

End user licence agreement

Throughout this End User Licence Agreement (“Licence”), use of the term Modality Systems is deemed to refer to Modality Systems Ltd, Modality Systems Inc. or Modality Systems Pty Ltd, depending upon the entity with which you have contracted, as stated in the applicable Statement of Services, Sales Contract, online sales form, email order form or quote (“Software Documentation”) provided to You separately.

1. Acceptance

By downloading, installing or using the Modality Systems’ Software (“the Software”), You agree to be bound by the terms and conditions contained herein. If you do not agree with the terms and conditions, you are not authorised to install or use the Software. If you are accepting this Licence on behalf of a company or entity, you represent and warrant that you have the authority to bind such company or entity to the terms of this Licence, in which case the terms “You” and “Your” refer to your company. If You do not have such authority, or if You or Your company does not agree with the terms of this Licence, then neither You nor Your company has the right to use the Software.

2. The Software

The Software is being licensed to You by Modality Systems for use with Microsoft Lync®, Skype for Business® and Microsoft Teams®. The Software is a product of Modality Systems and is not sponsored by Microsoft.

3. Licence Grant and Use of Software

- 3.1 In exchange for consideration, including fees (“Licence Fees”) to be paid to Modality Systems in accordance with the terms set forth in Your Software Documentation, and subject to all other terms and conditions set forth herein, Modality Systems hereby grants You a non-exclusive, revocable, non-transferable, limited right to use the Software, solely in accordance with the terms and conditions of this Licence. All rights not expressly granted are hereby reserved by Modality Systems.
- 3.2 Depending upon the Software provided, You may be issued with a unique licence key (“Licence Key”) which will grant access to the Software in accordance with the type of Licence granted in Your Software Documentation.
- 3.3 If a Licence Key is provided, Modality Systems will employ a usage tracking tool which will report back to Modality Systems on the number of users consuming the Software under the Licence. Activity will not routinely be blocked if the number of users exceeds the number of purchased Licences, but instead Modality Systems will be entitled to collect additional Licence Fees from You, calculated on a pro rata basis, for such additional use.
- 3.4 Notwithstanding section 3.3 above, Modality Systems reserves the right to revoke Your Licence Key if that Licence Key is used by more users than Licences purchased under Your Software Documentation.
- 3.5 If the usage tracking tool determines that an invalid Licence Key has been used by You, or if Your Software is revoked under section 3.4, the Software will perform a silent fail. This will not produce a visual error, and there will be no loss of functionality to the existing Skype for Business environment.
- 3.6 Modality Systems reserves the right to audit Your usage of the Software to determine whether the number of users consuming the Software is in line with the terms of Your Licence.

4. Term and Termination

- 4.1 This Licence is available on a subscription, perpetual or trial basis. The type of Licence granted to You and the corresponding term of that Licence will be set out in Your Software Documentation.



- 4.2 You may terminate this Licence at any time by notifying Modality Systems, without refund of any Licence or Software Assurance Fees paid, and without release from any Licence or Software Assurance Fees owed.
- 4.3 In the event that You breach any term or condition of this Licence, Modality Systems may immediately terminate this Licence without notice.
- 4.4 Upon termination of this Licence:
 - (i) if a Licence Key has been provided, Modality Systems will cause the Software to silently fail, with no loss of functionality to the existing Skype for Business environment; or
 - (ii) if a Licence Key has not been provided. You agree to immediately delete the Software together with any back-up copies. Failure to do so will be deemed to be a breach of Your Licence.

5. Restrictions and Prohibitions

- 5.1 You shall not:
 - (i) analyse, decompile, “unlock,” decode, disassemble, reverse engineer, reverse translate or attempt to discover or reconstruct any source code of the Software for any purpose, nor shall You cause a third party to do so;
 - (ii) attempt to disable, tamper with or bypass the Licence Key system or any other licence enforcement technology incorporated into the Software;
 - (iii) copy, reproduce, modify, adapt, improve, enhance, translate or create derivative works based on the Software or any accompanying materials;
 - (iv) violate any applicable laws, rules or regulations in connection with Your use of the Software, or use the Software other than in accordance with the instructions or documentation provided by Modality Systems;
 - (v) remove, alter or obscure any watermark or proprietary notice (including any notice of copyright or trademark) of Modality Systems or its affiliates and partners;
 - (vi) use the Software for creating a product, service or software that is, directly or indirectly, competitive with or in any way a substitute for any services, product or software offered by Modality Systems; or
 - (vii) distribute, resell or permit access to the Software by any third party.
- 5.2 The Software may be installed on any number of computers, provided that the number of users You allow to use the Software does not exceed the number of Licences granted from Modality Systems, as stated in Your Software Documentation.
- 5.3 Confidentiality: You agree not to disclose, duplicate, publish, release, transfer or otherwise make available any Confidential Information belonging to Modality Systems in any form to, or for the use or benefit of, any person or entity without the prior written consent of Modality Systems. “Confidential Information” means any financial, technical or business information that becomes known to You, or that You reasonably should understand to be confidential based on the nature of the information or the circumstances surrounding its disclosure. The specific features of the Software and documentation provided to You under this Licence are Confidential Information. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of Your confidentiality obligation under this Licence; (ii) You can demonstrate by written record was independently developed by You without breach of Your confidentiality obligation under this License and without reference to the Confidential Information; or (iii) is received from a third party who obtained such Confidential Information without breach of any obligation owed to Modality Systems.

6. Ownership

- 6.1 Except for the Licence expressly granted in Section 3, Modality Systems reserves all right, title and interest in and to the Software, the technology used to provide the Software, any documentation provided with the Software, and all intellectual property and proprietary rights in the foregoing. You understand and agree that You do not acquire any ownership rights in or to the Software through this Licence.



- 6.2 You hereby grant to Modality Systems a worldwide, non-exclusive, perpetual, irrevocable, royalty-free licence to fully use and exploit in any manner any ideas, feedback or suggestions for enhancement concerning the Software that You provide to Modality Systems or which Modality Systems becomes aware of during the course of providing the Software.

7. Trial Licence

- 7.1 If the Software has been made available to You on a trial basis (as stipulated in Your Software Documentation, this Trial Licence will allow You to evaluate the functionality of the Software with a view to purchasing a full Licence for the Software.
- 7.2 The Trial Licence will grant you a non-exclusive right to use the Software solely for evaluation purposes, and for the number of trial users and the duration of the term set out in Your Software Documentation.
- 7.3 Limited guidance on installation and usage will be provided to You as part of the Trial Licence. Software Assurance (as set out in section 8) is not available for Software provided under a Trial Licence.
- 7.4 Depending upon the Software provided, the Trial Licence may impose a visual watermark on the Software which will highlight that the Software is being used on a trial basis.
- 7.5 The Trial Licence will be free of all charges and Fees for the duration of the term set out in Your Software Documentation.
- 7.6 Modality Systems reserves the right to revoke the Trial Licence at any time without notice.
- 7.7 The Trial Licence will be revoked at the end of the term set out in Your Software Documentation, with no loss of functionality to the existing Skype for Business environment.
- 7.8 Unless stipulated to the contrary in individual sections of this Licence, all terms, conditions and obligations set out in this Licence will apply to any Trial Licence granted.

8. Software Assurance

- 8.1 A maintenance service for the Software ("Software Assurance") is available for the Software and, if purchased, will be provided by Modality Systems in accordance with the terms set forth in Your Software Documentation and for as long as the Software Assurance Fee is paid (or, if included as part of Your Licence, for the duration of the term of the Licence).
- 8.2 As part of the purchased Software Assurance, Modality Systems will investigate issues raised by You to determine if the problem is a Software bug or user support issue. If a Software bug is identified, Modality Systems will use reasonable endeavours to investigate a workaround, patch or version update in order to correct the issue.
- 8.3 Software Assurance will not cover problems arising as a result of Your incorrect use of the Software or failure to follow installation advice. If the issue raised by You is a configuration or implementation issue requiring user support, this will not be covered by Software Assurance and must be handled via the purchase of separate Modality Systems' consultancy time.
- 8.4 In the event that product improvement upgrades and/or updates of the Software are developed ("Upgrades and/or Updates"), Modality Systems will make such Upgrades and/or Updates available to You only as part of Your Software Assurance, provided all Licence Fee and Software Assurance Fee payments are up to date. For the avoidance of doubt, the provision of Updates and/or Upgrades is only available to You whilst You continue to pay the Licence Fee and Software Assurance Fee, and provided no invoices are outstanding at the time that the Update and/or Upgrade is released. If You have not paid Your Licence Fee and Software Assurance Fee, You are not entitled to receive any Update and/or Upgrade. If you have purchased Software Assurance, You commit to moving to the new version within twelve (12) months of release.
- 8.5 Security hotfixes will be covered as part of the Licence Fee, regardless of whether Software Assurance has been purchased.
- 8.6 Software Lifecycle. Modality Systems provides hotfix and rollup updates for a period of twelve (12) months following the release of a new version of the Software. For further information please refer to the Modality Systems' Software Lifecycle (available online).



- 8.7 Modality Systems may, at their discretion, provide advice to You about recommended hardware for on-premise deployment; however, support of such hardware is not deemed to be included in the Licence Fees unless additional support terms and costs specific to that hardware have been agreed in writing between Modality Systems and You.
- 8.8 Software Assurance under section 7 is not available for Software provided under a Trial Licence.

9. Transfer and Assignability

- 9.1 You shall not sublicense, assign, or transfer this Licence or the Software to another party (regardless of whether or not the other party agrees to accept the terms and conditions herein) unless otherwise expressly permitted in writing by Modality Systems. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder renders this Licence void.
- 9.2 In the event of a consolidation or merger of Modality Systems with or into another company or entity, or the sale of all or a substantial part of the assets of Modality Systems, Modality Systems may assign this Licence to any successor in interest and upon such assignment, Modality Systems shall have no further liability hereunder and the successor in interest shall be subject to all obligations and be entitled to enforce all rights of Modality Systems under this Licence.
- 9.3 Subject to the foregoing, this Licence shall bind and inure to the benefit of the parties and their respective successors and assigns.

10. Limitation of Liability, Indemnification and Remedies

- 10.1 Disclaimer of Warranties. You acknowledge and agree that provision of the Software to You is on an “as is” and “as available” basis, and Your use of or reliance upon the Software is at Your sole risk and discretion. You shall assume sole responsibility for the selection of the Software and for the installation, use, and results obtained from the Software. The entire risk as to the quality and performance of the Software is with You. Modality Systems will have no liability whatsoever for any bug, error, omission, deficiency or defect in the Software. Modality Systems disclaims all warranties, express, implied or statutory, with respect to the Software, Software Assurance and any related services, including without limitation the implied warranties of merchantability, fitness for a particular purpose, title, non-infringement or results to be obtained. You acknowledge that certain functionality of the Software depends on You (i) maintaining a licence to certain third party software as described in Your Software Documentation; and (ii) the ongoing availability of services from the providers of such third party software. Modality Systems disclaims any warranty that such third party software will continue to be compatible with the Software. Should the Software prove defective, You (and not Modality Systems) assume the entire cost of all necessary servicing, repair, or correction, except those which may be covered by any Software Assurance purchased as part of Your Licence.
- 10.2 Limitation of Liability. Under no circumstances and under no legal theory, tort, contract, or otherwise, shall Modality Systems or its suppliers or resellers be liable to You or any other persons/entities for any damages, including without limitation, lost profits, lost savings, indirect, special, incidental, or consequential damages of any character including, without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses, arising out of Your use of or inability to use the Software, even if Modality Systems or its suppliers or resellers shall have been informed of the possibility of such damages, or for any claim by any other party. This limitation of liability shall not apply to liability for death or personal injury to the extent applicable law prohibits such limitation. Furthermore, to the extent any applicable jurisdiction does not allow the exclusion or limitation of incidental or consequential damages, this limitation and exclusion may not apply to You. In the event that any or all of the limitations in this paragraph are deemed invalid or unenforceable, Modality Systems’ aggregate liability arising out of this Licence or any use of or inability to use the Software shall be limited to the minimum amount permitted by applicable law.
- 10.3 Third Party Indemnification. To the best of Modality Systems’ knowledge, Your use of the Software in accordance with its stated purposes will not infringe any third party’s copyright,



patent, or other intellectual property rights. Modality Systems shall indemnify, defend and hold harmless You, Your affiliates, and Your respective officers, directors, employees, representatives, and agents from and against all losses, damages, or expenses of whatever form or nature, including reasonable attorney's fees and other costs, arising out of or related to any third party claim that the Software violates any patent, copyright or trade secret right of such third party, provided that: (i) Your use of the Software is in accordance with the terms of this Licence; (ii) Modality Systems is promptly notified in writing of any such claim; and (iii) Modality Systems shall have the exclusive right to control the defence of such claim. In no event shall You settle or compromise any such claim without Modality Systems prior written approval. Modality Systems shall either: (i) obtain for You the right to continue to use the Software; or (ii) modify the Software so that it becomes non-infringing; or (iii) only in the event that options (i) and (ii) above are not commercially reasonable, terminate the Licence with respect to the infringing components of the Software without any further obligation to You. You may, at Your own cost and expense, assist in the defence of any such claim and be represented by counsel of Your choice. This section states the entire liability of Modality Systems with respect to any of the foregoing.

- 10.4 You agree that a material breach of this Licence would cause irreparable injury to Modality Systems for which monetary damages would not be an adequate remedy, and therefore that Modality Systems will be entitled to seek equitable relief in addition to any other available remedies.
- 10.5 You may have other legal rights that vary by jurisdiction.

11. Jurisdiction and Disputes

- 11.1 The United Nations Convention on Contracts for the International Sale of Goods expressly does not apply.
- 11.2 United States. If You acquired the Software in the United States, You are contracting with Modality Systems, Inc., a Delaware company registered at 8 The Green STE A, Dover, DE 19901, USA. This Licence shall be governed by and construed in accordance with the laws of the State of Washington without regard to the rules of conflicts of laws, and jurisdiction and venue shall be King County. The parties consent to the jurisdiction of such courts, agree to accept service of process by mail, and waive any jurisdictional or venue defences otherwise available.
- 11.3 Rest of the world. If You acquired the Software in the rest of the world, You are contracting with Modality Systems Limited, a company registered at Global House, 2 Crofton Close, Lincoln, LN3 4ND, United Kingdom. This Licence will be governed by and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
- 11.4 If any provision of this Licence, such as the limitations on warranties or remedies, is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be enforced to the maximum extent permissible, and the remaining provisions shall remain in full force and effect.
- 11.5 The failure of a party to enforce a provision of this Licence, or the failure to require performance by the other party of any of the provisions of this Licence, will in no way be construed as a present or future waiver of such provisions, nor in any way affect the ability of either party to enforce each and every such provision thereafter. The express waiver by either party of any provision, condition or requirement of this Licence will not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

12. Export

You acknowledge that the laws and regulations of the European Union restrict the export and re-export of commodities and technical data of European Union origin, including any associated Software. Without limiting the foregoing, You understand that the Software does not contain encryption technology and does not qualify as a dual-use item under the Council Regulation EC No. 1334/2000, as amended and updated from time to time.



13. Integration

This Licence, including terms and conditions specifically incorporated by reference (including the Sales Documentation), constitutes the entire understanding of the parties regarding the Licence for the Software, and revokes and supersedes all prior agreements, oral or written, between the parties, and is intended as a final expression of their agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Licence. This Licence shall take precedence over any other documents that may be in conflict herewith.

ACCEPTED AND AGREED BY:

Modality Systems Ltd

[Click here to enter text.](#)

Signature:

Signature:

Printed Name:_____
Printed Name:_____
asdsad_____
01/08/2019