

# End-User License Agreement

END USER LICENSE AGREEMENT ("EULA") for SOFTWARE

ACCOMPANYING DYNAVOX DEVICES

NOTICE TO USER: PLEASE READ THIS CONTRACT CAREFULLY. BY USING THE DYNAVOX DEVICE OR ANY ACCOMPANYING SOFTWARE YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, AS WELL AS THE WARRANTY DISCLAIMER AND LIMITATIONS AND INDEMNIFICATION IN SECTION 7. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU. THIS AGREEMENT IS ENFORCEABLE AGAINST YOU AND ANY LEGAL ENTITY THAT OBTAINED THE SOFTWARE AND ON WHOSE BEHALF IT IS USED. IF YOU DO NOT AGREE, DO NOT USE THIS DEVICE OR SOFTWARE. IF YOU HAVE NOT HAD AN OPPORTUNITY TO REVIEW THIS LICENSE AND YOU DO NOT ACCEPT THIS AGREEMENT, YOU MAY OBTAIN A REFUND OF ANY AMOUNT YOU ORIGINALLY PAID IF YOU: (A) DO NOT USE THE DEVICE OR SOFTWARE AND (B) RETURN THE DEVICE AND SOFTWARE, WITH PROOF OF PAYMENT, TO THE LOCATION FROM WHICH IT WAS OBTAINED WITHIN THIRTY (30) DAYS OF THE PURCHASE DATE.

DynaVox Systems LLC (hereinafter referred to as DynaVox) and its suppliers own all intellectual property in the Software that accompanies DynaVox devices. DynaVox permits You to Use the Software only in accordance with the terms of this Agreement.

## SECTION 1 - DEFINITIONS

- a. "Agreement" means this END USER LICENSE AGREEMENT ("EULA") and all terms and conditions contained therein.
- b. "Device" means the communication aid device obtained from DynaVox herewith and accompanying the Software.
- c. "Augmentative and Alternative Communications" means using the communication Device to express and understand thoughts, needs, wants, and ideas as a mechanism to enhance the ability to communicate.
- d. "You" or "Your" means the person, company, or organization that has purchased this Device or is using this Device.
- e. "Software" means: (a) any object code of Dynavox and its suppliers installed on the Device; (b) all of the contents of the files, disk(s), CD-ROM(s) or other media delivered with the Device for use on a Computer, regardless of whether the Software was already installed on the device or is accessed separately from the device. Software also includes, but is not limited to: (i) related explanatory written materials or files ("Documentation"); and (ii) upgrades, modified versions, updates, additions, and copies of the Software, if any, licensed to You by DynaVox (collectively, "Updates").
- f. "Use" or "Using" means to access, open, install, download, copy or otherwise benefit from using the functionality of the Software in accordance with the Documentation.
- g. "License Key" means software based key(s) to be delivered to the Licensee as a consequence of this Agreement, if applicable, and that provide technical means for installing the Software.
- h. "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions.
- i. "DynaVox" means DynaVox Systems LLC, a Delaware corporation, 2100 Wharton Street, Suite 400, Pittsburgh, PA 15203.

## SECTION 2 – SOFTWARE LICENSE

As long as You comply with the terms of this Agreement, DynaVox grants to You a limited, terminable, non-exclusive license to Use the Software for the purposes described in the Documentation.

This Agreement applies to updates, supplements, add-on components, or Internet-based service components of the Software that DynaVox may provide to You or make available to You after the date You obtain Your initial copy of the Software, unless we provide other terms along with the update, supplement, add-on component, or Internet-based services component. DynaVox reserves the right to discontinue any Internet-based services provided to You or made available to You through the Use of the Software.

### SECTION 3 - GRANT OF LICENSE

A. Device Software. This Agreement permits you to use the Software installed on the Device for personal or clinical Augmentative and Alternative Communications use. Such Software may only be used on a single Device.

B. Computer Software. This Agreement permits You, and –upon and within scope of the license granted to you - those individuals who provide instruction, therapy, supervision, assessment, care, or other services directly to You, to Use the accompanying Software, strictly for the purpose of supporting your use of the Device. You may use the accompanying Software on multiple computers, subject to the limitations of the License Key, if applicable.

### SECTION 4 - UPDATES and UPGRADES

If the Software is an Update or Upgrade to a previous version of the Software, You must possess a valid license to such previous version in order to Use such Update or Upgrade. All Updates or Upgrades are provided to You on a license exchange basis. You agree that by Using an Update or Upgrade, You voluntarily terminate Your right to Use any previous version of the Software. As an exception, You may continue to Use previous versions of the Software on Your Computer after You Use the Update or upgrade, but only to assist You in the transition to the new version, provided that: (a) the Update or Upgrade and the previous versions are installed on the same Computer; (b) the previous versions or copies thereof are not transferred to another party or Computer unless all copies of the Update or Upgrade are also transferred to such party or Computer; and (c) You acknowledge that any obligation DynaVox may have to support the previous versions of the Software may be ended upon availability of the Update or Upgrade; and (d) You comply with the terms and conditions of the most recent EULA with respect to the installation and/or Use of the Software.

You shall assume full responsibility for your own computers, network and other equipment that will interact with the Software, including but not limited to making backup copies of your software, data and databases used in connection with such equipment or the Software.

### SECTION 5 - NEW VERSIONS OR UPDATES

DynaVox, in its sole discretion, reserves the exclusive right to add additional features or functions, or to provide programming fixes, programming modifications, updates or upgrades, to the Software. DynaVox has no obligation to make available to You any subsequent versions of the Software.

### SECTION 6 - INTELLECTUAL PROPERTY OWNERSHIP, COPYRIGHT, COPYRIGHT PROTECTION

The Software is owned by DynaVox or its suppliers ---- and is protected by United States copyright laws and international treaty provisions. Therefore, You must treat the Software like any other copyrighted material (e.g., a book or musical recording). You may not (i) modify, translate, download, reverse engineer, de-compile, or disassemble the Software, or use the Software on any other device or network; (ii) disclose the Software to any third party; or (iii) except as otherwise provided herein, assign, sell, lease, rent, sublicense, distribute, or otherwise transfer or attempt to transfer the Software. You may not copy the written materials accompanying the Software.

The Software, and any authorized copies that You make, are the intellectual property of and are owned by DynaVox and its suppliers. The structure, organization and code of the Software are the valuable trade secrets and confidential information of DynaVox and its suppliers. The Software is protected by law, including without limitation the copyright laws of the United States and other countries, and by international treaty provisions. Except as expressly stated herein, this Agreement does not grant You any intellectual property rights in the Software, and all rights not expressly granted are reserved by DynaVox and its suppliers. Nothing in this Agreement intends to transfer any such intellectual property rights to, or to vest any such intellectual property rights in You. You may not take any action to jeopardize, limit or interfere with DynaVox intellectual property rights. Any unauthorized use of DynaVox intellectual property rights is a violation of this Agreement as well as a violation of intellectual property laws and treaties, including without limitation copyright laws and trademark laws.

### SECTION 7 - NO REMOVAL OF NOTICES

You agree that You will not remove, obscure, make illegible or alter any notices or indications of the intellectual property rights and/or DynaVox's rights and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to any materials.

## SECTION 8 - OTHER RESTRICTIONS

You, and those individuals who provide instruction, therapy, supervision, assessment, care, or other services directly to You, may use the Software to create materials in print or electronic form for the personal communication needs of the user of the Device. Materials created with the Software may not be sold, re-printed or distributed to third parties without the prior written consent of DynaVox. Except for the uses permitted above, distribution of any content or materials using PCS symbols in formats such as .pdf or PDF, .ppt or PowerPoint, .doc or WORD, html, or similar software formats used to display and/or transmit text and/or images is not permitted without the prior written consent of DynaVox.

## SECTION 9 - TRANSFER

You may not rent, lease, lend, or provide commercial hosting services with the Software. You may not sublicense, assign or transfer Your rights in the Software, or authorize all or any portion of the Software to be copied onto another user's Computer except as may be expressly permitted herein. You may, however, in connection with the sale or transfer of the Device, transfer all Your rights to Use the Software to another person or legal entity provided that: (a) You also transfer (i) this Agreement, and (ii) the Software and all other software or hardware bundled or pre-installed with the Software, including all copies, Updates and prior versions, to such person or entity; (b) You retain no copies, including backups and copies stored on a Computer; and (c) the receiving party accepts the terms and conditions of this Agreement and any other terms and conditions upon which You legally purchased a license to the Software. Notwithstanding the foregoing, You may not transfer education, pre-release, or not-for-resale copies of the Software.

## SECTION 10 - LIMITATIONS, LIMITED WARRANTY, LIMITATION OF REMEDIES, INDEMNIFICATION

### A. LIMITED WARRANTY

To the original buyer only: DynaVox warrants to You for the period of one (1) year from the date of delivery of the Software to You as evidenced by a copy of Your receipt, that: (1) The Software, unless modified by You, will perform substantially the functions described in the documentation provided by DynaVox; and (2) The media on which the Software is furnished will be free from defects in materials and workmanship under normal use. DynaVox does not warrant that the Software will meet Your requirements, that the operation of the Software will be uninterrupted or error-free, or that all Software errors will be corrected. DynaVox is not responsible for problems caused by changes in the operating characteristics of Computer hardware or Computer operating systems which are made after the release of the Software nor for problems in the interaction of the Software or the Device with non-DynaVox software. DynaVox will have no responsibility to replace or refund the purchase price of the media damaged by accident, abuse or misapplication.

### B. NO OTHER WARRANTIES

Except as expressly set forth above, the Software is being delivered to You "AS IS" and DynaVox makes no warranty as to its use or performance and disclaims any warranty relating to any impact to Your Computer's performance or any influences on Your Computer. DYNVOX AND ITS SUPPLIERS DO NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS YOU MAY OBTAIN BY USING THE SOFTWARE.

THE ABOVE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY DYNVOX, ITS EMPLOYEES, DISTRIBUTORS, DEALERS OR AGENTS SHALL INCREASE THE SCOPE OF THE ABOVE WARRANTIES OR CREATE ANY NEW WARRANTIES. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO ONE (1) YEAR FROM THE DATE OF DELIVERY OF THE SOFTWARE. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE.

EXCEPT FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO YOU IN YOUR JURISDICTION, DYNVOX AND ITS SUPPLIERS MAKE NO WARRANTIES CONDITIONS, REPRESENTATIONS, OR TERMS (EXPRESS OR IMPLIED WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER INCLUDING WITHOUT LIMITATION NONINFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, INTEGRATION, SATISFACTORY QUALITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

### C. LIMITATION OF REMEDIES

In order to make a claim under this warranty You must return the defective item with proof of purchase to DynaVox or an authorized dealer, postage prepaid, during the warranty period. If, in DynaVox's sole discretion, it is unable to replace defective media or DynaVox is unable to provide corrected Software or corrected documentation, DynaVox will, at its sole and exclusive option, either replace the Software with a functionally equivalent program at no charge to You or refund the

purchase price of the Software. These are Your sole and exclusive remedies for any claim, including but not limited to, any claim of breach of warranty.

#### D. LIMITATION OF LIABILITY, NO LIABILITY FOR CONSEQUENTIAL DAMAGES

REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL DYNAVOX BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY, FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, DIRECT, INDIRECT, PUNITIVE, STATUTORY, EXEMPLARY OR SIMILAR DAMAGES, INCLUDING ANY LOSS OF USE, LOST PROFITS OR LOST, DAMAGED OR CORRUPTED DATA ARISING OUT OF THE USE, RELIANCE UPON, OR INABILITY TO USE THE SOFTWARE OR ANY DATA SUPPLIED THEREWITH EVEN IF DYNAVOX OR AN AUTHORIZED DYNAVOX DEALER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR IF SUCH DAMAGES ARE FORESEEABLE, OR FOR ANY CLAIM BY ANY OTHER PARTY. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN NO CASE SHALL DYNAVOX 'S LIABILITY EXCEED THE PURCHASE PRICE OF THE DEVICE AND SOFTWARE. THIS LIMITATION SHALL APPLY EVEN IN THE EVENT OF A FUNDAMENTAL OR MATERIAL BREACH OR A BREACH OF THE FUNDAMENTAL OR MATERIAL TERMS OF THIS AGREEMENT.

#### E. INDEMNIFICATION

YOU AGREE TO INDEMNIFY, DEFEND AND HOLD DYNAVOX, ITS PARENT, SUBSIDIARY, AND AFFILIATED ENTITIES, AND THE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, LICENSORS, SUPPLIERS OF EACH OF THEM HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY AND EXPENSES, COSTS, INCLUDING REASONABLE ATTORNEY FEES INCURRED BY SUCH PARTIES, IN CONNECTION WITH OR ARISING OUT OF YOUR (1) VIOLATION OR BREACH OF ANY TERM OF THIS AGREEMENT OR ANY APPLICABLE LAW OR REGULATION, WHETHER OR NOT REFERENCED IN THIS AGREEMENT, OR (2) VIOLATION OF ANY RIGHT OF ANY THIRD PARTY, OR (3) USE OR MISUSE OF THE SOFTWARE.

The provisions of this section shall survive the termination of the Agreement, howsoever caused, but this shall not imply nor create any continued right to Use the Software after termination of the Agreement.

#### SECTION 11 - ADDITIONAL PROVISIONS

You may not undertake, cause, permit or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, or disassembly or hacking of the Software or any part thereof. If you have a license to the Software you may transfer the Software in connection with your sale of the Device purchased herewith, solely on a permanent basis, as long as you retain no copies of the Software and the recipient agrees to the terms of this Agreement. Any transfer of the Software must include all updates and prior versions.

You agree that DynaVox and its affiliates may collect and use technical information gathered as part of the product support services provided to You, if any, related to the Software or the Device. DynaVox may use this information solely to improve our products or to provide customized services or technologies to You and will not disclose this information in a form that personally identifies You.

#### SECTION 12. - BINDING ARBITRATION

By Using the Software, You agree with DynaVox that, except as set forth below under "Exceptions to Arbitration," any claim, dispute or controversy ("Claim") by either You or DynaVox against the other, whether related to the Software or otherwise, including the enforceability of this arbitration agreement, will be resolved by binding arbitration. This arbitration agreement is subject to the Federal Arbitration Act (9 U.S.C. §§ 1-16).

IN ABSENCE OF THIS ARBITRATION AGREEMENT, YOU AND WE MAY OTHERWISE HAVE HAD A RIGHT OR OPPORTUNITY TO LITIGATE CLAIMS THROUGH A COURT, AND/OR TO PARTICIPATE OR BE REPRESENTED IN COURT BY OTHERS, BUT ALL CLAIMS EXCEPT AS SET FORTH BELOW UNDER "EXCEPTIONS TO ARBITRATION," MUST NOW BE RESOLVED THROUGH ARBITRATION.

The arbitration shall be commenced and conducted under the Commercial Arbitration Rules of the American Arbitration Association ("AAA") and, where appropriate, the AAA's Supplementary Procedures for Consumer Related Disputes ("AAA Consumer Rules"), both of which are available at the AAA website [www.adr.org](http://www.adr.org). The determination of whether a Dispute is subject to arbitration shall be governed by the Federal Arbitration Act and determined by a court rather than an arbitrator. Your arbitration fees and your share of arbitrator compensation shall be governed by the AAA Rules and, where appropriate, limited by the AAA Consumer Rules. The arbitration may be conducted in person, through the submission of documents, by telephone or online. The arbitrator will make a decision in writing, but need not provide a statement of reasons unless requested by a party. The arbitrator must follow applicable law, and any award may be challenged if the

arbitrator fails to do so. Except as otherwise provided in this Agreement, You and DynaVox may litigate in court to compel arbitration, stay proceeding pending arbitration, or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator.

Restrictions. You and DynaVox agree that any arbitration shall be limited to the Dispute between DynaVox and You individually. To the full extent permitted by law, (1) no arbitration shall be joined with any other; (2) there is no right or authority for any Dispute to be arbitrated on a class-action basis or to utilize class action procedures; and (3) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons.

Exceptions to Arbitration. You and DynaVox agree that the following Disputes are not subject to the above provisions concerning binding arbitration: (1) any Disputes seeking to enforce or protect, or concerning the validity of, any of Your or DynaVox's intellectual property rights; (2) any Dispute related to, or arising from, allegations of theft, piracy, invasion of privacy or unauthorized use; and (3) any claim for injunctive relief.

#### SECTION 13. - ENFORCEABILITY

If any part of this Agreement is found void and/or unenforceable, it will not affect the validity of the balance of this Agreement, which shall remain valid and enforceable according to its terms. This Agreement shall not prejudice the statutory rights of any party dealing as a consumer. This Agreement may only be modified by a written document signed by an authorized officer of DynaVox. Updates may be licensed to You by DynaVox with additional or different terms. This is the entire agreement between DynaVox and You relating to the Software and it supersedes any prior representations, discussions, undertakings, communications or advertising relating to the Software.

#### SECTION 14 - CAPTIONS AND SECTION NUMBERS

The captions and section numbers appearing anywhere in this Agreement are inserted only as a matter of convenience for reference and in no way define, limit, construe or describe the scope or intent of this Agreement or of any such provision or clause of this Agreement nor in any other way affect this Agreement or any part thereof.

#### SECTION 15 - TERMINATION

Without prejudice to any other rights, DynaVox may terminate the license granted under this Agreement if You fail to comply with the terms and conditions of this Agreement. In such event, You must destroy all copies of the Software and all of its component parts.

You agree to destroy the Software together with all copies, modifications and merged portions in any form upon termination of the license granted to you.

#### SECTION 16 - NEW VERSIONS

DynaVox reserves the right to change this Agreement at any time by publishing a revised Agreement on the DynaVox Website. The revised Agreement shall become effective within thirty (30) days of such publication, unless You expressly accept the revised Agreement earlier by clicking on the accept button. Your express acceptance or Your continued use of the Software after expiration of the notice period of thirty (30) days, shall constitute Your acceptance to be bound by the terms and conditions of the revised Agreement. You can find the latest version of this Agreement at [www.DynaVoxtech.com](http://www.DynaVoxtech.com). DynaVox reserves the right to change any of the Additional Terms from time to time and such changes shall become effective either within thirty (30) days of publication of the revised version on the Website (unless You expressly accept the revised terms earlier by clicking on the accept button if this option is made available), or within the timeframe set out in the applicable terms if different.

#### SECTION 17 - COMPLIANCE WITH LICENSES

If You are a business or organization, You agree that upon request from DynaVox or authorized DynaVox representative, You will within thirty (30) days fully document and certify that use of any and all Software at the time of the request is in conformity with Your valid license(s) from DynaVox.

#### SECTION 18 - ACKNOWLEDGEMENT

By using the Device or the Software, You expressly acknowledge that You have read this Agreement and understand the rights, obligations, terms and conditions set forth herein and consent to be bound by its terms and conditions and agree that upon installing the Software, You will use it in accordance with the above terms and conditions.