



## FUNCTIONFOX END USER LICENSEAGREEMENT

This Agreement is between FunctionFox Systems Inc. ("FunctionFox") and "you". By accessing, using or otherwise benefitting from the Services, you are acknowledging and confirming your agreement to all of the terms and conditions in this Agreement, including, without limitation, the indemnification, and limitation of liability provisions herein. If you do not agree to any of these terms and conditions, then do not use the Services.

### ARTICLE 1 DEFINITIONS

- 1.1 The following terms shall have the following meanings when used in this Agreement: "**Account**" means the account through which an Authorized User may access and use the Service and Software; "**Agreement**" means this FunctionFox License and Hosting Agreement; "**Authorized User**" means a person, authorized by you, to use the Services on your behalf; "**Documentation**" shall mean all manuals, documentation and other related materials, or any portion thereof, pertaining to the Services provided or made available by FunctionFox to you in conjunction with the Services (if any), and shall include any abridgement or condensed form of such documentation, and any other work derived therefrom; "**Effective Date**" shall mean the date on which you agree to be bound by this Agreement; "**Licensee Content**" shall mean all items supplied by you or your Authorized Users for inclusion in, use in association with the Services, including all data, or other software files, regardless of format, documents, text, pictures, photographs, graphics, video, animation, and sound recordings; "**Services**" shall mean those services provided by FunctionFox to which you have specifically subscribed relating to the FunctionFox time, project, and expense tracking system, as may be amended from time to time; "**Software**" shall mean the computer programs necessary for FunctionFox to perform the Services, or any portion thereof, as may be amended from time to time; and "**Term**" shall mean the Initial Term along with any Renewal Terms.

### ARTICLE 2 GRANT OF LICENSE

- 2.1 FunctionFox hereby grants, and you hereby accept, subject to the terms and conditions of this Agreement, a revocable, non-exclusive, non-sublicensable, non-assignable license to: (i) use the Services during the Term for the sole purpose of permitting you to track time, projects and expenses and (ii) use the Documentation in connection with your authorized use of the Services.
- 2.2 You may (subject to, and only to the extent of, the license rights granted to you in Section 2.1 above) permit your Authorized Users to use the Services and Documentation for such purpose. You shall be fully responsible for your Authorized Users' compliance with this Agreement in such use.
- 2.3 You agree that title to and ownership of the Software (including all source code), the Services and Documentation and any modifications made thereto and all intellectual property rights therein shall at all times remain with FunctionFox and/or its suppliers. You shall not have any right, title or ownership interest in the Software, Services or Documentation except the limited right to use the Services and Documentation as explicitly provided in this Agreement.
- 2.4 You shall not, directly or indirectly, send, submit, post, receive or otherwise facilitate, or in any way use, or permit to be used, the Services to send, submit, post, receive or otherwise facilitate the transmission of any materials that are abusive, obscene, profane, sexually explicit, threatening, predatory or materials containing graphic or gratuitous violence, pornography or sexually explicit content, or blatant expressions of bigotry, racism or hate. Moreover, you shall not use the Services to: (i) make network connections to any users, hosts, or networks unless you have permission to communicate with them; (ii) violate the security or integrity of any network, computer or communications system, software application, or network or computing device; or (iii) distribute, publish, send, or facilitate unsolicited mass e-mailings, promotions,



advertising, or solicitations (like "spam"), including commercial advertising and informational announcements.

- 2.5 You shall comply with all applicable laws (including, but not limited to export/import laws and laws relating to privacy, obscenity, copyright, trademark, confidential information, trade secret, libel, slander or defamation). You acknowledge and agree that you shall be responsible and liable for all uses made by you or your Authorized Users of the Services or Documentation. Notwithstanding any other provision in this Agreement, FunctionFox may terminate this Agreement, or any portion of the licenses granted herein, immediately, without notice, if it is determined that you or your Authorized Users have failed to comply with any applicable laws.
- 2.6 In order to avoid potential misunderstandings or disputes, FunctionFox does not accept or consider unsolicited ideas or suggestions with respect to the Services or Documentation (collectively, "Submissions"). If you send any Submissions to FunctionFox, you automatically grant (or warrant that the owner of the Submissions grants) to FunctionFox and its successors, assigns and licensees a perpetual, royalty-free, irrevocable, unrestricted, non-exclusive, world-wide, assignable, sublicensable, right and license to use and exploit the Submissions or any ideas, concepts, know-how or techniques associated with the Submissions for any purpose whatsoever, commercial or otherwise, using any form, media or technology now known or later developed, without providing any attribution or compensation to you or any other person, without any liability whatsoever, and free from any obligation of confidence or other duties on the part of FunctionFox or its successors, assigns and licensees, and you agree, represent and warrant that all moral rights in the Submissions are waived in favour of FunctionFox and its successors, assigns and licensees.

### ARTICLE 3 THE SERVICES

- 3.1 FunctionFox shall use commercially reasonable efforts to provide you and your Authorized Users with access via the Internet to the Services for the purpose of using the Software in accordance with the terms of this Agreement and in the manner more particularly set out herein. Generally, FunctionFox endeavors to provide such access on a 24-hours per day and 365 days per year basis. However, such access may not be available from time to time as a result of repairs, upgrades or routine maintenance. FunctionFox will use commercially reasonable efforts to minimize the impact of such activities.
- 3.2 You acknowledge and agree that you and your Authorized Users are responsible for obtaining your and their own access to the Internet and that FunctionFox shall not provide such access or any services in relation thereto.
- 3.3 You will be permitted to provide access codes and passwords to Authorized Users. You acknowledge and agree that you are solely responsible for the issuance of access codes and passwords and that FunctionFox will only issue access codes or passwords to Authorized Users on your instruction and as your agent. The issuance of all access codes and passwords will be based on FunctionFox's then existing procedures and policies.
- 3.4 You represent, warrant, and covenant to FunctionFox that: (i) you will promptly update any information you may have provided to FunctionFox in connection with your subscription to the Services; (ii) you either own fully and outright or otherwise possesses and have obtained all rights, approvals, licenses, contents and permissions as are necessary to perform your obligations hereunder, exercise your rights hereunder, and to grant the license granted by you, implied or otherwise, hereunder; and (iii) the Licensee Content and your use of same through the Services, either directly or indirectly, does not, and will not, infringe, violate or misappropriate any third party's rights. In particular, you represent and warrant to FunctionFox that you have obtained consent from your Authorized Users for the collection, use and transfer of their



personal information to be used solely for FunctionFox to provide the Services, and in conjunction with their use of the Services.

- 3.5 You acknowledge and agree that the user identification provided by FunctionFox to you and each of your Authorized Users, so that you and your Authorized Users may access, utilize or otherwise employ the Services, and the passwords selected by and used by you and your Authorized Users in conjunction with the user identifications are to be kept secret and confidential. You shall not, and shall cause your Authorized Users to not, disclose such user identifications or passwords to any other party without the express written permission of FunctionFox.
- 3.6 You acknowledge and agree that you shall be responsible for each and every access, use or employment of the Services that occurs in conjunction with such passwords and user identifications, and that FunctionFox is authorized to accept the user identifications and passwords as conclusive evidence that you, or your Authorized Users, as the case may be, have accessed, utilized, or otherwise employed the Services and/or the Software.
- 3.7 You agree that you will not attempt to, nor permit your Authorized Users to, enter restricted areas of FunctionFox's computer systems or perform functions that you are not authorized to perform pursuant to this Agreement. FunctionFox may, without notice, temporarily suspend your, or any of your Authorized User's, or any other party's access to the Services, or Documentation (including, without limitation, any specific areas hosted within Services or Software) by deactivating any password(s) or links to the Internet if FunctionFox reasonably suspects that you, or any of your Authorized Users, or any other parties are obtaining unauthorized access to FunctionFox's other systems or information, or are using otherwise valid user identifications or passwords in any other unauthorized manner. These suspensions will be for such periods of time as FunctionFox may reasonably determine is necessary to permit the thorough investigation of such suspended activity. Notwithstanding any other provision in this Agreement, FunctionFox may terminate this Agreement, or any portion of the licenses granted herein, immediately, without notice, if it is determined that you or your Authorized Users have undertaken such unauthorized activity.

## ARTICLE 4 LICENSEE CONTENT

- 4.1 You hereby grant to FunctionFox, and FunctionFox hereby accepts, subject to the terms and conditions of this Agreement, a non-exclusive, non-transferable, world-wide, royalty-free, revocable license to reproduce, create derivative works from, distribute, perform, display and otherwise use the Licensee Content for the purpose of enabling FunctionFox to fulfill its obligations under this Agreement.
- 4.2 All right, title and interest in and to the Licensee Content is and shall remain your sole and exclusive property.
- 4.3 Although FunctionFox does not constantly monitor the Licensee Content, it nevertheless expressly reserves the right, but undertakes no duty, to review, edit, move or delete any Licensee Content, or any parts thereof, provided for use in association with the Services, in FunctionFox's sole discretion, without notice. FunctionFox reserves the right to suspend your access to and/or use of the Service to the extent that FunctionFox determines, in good faith, that such suspension is necessary to comply with applicable law or to prevent significant harm to any end user, or the Services.
- 4.4 You are solely responsible for Licensee Content, as well as for the content of any communications by you or your Authorized Users, including any communications involving the use of the Services. You are solely responsible for making and keeping backup copies of Licensee Content. You and your Authorized Users are solely responsible for applying the appropriate level of access rights to Licensee Content and to communications involving the use of the Services. FunctionFox shall not be responsible or liable for the



deletion or accuracy of Licensee Content, the failure to store, transmit, encrypt (or otherwise secure) or receive Licensee Content, or the storage, transmission, encryption (or other security) or receipt of any other communication involving the use of the Services or Software.

## ARTICLE 5 SUPPORT

- 5.1 For the Term of this Agreement, FunctionFox shall provide, to such degree as FunctionFox makes such services generally available, support services to you with respect to the Services. In providing support services FunctionFox shall only be required to use reasonable commercial efforts to correct documented errors in the Services identified by you, which can be repeated by FunctionFox (with your assistance if FunctionFox so requests such assistance). Notwithstanding the forgoing, under no circumstances does FunctionFox warrant or represent that all errors can or will be corrected.

## ARTICLE 6 TERM

- 6.1 The initial term ("**Initial Term**") of this Agreement shall commence on the Effective Date. The Initial Term of the Agreement shall be renewed automatically for successive periods of one (1) month each (a "**Renewal Term**") after the expiration of the Initial Term and any subsequent Renewal Term, unless you provide FunctionFox, or FunctionFox provides you with a written notice to the contrary sixty (60) days prior to the end of the Initial Term or any subsequent Renewal Term. Each Renewal Term shall incorporate and be governed by FunctionFox's then current pricing.

## ARTICLE 7 FEES AND PAYMENT

- 7.1 All prices are be payable and to be paid in US dollars unless otherwise noted. Payment terms are Net 30, and a 12% per annum interest fee (accrued and billable monthly) will apply to any invoices not paid on time.
- 7.2 If you fail to pay applicable fees when payment is due, then in addition to any other rights FunctionFox may have, FunctionFox shall have the right to suspend delivery of all or a portion of the Services to you. If FunctionFox pursues collection efforts against you due to your failure to pay fees due under this Agreement, you agree to pay FunctionFox's reasonable costs of collection, including any legal fees related thereto.
- 7.3 All fees paid to FunctionFox are non-refundable. For greater certainty, FunctionFox shall have no obligation to issue refunds or credits for any partial months or in connection with any downgrade, cancellation, termination or otherwise.
- 7.4 With at least 30 days prior notice to you, FunctionFox may, in its discretion, change the Services or pricing applicable to the Services. If you do not agree to such changes, you will have an opportunity to terminate this Agreement with 15 days notice or prior to such changes going into effect. If you do not terminate this Agreement within such time, you hereby acknowledge and agree that your failure to do so shall constitute your affirmative acceptance of our changes.

## ARTICLE 8 TERMINATION

- 8.1 Either party may terminate this Agreement by written notice to the other party, upon the occurrence of any of the following events and the continuance thereof thirty (30) days after such written notice: (i) the



other party becomes insolvent or subject to any proceeding under the federal bankruptcy laws or other similar laws for the protection of creditors; (ii) the other party materially breaches any term, provision, representation or warranty of this Agreement and such breach or default is not cured to the terminating party' reasonable satisfaction within such thirty (30) day period; or (iii) the other party's performance hereunder is delayed by a force majeure, including any issues that may arise from any network failures beyond FunctionFox's reasonable control, for more than sixty (60) days.

- 8.2 This Agreement may be terminated by FunctionFox for convenience upon 15 days notice to you.
- 8.3 Within ten (10) days after termination of this Agreement, you shall: (i) pay all amounts due and owing to FunctionFox hereunder (if any); and (ii) cease and desist all use of the Software and Documentation.

## ARTICLE 9 CONFIDENTIALITY

- 9.1 FunctionFox will implement generally accepted industry standard protocols to seek to secure any information shared or communicated between you, your Authorized Users and FunctionFox through the Services. Nevertheless, the parties acknowledge that the Services and Documentation are provided via the Internet and that there are inherent risks and limitations associated with the communication of information over the Internet including, without limitation, the possibility that such information may be lost, intercepted or altered or otherwise rendered non-confidential ("**Internet Risks**"). While the Services may enable communication by encryption, it is the responsibility of each Authorized User to enable and use such encryption and that, even though some Authorized Users may be using such encryption in any given session, others may not be using same and that no encryption technology is completely secure. You acknowledge and agree that any communication undertaken via the Services, even if encrypted, is subject to Internet Risks, and that, notwithstanding any other provision herein, FunctionFox shall not in any way be responsible or liable for any claim, action, damage or expense (direct, indirect, consequential or otherwise) arising from such Internet Risks, the communication of information over the Internet, or your, your Authorized Users' or any third party's actions.
- 9.2 During the term of this Agreement, a party ("**Receiving Party**") may have disclosed to it information of the other party ("**Disclosing Party**") of a confidential nature ("**Confidential Information**"). Confidential Information shall not include information which: (i) is or becomes publicly known or available to the Receiving Party at or after the time of disclosure through no wrongful act of the Receiving Party; (ii) is in the possession of or known to the Receiving Party at the time of disclosure; or (iii) is rightfully obtained by the Receiving Party from a third party.
- 9.3 FunctionFox acknowledges that it may receive your Confidential Information. FunctionFox shall not use such information for any purpose other than as permitted hereunder or to perform its obligations hereunder and shall not disclose such information to any third party except: (i) as required for FunctionFox to provide the Services (including, without limitation, by communicating information over the Internet) and perform its obligations hereunder; or (ii) as required pursuant to the order of a court or administrative body of competent jurisdiction.
- 9.4 You acknowledge that the Services contain valuable Confidential Information and proprietary technology of FunctionFox and its suppliers. You shall not use the Confidential Information of FunctionFox for any purpose other than as permitted hereunder and shall not disclose the same to any third party except: (i) as required for by you to use the Services in accordance with this Agreement; or (ii) as required pursuant to the order of a court or administrative body of competent jurisdiction.
- 9.5 Where a Receiving Party is required to disclose the Confidential Information of the Disclosing Party pursuant to the order of a court or administrative body of competent jurisdiction, the Receiving Party shall:



(i) if practicable and permitted by law, notify the Disclosing Party prior to such disclosure and as soon as possible after such order; (ii) cooperate with the Disclosing Party (at the Disclosing Party's costs and expense) in the event that the Disclosing party elects to legally contest, request confidential treatment, or otherwise attempt to avoid or limit such disclosure; and (iii) limit such disclosure to the extent legally permissible.

- 9.6 Upon any termination or expiration of this Agreement, each party shall promptly return to the other or destroy the Confidential Information of the other then in its custody or control, provided however that: (i) each party shall be permitted to retain such copies of such information as may be required by law or its record retention obligations and (ii) neither party will be required to destroy such copies as may be retained as part of its reasonable system back-up and archival activities.
- 9.7 You may not create derivatives, modify, decompile or reverse engineer the Software or do anything that will reveal or generate the source code of the Software. Any such act will be deemed to constitute a trespass on the rights, titles and interests of FunctionFox and its suppliers.
- 9.8 FunctionFox shall have the right to identify you as a customer of FunctionFox and you shall have the right to identify FunctionFox as the provider of any Services.

## ARTICLE 10 WARRANTIES AND LIMITATIONS OF LIABILITY

- 10.1 You acknowledge that you have or will have independently determined that Services meet your requirements and that you have not, and shall not, rely on any representation made, or information provided, by FunctionFox as to the suitability of the Software, Services or Documentation for any particular purpose.
- 10.2 EXCEPT AS OTHERWISE EXPLICITLY SET OUT HEREIN, THE SOFTWARE, SERVICES AND DOCUMENTATION ARE PROVIDED ON AN "AS-IS", "AS AVAILABLE" AND "WITH ALL FAULTS BASIS" AND FUNCTIONFOX EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS CONCERNING THE SOFTWARE, SERVICES OR DOCUMENTATION, INCLUDING ANY AND ALL REPRESENTATIONS, WARRANTIES OR CONDITIONS OF DESIGN, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, INFRINGEMENT OR PERFORMANCE AND ANY AND ALL REPRESENTATIONS, WARRANTIES OR CONDITIONS THAT MIGHT OTHERWISE ARISE DURING THE COURSE OF DEALING, USAGE OR TRADE AND THOSE WHICH MAY BE IMPLIED BY LAW. THIS AGREEMENT SETS OUT THE ENTIRE EXTENT OF ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS IN RESPECT OF THE SOFTWARE, SERVICES AND DOCUMENTATION AND NO AGENT OF FUNCTIONFOX IS AUTHORIZED TO ALTER SAME. ALL ALTERATIONS SHALL BE IN WRITING AND SIGNED BY FUNCTIONFOX.
- 10.3 EXCEPT IN RESPECT OF WILLFUL MISCONDUCT OR FRAUD, UNDER NO CIRCUMSTANCES SHALL FUNCTIONFOX BE LIABLE TO YOU FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OR LOST OR IMPUTED PROFITS AND/OR ROYALTIES, OR OTHER ECONOMIC LOSS, ARISING OUT OF THIS AGREEMENT OR ITS TERMINATION OR EXPIRATION, WHETHER FOR BREACH OR ALLEGED BREACH OF A REPRESENTATION OR ANY OBLIGATION ARISING THEREFROM AND IRRESPECTIVE OF WHETHER FUNCTIONFOX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 10.4 WITHOUT LIMITING THE FOREGOING, YOU ACKNOWLEDGE THAT THE SERVICES, SOFTWARE OR DOCUMENTATION ARE NOT DESIGNED OR LICENSED FOR USE IN MOTOR VEHICLES OR HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS (INCLUDING, OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION/COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, SURGICAL OR MEDICAL FACILITIES, LIFE SUPPORT OR WEAPONS SYSTEMS) AND THAT FUNCTIONFOX SPECIFICALLY DISCLAIMS



ANY EXPRESS OR IMPLIED REPRESENTATION, WARRANTY OR CONDITION OF FITNESS FOR SUCH PURPOSES.

- 10.5 THE CONSIDERATION BEING PAID HEREUNDER DOES NOT INCLUDE ANY CONSIDERATION FOR FUNCTIONFOX TO ACCEPT ANY LIABILITY OR RISKS BEYOND WHAT IS EXPRESSLY PROVIDE HEREIN AND IF ANY SUCH LIABILITIES OR RISKS WERE TO BE ASSUMED BY FUNCTIONFOX, FUNCTIONFOX WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT CHARGING SUBSTANTIALLY HIGHER FEES.
- 10.6 NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, FUNCTIONFOX'S TOTAL MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT AND THE LICENSE AND USE OF THE SERVICES AND DOCUMENTATION UNDER ANY AND ALL CIRCUMSTANCES, ARISING IN ANY MANNER WHATSOEVER, SHALL BE LIMITED TO: (I) THE LICENSE FEES ACTUALLY PAID BY YOU TO FUNCTIONFOX UNDER THIS AGREEMENT IN THE ONE (1) YEAR PERIOD IMMEDIATELY PRECEDING THE FINAL ACT OR EVENT WHICH GAVE RISE TO SUCH LIABILITY; OR (II) \$100, WHICHEVER IS LESS.
- 10.7 SOME JURISDICTIONS DO NOT ALLOW FOR THE LIMITATION OR EXCLUSION OF CERTAIN LIABILITIES OR DAMAGES, SO ASPECTS OF THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

## **ARTICLE 11 INDEMNIFICATION**

- 11.1 You agree to indemnify, defend and hold harmless FunctionFox and FunctionFox's officers, employees directors, agents, affiliates, subsidiaries, successors and assigns from and against any and all third party claims, damages, liabilities, loss, government fines, costs and expenses (including reasonable attorney's fees and litigation expenses), arising out of or related to any alleged or actual breach of any representation, warranty or covenant made by you in this Agreement.

## **ARTICLE 12 GENERAL**

- 12.1 FunctionFox may provide general notices intended for you by posting such notices on FunctionFox's website. In this instance, you will be deemed to have received any notice posted in the appropriate section of our website: it is your responsibility to check our website periodically for such notices.
- 12.2 FunctionFox may assign any of its rights and obligations under this Agreement without your consent. You shall not assign this Agreement or your rights hereunder without the prior written consent of FunctionFox.
- 12.3 The validity, interpretation, construction and performance of this Agreement shall be governed by the laws in force in the Province of Alberta, Canada (without reference to conflicts of laws principles). Each of the parties hereto irrevocably attorns and consents to the jurisdiction of such courts.
- 12.4 The waiver by either party of a breach or a default of any provision shall not be construed as a waiver of any succeeding branch of the same of any other provision.
- 12.5 All terms of this Agreement which by their nature extend beyond the termination of this Agreement, remain in effect until fulfilled and apply to respective successors and assigns. Your obligations under Articles 2.6, 8.3, 9, 10, 11, and 12 will survive the termination of this Agreement or of any license granted under this Agreement for whatever reason.
- 12.6 Any provision of this Agreement that is prohibited or unenforceable by a Court of competent jurisdiction will be ineffective to the extent of the prohibition or unenforceability without invalidating the remaining provisions of this Agreement and any prohibition or unenforceability in any jurisdiction will not invalidate



or render unenforceable that provision in any other jurisdiction. For any provision severed there will be deemed substituted a like provision to accomplish the intent of the parties as closely as possible to the provision as drafted, as determined by any court or arbitrator having jurisdiction over any relevant proceeding, to the extent permitted by the applicable law.

- 12.7 This Agreement contains the entire understanding and agreement between the parties respecting the subject matter hereof. This Agreement may not be supplemented, modified, amended, released or discharged except by an instrument agreed to by each party's duly authorized representative. All captions and headings in this Agreement are for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.
- 12.8 The Parties hereto have requested that this Agreement and all correspondence and all documentation relating to this Agreement, be written in the English language. Les parties aux présentes ont exigé que la présente Les parties aux présentes ont exigé que la présente entente, de même que toute la correspondance et la documentation relative à cette entente, soient rédigées en langue anglais.