

## **Fidelio VR Experience License Agreement and Terms of Service**

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General Counsel  
John F. Kennedy Center for the Performing Arts

2500 F. Street NW  
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All correspondence should include a statement, under penalty of perjury, describing the alleged infringement, including the material and where it is located on our site, a statement of your good-faith belief that the use is not authorized, and a digital or physical signature from a person authorized to act on the copyright owner's behalf.

#### APP AVAILABILITY

The App is currently available for free via the Apple App Store and the Google Play Store (the "Free Distributors") as well as for purchase via Oculus (the "Paid Distributor").

#### IN-APP PURCHASES AND BILLING

By agreeing to opt for an in-app purchase, you agree to pay the required amount and are also required to agree to the terms and conditions of the specific payment method chosen to subscribe through the Paid Distributor. Center may change the price of any or all of the packs available for in-app purchase, at its own discretion. If you do not agree to this price change, you may not make the respective in-app purchase.

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The Paid Distributor takes care of all the billing and we DO NOT store your credit card information. Any billing disputes or queries can be submitted to the Paid Distributor or to FidelioVR@kennedy-center.org. In your email to us, please provide your "Name" and the "Date of Charge" that you are disputing. We will evaluate the claim and issue a decision based on our discretion.

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When you use the Fidelio App, you may grant certain permissions to us for your device. Most mobile devices provide you with information about these permissions.

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You are responsible for obtaining, maintaining and paying for all costs and fees associated with obtaining and maintaining all phone, computer hardware, Internet access services and other equipment or services needed to access and use the App. You must provide all equipment and software necessary to connect to the App, and are responsible to ensure that the foregoing do not disturb or interfere with the App's operations. If any upgrade in or to the App requires changes in your equipment or software, you must effect these changes at your own expense. Unless explicitly stated in writing by the Kennedy Center, any new or additional features of the App, including the release of new content, shall be subject to these Terms of Service. We are not responsible for any loss or harm caused to your equipment or hardware for any use, or alleged use, of the App.

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You agree that you shall defend, indemnify and hold harmless the Kennedy Center and its officers, directors, shareholders, employees, independent contractors, agents, representatives, partners, licensors, suppliers and affiliates (collectively, "Affiliates") and other users of the App from and against all claims, actions, demands, liabilities, settlements and expenses, including, but not limited to, attorneys'

fees and costs, arising out of or related to: (i) any breach or violation by you of these Terms of Service or the Privacy Policy or any applicable law; (ii) your access or Use of the App; (iii) any third party's access or Use of the App; and (iv) your use of any of the Content.

#### GOVERNING LAW

These Terms of Use will be interpreted and construed in accordance with the laws of the United States and the District of Columbia without reference to its rules of conflicts of law.

#### DISPUTES

You agree that any disputes arising out of these Terms of Service, the Kennedy Center Privacy Policy, or from use of the App and the associated Content which cannot be resolved by negotiation between the parties shall be brought in the Federal Court of Claims of the United States or another federal court of competent jurisdiction.

We each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If any claim proceeds in court we each waive any right to a jury trial.

#### CONSTRUCTION

Severability: If any provision of these terms shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these terms and shall not affect the validity and enforceability of any remaining provisions.

Survival: The provisions of these terms, which by their nature should survive the termination of these terms, shall survive such termination.

Waiver: No waiver of any provision of these terms by us shall be deemed a further or continuing waiver of such provision or any other provision, and our failure to assert any right or provision under these terms shall not constitute a waiver of such right or provision.

Assignment: These Terms of Service, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Kennedy Center without restriction.

Force Majeure: The Kennedy Center's performance of its obligations under this Contract will be suspended for so long as Center is prevented from doing so by an Event of Force Majeure. "Event of Force Majeure" shall mean such events or circumstances, which are beyond the control of the Kennedy Center and which events could not have been reasonably foreseen or anticipated by the Kennedy Center upon the exercise of due care and diligence, including but not limited to Center's operations being materially impaired, hampered, interrupted, prevented, suspended, postponed or discontinued due to the acts of God, earthquake, floods, riots, lockouts, war, civil disturbance, fire, accidents, epidemic, armed conflict etc. government order or regulation, judicial order or decree (including without limitation injunctive relief, whether imposed on an industry wide basis or affecting the Kennedy Center), failure of technical facilities or substantial impairment in obtaining facilities which makes the rendering of the App beyond the Kennedy Center's control.

Obligation: This agreement shall obligate the Kennedy Center, but no officer, trustee, employee or agent thereof.

#### AMENDMENT

The Kennedy Center reserves the right, at any time and from time to time, to amend, supplement or modify the terms of these Terms of Service. We will post or display notices of material changes on the website and those changes will become effective fifteen (15) days after the date of posting. You are responsible for regularly reviewing the Terms of Service, including, without limitation, by checking the date of "Last Update" at the bottom of this document. Your continued use of the App after the changes become effective signifies your agreement to be bound by such modified Terms of Service. If you do not agree with the changes in the Terms of Service, your only recourse is stop using the App.

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