



## Dialogic® Diva® Software License Agreement

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This is an Agreement between you, the Company, and your Affiliates (referred to in some instances as "You" and in other instances as "Company") and all Your Authorized Users and Dialogic Inc. and/or an affiliate or subsidiary thereof ("Dialogic").

YOU SHOULD CAREFULLY READ THE SOFTWARE LICENSE AGREEMENT ("AGREEMENT"). IF YOU DO NOT AGREE WITH OR ARE UNWILLING TO ACCEPT THIS AGREEMENT AND ITS TERMS AND CONDITIONS, DO NOT DOWNLOAD, INSTALL, COPY OR OTHERWISE USE THE SOFTWARE ("PROGRAM") ASSOCIATED WITH THIS PRODUCT, AS BY DOWNLOADING, INSTALLING, COPYING /AND OR OTHERWISE USING SUCH PROGRAM YOU FURTHER AGREE AND ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND UNDERSTAND IT, AND THAT YOU AGREE TO BE BOUND BY THE AGREEMENT ITS SUCH TERMS AND CONDITIONS. DIALOGIC IS UNWILLING TO LICENSE THE PROGRAM TO YOU IF YOU DO NOT ACCEPT AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS AND THE AGREEMENT.

### Intellectual Property

The Program and all accompanying documentation are individually and collectively owned by Dialogic Inc., its subsidiaries and/or its suppliers and are protected by all applicable intellectual property laws and international treaty provisions. Therefore, You and Your Authorized Users must treat the Program and documentation like any other material so protected, except as expressly permitted in this Agreement. In particular, but without limitation, You acknowledge that the Program and its accompanying documentation constitute valuable intellectual property rights, including without limitation trade secrets and copyrights, and confidential information of Dialogic. The Program and all programs developed thereunder and all copies thereof (including without limitation translations, compilations, partial copies with modifications and updated works) are proprietary to Dialogic and title to all applicable copyrights, trade secrets, patents and other intellectual property rights therein remains in Dialogic, its subsidiaries, and/or its suppliers. Except as expressly permitted in this Agreement, you shall not sell, transfer, publish, disclose, display or otherwise make available the Program or copies thereof to others. You agree to secure and protect the Program, its accompanying documentation and copies thereof in a manner consistent with the maintenance of Dialogic's rights therein and to take appropriate action by instruction or agreement with Your employees and/or consultants who are permitted access to the Program to satisfy Your obligations hereunder. Violation of any provision of this paragraph shall be the basis for immediate termination of this Agreement. Because unauthorized use or transfer of the Program, or documentation may diminish substantially the value of such materials and irrevocably harm Dialogic, if You breach the provisions of this Section of this Agreement, Dialogic shall be entitled to injunctive and/or other equitable relief, in addition to other remedies afforded by law, to prevent a breach of this Section of this Agreement.

### Grant of License

Subject to the terms and conditions of this Agreement Dialogic grants to You a non-exclusive, personal, non-transferable license to use the Program in object code form only and solely in accordance with the following terms and conditions:

- You may make, install and use only one (1) copy of the Program on a single-user computer, file server, or on a workstation of a local area network, and only in conjunction with a legally acquired Dialogic® hardware or software product You may also make one copy solely for backup or archive purposes;
- The primary Authorized User on the computer on which the Program is installed may make a second copy for his/her exclusive use on either a home or portable computer;
- You may copy the Program into any machine readable or printed form for backup or modification purposes in support of Your use of one copy of the Program;
- You may distribute the Program in object code only and only as part of, or integrated by You into, a computer system that (i) contains a Dialogic hardware product, (ii) includes a substantial amount of other software and/or hardware manufactured or marketed by You and (iii) is marketed and sublicensed to an end user for the end user's own internal use in the regular course of business (a "Licensed System");
- Each end user to whom a Licensed System is distributed must agree to license terms with respect to the Program that are at least as protective of Dialogic's rights in the Program as those set forth in this Agreement;
- You may make one (1) copy of the documentation accompanying the Program, provided that all copyright notices contained within the documentation are retained; You may modify the Program and/or merge it into another Program for Your use in one computer; (any portion of this Program will continue to be subject to the terms and conditions of this Agreement);
- You may transfer the Program, documentation and the license to another eligible party within Your Company if the other party agrees to accept the terms and conditions of this Agreement. If You transfer the Program and documentation, You must at the same time either transfer all copies whether in printed or machine readable form

to the same party or destroy any copies not transferred; this includes all modifications and portions of the Program contained in or merged into other Programs;

- You shall not remove, and each copy of the Program shall contain, the same copyright, proprietary, patent and/or other applicable intellectual property or other ownership notices, plus any restricted rights legends that appear in the Program and/or this Agreement;
- You may not rent or lease the Program. You may not reverse engineer, decompile or disassemble the Program. Except as is strictly necessary for You to integrate the Program with other software and/or hardware to produce the Licensed Systems, You shall not copy, modify or reproduce the Program or documentation in any way. You shall use Your best efforts to ensure that any user of the Program does not reverse engineer, decompile or disassemble the Program to derive a source code equivalent of the Program;
- If You transfer possession of any copy, modification or merged portion of the Program or documentation to another party in any way other than as expressly permitted in this Agreement, this license is immediately and automatically terminated;
- The Program may be used only in conjunction with Dialogic hardware;
- The Program shall not be exported or re-exported in violation of any export provisions of the United States or any other applicable jurisdiction.

## **Upgrades**

If the Program is provided as an upgrade and the upgrade is an upgrade from another product licensed to You and Your Authorized Users by Dialogic, the upgrade is governed by the license agreement earlier provided with that software product package and the present Agreement does not grant You additional license(s).

## **Term**

The Agreement is effective until terminated. You may terminate it at any time by notifying Dialogic and/or by destroying the Program and all accompanying documentation together with all copies, modifications and merged portions in any form. The Agreement will also terminate automatically upon the occurrence or lack of occurrence of certain terms and/or conditions set forth in this Agreement, or if You fail to comply with any term or condition of this Agreement. You agree that upon any such termination You shall destroy or return to Dialogic the Program and all accompanying documentation supplied by Dialogic, together with any and all copies, modifications and merged portions in any form. All provisions of this Agreement relating to disclaimers of warranties, limitation of liability, remedies, or damages, and licensor's proprietary rights shall survive termination.

## **Limited Warranty**

Dialogic solely warrants the media on which the Program is furnished to You to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of purchase by You as evidenced by a copy of Your receipt. If such a defect appears within the warranty period, You may return the defective media to Dialogic for replacement without charge provided Dialogic, in good faith, determines that it was defective in materials or workmanship. Replacement is Your sole remedy with respect to such a defect. Dialogic offers no warranty for Your reproduction of the Program. This Limited Warranty is void if failure of the Program has resulted from accident, misuse, abuse or misapplication.

## **Disclaimers, Limitations of Liability and Customer Remedies**

Except as set forth in the "Limited Warranty" Section of this Agreement, the Program and accompanying documentation are provided to You "as is." Neither Dialogic, its subsidiaries, its suppliers, nor its licensor(s) (if any) warrants that the Program will meet Your requirements or that its use will be uninterrupted or error-free. Except as set forth in the "Limited Warranty" Section, EACH OF DIALOGIC, ITS SUBSIDIARIES, ITS SUPPLIERS AND ITS LICENSOR(S) (IF ANY) DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROGRAM AND ACCOMPANYING DOCUMENTATION, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST LATENT DEFECTS. Except as set forth in the "Limited Warranty" Section, neither Dialogic, its subsidiaries, its suppliers, nor its licensor(s) (if any) shall have any liability to You or any third party for any claim, loss or damage of any kind, including but not limited to lost business profits, business interruption, loss of information, or other pecuniary loss and indirect, punitive, incidental, economic, consequential or special damages, arising out of or in connection with this Agreement and/or the use, inability to use the Program and/or the Program's performance or inability to perform nor from or in connection with the Program's accompanying documentation, or any data or equipment related thereto or used in connection therewith. In no event shall Dialogic's, its subsidiaries', its suppliers' or its licensor(s)'s liability for damages, whether arising out of contract, negligence, warranty, or patent or copyright infringement, exceed the fees You paid for the Program. No representation or warranty regarding the Program may be made without Dialogic's, its subsidiaries', its suppliers', or its licensor(s)'s (if any) prior written consent, and any warranty or representation made by You or Your customers regarding the Program shall not constitute an obligation of Dialogic, its subsidiaries, its suppliers, or other licensor(s) (if any). This limited warranty gives You specific legal rights. You may have other rights, which may vary from jurisdiction to jurisdiction. Also, as some jurisdictions do not allow the exclusion or limitation for certain damages, some of the above limitations may not apply to You.

## **Right to Audit**

If this Program is licensed for use in a Company, Your Company and You individually and collectively agree to keep all usual and proper records and books of accounts and all usual proper entries relating to each installation of the Program during the term of this Agreement and for a period of three (3) years thereafter. During this period, Dialogic may cause an audit to be made of the applicable records in order to verify Your compliance with this Agreement and prompt adjustment shall be made to compensate for any errors or omissions disclosed by such audit. Any such audit shall be conducted by an independent certified public accountant selected by Dialogic and shall be conducted during the regular business hours at Your offices and in such a manner as not to interfere with Your normal business activities. Any such audit shall be paid for by Dialogic unless material discrepancies are disclosed. For such purposes, "material discrepancies" shall mean three percent (3%) or more of the Authorized Users within the Company. If material discrepancies are disclosed,

Your Company agrees to pay Dialogic for the costs associated with the audit as well as the license fees for the additional licensed channels or additional authorized users. In no event shall audits be made more frequently than semi-annually unless the immediately preceding audit disclosed a material discrepancy.

## **Supplementary Software**

Any Supplementary Software provided with the Program and/or referred to in this Agreement is provided "as is" with no warranty of any kind.

## **Miscellaneous**

You acknowledge that You have read this Agreement, that You understand it, and that You agree to be bound by its terms and conditions, and You further agree that this is the complete and exclusive statement of the Agreement between the Dialogic and You ("the Parties"), which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the Parties relating to the Program. You agree to indemnify and hold harmless Dialogic and its subsidiaries, affiliates, suppliers, officers, directors and employees from and against any claim, injury, loss or expense, including reasonable attorneys' fees, arising out of (i) Your failure to comply with the provisions of this Agreement, or (ii) any other wrongful conduct by or on behalf of You. This Agreement applies to all updates, future releases, modifications and portions of the Program contained in or merged into other programs. This Agreement may not be modified or altered except by written instrument duly executed by Dialogic. No action, regardless of form, arising out of this Agreement or the use of the Program may be brought by You more than two (2) years after the cause of action has first arisen. Except as provided herein, neither this Agreement nor any rights granted are assignable or transferable, and any assignment or transfer will be null and void. If You authorize any other person to copy the Program, You shall obligate that person in writing to comply with all conditions of this Agreement. Dialogic shall have the right to collect from You its reasonable expenses incurred in enforcing this agreement, including attorney's fees. The waiver or failure of Dialogic to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder. All rights and remedies, whether conferred hereunder or by any other instrument or law, will be cumulative and may be exercised singularly or concurrently. Failure by either Dialogic or You to enforce any term or condition of the Agreement will not be deemed a waiver of future enforcement of that or any other term or conditions. The terms and conditions stated herein are declared to be severable. Should any term(s) or condition(s) of this Agreement be held to be invalid or unenforceable the validity, construction and enforceability of the remaining terms and conditions of this Agreement shall not be affected. It is expressly agreed that Dialogic and You are acting as independent contractors under this Agreement. These terms and conditions will prevail notwithstanding any different, conflicting or additional terms and conditions that may appear on any other agreement between Dialogic and You. Deviations from these terms and conditions are not valid unless agreed to in writing in advance by an authorized representative of Dialogic. Any notices sent to Dialogic under this Agreement must be sent by registered mail or courier to the attention of Dialogic's legal department at the address below or such other address as may be listed on [www.dialogic.com](http://www.dialogic.com) from time to time as being Dialogic's Montreal headquarters.

## **U.S. Government Restricted Rights**

The Program and all accompanying documentation are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(iii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraph (c) (1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR52.227-19, both as applicable.

## **Governing Law**

Any and all claims arising under this Agreement shall be construed and controlled by the laws in force in the State of California excluding its principles of conflict of laws and the United Nations Convention on Contracts for the Sale of Goods. Dialogic is not obligated under any other agreements unless they are in writing and signed by an authorized representative of Dialogic.

## **Contractor/ manufacturer is:**

DIALOGIC INC.  
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P/N 64-1178-01