

IMPORTANT, READ CAREFULLY : YOUR USE OF AND ACCESS TO THE WEBSITE AND PRODUCTS AND SERVICES AND ASSOCIATED SOFTWARE (COLLECTIVELY, THE "SERVICES") OF FLUENCY, INC. IS CONDITIONED UPON YOUR COMPLIANCE WITH AND ACCEPTANCE OF THESE TERMS, WHICH INCLUDE YOUR AGREEMENT TO ARBITRATE CLAIMS. PLEASE REVIEW THOROUGHLY BEFORE ACCEPTING THIS "AGREEMENT. ADDITIONALLY, THE ACCESS AND USE OF THE SERVICES ARE EXPRESSLY AND HEREBY FOR THE INTERNAL BUSINESS PURPOSES OF DELIVERING SPOKEN LANGUAGE AND AMERICAN SIGN LANGUAGE INTERPRETING SERVICES AS WELL AS ANY ALLIED OR ASSOCIATED BUSINESS USE OF THESE COMMUNICATION SERVICES AND PLATFORMS.

BY CLICKING/CHECKING THE "I AGREE" BUTTON/BOX, ACCESSING THE FLUENCY, INC SERVICES YOU AGREE TO BE BOUND BY THESE TERMS OF SERVICE AND ALL EXHIBITS, ORDER FORMS, AND INCORPORATED POLICIES (THE "AGREEMENT" OR "TOS"). THESE FLUENCY INC. SERVICES ARE NOT AVAILABLE TO PERSONS WHO ARE NOT LEGALLY ELIGIBLE TO BE BOUND BY THESE TERMS OF SERVICE.

THIS AGREEMENT APPLIES TO THE SERVICES AND SOFTWARE THAT FLUENCY CLIENTS HAVE LEGITIMATELY PURCHASED. THE SOFTWARE AND ASSOCIATED ENABLED PLATFORMS, PRODUCTS AND SERVICES ARE LICENSED, NOT SOLD. FLUENCY, INC CLIENTS MAY USE ONLY THE SOFTWARE THAT HAS BEEN PAID FOR, AND FLUENCY, INC. CLIENTS MUST USE IT STRICTLY IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT. FLUENCY, INC. CLIENTS ARE RESPONSIBLE FOR ENSURING THAT ALL EMPLOYEES, CONTRACTORS, CLIENTS AND OTHER USERS ("AUTHORIZED USERS") WITHIN ITS ORGANIZATION OR ENTITY ABIDE BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

FLUENCY, INC. RESERVES THE RIGHT, AT ITS SOLE DISCRETION, TO MODIFY, DELETE, EDIT, AND/OR ADD TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND AT ANY TIME SUCH MODIFIED TERMS AND CONDITIONS SHALL BECOME AVAILABLE, IT WILL HAVE IMMEDIATE EFFECT AND BE IN FORCE ONCE THEY ARE MADE AVAILABLE THROUGH PLATFORM UPDATES. UNLESS OTHERWISE EXPRESSLY SET FORTH IN ANY SUCH ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO THE SERVICES, THOSE ADDITIONAL TERMS ARE HEREBY INCORPORATED INTO THIS AGREEMENT IN RELATION TO YOUR USE OF THE SERVICES.

System Requirements. Use of the Services requires one or more compatible devices, Internet access (fees may apply), and certain third party software products and/or services that have been designed to enhance the features add new features, and improve the work, security and overall usability of the platform. Such third-party products and services may require additional fees to install and use, and may require obtaining updates or upgrades from time to time in order to keep these third party products and services up to date and useful. Because use of the Services involves hardware, software, and Internet access, and other third-party products and services, your ability to access and use the Services may be affected by the performance of these third party products and services. High speed Internet access is recommended. You acknowledge and agree that such system requirements, which may be changed from time to time, are entirely your responsibility.

1. **DEFINITIONS.** The following definitions will apply in this Agreement, and any reference to the singular includes a reference to the plural and vice versa.

"End User" means a Host or Participant (as defined in the Services Description) who uses the Services.

"Initial Subscription Term" means the initial subscription term for a Service as specified in an Order Form.

"Service Effective Date" means the date an Initial Subscription Term begins as specified in an Order Form.

"Renewal Term" means the renewal subscription term for a Service commencing after the Initial Subscription Term or another Renewal Term as specified in an Order Form.

2. **SERVICES.** Fluency, Inc. will provide the Services as described on the Order Form, and standard updates to the Services that are made generally available by Fluency, Inc. during the term. Fluency, Inc. may, in its sole discretion, discontinue the Services or modify the features of the Services from time to time without prior notice.

a. **Beta Services.** Fluency, Inc. may, from time to time, offer access to services that are classified as Beta version. Access to and use of Beta versions may be subject to additional agreements. Fluency, Inc. makes no representations that a Beta version will ever be made generally available and reserves the right to discontinue or modify a Beta version at any time

without notice. Beta versions are provided AS IS, may contain bugs, errors or other defects, and Your use of a Beta version is at Your sole risk. Your feedback, suggestions and opinions may be incorporated into later versions of the Services, and you hereby agree that your feedback will remain the exclusive intellectual property of Fluency.

3. **USE OF SERVICES AND YOUR RESPONSIBILITIES.** You may only use the Services pursuant to the terms of this Agreement. You are solely responsible for Your and Your End Users' use of the Services and shall abide by, and ensure compliance with, all laws in connection with Your and each End User's use of the Services, including but not limited to Laws related to recording, intellectual property, privacy and export control. Use of the Services is void where prohibited.

a. **Registration Information.** You may be required to provide information about Yourself in order to register for and/or use certain Services. You agree that any such information shall be accurate. You may also be asked to choose a user name and password. You are entirely responsible for maintaining the security of Your user name and password and agree not to disclose such to any third party.

b. **Your Content.** You agree that You are solely responsible for the content ("Content") sent or transmitted by You or displayed or uploaded by You in using the Services and for compliance with all Laws pertaining to the Content, including, but not limited to, Laws requiring You to obtain the consent of a third party to use the Content and to provide appropriate notices of third-party rights. You represent and warrant that You have the right to upload the Content to the Services and that such use does not violate or infringe on any rights of any third party. Under no circumstances will Fluency, Inc. be liable in any way for any (a) Content that is transmitted or viewed while using the Services, (b) errors or omissions in the Content, or (c) any loss or damage of any kind incurred as a result of the use of, access to, or denial of access to Content. Although Fluency, Inc. is not responsible for any Content, Fluency, Inc. may delete any Content, at any time without notice to You, if Fluency, Inc. becomes aware that it violates any provision of this Agreement, or any law. You retain copyright and any other rights You already hold in Content which You submit, post or display on or through, the Services.

c. **Recordings.** You are responsible for compliance with all recording laws. The host can choose to record Fluency, Inc. meetings and Webinars. By using the Services, you are giving Fluency, Inc. consent to store recordings for any or all Fluency, Inc. meetings or webinars that you join, if such recordings are stored in our systems. You will receive a notification (visual or otherwise) when recording is enabled. If you do not consent to being recorded, you can choose to leave the meeting or webinar

d. **Prohibited Use.** You agree that You will not use, and will not permit any End User to use, the Services to: (i) modify, disassemble, decompile, prepare derivative works of, reverse engineer or otherwise attempt to gain access to the source code of the Services; (ii) knowingly or negligently use the Services in a way that abuses, interferes with, or disrupts Fluency, Inc.'s networks, Your accounts, or the Services; (iii) engage in activity that is illegal, fraudulent, false, or misleading, (iv) transmit through the Services any material that may infringe the intellectual property or other rights of third parties; (v) build or benchmark a competitive product or service, or copy any features, functions or graphics of the Services; or (vi) use the Services to communicate any message or material that is harassing, libelous, threatening, obscene, indecent, would violate the intellectual property rights of any party or is otherwise unlawful, that would give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offense, under any applicable law or regulation; (vii) upload or transmit any software, Content or code that does or is intended to harm, disable, destroy or adversely affect performance of the Services in any way or which does or is intended to harm or extract information or data from other hardware, software or networks of Fluency, Inc. or other users of Services; (viii) engage in any activity or use the Services in any manner that could damage, disable, overburden, impair or otherwise interfere with or disrupt the Services, or any servers or networks connected to the Services or Fluency, Inc.'s security systems. (ix) use the Services in violation of any Fluency, Inc. policy or in a manner that violates applicable law, including but not limited to anti-spam, export control, privacy, and anti-terrorism laws and regulations and laws requiring the consent of subjects of audio and video recordings, and You agree that You are solely responsible for compliance with all such laws and regulations.

e. **Limitations on Use.** You may not reproduce, resell, or distribute the Services or any information services or products generated by the Services for any purpose outside your direct business use articulated in this Agreement unless You have been specifically permitted to do so under a separate written agreement with Fluency, Inc. You may not offer or enable any third parties to use the Services purchased by You, display on any website or otherwise publish the Services or any Content obtained from a Service (other than Content created by You) or otherwise generate income from the Services or use the Services for the development, production or marketing of a service or product substantially similar to the Services.

4. **RESPONSIBILITY FOR END USERS.** You are responsible for the activities of all End Users who access or use the Services through your account and you agree to ensure that any such End User will comply with the terms of this Agreement and any Fluency, Inc. policies. Fluency, Inc. assumes no responsibility or liability for violations. If You become aware of any violation of this Agreement in connection with use of the Services by any person, please contact Fluency, Inc. at support@gofluently.com Fluency, Inc. may investigate any complaints and violations that come to its attention and may take any (or no) action that it believes is appropriate, including, but not limited to issuing warnings, removing the content or terminating accounts and/or User profiles. Under no circumstances will Fluency, Inc. be liable in any way for any data or other content viewed while using the Services, including, but not limited to, any errors or omissions in any such data or content, or any loss or damage of any kind incurred as a result of the use of, access to, or denial of access to any data or content.

FLUENCY, INC. OBLIGATIONS FOR CONTENT. Fluency, Inc. will maintain reasonable physical and technical safeguards to prevent unauthorized disclosure of or access to Content, in accordance with industry standards. Fluency, Inc. will notify You if it becomes aware of unauthorized access to Content. Fluency, Inc. will not access, view or process Content except (a) as provided for in this Agreement and in Fluency, Inc.'s [Privacy Statement](#); (b) as authorized or instructed by You, (c) as required to perform its obligations under this Agreement; or (d) as required by Law. Fluency, Inc. has no other obligations with respect to Content.

5. THIRD-PARTY USE OF COOKIES AND OTHER TRACKING TECHNOLOGIES

Some content or applications, including advertisements, on the Website are served by third-parties, including advertisers, ad networks and servers, content providers, and application providers. These third parties may use cookies alone or in conjunction with web beacons or other tracking technologies to collect information about you when you use our website. The information they collect may be associated with your personal information or they may collect information, including personal information, about your online activities over time and across different websites and other online services. They may use this information to provide you with interest-based (behavioral) advertising or other targeted content. Fluency, Inc. does not control these third parties' tracking technologies or how they may be used. If you have any questions about an advertisement or other targeted content, you should contact the responsible provider directly.

6. **ELIGIBILITY.** You affirm that You are at least 18 years of age and are otherwise fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in this Agreement, and to abide by and comply with this Agreement. Your access may be terminated without warning if we believe that You are under the age of 18 or are otherwise ineligible.

7. **INTENDED USE; RESTRICTION ON USE BY CHILDREN.** The Services are intended for business use. Fluency, Inc. is not intended for use by individuals under the age of 18, unless it is through a School Subscriber (as that term is defined in the Services Description) using Fluency, Inc. for Education (K-12).

8. **CHARGES AND CANCELLATION.** You agree that Fluency, Inc. may charge to Your credit card or other payment mechanism selected by You and approved by Fluency, Inc. ("Your Account") all amounts due and owing for the Services, including taxes and service fees, set up fees, subscription fees, support fees or any other fee or charge associated with Your Account. Fluency, Inc. may change prices at any time, including changing from a free service to a paid service and charging for Services that were previously offered free of charge; provided, however, that Fluency, Inc. will provide you with prior notice and an opportunity to terminate Your Account. Fluency, Inc. will not charge you for a previously free Service unless you have been notified of the applicable fees and agreed to pay such fees. You agree that in the event Fluency, Inc. is unable to collect the fees owed to Fluency, Inc. for the Services through Your Account, Fluency, Inc. may take any other steps it deems necessary to collect such fees

from You and that You will be responsible for all costs and expenses incurred by Fluency, Inc. in connection with such collection activity, including collection fees, court costs and attorneys' fees. You further agree that Fluency, Inc. may collect interest at the lesser of 1.5% per month or the highest amount permitted by law on any amounts not paid when due. You may cancel your subscription at any time. If you cancel, you will not be billed for any additional terms of service, and service will continue until the end of the current Subscription Term. If you cancel, you will not receive a refund for any service already paid for.

9. **TERMINATION.** If you have purchased a Service for a specific term, such termination will be effective on the last day of the then-current term. Your Order Form may provide that a Renewal Term will begin automatically unless either party provides notice of termination at least thirty (30) days prior to the commencement of the next Renewal Term. If You fail to comply with any provision of this Agreement, Fluency, Inc. may terminate this Agreement immediately and retain any fees previously paid by You. Sections 1 and 3 through 20, inclusive, shall survive any termination of this Agreement. Upon any termination of this Agreement, You must cease any further use of the Services. If at any time You are not happy with the Services, Your sole remedy is to cease using the Services and follow this termination process.

10. **ACCESS RESTRICTION.** Fluency, Inc. reserves the right to deny to any Client or any End User, in its sole discretion, access to the Services or any portion thereof without notice. Client is responsible for safeguarding the confidentiality of password(s) and user name(s) created by Client or any of its Clients for use with the Services and for any use or misuse of their Fluency, Inc.'s account resulting from any third party using a password or user name created by Client or any of its Clients. Client shall be solely responsible for securing access to its and its Clients' data. Fluency, Inc. shall in no event be liable for any unauthorized access to any data stored using the Software.

11. **PROPRIETARY RIGHTS.** Fluency, Inc. and/or its suppliers, as applicable, retain ownership of all proprietary rights in the Services and in all trade names, trademarks, service marks, logos, unique design elements and user interfaces and domain names ("Fluency, Inc. Marks") associated or displayed with the Services. You may not frame or utilize framing techniques to enclose any Fluency, Inc. Marks, or other proprietary information (including images, text, page layout, or form) of Fluency, Inc. without express written consent. You may not

use any meta tags or any other "hidden text" utilizing Fluency, Inc. Marks without Fluency, Inc.'s express written consent.

12. **COPYRIGHT.** You may not post, modify, distribute, or reproduce in any way copyrighted material, trademarks, rights of publicity or other proprietary rights without obtaining the prior written consent of the owner of such proprietary rights. Fluency, Inc. may deny access to the Services to any User who is alleged to infringe another party's copyright. Without limiting the foregoing, if You believe that Your copyright has been infringed, please notify Fluency, Inc. at support@gofluently.com.

13. **EXPORT RESTRICTIONS.** You acknowledge that the Services, or a portion thereof, are subject to the Export Administration Regulations, 15 C.F.R. Parts 730-774, of the United States and may be subject to other applicable country export control and trade sanctions laws ("Export Control and Sanctions Laws"). Fluency, Inc. will provide the U.S. export classification(s) applicable to its Services upon request. You and Your End Users may not access, use, export, re-export, divert, transfer or disclose any portion of the Services or any related technical information or materials, directly or indirectly, in violation of Export Control and Sanctions Laws. You represent and warrant that: (i) You and Your End Users (a) are not citizens of, or located within, a country or territory that is subject to U.S. trade sanctions or other significant trade restrictions (including without limitation Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine) and that You and Your End Users will not access or use the Services, or export, re-export, divert, or transfer the Services, in or to such countries or territories; (b) are not persons, or owned 50% or more, individually or in the aggregate by persons, identified on the U.S. Department of the Treasury's Specially Designated Nationals and Blocked Persons List or Foreign Sanctions Evaders Lists; and (c) are not persons on the U.S. Department of Commerce's Denied Persons List, Entity List, or Unverified List, or U.S. Department of State proliferation-related lists; (ii) You and Your End Users located in China, Russia, or Venezuela are not Military End Users and will not put Fluency, Inc.'s Services to a Military End Use, as defined in 15 C.F.R. 744.21; (iii) no Content created or submitted by You or Your End Users is subject to any restriction on disclosure, transfer, download, export or re-export under the Export Control and Sanctions Laws; and (iv) You and Your End Users will not take any action that would constitute a violation of, or be penalized under, U.S. antiboycott laws administered by the U.S. Department of Commerce or the U.S. Department of

the Treasury. You are solely responsible for complying with the Export Control and Sanctions Laws and monitoring them for any modifications.

14. **NO HIGH RISK USE.** The Services are not designed or licensed for use in hazardous environments requiring fail-safe controls, including without limitation operation of nuclear facilities, aircraft navigation/communication systems, air traffic control, and life support or weapons systems. The Services shall not be used for or in any HIGH-RISK environment.

15. **INJUNCTIVE RELIEF.** You acknowledge that any use of the Services contrary to this Agreement, or any transfer, sublicensing, copying or disclosure of technical information or materials related to the Services, may cause irreparable injury to Fluency, Inc., its Affiliates, suppliers and any other party authorized by Fluency, Inc. to resell, distribute, or promote the Services ("Resellers"), and under such circumstances Fluency, Inc., its Affiliates, suppliers and Resellers will be entitled to equitable relief, without posting bond or other security, including, but not limited to, preliminary and permanent injunctive relief.

16. **NO WARRANTIES.** YOU UNDERSTAND AND AGREE THAT THE SERVICES ARE PROVIDED "AS IS" AND FLUENCY, INC., ITS AFFILIATES, SUPPLIERS AND RESELLERS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. FLUENCY, INC., ITS AFFILIATES, SUPPLIERS AND RESELLERS MAKE NO WARRANTY OR REPRESENTATION REGARDING THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES, REGARDING THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICES OR THAT THE SERVICES WILL MEET ANY USER'S REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. USE OF THE SERVICES IS AT YOUR SOLE RISK. ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS AT YOUR OWN DISCRETION AND RISK. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOU RESULTING FROM THE USE OF THE SERVICES. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE SERVICES REMAINS WITH YOU. FLUENCY, INC. DOES NOT ASSUME ANY RESPONSIBILITY FOR RETENTION OF ANY USER INFORMATION OR COMMUNICATIONS BETWEEN USERS. FLUENCY,

INC. CANNOT GUARANTEE AND DOES NOT PROMISE ANY SPECIFIC RESULTS FROM USE OF THE SERVICES. USE IS AT YOUR OWN RISK.

17. **INDEMNIFICATION.** You agree to indemnify, defend and hold harmless Fluency, Inc., its affiliates, officers, directors, employees, consultants, agents, suppliers and Resellers from any and all third-party claims, liability, damages and/or costs (including, but not limited to, attorneys' fees) arising from Your use of the Services. This includes without limitation claims relating to loss or confidentiality of data or programs the following: (b) any violation by Authorized Users and Organizations of any warranty, representation or covenant under this Agreement, (c) Authorized Users and Organizations' violation of any third party rights, including, without limitation, infringement of any copyright, trademark or patent right, violation of any other proprietary right and invasion of any privacy or publicity rights, and/or the use or misuse of the Client's account by any third party using Client's password(s) and/or user name(s). These obligations will survive any termination of this Agreement.

18. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL FLUENCY, INC. OR ITS AFFILIATES, SUPPLIERS OR RESELLERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS OR DAMAGE) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES OR THE PROVISION OF OR FAILURE TO PROVIDE TECHNICAL OR OTHER SUPPORT SERVICES, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE) CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF FLUENCY, INC., ITS AFFILIATES, SUPPLIERS OR RESELLERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, FLUENCY, INC.'S, ITS AFFILIATES', SUPPLIERS' AND RESELLERS' MAXIMUM CUMULATIVE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE SERVICES (IF ANY) IN THE TWELVE (12) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH CLAIMS. THE PARTIES ACKNOWLEDGE AND AGREE THAT THEY HAVE FULLY CONSIDERED THE FOREGOING ALLOCATION OF RISK AND FIND IT REASONABLE, AND THAT THE FOREGOING LIMITATIONS ARE AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. Because

some states and jurisdictions do not allow the exclusion or limitation of liability, the above limitation may not apply to You.

19. AGREEMENT TO ARBITRATE; WAIVER OF CLASS ACTION. If You are located in the United States, You agree to resolve disputes only on an individual basis, through arbitration pursuant to the provisions of Exhibit A. **The parties expressly waive any right to bring any action, lawsuit, or proceeding as a class or collective action, private attorney general action, or any other proceeding in which any party acts or proposes to act in a representative capacity.**

19.1 Waiver and Severability. Failure by either Party to exercise any of its rights under, or to enforce any provision of, this Agreement will not be deemed a waiver or forfeiture of such rights or ability to enforce such provision. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be amended to achieve as nearly as possible the same economic effect of the original provision and the remainder of this Agreement will remain in full force and effect.

19.2 General Provisions. This Agreement embodies the entire understanding and agreement between the Parties respecting the subject matter of this Agreement and supersedes any and all prior understandings and agreements between the Parties respecting such subject matter, except that if You or Your company have executed a separate written agreement or you have signed an order form referencing a separate agreement governing your use of the Services, then such agreement shall control to the extent that any provision of this Agreement conflicts with the terms of such agreement. Fluency, Inc. may elect to change or supplement the terms of this Agreement from time to time at its sole discretion. Fluency, Inc. will exercise commercially reasonable business efforts to provide notice to You of any material changes to this Agreement. Within ten (10) business days of posting changes to this Agreement (or ten (10) business days from the date of notice, if such is provided), they will be binding on You. If You do not agree with the changes, You should discontinue using the Services. If You continue using the Services after such ten-business-day period, You will be deemed to have accepted the changes to the terms of this Agreement. In order to participate in certain Services, You may be notified that You are required to download software and/or agree to additional terms and conditions. Unless expressly set forth in such additional terms and conditions, those additional terms are hereby incorporated into this Agreement. This Agreement has been prepared in the English Language and such version shall be controlling in all respects and any non-English version of this

Agreement is solely for accommodation purposes. Each party hereby agrees to submit to the jurisdiction of such courts. Client acknowledges that a breach of this Agreement will cause irreparable and continuing damage to Fluency, Inc. for which money damages are insufficient, and Fluency, Inc. shall be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including money damages if appropriate).

BY ACCESSING AND USING THE FLUENCY, INC. SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE UNCONDITIONALLY THAT YOU SHALL BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO EXECUTE THIS BINDING AGREEMENT ON BEHALF OF YOUR BUSINESS OR ORGANIZATION.

20. Choice of Law and Forum. This Agreement shall be governed by and construed under the laws of the State of California, U.S.A., as applied to agreements entered into and to be performed in California by California residents. Except as provided in Exhibit A, the Parties consent to the exclusive jurisdiction and venue of the state courts located in and serving Sacramento County, California and the federal courts in the Northern District of California.

21. PRIVACY AND OTHER POLICIES. Use of the Services is also subject to Fluency, Inc's [Privacy Statement](#). The Privacy Statement, and all policies cited herein are incorporated into this Agreement by this reference.

22. DATA SECURITY We have implemented measures designed to secure your personal and business information and that of your Clients from accidental loss and from unauthorized access, use, alteration, and disclosure. All information you provide to us is stored on our private cloud servers behind enterprise class security equipment and services. Our servers are housed in a high security location in Sacramento, California: <https://www.ragingwire.com/> utilizing industry leading back up, security, and redundancy protocols necessary for modern software as a service provider entrusted with vital data.

The safety and security of your information also depends on you. Where we have given you (or where you have chosen) a password for access to certain parts of our Website, you are responsible for keeping this password confidential. We ask you not to share your password with anyone. We urge you to be careful about giving out information in public areas of the Website like message boards with particular caution towards

divulging usernames and/or passwords on social media accounts that is widely accessed by anyone at any time.

Unfortunately, the transmission of information via the internet is not completely secure. Although we do our best to protect your personal information, we cannot guarantee the security of your personal information transmitted to our Website. Any transmission of personal information is at your own risk. We are not responsible for circumvention of any privacy settings or security measures contained on the Website.

23. DATA RETENTION. Fluency, Inc. will retain your information for as long as your account is active or as needed to provide you services. Subscriber shall have the right to request a copy of the data stored in the Software Services within the forty-five (45) day period immediately following any expiration or termination of this subscription. In any such case, a copy of the data will be returned via an encrypted flash drive delivered via FedEx, or alternatively, via a secure file transfer mechanism. All data will be expunged from the Software Platform within thirty (30) days of acknowledged receipt of the data by Subscriber, or alternatively, if no data is requested, data will be expunged permanently within sixty (60) days of termination, according to HIPAA rules section 45 CFR 164.50 relating to ePhi for Covered Entities and Business Associates.

24. CHANGES TO OUR PRIVACY POLICY. It is our policy to post any changes we make to our privacy policy on this page. You are responsible for ensuring we have an up-to-date active and deliverable email address for you, and for periodically visiting our Website and this privacy policy to check for any changes. To review our Privacy Policy [please click here](#).

25. DATA BREACH. If you suspect a data breach, please contact us immediately at support@gofluently.com or by contacting us by phone at (800) 522-7512

26. CONTACT INFORMATION: Info@gofluently.com, Fluency, Inc. is a California Corporation located at 6825 Fair Oaks Blvd, Suite 200, Carmichael, CA 95608 (800) 522-7512

Exhibit A

Binding Arbitration

This Exhibit A to the TOS describes the further provisions which apply to the Binding Arbitration and Class Action Waiver.

A. **Disputes.** A dispute is any controversy between You and Fluency, Inc. concerning the Services, any software related to the Services, the price of the Services, Your account, Fluency, Inc.'s advertising, marketing, or communications, Your purchase transaction or billing, or any term of this Agreement, under any legal theory including contract, warranty, tort, statute, or regulation, except disputes relating to the enforcement or validity of Your or Fluency, Inc.'s intellectual property rights. As part of the best-efforts process to resolve disputes, and prior to initiating arbitration proceedings, each party agrees to provide notice of the dispute to the other party, including a description of the dispute, what efforts have been made to resolve it, and what the disputing party is requesting as resolution, to support@gofluently.com.

B. **Small Claims Court Available.** You may initiate an action in your local Small Claims Court if You meets the court's requirements. However, if such a claim is transferred, removed or appealed to a different court, Fluency, Inc. reserves the right to require arbitration.

C. **Arbitration Procedure.** Disputes not resolved pursuant to Section A or B shall be resolved through arbitration. The American Arbitration Association ("AAA") will conduct any arbitration under its Commercial Arbitration Rules. For more information, see www.adr.org. Arbitration hearings will take place in the federal judicial district of Your primary business location. A single arbitrator will be appointed. The arbitrator must: (a) follow all applicable substantive Law; (b) follow applicable statutes of limitations; (c) honor valid claims of privilege; (d) issue a written decision including the reasons for the award. The arbitrator may award damages, declaratory or injunctive relief, and costs (including reasonable attorneys' fees). Any arbitration award may be enforced (such as through a judgment) in any court with jurisdiction. **Under AAA Rules, the arbitrator rules on his or her own jurisdiction, including the arbitrability of any claim; however, a court has exclusive authority to enforce the prohibition on arbitration on a class-wide basis or in a representative capacity.**

D. **Arbitration Fees.** If You are unable to afford the arbitration costs, Fluency, Inc. will advance those costs to You, subject to the arbitrator's determination if costs should be reimbursed to Fluency, Inc. if Fluency, Inc. prevails. For disputes involving more than \$75,000, the AAA rules will

govern payment of filing fees and the AAA's and arbitrator's fees and expenses.

E. **Conflict with AAA Rules.** This Agreement governs if there is a conflict with the AAA's Commercial Arbitration Rules.

F. **Requirement to File Within One Year.** Notwithstanding any other statute of limitations, a claim or dispute under this Agreement must be filed in Small Claims Court or noticed for arbitration within one year of when it could first be filed, or such claim will be permanently barred.

G. **Severability.** If the class action waiver is found to be illegal or unenforceable as to all or some parts of a dispute, then those parts will not be arbitrated but will be resolved in court, with the balance resolved through arbitration. If any provision of this Exhibit A is found to be illegal or unenforceable, then that provision will be severed; however, the remaining provisions shall still apply and shall be interpreted to as nearly as possible achieve the original intent of this Exhibit, inclusive of the severed provision.
