operation or combination of the applicable Licensed Software or Documentation with non-Licensed Software programs, data, equipment or documentation if such infringement would have been avoided but for such use, modification, operation or combination; (iii) compliance with Company's designs, specifications or instructions; or (iv) any third party software not included in the Licensed Software. THE FOREGOING CONSTITUTES THE ENTIRE LIABILITY OF SONIFI, AND COMPANY'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OF THIRD-PARTY RIGHTS RELATING TO THE LICENSED SOFTWARE AND/OR DOCUMENTATION.

6. EXPIRATION AND TERMINATION

Upon expiration or termination of the Agreement for any reason, or of any licenses granted hereunder, (a) Company's license to use the Licensed Software and Documentation shall immediately terminate, (b) the provisions of Sections 2.2, 2.3, 4 and 6 through 9 shall survive and (c) Company shall promptly remove all affected Licensed Software and Documentation from all memory locations, return all copies of the affected Licensed Software (including all related Documentation) to SONIFI, and execute and deliver to SONIFI a certificate stating that all copies of the affected Licensed Software and Documentation have been removed and returned or destroyed. Company shall not have the right under any circumstances, including Company's termination of the Agreement, to use the Licensed Software and Documentation from and after the expiration or termination of the Agreement.

7. LIMITATION OF LIABILITY

SONIFI's entire liability to Company for damages concerning performance or nonperformance by SONIFI or in any way related to the Licensed Software and/or Documentation, regardless of whether the claim for such damages is based in contract, tort, strict liability, or otherwise, shall not exceed the amounts received by SONIFI under the Agreement.

8. CONSEQUENTIAL DAMAGES WAIVER

IN NO EVENT SHALL SONIFI BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, DAMAGES FOR LOST PROFITS, LOST DATA OR LOST BUSINESS, OR ANY OTHER INDIRECT DAMAGES, EVEN IF SONIFI HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. SONIFI shall have no liability with respect to claims relating to or arising from the use of non-SONIFI products and services, even if SONIFI has recommended, referred or introduced Company to such products and services.

9. GENERAL

9.1 Force Majeure. Without limiting the foregoing limitations on liability and waivers, SONIFI shall not be responsible for any delay or failure to the extent that such delay or failure is caused by fires, strikes, embargoes, explosion, earthquakes, floods, wars, labor disputes, government requirements, civil or military authorities, acts of God or by the public enemy, inability to secure raw materials or transportation facilities, acts or omissions of carriers or suppliers, or other causes beyond its reasonable control.

9.2 Complete Agreement. These Terms are hereby incorporated into the Agreement, and cannot be modified or amended except in a writing signed by both Parties.