



## PARTNER PROGRAM AGREEMENT

This Partner Program Agreement (“Agreement”) is made by and between Fidelity, Inc. and Partner. The “Effective Date” of this Agreement is the date upon which Partner registers on Fidelity’s Partner Exchange site and accepts the terms of the Fidelity Partner Program Guide and this Agreement.

**1. Term of Agreement.** The initial term of this Agreement shall be one year from the Effective Date (“Initial Term”) and the Agreement shall then automatically continue on an annual basis (“Term”) until terminated except that either party may elect not to renew for any Term after the Initial Term upon the giving of at least thirty (30) days written notice before the end of the Initial Term or any Term thereafter.

**2. Relationship between the Parties.** Per the [Fidelity Partner Program Guide](#) and Fidelity and Partner’s election/agreement, Partner may be a “Referral Partner”, “Authorized Partner”, or “Certified Partner”, (for purposes of this Agreement, individually or collectively, “Partner”). Fidelity hereby appoints Partner as a non-exclusive referral or resale (as applicable) party of Fidelity for the referral and/or resale of Fidelity telecommunications software products, services, and equipment, including VoIP telephony services listed and as described on Fidelity’s website, and as designated to Partner to sale or refer (“Fidelity Product(s)”). Nothing contained in this Agreement shall preclude or limit in any way the right of Fidelity from marketing or providing worldwide, either directly or indirectly, any of its services or products. This Agreement does not constitute Partner as agent, legal representative, joint venture, legal partner, employee or servant of Fidelity for any purpose whatsoever; and it is deemed understood between parties that Partner shall be an independent contractor and is in no way authorized to make any license, contract, agreement, warranty or representation on behalf of Fidelity, or to create any obligations expressed or inspired on behalf of Fidelity beyond the regular sales and service of Fidelity Products. Partner will cause all Customers to accept (either directly or by inclusion of such in Partner’s sales process) Fidelity’s applicable terms of use and license agreement and otherwise be subject to all of Fidelity’s terms and conditions for use of the Fidelity Products. Where this Agreement discusses the sale and/or resale terms of Fidelity Products sold by Partner, such does not apply to a Partner that is Referral Partner only.

### **3. Obligations:**

**a. Fidelity.** For purposes of this Agreement, Fidelity’s obligations to Partner (not applicable to Referral Partners) are as follows:

- i. Provide Partner with access to marketing materials and collateral, sales tools, web content and quoting system.
- ii. As applicable, provide sales assistance for all referred opportunities.
- iii. Provide access to on-line training and certification.
- iv. Provide Customer support in conjunction with Fidelity Products purchased by Customers in accordance with Fidelity’s standard warranty and support agreements.
- v. Provide Partner purchase and delivery history and Customer information upon demand for audit purposes, subject to Fidelity’s Privacy Policy as posted on [www.fidelity.com](http://www.fidelity.com).
- vi. Provide/Pay to Partner the Benefits/Compensation, as set forth in the Fidelity Partner Program Guide.

**b. Partner.** For purposes of this Agreement, Partner’s obligations to Fidelity are as follows:

- i. Promote Fidelity Products to prospective customers upon the terms and conditions set forth on the Fidelity website and this Agreement. Partner shall not market and sell Fidelity Service to current Fidelity customers or customers who have a purchase history with another partner, without the prior written approval of Fidelity’s SVP of Sales, COO or CEO. Sales that are subsequently found to fall into one of these categories will be subject to no compensation or reversal of compensation of Partner’s Compensation for such sale(s) or referrals and shall be a breach of this Agreement.
- ii. Provide adequate training for its personnel in marketing, operation and support of Fidelity Products to enable them to effectively market such Fidelity Products.
- iii. Provide Fidelity with all pertinent Customer information necessary to service the Customer. This will be facilitated through the Fidelity lead lock process and should include, at a minimum, End Customer Name, Full Address, Phone Email and Web Address.
- iv. Include Fidelity Products in any relevant Partner quote and sales tools.
- v. Appoint liaison(s) to support presales and marketing efforts.
- vi. Meet all goals and objectives as described in the Fidelity Partner Program Guide.
- vii. Remit to Fidelity any and all required amounts due for such Fidelity Products pre-ordered or pre-paid by Partner for resale that are due to Fidelity and/or remit amounts due from Fidelity Products (or related services) ordered/paid for by Customer(s) using Fidelity Products. For Fidelity subscription Products, Partner must provide a credit card and ACH as a form of payment prior to order and delivery of said Products to Partner or its customers.

**c. Fidelity’s Acceptance or Rejection of Presented Customers.** Fidelity has the right, in its sole discretion, to enter into or not enter into any service or agreement with a Customer. If Fidelity declines to enter into service or agreement with a presented Customer, Fidelity will not be obligated to pay any Compensation to Partner. Fidelity has the sole right to set prices for the Fidelity Products, to set the terms and conditions of the Fidelity Products, and to make other adjustments to, and to discontinue offering or selling, the Fidelity Products, without liability of any kind to the Partner.

**d. Partner non-performance (including non-payment).** Where a Customer(s) has purchased Fidelity Products through a Partner, Partner shall pay Fidelity for such Fidelity Product and services in accordance with the Partner Program Guide or other Fidelity Product order or agreement terms. At any time, should Partner not remit amounts due to Fidelity for the Product or products/services related to the Product, and after Fidelity and Partner have exhausted any notice and cure steps that may be in place between Fidelity and Partner, per this Agreement or the Fidelity Partner Program Guide or Fidelity Product order or agreement terms, Fidelity may notify Partner and Partner’s Customer(s) of the non-payment by Partner and require that Customer cause its account to become current with Fidelity (if applicable) and require Customer to become a direct Customer of Fidelity (to maintain the Fidelity Product and service) by accepting Fidelity’s terms and conditions for the Product. Customer will cease to be Partner’s Customer at such time. Partner understands that Fidelity’s Product Terms of Service and License Agreement expressly set forth this possibility to Customer. In such Terms of Service and License Agreement, Customer shall hold Fidelity harmless for such Partner actions/events and will seek redress from Partner for amounts not paid by Partner to Fidelity (but previously collected from Customer by Partner) for Fidelity Products and related services enjoyed by Customer. Fidelity shall not be liable to Customer

for any Partner non-performance that may cause Customer's Fidelity Product/account to be suspended or terminated due to Partner non-performance. Further, Fidelity shall not be liable to Partner for any Customer claims against Partner caused or due to Partner's non-performance.

**4. Dispute Resolutions.** Disputes regarding compensation must be submitted in writing to [partnercommissions@fidelity.com](mailto:partnercommissions@fidelity.com) within ninety (90) days of receiving payment for same. It is Partner's responsibility to file any such dispute within the ninety (90) day period. The parties agree that they shall not consider any dispute for any amount paid to the other party more than twelve (12) months prior.

**5. Certification and Readiness Program.** The Partner shall participate in Fidelity's relevant sales, pre-sales and technical training programs, as applicable.

**6. Marketing Authorizations.** Partner, when marketing, agrees (i) to market Fidelity's Products using only pre-approved and/or jointly developed materials; and (ii) not to negotiate any business terms nor make any representations, warranties or statements regarding Fidelity Products other than through the use of pre-approved materials/media. Fidelity acknowledges that Partner may offer ancillary services that Partner may propose in conjunction with Fidelity Products.

**7. Use of Trademarks.**

**a.** Solely in connection with the performance of its obligations under this Agreement, Fidelity may use Partner's name and certain other Partner trademarks ("Partner Marks") to market Partner's services in connection with the obligations hereunder. Partner hereby grants to Fidelity a non-exclusive, revocable right during the term of this Agreement to use Partner Marks in the performance of Fidelity's authorized obligations pursuant to this Agreement. Except for the jointly developed marketing materials, Fidelity agrees to submit to Partner, in advance of any proposed use, samples of its use of the Partner Marks for review and approval. If, in the reasonable determination of Partner, any use or proposed use is unacceptable, Fidelity shall be prohibited from using the Partner Mark as proposed.

**b.** All right, title and interest in and to the Fidelity Product(s), the concepts embodied therein, the name "Fidelity," and its trademarks and service marks are, and shall remain, the sole property of Fidelity. Solely in connection with the performance of its obligations under this Agreement, Partner may use the Fidelity name and certain other Fidelity trademarks, ("Fidelity Marks") to market Fidelity Products in connection with the obligations hereunder. Fidelity hereby grants to Partner a non-exclusive, revocable right during the term of this Agreement to use Fidelity Marks in the performance of Partner's obligations pursuant to this Agreement. Except for the jointly developed marketing materials, Partner agrees to submit to Fidelity, in advance of any proposed use, samples of its use of the Fidelity Marks for review and approval. If, in the reasonable determination of Fidelity, any use or proposed use is unacceptable, Partner will be prohibited from using the Fidelity Mark as proposed.

**8. Survival of Agreement Obligations.** In the event of any Customer default on account, late payment, or any other violation of the Terms of Service and License Agreement by the Customer, Fidelity may, at its sole discretion, terminate disconnect or otherwise modify its relationship with the Customer, but will notify Partner of such actions taken. No compensation will be due on any Customer accounts which are in default, late or otherwise in violation of the Terms of Service and License Agreement. Should a Partner provided Customer demand in writing that Fidelity provide Customer a new reseller/referral partner for any reason, Fidelity may do so. Before reassigning such Customer, however, Fidelity agrees to use reasonable efforts to mediate the dispute between Partner and Customer. Likewise, should this Agreement be terminated for cause due to a Partner breach, Fidelity may refer/assign active Customers to another reseller/referral partner.

**9. Confidential Information and License.** Partner acknowledges that the Fidelity Products and any Proprietary Data furnished by Fidelity, and the concepts embodied therein, are and shall remain the proprietary property of Fidelity; and Partner shall neither have nor acquire any proprietary interest or other right to such Fidelity Products and Proprietary Data other than the right to use granted hereby. Further, Partner agrees to hold in confidence any Proprietary Data of Fidelity which it receives and protect it in accordance with the standards within the industry for the protection of proprietary information and at least to the same extent that Partner protects its own confidential or proprietary information. Under no circumstances shall Partner decompile, or permit others to decompile, any object code related to the Fidelity Products into a Source Code version. For the purposes of this Agreement, "Proprietary Data" shall mean any Source Code and such other proprietary materials delivered. Proprietary Data shall not include data which (i) through no act or failure on the part of Partner, becomes generally known or available; (ii) is demonstrated by Partner as being known to Partner at the time of receiving such information from Fidelity; or (iii) is furnished to others by Fidelity without restrictions on disclosure. Partner acknowledges that all Fidelity intellectual property (products and software) furnished by Fidelity hereunder and the contents thereof are the proprietary property of Fidelity, and Partner has no right or interest therein.

**10. NO WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN THE TERMS OF SERVICE AND LICENSE AGREEMENT(S) FOR FIDELITY PRODUCT(S), FIDELITY PROVIDES THE PRODUCT(S) "AS IS" AND WITH ALL FAULTS. FIDELITY HEREBY EXPRESSLY DISCLAIMS, AND, RELEASES AND RENOUNCES ALL OTHER REMEDIES, WARRANTIES, GUARANTEES, OBLIGATIONS, REPRESENTATIONS AND LIABILITIES, EXPRESS OR IMPLIED, ARISING IN FACT, LAW, EQUITY, CONTRACT, TORT, UNDER STATUTE, UNDER WARRANTY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO: (A) ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (B) ANY IMPLIED WARRANTY OR CONDITION ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OR TRADE, (C) ANY OBLIGATION, LIABILITY RIGHT, CLAIM OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM ACTIVE, PASSIVE OR IMPUTED NEGLIGENCE, CONTRIBUTORY NEGLIGENCE, VICARIOUS LIABILITY OR STRICT PRODUCTS LIABILITY OF FIDELITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES, AND (D) ANY OBLIGATION, LIABILITY OR RESPONSIBILITY FOR LOSS OF SERVICE OR DAMAGE TO ANY EQUIPMENT OR PART THEREOF. FURTHER, FIDELITY DOES NOT WARRANT THAT THE PRODUCT(S) WILL BE FREE OF BUGS, ERRORS, VIRUSES OR OTHER DEFECTS, OR THAT THE PRODUCT(S) WILL BE COMPATIBLE WITH A CUSTOMER'S EXISTING INTERNET CONNECTION, NETWORK, OR COMMUNICATIONS INFRASTRUCTURE OR ENVIRONMENT.

**11. LIMITATION OF LIABILITY.** IN NO EVENT WILL FIDELITY OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, VENDORS AND CONTRACTORS BE LIABLE FOR THE COST OF COVER OR FOR ANY INCIDENTAL, INDIRECT, SPECIAL, AGGRAVATED, PUNITIVE, CONSEQUENTIAL OR SIMILAR DAMAGES OR LIABILITIES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO LOSS OF DATA, INFORMATION, REVENUE, PROFIT OR BUSINESS) ARISING OUT OF OR RELATING TO THE USE OR INABILITY TO USE THE PRODUCT(S) OR OTHERWISE, WHETHER ARISING IN FACT, LAW, EQUITY, CONTRACT, TORT (INCLUDING NEGLIGENCE AS DESCRIBED ABOVE), STRICT LIABILITY, UNDER STATUTE,

UNDER WARRANTY OR OTHER THEORY EVEN IF FONALITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**12. Indemnification.** Each party shall indemnify, defend and hold harmless the other, its employees, principals (partners, shareholders or holders of an ownership interest, as the case may be) and agents, from and against any third party claims, demands, loss, damage or expense, whether in contract or tort, law or equity, relating to bodily injury or death of any person or damage to real and/or tangible personal property directly caused by the conduct of the indemnifying party, its personnel or agents in connection with the obligations hereunder. To receive the foregoing indemnities, the party seeking indemnification must promptly notify the other in writing of a claim or suit and provide reasonable cooperation (at the indemnifying party's expense) and full authority to defend or settle the claim or suit. The indemnifying party shall have no obligation to indemnify the indemnified party under any settlement made without the indemnifying party's written consent.

**13. Termination of Agreement.**

**a. Either party may terminate this Agreement:**

- i. for convenience, by providing at least sixty (60) days' prior written notice to the other party; or
- ii. for cause if the other party breaches any material term or condition of this Agreement and fails to cure such material breach within thirty (30) days after written notice by the non-breaching party; or
- iii. immediately upon written notice if the other party becomes the subject of a voluntary or involuntary petition in bankruptcy or any voluntary or involuntary proceeding relating to insolvency, has a receiver appointed, or an assignee for the benefit of creditors, or in the event of any insolvency or inability to pay debts as they become due by the other party, except as may be prohibited by applicable bankruptcy laws.

**b. No Liability for Termination.** Except as described in sections 3 and 8 herein, neither party will be liable to the other for any termination or expiration of this Agreement in accordance with the terms hereunder.

**c. Effect of Termination.** Within thirty (30) days of the termination or expiration of this Agreement, each party will return all Confidential Information belonging to the other in its possession at such time and will not make and/or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting recording keeping requirement.

**14. General.**

**a. Amendments in Writing.** No provision of this Agreement may be amended except by an agreement in writing signed by both Fonality and Partner.

**b. Severability.** If any provision of this Agreement or the application of such provision to any person, entity, or circumstance is found invalid or unenforceable by a court of competent jurisdiction, the determination shall not affect the other provisions of this Agreement and all other provisions of this Agreement shall be deemed valid and enforceable.

**c. Successors.** All rights and obligations of Fonality and Partner under this Agreement shall extend to and bind the respective heirs, executors, administrators, and the permitted concessionaires, successors and assignees of the parties hereto.

**d. Governing Law, Jurisdiction, and Fees.** This Agreement, the Fonality Partner Program Guide, related Fonality Product orders/agreements, and the entire relationship of the parties, shall be governed by and construed under the laws of the State of Texas without giving effect to its choice of law principles. The parties disclaim the application of the 1980 U.N. Convention on Contracts for the International Sale of Goods or any successor thereto is disclaimed. You hereby irrevocably consent and submit to the jurisdiction of the state and federal courts located in Collin County, Texas with respect to any proceeding under this Agreement, the Fonality Partner Program Guide, related Fonality Product orders/agreements, and relationship of the parties. You agree not to prosecute any action, suit, proceeding, or claim arising under or by reason of this Agreement except in such courts. In any formal action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and reasonable attorney(s') fees.

**e. Compliance with all Laws.** Fonality and Partner shall perform the obligations provided hereunder in compliance with all applicable laws, rules, and regulations.

**f. Counterparts.** This Agreement may be executed in duplicate counterparts with each such counterpart serving as an original of the document.

**g. Force Majeure.** Neither party will be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform results from causes beyond its control, including, without limitation, strikes, lockouts, or other industrial disturbances; civil disturbances; fires; acts of God; acts of a public enemy; compliance with any regulations, order, or requirement of any governmental body or agency; or inability to obtain transportation or necessary materials in the open market.

**h. Notices.** Any notice required or permitted to be sent under this Agreement shall be delivered by first class mail, return receipt requested, or via an international courier service (e.g. FedEx, DHL, UPS, etc.) to the addresses of the parties first listed above. Notice so sent will be deemed effective three days following deposit in the mail, proper postage prepaid or one day following delivery to an international courier, prepaid for overnight delivery.

**i. Entire Agreement.** Except for the Fonality Partner Program Guide and any applicable order/agreement for the Fonality Products, It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Agreement, and such supersedes and cancels any and all previous negotiations, arrangements, representations, brochures, agreements, and understandings, if any, between Fonality and Partner.