

STAY1000LX® STANDARD TERMS AND CONDITIONS FOR SERVICES

These standard terms, conditions, warranties, representations and covenants (collectively, the “**Service Terms**”) apply only to the specific STAY1000LX System (defined below) products, features and services (collectively, the “**Services**”) which Company has explicitly selected and purchased, subscribed to or licensed from SONIFI Solutions, Inc. (“**SONIFI**”) pursuant to a binding STAY1000LX® Agreement by and between Company and SONIFI, including without limitation all terms and conditions, exhibits, schedules, addenda and appendices attached thereto or incorporated therein (collectively, the “**Agreement**”). These Service Terms are incorporated into Company’s Agreement with SONIFI and form an integral part of the Agreement. In the event of a conflict between these Service Terms and the body of the Agreement, the Service Terms shall prevail in all instances, but only to the extent of such conflict. Capitalized terms used but not defined herein shall have the meanings set forth in the body of the Agreement (or in attachments, exhibits, appendices, schedules, addenda, amendments, or documents incorporated therein), and if not defined therein, words shall be given the meaning accorded to them in applicable laws and regulations, and if not defined therein, words shall be given their common and ordinary meaning.

Section 1. Universal Service Terms (Applicable to All Services).

1.1 **Payment of Fees.** Company shall pay SONIFI the one-time fees and recurring fees identified on the Products & Fee Schedule set forth in the Agreement as follows: (i) all one-time fees and charges, plus all applicable taxes, surcharges and fees thereon, shall be paid to SONIFI within thirty (30) days of the date of invoice; (ii) recurring monthly fees, plus all applicable taxes, surcharges and fees thereon, shall be paid on a monthly basis (in advance) on the first day of each calendar month, pro-rated for the first month, if applicable, commencing on the Commencement Date; and (iii) all other fees and charges not otherwise specified above shall be due and payable within thirty (30) days from the date of invoice. Notwithstanding the foregoing, Company’s payment of each installment of the Purchase Price (defined below) for the Equipment set forth in a financing agreement by and between Company and a third-party financing company approved by SONIFI (an “**Approved Third-Party Financing Company**”), and upon terms approved by SONIFI in its sole discretion, is due in accordance with the terms of such agreement. All payments are subject to applicable taxes, shipping, handling, and freight costs. Late payments shall accrue interest until paid at the lower of 1.5% per month or the highest lawful rate. Recurring charges and fees may include discounts, credits, incentives, rebates and/or other adjustments. SONIFI reserves the right to adjust recurring fees: (a) on an annual basis, with at least thirty (30) days’ prior notification (provided, however, that during the Initial Term the amount of such annual adjustments as a percentage of all then-current recurring fees shall not exceed the greater of (i) five percent (5%) or (ii) the percentage increase in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics for the prior twelve months); and (b) as otherwise required or permitted by this Agreement, including these Service Terms, or by applicable laws, regulations, tariffs, government orders or directives. Notwithstanding the limitations in the preceding sentence or elsewhere in the Agreement or these Service Terms, SONIFI can pass through any applicable changes in third-party fees, prices, or charges. For purposes of the Agreement, “**Purchase Price**” means the total price Company pays to SONIFI or, if applicable, an Approved Third-Party Financing Company, for the Equipment and the initial installation, configuration, set-up and activation of the Equipment at the Premises, including all applicable and related fees, costs, surcharges, taxes and interest, as specifically described in the Products & Fee Schedule set forth in the Agreement and in any Approved Third-Party Financing Company agreement.

1.2 **Equipment Purchase and Ownership.** Company shall purchase from SONIFI or, if applicable, an Approved Third-Party Financing Company for the Purchase Price set forth in the Products & Fee Schedule in the Agreement: (a) the on-Premises hardware and/or cloud-based resources (in each case, excluding Licensed Software) that deliver (i) the specific Services delineated in the Agreement as of the Effective Date, as further described or defined in these Service Terms and in the Product Definitions, and (ii) any subsequent functions, features, content or channels added to the Agreement via an amendment or addendum signed by both Parties (collectively, the “**Equipment**” or the “**STAY1000LX System**”); and (b) the installation, configuration, customization and set-up services necessary to install and activate the Equipment at the Premises as described (i) in the STAY1000LX® Statement of Work (“**SOW**”) located at www.sonifi.com/stay1000lxsow_usa, and incorporated in this Agreement by reference, and (ii) in any additional exhibits, amendments, schedules, appendices or addenda attached to and incorporated in the Agreement. For purposes of clarity, Equipment does not include televisions, television mounting hardware or any Internet router, Internet access points, Ethernet adapters and related software, cabling, and enclosures. SONIFI reserves the right to deliver certain Services and/or Licensed Software to the Premises from cloud-based resources instead of the Equipment. Any such remote resources, together with the Equipment, collectively comprise the STAY1000LX System. Company shall perform all of its obligations under the Agreement, including but not limited to completing all necessary paperwork, in a timely manner. Company is solely responsible for any delay it, its employees or its contractors cause to the installation, configuration, customization and set-up of the STAY1000LX System at the Premises, and Company shall pay all reasonable costs and fees incurred or charged by SONIFI as a result of any such delay, including without limitation all applicable fees and charges set forth on SONIFI’s then-current Rate Card, available upon request to SONIFI or as made available at www.sonifi.com. Notwithstanding anything to the contrary in the Agreement, including these Service Terms, SONIFI shall not be liable to Company, the Premises or their respective owners, shareholders, members, partners, officers, employees, contractors, or agents for any inability to perform caused by Company, the Premises or their respective officers, employees, contractors or agents.

1.2.1 In the event Company elects to utilize an Approved Third-Party Financing Company, Company understands the Approved Third-Party Financing Company will purchase the Equipment directly from SONIFI, and Company will then purchase the Equipment from the Approved Third-Party Financing Company. Company agrees that SONIFI will invoice the Approved Third-Party Financing Company for the financed amount specified in the applicable financing agreement between Company and the Approved Third-Party Financing Company, unless specifically notified otherwise by Company or the Approved Third-Party Financing Company. Notwithstanding the foregoing, Company agrees that invoicing the Approved Third-Party Financing Company for the Equipment in no way binds or obligates SONIFI to any Company obligations or Company liabilities to the Approved Third-Party Financing Company. Additionally, in the event the Approved Third-Party Financing Company does not timely and fully pay SONIFI for the Equipment, Company agrees it is responsible for payment and SONIFI will invoice Company for the Equipment and Company shall remit all amounts due to SONIFI within thirty (30) days of receipt of an invoice from SONIFI.

1.2.2 If before the Effective Date there is pre-existing equipment owned by SONIFI installed or otherwise located at the Premises, then upon the Effective Date, all right, title and interest in and to such pre-existing equipment is hereby assigned and transferred to Company; provided, however, that (a) such assignment and transfer shall not include any software and/or technology owned by SONIFI or third parties installed on, embedded into, incorporated within or used in connection with the pre-existing equipment, and (b) use of any and all such software and technology is subject to the terms of the Agreement, including these Service Terms, and all applicable software licenses.

1.3 **Site Evaluation and Modification.** In order to complete installation, configuration, set-up, customization and activation of the on-Premises Equipment, the Premises must conform to SONIFI site requirements and Company must cooperate in the necessary site evaluation, installation planning and site preparation, as such requirements are set forth and described (a) in the SOW available at www.sonifi.com/stay1000lxsow_usa, and (b) in the Required Assets Form and the Required Premises Information Form attached to the Agreement. The applicable SOW, the Required Assets Form, and the Required Premises Information Form are incorporated in the Agreement by reference. Company acknowledges that SONIFI relies upon Company-provided information, as described or requested in all exhibits, appendices, schedules, amendments, forms and addenda attached to or incorporated in the Agreement (including, without limitation, information regarding televisions, set-top boxes and set-back devices), as well as SONIFI’S technical evaluation of the Premises and the Premises’ master television antenna, cabling and amplifiers (collectively, the “**MATV System**”) and related communications network systems and components, including but not limited to Internet Protocol (“**IP**”)–based network infrastructure, Ethernet switches, IP equipment, core distribution network, Internet infrastructure and in-guest room equipment (collectively, the “**Premises Network Infrastructure**”

and, together with the MATV System, the “CNS”), to accurately determine the composition of the on-Premises Equipment and to scope and price installation and site upgrade work necessary for interconnection and interoperability between the STAY1000LX System and the CNS.

1.3.1 Any modifications, upgrades or repairs to the Premises, the CNS or Company-provided equipment (collectively, “**MATV Work**”) necessary for the proper operation of the on-Premises Equipment or for the interconnection and interoperability of the on-Premises Equipment and Company’s CNS shall be completed by Company (or its designated contractor(s)) or by SONIFI, upon SONIFI’s receipt of Company’s written approval, for the fees set forth in the Products & Fee Schedule in the Agreement or for the fees and charges set forth in a separate customer order or statement of work signed by SONIFI and Company. All MATV Work performed by SONIFI will be described in and limited to the corresponding statement(s) of work set forth in the Agreement (including the SOW) or in a separate customer order signed by both Parties. Company must provide SONIFI with at least thirty (30) days’ advance written notice of any MATV Work to be performed by Company or its contractor(s). All MATV Work undertaken by Company, or its contractor(s) must comply with SONIFI’s technical specifications and design requirements as described in the SOW and in SONIFI documentation that will be provided to Company, upon request, on a confidential basis. Except as otherwise specifically provided herein, approved MATV Work undertaken by SONIFI will be at additional cost to the Company. Any necessary or desired modifications, changes, updates, repairs, or upgrades to or replacement of televisions (including without limitation television mounting and firmware updates) is the sole responsibility of Company. Company acknowledges and agrees that SONIFI is not responsible or liable for any damages, losses, costs, or expenses Company incurs as a result of MATV Work performed by Company or its contractor(s). If Company elects not to perform recommended or identified MATV Work, Company acknowledges and agrees that SONIFI is not responsible or liable for any loss of or diminishment of (a) STAY1000LX System features and functions or (b) Services selected by Company.

1.3.2 SONIFI may prepare certain drawings, plans or other documents during the course of conducting a site evaluation, installing and configuring on-Premises Equipment or performing MATV Work (collectively, “**Instruments of Service**”). To the extent that such Instruments of Service are prepared, SONIFI grants Company a limited, revocable, non-exclusive, non-sublicensable, non-transferable, royalty-free license to use such Instruments of Service solely for the purpose of documenting information about the Premises relevant to the STAY1000LX System and Services. Instruments of Service are not intended for use by Company for any other purpose and SONIFI explicitly disclaims sufficiency, fitness or suitability for any other purpose and assumes no obligation to maintain or update any Instruments of Service. **SONIFI DOES NOT GUARANTEE OR WARRANTY THE ACCURACY OR COMPLETENESS OF ANY INSTRUMENTS OF SERVICE.**

1.4 Company Network, Integration and Connectivity. Company acknowledges and agrees that Company’s access to and use of certain SONIFI or third-party products and services are contingent upon Company (a) having and maintaining sufficient Internet connectivity and CNS connectivity, (b) providing necessary access to the Premises and CNS, (c) granting or procuring all necessary rights and licenses to back office systems, (d) granting SONIFI exclusive access to and use of (i) the channels and bandwidth at the Premises used to deliver Services and (ii) the sub-frequency forward and return channel(s) identified on the Billing Commencement & Installation Completion Form (“**CNS System Channels**”), and (e) dedicating adequate space upon and within the Premises for the placement of on-Premises Equipment in accordance with the SOW, all at Company’s sole cost and expense. Company is responsible for purchasing, installing, updating, upgrading, and maintaining the hardware and software for Company’s or a third-party’s computer equipment, and for enabling the requisite system interface for use of any such contingent products and services at the Premises. Company shall not add any In-Room Equipment (defined in the SONIFI Limited Warranty) at the Premises except with SONIFI’s prior written permission.

1.5 Premises Access and Licenses. Company shall secure and maintain such licenses, permits and approvals required by governmental and regulatory authorities having jurisdiction over the installation, set-up, activation, operation, and removal of on-Premises Equipment. Company shall consult with SONIFI before undertaking any project, on its own behalf or by granting of rights to a third-party, that may interfere with the operation or functionality of the Equipment or limit SONIFI’s access to the on-Premises Equipment.

1.6 Installation. SONIFI will install the on-Premises Equipment on and in the Premises as soon as practicable following the Effective Date, completion of any required site evaluation and MATV Work, and receipt of any down payment described in the Products & Fee Schedule set forth in the Agreement. Installation planning and preparation will be in accordance with the SOW at a mutually agreed upon start date and schedule. During the on-Premises Equipment installation period, Company either (a) shall provide (i) complimentary guest rooms and parking at the Premises to SONIFI for installation personnel and (ii) secure storage area(s) in the Premises for on-Premises Equipment and tools, or (b) reimburse SONIFI, upon request and in addition to all other amounts payable to SONIFI under the Agreement, the actual cost of guest rooms, parking and storage area(s) at another lodging facility of comparable quality to the Premises within ten (10) miles of the Premises. If SONIFI is replacing an existing vendor at the Premises, Company shall provide written notice to such vendor and SONIFI will coordinate and cooperate with Company and said vendor to minimize any disruptions to Company’s operations and its guests. Unless otherwise expressly stated in these Service Terms or in an addendum or amendment to the Agreement, SONIFI’s standard installation process and pricing, as delineated in the Products & Fee Schedule and the SOW, include up to two (2) attempts to install and configure In-Room Equipment in Premises guest rooms. If after two (2) attempts SONIFI installation personnel have been unable to install and configure all In-Room Equipment in a Premises guest room due to circumstances beyond SONIFI’s control (e.g., guest rooms are occupied or Premises employees are unwilling or unable to provide SONIFI personnel or SONIFI contractors with necessary access to a guest room)(each such guest room a “**Delayed Installation Room**”), then SONIFI reserves the right to charge Company for all subsequent installation work and on-site visits to the Premises for each and every Delayed Installation Room at SONIFI’s then-current Rate Card rates, which are available from SONIFI upon request or as made available at www.sonifi.com, plus all applicable taxes. Company is solely responsible for paying and all fees and charges imposed by third parties, such as Company’s Internet service provider, associated with the installation of on-Premises Equipment. At the conclusion of STAY1000LX System installation in accordance with the SOW, Company shall affirm that installation has been completed by signing SONIFI’s standard “**Billing Commencement & Installation Completion Form**”.

1.7 CNS Changes. Any modifications, additions or upgrades to the on-Premises Equipment that are required due to a change in the CNS at the Premises, or the availability of the CNS System Channels, shall be made by SONIFI for the fees and charges set forth on SONIFI’s then current Rate Card, available upon request to SONIFI or as made available at www.sonifi.com, plus all costs for parts and components and all applicable taxes, surcharges, shipping, handling and freight. Company is solely responsible for maintaining internal and external Internet connectivity, bandwidth and throughput at the Premises that is sufficient to enable the proper functioning of all on-Premises Equipment and Services, and if Company adds products or services (whether delivered by SONIFI or a third-party) that require additional Internet connectivity, bandwidth or throughput, Company will acquire such additional Internet connectivity, bandwidth or throughput at its own expense as advised by SONIFI.

1.8 Software.

1.8.1 Licensed Software. SONIFI does not sell and non-exclusively licenses to Company the limited right to use the “**Licensed Software**” in accordance with the STAY1000LX® Non-Exclusive Software License Terms which are available upon request to SONIFI or at www.sonifi.com/stay1000lxsoftwareterms_usa (the “**Licensed Software Terms**”). Licensed Software can reside on the on-Premises Equipment and In-Room Equipment, or it can be served from cloud-based remote resources, at SONIFI’s sole discretion. The Licensed Software Terms are incorporated in the Agreement, including these Service Terms, by reference. Company acknowledges and agrees that it is only obtaining a limited license right to the Licensed Software and that no ownership rights are being conveyed to Company, expressly or implicitly, under this Agreement. In addition to the Licensed Software Terms, Company’s use of all third party-owned or third party-licensed operating, application, digital rights management, encryption and/or other software and technology installed on, embedded into, incorporated within or used in connection with the on-Premises

Equipment, In-Room Equipment, and Services is subject to the terms of the non-exclusive third-party license agreement(s) for such software and/or technology, which agreement(s) are available directly from the third party, upon request, or accessible on the third party's website. Upon expiration or termination of the Agreement for any reason, or expiration or termination of any licenses granted hereunder, Company's limited license to use the Licensed Software under the Agreement terminates immediately, unless otherwise expressly permitted by a license agreement.

1.8.2 Licensed Software Updates. Company agrees to permit SONIFI and its licensors to update, upgrade, bug fix, error correct and patch Licensed Software on a regular basis or as otherwise needed. Company's on-Premises Equipment must run a version of SONIFI's Licensed Software (a) that is not more than one generation behind SONIFI's then-current commercially available version of Licensed Software, or (b) that is not more than one year old, whichever version is most recent. Any failure by Company to comply with this Paragraph 1.8.2 may result in the diminishment or loss of Services, or in termination of the Agreement. SONIFI shall not be liable or responsible for any diminishment or loss of Services attributable to Company's breach of this Paragraph 1.8.2.

1.9 Pro:Idiom™ Source Function Devices. Company acknowledges and agrees that if the on-Premises Equipment or In-Room Equipment Company purchases to provide Services at the Premises includes hardware and software which enables Pro:Idiom Source Function Devices, it is bound by all the obligations and other terms contained in the Zenith User Terms for Pro:Idiom Source Function Devices available at www.sonifi.com/ZenithProIdiomTerms (the "**Pro:Idiom Terms**"), which Pro:Idiom Terms are hereby incorporated by reference in the Agreement. Company understands that a violation of any of the terms, conditions, limitations or restrictions contained in the Pro:Idiom Terms is a material breach of the Agreement, including without limitation these Service Terms. In the event of such a material breach, SONIFI may (a) immediately terminate Company's Agreement without liability of any kind or amount by providing written notice to the Company and (b) invoke any other rights and remedies available under the Agreement and at law or equity. This Subsection 1.9 survives the termination or expiration of the Agreement.

1.10 Indemnification.

1.10.1 General Indemnification. Excluding Infringement Claims, which are defined and addressed in Paragraph 1.10.2, and subject to Subsection 1.13, each Party (the "**Indemnifying Party**") shall indemnify, defend and hold harmless the other Party and its subsidiaries and affiliates and each such entity's officers, owners, directors, shareholders, members, managers, partners, employees, contractors (excluding if Company is the Indemnifying Party, SONIFI and its contractors, or if SONIFI is the Indemnifying Party, Company and its contractors), agents, representatives, permitted successors and permitted assigns (collectively, as to each Party, the "**Indemnified Parties**" and, individually, an "**Indemnified Party**"), from and against: (a) any and all suits, proceedings, investigations and causes of action brought or asserted against an Indemnified Party by a third-party other than an Indemnified Party, including for purposes of this Subsection 1.10, a governmental authority (individually, a "**Claim**" and, collectively, "**Claims**"), to the extent arising out of, relating to or caused by (i) any breach of this Agreement by the Indemnifying Party (including a breach of any representation and warranty) and/or (ii) the Indemnifying Party's willful, reckless or grossly negligent act or omission under this Agreement, or such willful, reckless or grossly negligent acts or omissions by the Indemnifying Party's officers, employees, contractors (excluding if Company is the Indemnifying Party, SONIFI and its contractors, or if SONIFI is the Indemnifying Party, Company and its contractors) or agents; and (b) any and all Indemnifiable Losses (defined below), if permitted under Paragraph 1.10.4 and Paragraph 1.10.5.

1.10.2 Indemnification for Intellectual Property Infringement. Subject to Subsection 1.13, each Party agrees to indemnify, defend, and hold harmless the other Party and its Indemnified Parties from and against (a) all Claims brought or asserted against an Indemnified Party by a third-party that is not a Party's Indemnified Party and (b) all Indemnifiable Losses suffered or incurred by an Indemnified Party as the result of such third-party Claim, to the extent arising out of, relating to or caused by infringement or misappropriation of a third-party's Intellectual Property Rights in or to any of the following: (i) if Company is the Indemnifying Party, any Company-Customized Content (defined in Subsection 2.1), when used by SONIFI as expressly permitted in the Agreement; or (ii) if SONIFI is the Indemnifying Party, iTV Content and Services, Documentation or Licensed Software (excluding Third-Party Code), when used by Company as expressly permitted by this Agreement (each an "**Infringement Claim**"). If in the Indemnifying Party's opinion any of the foregoing content, software, Documentation or services listed in this Paragraph 1.10.2 is likely to become the subject of an Infringement Claim, then without limitation to any of the Indemnifying Party's obligations under this Paragraph 1.10.2, or to any other remedy available to the Indemnified Parties under the Agreement or at law or equity, the Indemnified Parties shall permit the Indemnifying Party, at the Indemnifying Party's sole option and expense: (A) to procure for the Indemnified Parties the right to continue to use the affected content, Documentation, software or service on terms no less favorable to the Indemnified Parties than those set forth in this Agreement; or (B) to replace or modify the affected content, Documentation, software or service to become non-infringing with no material loss of function to the Indemnified Parties, and also reimburse the Indemnified Parties for all costs and expenses they actually incurred in connection with such conversion to the replacement or modification. The Indemnifiable Losses paid to the Indemnified Parties or a third-party by the Indemnifying Party or its insurer(s) under this Paragraph 1.10.2, if any, shall be reduced by any amount that Indemnified Parties receive from a joint infringer or joint defendant (other than the Indemnifying Party).

1.10.3 Exclusions. Company acknowledges and agrees that the indemnification obligations under Paragraph 1.10.1 and Paragraph 1.10.2 of these Service Terms do not require SONIFI to indemnify, defend or hold harmless Company or any Indemnified Parties for any act or omission of any SONIFI shareholder, director, officer, employee, contractor or agent that occurs when such person's presence or stay at the Premises is not related to, connected with, or arising out of, the performance of any duties under the Agreement, including these Service Terms. In addition, any Indemnifying Party will be excused from its obligations under Paragraph 1.10.2 with regard to an Infringement Claim or portion thereof to the extent such Infringement Claim or portion thereof arises out of or in connection with (a) the Indemnified Party's breach of any licenses granted to it to the Services (including iTV Content and Services), Company-Customized Content, Documentation, or Licensed Software that is the subject of the Infringement Claim, (b) any modification or misuse of the affected Documentation, Licensed Software, Company-Customized Content or Services (including iTV Content and Services) not expressly authorized by the Indemnifying Party or expressly permitted under the Agreement, including these Service Terms, or (c) any combination of the affected Documentation, Licensed Software, Company-Customized Content or Services (including iTV Content and Services) with other content, products, Documentation, services or software not expressly authorized by the Indemnifying Party or expressly permitted under the Agreement, including these Service Terms.

1.10.4 Indemnification Procedures. The Indemnified Party or Indemnified Parties shall notify the Indemnifying Party of a Claim (including an Infringement Claim) or Indemnifiable Loss for which it is seeking indemnification in writing as soon as practicable, together with such further information as is necessary for the Indemnifying Party to evaluate the Claim (including an Infringement Claim) or Indemnifiable Loss to the extent that the Indemnified Party or Indemnified Parties are in possession or have knowledge of such information; *provided* that any delay in giving such notice shall not preclude the Indemnified Party or Indemnified Parties from seeking indemnification for an indemnified Claim (including an Infringement Claim) or an Indemnifiable Loss if: (a) such delay has not materially prejudiced the Indemnifying Party's ability to defend the Claim (including an Infringement Claim); and (b) such delay does not materially affect the amount of any Indemnifiable Losses awarded by a court or paid in settlement of the Claim (including an Infringement Claim). The Indemnifying Party shall control the defense of any Claim (including an Infringement Claim) qualifying for indemnification with counsel of its own choosing and shall regularly consult with the Indemnified Parties and their counsel (and the affected person or entity and its counsel) regarding such defense. However, the Indemnified Parties may participate in such defense through counsel of their own choosing at the Indemnified Parties' expense. The Indemnified Parties shall cooperate with the Indemnifying Party in the defense of any Claim (including an Infringement Claim) qualifying for indemnification, and shall furnish such records, information and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested in connection therewith, all at the Indemnifying Party's expense. Upon the Indemnifying Party's assumption of the defense of an indemnified Claim (including an Infringement Claim) with counsel of its choosing, the Indemnifying Party will not be liable for the Litigation Expenses of the Indemnified Parties; *provided, however*, the Indemnifying Party shall pay any Litigation Expenses actually incurred and paid by an Indemnified Party prior to the Indemnifying Party's assumption of the defense of an indemnified Claim (including an Infringement Claim). In no event shall the Indemnifying Party consent to entry of judgment or enter

into any settlement agreement without the Indemnified Parties' prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. The Parties acknowledge that if either Party agrees to pay a third party any fees or amounts pursuant to a contract and such contract is not the result of a settlement made pursuant to this Paragraph 1.10.4, then the Indemnifying Party is not obligated to indemnify the Indemnified Party or Indemnified Parties, as applicable, for such fees or amounts.

1.10.5 **Definitions.** In these Service Terms, the following definitions apply:

1.10.5.1 **"Loss" or "Losses"** means any amount awarded in, or paid in settlement of, any Claim or Infringement Claim, including interest, but excluding Litigation Expenses (defined below);

1.10.5.2 **"Litigation Expense" or "Litigation Expenses"** means any reasonable out-of-pocket expense actually incurred in defending a Claim or Infringement Claim or in any related investigation or negotiation, including without limitation attorneys' fees, court costs, expert witness fees and other professionals' fees; and

1.10.5.3 **"Indemnifiable Loss" or "Indemnifiable Losses"** means the aggregate of Losses and Litigation Expenses.

1.10.6 **Survival.** This Subsection 1.10 survives termination or expiration of the Agreement.

1.11 **Termination, Transfer of Premises Ownership and Assumption of Agreement.**

1.11.1 **Transfer/Assumption.** If Company intends to transfer ownership of the Premises, to assign or novate the Agreement, or to delegate or any of its obligations under the Agreement, Company shall provide SONIFI with at least thirty (30) days' written notice in advance of the date such transaction(s) will be completed. If the transferee, assignee, novatee, or delegatee (a) assumes all of Company's obligations under the Agreement pursuant to an assumption agreement acceptable to SONIFI and (b) meets SONIFI's customary credit standards, Company shall have no further obligations hereunder after the effective date of such transfer, assignment, novation, or delegation. Company acknowledges and agrees that the assumption of the Agreement by any transferee, assignee, novatee, or delegatee does not assign, transfer, or otherwise affect any rights or obligations of Company under its agreements with an Approved Third-Party Financing Company or any other third party.

1.11.2 **Effect of Termination.** SONIFI is not responsible or in any way liable for any deinstallation, relocation, removal, disposal or use of any on-Premises Equipment or in-Room Equipment after the expiration or termination of the Agreement and Company, in accordance with Subsection 1.10, hereby indemnifies, defends and holds harmless SONIFI and its Indemnified Parties from and against any and all Indemnifiable Losses arising out of or in connection with any Claim or Infringement Claim relating to or arising from Company's or its employees', contractors' or agents' deinstallation, relocation, removal, disposal or use of on-Premises Equipment or In-Room Equipment after the expiration or termination of the Agreement. This Paragraph 1.11.2 survives termination or expiration of the Agreement.

1.11.3 **Termination for Cause.** If any contract default is not remedied within thirty (30) days (or ten (10) days in the case of non-payment or immediately in the case of a violation of the Pro:Idiom Terms) following receipt of notice thereof, the non-defaulting Party may terminate the Agreement upon notice to the defaulting Party. The non-defaulting Party shall be entitled to recover from the defaulting Party its reasonable attorneys' fees and costs, including collection agency fees and court costs. If Company is the defaulting Party, and SONIFI elects to terminate the Agreement during the Initial Term, SONIFI is entitled to the early termination fees for each Service as specified in these Service Terms. The Parties agree that (i) contractual damages incurred by SONIFI are not readily identifiable and that the formula(s) and calculation of early termination fees described in these Service Terms are reasonable considering the totality of the Agreement, and (ii) payment of early termination fees shall be considered liquidated damages. Notwithstanding any payment of early termination fees to SONIFI, Company is solely responsible for the complete repayment of any and all subsidies and incentives remaining upon the termination of the Agreement to the extent and in the amount specified in the Agreement, in any additional programming or content agreement entered into by the Parties, or in any agreement between the Company and a third party.

1.12 **Limited Warranties.** With respect to hardware, components, parts, and products provided or sold by SONIFI or an Approved Third-Party Financing Company pursuant to the Agreement and installed by SONIFI personnel which are not expressly covered by a specific SONIFI limited warranty set forth in the Agreement, including these Service Terms and the SONIFI Limited Warranty, SONIFI warrants to Company that such hardware, components, parts, and products will be free from defects in materials and workmanship for a period of ninety (90) calendar days after installation. With respect to installation and professional services performed by SONIFI personnel pursuant to the Agreement which are not expressly covered by a specific SONIFI limited warranty set forth in the Agreement, including these Service Terms and the SONIFI Limited Warranty, SONIFI warrants that such installation labor and/or professional services will be free from defects in workmanship for a period of ninety (90) calendar days from the date of performance. **THIRD-PARTY SOFTWARE OR FIRMWARE SOLD, LICENSED OR FURNISHED BY SONIFI (EXCLUDING THE LICENSED SOFTWARE) IS PROVIDED "AS IS" EXCEPT FOR ANY WARRANTY DIRECTLY PROVIDED TO COMPANY BY A THIRD-PARTY SOFTWARE AUTHOR, DEVELOPER OR PUBLISHER. IN NO EVENT SHALL SONIFI HAVE ANY EXPRESS, STATUTORY, OR IMPLIED WARRANTY OBLIGATIONS OF ANY KIND FOR OR RELATED TO THIRD-PARTY SOFTWARE OR THIRD-PARTY INTELLECTUAL PROPERTY (EXCEPT, IN EITHER CASE, AS OTHERWISE SPECIFIED IN THE AGREEMENT), AND COMPANY SHALL LOOK SOLELY TO A THIRD-PARTY SOFTWARE AUTHOR, DEVELOPER OR PUBLISHER FOR ANY WARRANTY COVERAGE, REMEDY, CAUSE OF ACTION OR CLAIM APPLICABLE WITH RESPECT THERETO, UNLESS OTHERWISE EXPRESSLY STATED IN THE AGREEMENT.** SONIFI does not warrant that the Licensed Software, the STAY1000LX System, or any part or component thereof, will meet Company's requirements or that the STAY1000LX System and Licensed Software will operate in an error-free or uninterrupted manner. The limited warranties set forth herein do not apply to: (a) damage, loss or diminishment of features or functions, or inability to perform as a result of accident, misuse, abuse or neglect; (b) damage, loss or diminishment of features or functions, or inability to perform resulting from Company's failure to comply with its responsibilities set forth in the SOW, or later-provided instructions; (c) modifications to the STAY1000LX System or Licensed Software if not performed or authorized by SONIFI; and (d) any other damage or failures to perform resulting from causes other than STAY1000LX System defects. **EXCEPT FOR THE EXPRESS LIMITED WARRANTIES CONTAINED IN THIS SUBSECTION 1.12 OR ELSEWHERE IN THE AGREEMENT, INCLUDING THESE SERVICE TERMS AND THE SONIFI LIMITED WARRANTY, SONIFI DISCLAIMS ALL WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED OR STATUTORY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT WITH REGARD TO THE PROVISION OF OR FAILURE TO PROVIDE SERVICES, LICENSED SOFTWARE, DOCUMENTATION AND EQUIPMENT SET FORTH IN THE AGREEMENT.** Company's sole and exclusive remedy in the event of a non-conformity in the express limited warranties contained in this Subsection 1.12 is that SONIFI, in its sole discretion, will repair or replace the hardware, components, parts and products covered by the express warranty with new or refurbished hardware, components, parts and products and/or re-perform any required professional or installation service(s) to make them substantially conform with such limited warranty or, in the alternative, substitute a comparable part or component for the defective part or component to which the nonconformity is attributable.

1.13 **Limitation of Liability.** **EXCEPT WITH RESPECT TO COMPANY'S PAYMENT OF EARLY TERMINATION FEES, A PARTY'S BREACH OF SUBSECTION 1.18 (CONFIDENTIALITY), INFRINGEMENT BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, A PARTY'S INDEMNIFICATION OBLIGATIONS, OR A PARTY'S WILLFUL MISCONDUCT OR FRAUD, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS: (A) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES OR LOSSES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST REVENUES, LOST DATA, LOSS OF GOODWILL, AND LOSS OF ANTICIPATED SAVINGS, WHETHER FORESEEABLE OR NOT AND REGARDLESS OF THE FORM, LEGAL THEORY OR BASIS OF RECOVERY OF ANY SUCH DAMAGES OR LOSSES; AND (B) EACH PARTY'S**

ENTIRE LIABILITY TO THE OTHER PARTY FOR ANY CLAIM, DEMAND, SUIT, INVESTIGATION, PROCEEDING OR CAUSE OF ACTION RELATED TO OR ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID TO SONIFI BY COMPANY FOR SERVICES DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO A CLAIM, DEMAND, SUIT, INVESTIGATION, PROCEEDING OR CAUSE OF ACTION (THE "LIABILITY CAP"). FOR ALL CLAIMS, SUITS, PROCEEDINGS, INVESTIGATIONS, CAUSES OF ACTION, DAMAGES, LOSSES, AND INDEMNIFICATION OBLIGATIONS EXCLUDED FROM THE LIABILITY CAP IN THIS SUBSECTION 1.13, EACH PARTY'S ENTIRE AGGREGATE LIABILITY TO THE OTHER PARTY AND ITS INDEMNIFIED PARTIES, AFFILIATES AND SUBSIDIARIES SHALL NOT EXCEED USD \$250,000.00. This Subsection 1.13 survives termination or expiration of the Agreement, including these Service Terms.

1.14 **Notices.** All notices shall be given in writing at the addresses or using other contact information set forth on the signature page of the Agreement and shall be deemed given (a) when deposited in the mail with postage prepaid, certified or registered mail, with return receipt requested, (b) when delivered to a reputable national overnight delivery or courier service, or (c) by e-mail, provided that a hard copy is sent as described in clause (a) or (b) within 24-hours of the e-mail transmission. SONIFI may send and Company consents to receive communications or data regarding the Services, Licensed Software or the STAY1000LX System that are the subject matter of the Agreement, including but not limited to (i) notices about Company's use of the on-Premises, Equipment, In-Room Equipment, Licensed Software or Services, (ii) Updates or upgrades, and (iii) promotional information and materials regarding SONIFI's products and services, in each case, via e-mail.

1.15 **Complete Agreement.** The Agreement, including these Service Terms and all addenda, appendices, schedules, forms, exhibits and other documents attached to or incorporated in the Agreement, is the complete understanding of the Parties and no other statements, representations, discussions, or communications, whether oral or written, with respect to the subject matter contained in the Agreement shall be binding upon the Parties. The Agreement and all rights, remedies, covenants, and obligations thereunder cannot be modified, waived, or amended except in a written instrument signed by both Parties. No handwritten or other changes, additions, or deletions made by a Party on any pages of the Agreement are valid or binding without the express written consent of the other Party. If any part of the Agreement is found to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remainder of the Agreement. The Parties will negotiate in good faith to replace an invalid or unenforceable provision to accomplish the original intent and economic agreement of the Parties.

1.16 **Independent Contractor.** Nothing contained in the Agreement shall be deemed to create a joint venture or partnership between the Parties and neither Party is authorized to act towards third parties in any manner that would indicate such a relationship. In performing their respective duties under the Agreement, each Party is operating as an independent contractor.

1.17 **Private Provision of Services; No Third-Party Beneficiaries.** The STAY1000LX System, Licensed Software and Services are privately offered and will be privately furnished on a non-common carrier basis. Neither Company nor SONIFI regards any warranties, representations, covenants, offers or undertakings made by the other as being in the nature of offers of common carriage. In addition, nothing contained in the Agreement, including these Service Terms, shall be deemed or construed by the Parties or any third-party to create any rights, obligations or interests in third parties.

1.18 **Confidential Information.**

1.18.1 **Definition.** "**Confidential Information**" means all of a Party's tangible and intangible information that does not meet the exceptions set forth at the end of this Paragraph 1.18.1, including without limitation, (a) Company's or SONIFI's trade secrets, business plans, business opportunities, customers, pricing, marketing plans, financial information, analyses, compilations, research, development, know-how, technology, designs, ideas, concepts, inventions, discoveries, methods, combinations, techniques, solutions, systems, specifications, software, code, communications protocols, algorithms, prototypes, devices or other intellectual property, or third-party confidential information disclosed through dealings or discussions between the Parties, including derivations, revisions and improvements thereto, (b) information Company or SONIFI identifies from time to time as confidential, (c) information that should be treated as confidential under the circumstances surrounding its disclosure, and (d) the contents of this Agreement and any exhibits, addenda, amendments, schedules, appendices, forms, attachments or related agreements, which will be both Parties' Confidential Information. The Party disclosing Confidential Information is hereinafter referred to as the "**Disclosing Party**" and the Party receiving Confidential Information is hereinafter referred to as the "**Receiving Party**". Confidential Information does not include information which (i) is already in Receiving Party's possession (other than information provided by or on behalf of Disclosing Party), *provided* that such information is not subject to another confidentiality agreement with or other obligation of secrecy to Disclosing Party or another person or entity, or (ii) is independently developed or acquired by the Receiving Party without the use of or reference to the Disclosing Party's Confidential Information, or (iii) is or becomes generally available to the public other than as a result of an unauthorized disclosure by Receiving Party or its representatives, or (iv) becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party or its representatives, *provided* that such source is not bound, to Receiving Party's knowledge, by a confidentiality agreement with or other obligation of secrecy to Disclosing Party or another person or entity.

1.18.2 **Use and Maintenance of Confidential Information.** Except as otherwise specifically authorized by any other provision of the Agreement, SONIFI and Company each shall hold the other Party's Confidential Information in strict confidence and shall protect the other Party's Confidential Information from unauthorized disclosure and unauthorized use with at least the same level of care as it protects its own information of a like nature, but no less than reasonable care. Unless otherwise expressly permitted in the Agreement, the Receiving Party may disclose the Disclosing Party's Confidential Information only to the Receiving Party's officers, employees, advisors, contractors, subcontractors, agents and permitted assigns and permitted successors who have a need to know the Disclosing Party's Confidential Information in the course of fulfilling the Receiving Party's obligations under the Agreement and/or to the extent required for the Receiving Party to enforce its rights against the Disclosing Party, including filing a lawsuit or instituting arbitration or mediation. SONIFI and Company shall each cause their respective officers, employees, advisors, contractors, subcontractors, agents, successors, assigns, and affiliates to comply with the requirements of this Subsection 1.18. The Receiving Party is responsible for any breach of the requirements of this Subsection 1.18 by the Receiving Party's officers, employees, advisors, contractors, subcontractors, agents, successors, assigns, and affiliates. SONIFI and Company may use the other Party's Confidential Information only to the extent required to fulfill their respective obligations under the Agreement, to enforce their respective rights under this Agreement and/or, to receive the full benefit of the licenses granted by the other Party herein and must not divulge or communicate any of the other Party's Confidential Information to any person or entity except as expressly permitted by this Subsection 1.18 or another provision of the Agreement. Unless otherwise expressly stated in the Agreement, no provision in the Agreement grants the Receiving Party any express or implied licenses or any express or implied proprietary rights in Confidential Information belonging to the Disclosing Party and each Party retains all right, title and interest in and to its Confidential Information, unless otherwise expressly stated in the Agreement. The Receiving Party shall not engage, directly or indirectly, in the disassembly, reverse engineering, decompilation, modification or translation of the Disclosing Party's Confidential Information, nor create any derivative works based on the Disclosing Party's Confidential Information, unless expressly permitted by the Agreement or by applicable law. Nothing in the Agreement shall in any manner prohibit or restrain either Party from the development of products or services, having products or services developed for it, and entering into joint ventures, alliances, or licensing arrangements with third parties that, without violation of the confidentiality obligations of the Agreement, compete with the products, services, technologies or systems of the other Party. Unless otherwise expressly stated in the Agreement, no representation or warranty as to the accuracy or completeness of Confidential Information is made or implied by the Disclosing Party, and the Disclosing Party shall have no liability relating to or resulting from the Receiving Party's use of the Disclosing Party's Confidential Information.

1.18.3 **Notification.** SONIFI or Company, as applicable, shall immediately (or within such other timeframe prescribed in the Agreement or in applicable

laws and regulations) notify the other if it discovers any unauthorized use or unauthorized disclosure of the other Party's Confidential Information. The discovering Party must then cooperate with the other Party to regain possession of the Confidential Information and prevent its further unauthorized use or dissemination.

1.18.4 Injunctive Relief. If SONIFI or Company breaches the obligations established in this Subsection 1.18, then the breaching Party consents to the other Party seeking the remedies of specific performance and temporary, preliminary, or final injunctive relief, without proof of the non-breaching Party's actual damages and without posting a bond or other security, because remedies at law would be inadequate. Notwithstanding the foregoing, such remedies shall not be deemed to be the exclusive remedies for a breach of this Subsection 1.18 but shall be in addition to all other remedies available at law or in equity.

1.18.5 Return of Confidential Information. SONIFI and Company agree to promptly return to its owner or destroy, at the Disclosing Party's option, all of the Disclosing Party's Confidential Information and related records containing Disclosing Party's Confidential Information and all copies of the Disclosing Party's Confidential Information on the earlier of expiration or termination of this Agreement; provided that the Receiving Party may retain copies of materials containing the Disclosing Party's Confidential Information to the extent required by applicable laws or applicable regulations or a Party's own recordkeeping and records retention policies and procedures so long as the Receiving Party continues to protect the Disclosing Party's Confidential Information in accordance with this Subsection 1.18.

1.18.6 Disclosure. Notwithstanding anything to the contrary contained in the Agreement, the Receiving Party may disclose the Disclosing Party's Confidential Information (i) if required by applicable laws, applicable regulations, applicable government or judicial orders or applicable government or judicial directives, including if a court of competent jurisdiction issues a subpoena or court order ordering such disclosure, in which event the Receiving Party shall notify the Disclosing Party as promptly as practicable (if permitted by applicable laws, applicable regulations, or judicial or governmental rules, orders or directives) in order to allow the Disclosing Party an opportunity to seek confidential treatment and the Receiving Party shall disclose the Disclosing Party's Confidential Information only to the extent necessary to comply with such subpoena or court order, or (ii) in order to enforce its rights under the Agreement, including a litigation proceeding, but such disclosure must be subject to appropriate protections to prevent public disclosure of Disclosing Party's Confidential Information, if available.

1.18.7 Survival of Parties' Confidentiality Obligations. The obligations set forth in this Subsection 1.18 concerning Confidential Information survive the expiration or termination of this Agreement.

1.19 Force Majeure. Neither Party shall have any liability (except for payment obligations specified in the Agreement) for the failure to perform or a delay in performing any of its obligations under the Agreement, including these Service Terms, if such failure or delay is the result of any legal restriction, labor dispute (excluding disputes involving the employees of the Party seeking the benefit of this Subsection 1.19), boycott, flood, fire, extreme weather or other natural calamity (including a partial or complete FTG Programming outage caused by weather conditions), Act of God, act of terrorism, public emergency, disease epidemic or disease pandemic (in either case, as determined by the United States Centers for Disease Control and Prevention, or its successor, or the World Health Organization, or its successor), insurrection, riot, war, civil disturbance, national emergency, commercial unavailability of hardware, parts or components, the inability to secure raw materials, shipping or freight carriers or transportation facilities, supply chain disruptions, unavoidable mechanical failure not caused by the Party seeking the benefit of this Subsection 1.19, interruption in the supply of electrical power not caused by the Party seeking the benefit of this Subsection 1.19, telecommunications or Internet outage not caused by the Party seeking the benefit of this Subsection 1.19, damage to or destruction of satellites used to deliver FTG Programming or iTV Content and Services to the Premises, or any cause beyond the control of the Party relying on this Subsection 1.19 (each a "**Force Majeure Event**"). A Party whose performance is delayed or prevented because of a Force Majeure Event shall promptly notify the other Party. The affected Party's performance or deadline for compliance will be extended on a day-to-day basis for the period of time equal to that of the underlying Force Majeure Event.

1.20 Assignment or Transfer. SONIFI may transfer or novate the Agreement or assign its rights under the Agreement to any parent, subsidiary, or affiliate, to any entity with or into which SONIFI merges or consolidates or to which SONIFI sells all or substantially all its assets.

1.21 Parties' Authority to Sign Agreement. Each Party represents and warrants to the other that it has the full right, power, and authority to enter into the Agreement and to perform all its obligations thereunder and hereunder. Each person signing the Agreement represents and warrants that he or she is fully authorized on behalf of the respective Party to sign the Agreement. With respect to Company, if the Agreement is signed by or on behalf of any entity other than the owner of the Premises (e.g., a management company), such entity represents and warrants that it is the duly authorized agent for such owner and has the requisite capacity as agent to bind such owner.

1.22 Controlling Language. The Parties hereby confirm their express agreement that the Agreement and all documents directly or indirectly related thereto be drawn up in English. LES PARTIES RECONNAISSENT LEUR VOLANTE EXPRESSE QUE LA PRESENTE CONVENTION AINSI QUE TOUS LES DOCUMENTS QUI S'Y RATTACHENT DIRECTEMENT OU INDIRECTEMENT SOIENT REDIGES EN LANGUE ANGLAISE. The official text of the Agreement (and any notice submitted pursuant to the Agreement) is in English and in the event of any dispute concerning the construction or meaning of the Agreement, including these Service Terms, reference shall be made only to the Agreement as written in English and not to any translation.

1.23 Applicability. This Section 1 applies in its entirety to the Agreement and to all on-Premises Equipment, In-Room Equipment, Licensed Software, Documentation and Services purchased, licensed, or subscribed to by Company pursuant to the Agreement.

Section 2. iTV Content and Services.

2.1 Limited License. SONIFI grants Company a limited, non-exclusive, non-sublicensable, revocable license to receive, display, exhibit, use and make available to guests at the Premises the specific interactive and on-demand content, products, and features, including but not limited to guest applications (collectively, "**iTV Content and Services**"), delineated in the Agreement's Products & Fee Schedule and defined in the Product Definitions attached to and incorporated in the Agreement. SONIFI reserves all rights to iTV Content and Services, exclusive of content owned or licensed by Company that Company selects and/or schedules for display, performance, or exhibition to its guests, inclusive of all Company-customized content contained in guest-facing screens and guest-facing menus (collectively, "**Company-Customized Content**"). As between SONIFI and Company, SONIFI is the sole owner of the iTV Content and Services, except for Company-Customized Content. SONIFI retains all common law, statutory and other intellectual property rights throughout the world, including, without limitation, patents, design rights, copyrights, moral rights, database rights, trademarks, trade secrets and rights in know-how (collectively, "**Intellectual Property Rights**") in and to iTV Content and Services (excluding Company-Customized Content). Company shall not remove, amend, obscure, or modify any notice of SONIFI's and/or any other entity's Intellectual Property Rights or other proprietary rights appearing on or through the iTV Content and Services. Company grants SONIFI a limited, revocable, fully paid license to use, modify, distribute, and copy the Company-Customized Content for the sole purpose of fulfilling SONIFI's obligations under the Agreement. SONIFI is not responsible or liable for Company-Customized Content. Company represents and warrants to SONIFI that: (a) Company owns and/or has secured, at its expense, all Intellectual Property Rights and all other proprietary rights to all portions of Company-Customized Content, and has acquired and secured, at its own expense, all licenses, consents, releases, performance rights, and distribution rights or approvals necessary for Company-Customized Content; (b) SONIFI may distribute and exhibit Company-Customized Content in the Premises without infringing any third-party Intellectual Property Rights, performing rights, music rights, distribution rights, privacy rights, publicity rights, or any other rights owned or controlled by any third party; (c) all applicable license fees, royalties, or other fees for Company-Customized Content have been and will continue to be paid by Company to the appropriate person(s) or entity(ies) in full in a timely manner; and (d) Company-Customized Content will not promote or make available services that compete, directly or indirectly, with the iTV Content and Services. Company acknowledges that SONIFI retains the right to restrict the availability of or remove

Company-Customized Content if SONIFI, in its sole yet reasonable discretion, determines that Company is in violation of the foregoing representations and warranties.

2.2 **Advertising.** SONIFI shall have the right to insert, place, include, schedule, remove, modify, turn on and off and otherwise control all advertising and third-party paid content in any form (including infomercials) provided and scheduled by SONIFI included in or in connection with FTG Programming (defined in Section 3) and/or iTV Content and Services in any and all forms and media, including, without limitation, insertion of advertisements or interactive advertising modules in the main menu and the Interactive Programming Guide.

2.3 **iTV Fees.** SONIFI, in its sole discretion, has the right to establish and to adjust all fees and charges for iTV Content and Services made available to Premises guests, permitted invitees, and permitted employees for viewing on a pay-per-transaction or pay-per-view basis (such fees and charges, exclusive of taxes, the “**iTV Fees**”). Company shall be entitled to a portion of the iTV Fees billed to and collected directly from Premises guests, permitted invitees, and permitted employees on a pay-per-transaction or pay-per-view basis in such percentage or in such amount as is set forth in the Products & Fee Schedule in the Agreement (the “**Company Share**”). The Company Share shall be deemed fees earned by Company for its services under the Agreement. Company shall post charges reported by the STAY1000LX System to guest invoices or bills and collect from its guests the iTV Fees which shall be held by Company, in trust, for the benefit of SONIFI. Company shall also collect from guests any and all federal, state, provincial, county and local taxes applicable to the iTV Fees, and shall directly remit the same to the applicable taxing authority or SONIFI, as directed by SONIFI. Company shall charge to and collect from its guests the iTV Fees together with all applicable taxes. Unless Company is required to remit such taxes to a government agency or government authority directly, or unless otherwise agreed in writing by the Parties, Company will pay all iTV Fees and applicable taxes to SONIFI (less the Company Share) and SONIFI will remit the applicable taxes to the appropriate government agency or government authority. As soon as practicable following the end of each calendar month, SONIFI will transmit to Company a monthly statement setting forth all iTV Fees and applicable taxes, net of itemized adjustments timely entered by Company and approved by SONIFI, which adjustments shall not exceed two percent (2%) of the gross monthly iTV Fees generated during the prior month (“**Final Statement**”). Such Final Statement for the preceding calendar month shall include a calculation of Company’s Company Share. Company shall notify SONIFI of, and resolve, any discrepancy in the Final Statement within 5-business days of receipt of the Final Statement. No later than thirty (30) days after Company’s receipt of the Final Statement from SONIFI, Company shall pay and deliver to SONIFI the total iTV Fees for the preceding calendar month specified in the Final Statement, **less** the Company Share, **plus** all applicable taxes (unless Company is required to remit such taxes to a government agency or government authority directly). SONIFI or its designated representative may inspect and audit Company’s books and records pertaining to iTV Content and Services and iTV Fees on at least seven (7) days’ notice to Company. It is expressly understood that SONIFI’s right to audit and inspect Company’s books and records shall not extend more than four (4) years from the expiration of the calendar year to be audited.

2.4 In the event Company breaches the Agreement for any reason, and SONIFI elects to terminate the Agreement during the Initial Term, SONIFI shall be entitled to early termination fees equal to: (a) 100% of any financing fees, including the Purchase Price of the STAY1000LX System; (b) 100% of any Term discount Company received through the effective date of Agreement termination and 100% of any SONIFI or third-party subsidy remaining as of the effective date of Agreement termination; and (c) 70% of the average of the previous 12-months’ aggregate iTV Fees and 70% of all “Recurring Fees” specified in the Products & Fee Schedule or in an addendum, amendment or schedule to the Agreement, in each case, multiplied by the number of months remaining in the Initial Term. Early termination fees calculated and due pursuant to this Subsection 2.4 are in addition to any and all early termination fees Company owes to SONIFI pursuant to other provisions of the Agreement.

2.5. Company must purchase, install, activate, and continuously operate the STAY1000LX System at the Premises during the Term in order to receive iTV Content and Services. Failure to do so will be considered a material breach of the Agreement by Company. SONIFI, in its sole discretion, reserves the right to discontinue or modify specific iTV Content and Services or any portion of iTV Content and Services at any time for legal or other bona fide purposes, including but not limited to commercial unavailability or infeasibility. Additional Services for which a one-time fee or recurring fee is charged may be added to the STAY1000LX System solely through the incorporation of additional exhibits, schedules, appendices, amendments, or addenda by mutual written agreement of the Parties. SONIFI, from time to time during the Term, may unilaterally add new or enhanced features and functions to the STAY1000LX System, at no additional cost to Company (collectively, “**Free Services**”), without amending the Agreement. SONIFI may discontinue or modify Free Services at any time during the Term, without amending the Agreement, after providing Company with written notice.

Section 3. Free-to-Guest Programming.

This Section 3 of the Service Terms only applies to and binds Company and SONIFI if Company elects to subscribe to, distribute and exhibit FTG Programming at the Premises. Section 3 does not apply to SONIFI or Company if the Premises is located in Canada or its territories.

3.1 **Definitions.** For the purposes of the Agreement, including this Section 3 of the Service Terms and the Free-to Guest Programming Appendix, the words, terms, and phrases, below, shall be given the following meanings:

3.1.1 “**FTG Programming**” is the linear video programming content (such as television networks) that is displayed on the free-to-guest channels available on televisions in guest rooms, public areas, and semi-public areas in the Premises, as applicable, and is provided and exhibited at no charge to Premises guests, employees, patrons, or invitees. FTG Programming requires the installation and use of commercial-grade hardware that delivers FTG Programming to individual guest rooms, public areas and/or semi-public areas, as applicable. Depending on hardware capabilities, various combinations of high definition digital or standard definition digital channels can be enabled at the Premises. The specific hardware to be installed at the Premises for FTG Programming reception, decoding, encoding, encryption, distribution, and exhibition is listed and described in Free-to-Guest Programming Appendix attached to and incorporated in the Agreement.

3.1.2 “**Public Viewing**” is the availability of FTG Programming content for viewing by the general public on televisions in public areas of the Premises where the main source of revenue is from the sale of food and beverages for immediate consumption. Common applications are bars and restaurants. A separate contract is required for Public Viewing and, therefore, Public Viewing is not covered by the Agreement.

3.1.3 “**Business Viewing**” is the availability of FTG Programming content for viewing by the general public on televisions in public and semi-public areas of the Premises where the main source of revenue is from the sale of goods, services, and experiences. Common applications are lobbies and exercise facilities. Depending on the number and locations of televisions intended for Business Viewing, a separate contract may be required for Business Viewing, in which case, Business Viewing is not covered by the Agreement.

3.2 Provision of FTG Programming at the Premises.

3.2.1 SONIFI shall provide the FTG Programming selected by Company to the Premises as described herein and at such cost and for such fees as are set forth in the Agreement’s Products & Fee Schedule, in the Free-to-Guest Programming Appendix and in any additional FTG Programming agreements, amendments or

addenda entered into by and between the Parties. SONIFI hereby grants Company a non-exclusive, limited, non-sublicensable, revocable license to receive, distribute and exhibit the FTG Programming to which it subscribes at the Premises and for which it pays the fees specified in the Products & Fee Schedule in the Agreement. As between SONIFI and Company, SONIFI reserves all Intellectual Property Rights in and to the FTG Programming not expressly granted herein or in the Free-to-Guest Programming Appendix. SONIFI and its third-party suppliers are the sole owners of and shall retain all right, title, and interest in and to all Intellectual Property Rights in and relating to the FTG Programming. Company shall not remove, amend, obscure, or modify any notice of SONIFI's or any other entity's proprietary rights appearing on or through the FTG Programming.

3.2.2 The limited license granted under the Agreement, including the Free-to-Guest Programming Appendix, is for rooms for rent or occupancy on a nightly basis located in the Premises and the FTG Programming may not be displayed for Public Viewing in any public room or public area at the Premises, including, but not limited to, bars, lounges, restaurants, fitness centers, lobbies, common areas, hallways, employee areas, or any area where an admission fee is required; *provided* that (a) if the Products & Fee Schedule in the Agreement, the Free-to-Guest Programming Appendix and these Service Terms provide that the FTG Programming may be made available for Business Viewing in specified public areas or semi-public areas of the Premises, then such limited license shall also be for the approved public areas and semi-public areas listed therein, and (b) certain FTG Programming may be required to be blacked-out or deleted by a programmer (e.g., live sporting events).

3.2.3 The FTG Programming is subject to copyright agreements and other restrictions. While SONIFI is an authorized distributor of the FTG Programming and Equipment offered by SONIFI's third-party suppliers, SONIFI does not have responsibility for or any control over the content, ownership and licensing of FTG Programming, including the acquisition and maintenance of all Intellectual Property Rights (including without limitation music performance licenses) related to FTG Programming and the payment of royalties and license fees to the individual owners and licensors of FTG Programming. Public Viewing and Business Viewing generally will require separate music performance rights licenses and payment of associated license fees. Company is responsible for obtaining and maintaining all licenses and for paying all license fees and royalties applicable to the FTG Programming it exhibits at the Premises that are not included in this Agreement or Company's agreement(s) with a third party. If any of the FTG Programming Company has selected is no longer available, SONIFI will use commercially reasonable efforts (a) to provide Company with at least 30-days' prior written notice of the unavailability of the FTG Programming and (b) to furnish substitute FTG Programming acceptable to Company.

3.2.4 Monthly fees for FTG Programming are subject to increase in accordance with price adjustments imposed by third-party providers of FTG Programming. The then-current aggregate monthly fees for FTG Programming may be increased by up to five percent (5%) without Company approval. SONIFI will provide Company with at least thirty (30) days' prior notice of any such increase, if feasible, based on when SONIFI is informed of the increase. In the event that such an increase in then-current aggregate monthly FTG Programming fees exceeds five percent (5%), SONIFI shall provide Company with notice no less than thirty (30) days prior to the effective date of the increase, if feasible depending on when SONIFI is informed of the increase, and upon written notice to SONIFI within thirty (30) days following receipt of SONIFI's notice, Company may elect, in its reasonable discretion: (a) to continue to receive the affected FTG Programming at the increased amount; (b) to decline to continue receiving the FTG Programming that is subject to the price increase; or (c) to choose to receive substitute FTG Programming, subject to availability and comparable cost. Company acknowledges that a decision not to receive certain FTG Programming or to substitute certain FTG Programming in accordance with the foregoing may require Company to return or repay programmer rebates, subsidies and incentives related to such FTG Programming.

3.3 Premises Access for FTG Programming. Company shall secure and maintain such licenses, permits and approvals required by governmental and regulatory authorities having jurisdiction over the installation, set-up, activation, operation, and removal of Equipment used to deliver FTG Programming to and within the Premises, including any permits required for the exterior installation of a satellite dish and other signal reception devices. Such obligation of Company to secure and grant to SONIFI the rights necessary to install, set-up, activate, service and maintain Equipment used to deliver and distribute FTG Programming shall include all rights, licenses, permissions, and variances necessary to install, use and access Equipment on the rooftop of the Premises as SONIFI considers reasonably necessary. Company shall consult with SONIFI before undertaking any project, on its own behalf or by granting of rights to a third-party, that may limit SONIFI's access to Equipment utilized to deliver or distribute FTG Programming at the Premises, including but not limited to roof repairs or the installation of other equipment on the rooftop of the Premises. No Equipment installed by SONIFI on the rooftop of the Premises may be removed or moved during the Term without prior written notice to and the consent of SONIFI, such consent not to be unreasonably withheld.

3.4 Early Termination Fees. In the event Company breaches the Agreement for any reason, and SONIFI elects to terminate the Agreement during the Initial Term, SONIFI shall be entitled to early termination fees equal to: (a) 100% of any financing fees, including the Purchase Price of Equipment for FTG Programming; (b) 100% of any Term discount Company received through the effective date of Agreement termination and 100% of any SONIFI or third-party subsidy remaining as of the effective date of Agreement termination; and (c) 40% of the "Recurring Fees" for FTG Programming specified (i) in the Products & Fee Schedule, (ii) in the Free-To-Guest Programming Appendix and (iii) in any schedule, addendum or amendment to the Agreement, in all cases, for each month remaining in the Initial Term. Early termination fees calculated and due pursuant to this Subsection 3.4 are in addition to any and all early termination fees Company owes to SONIFI pursuant to other provisions of the Agreement.