

# Terms & Conditions

January 13, 2022

All charges shall be fully accounted for in accordance with this contract. The Client will be entitled to examine Ternio II Inc. records regarding the Client's account and at all reasonable times.

YOUR SUBSCRIPTION TO THE SERVICE RENEWS AUTOMATICALLY FOR THE SAME ANNUAL TERM. YOU MAY CANCEL YOUR RENEWAL WITH A 30 DAY NOTICE PRIOR TO THE ANNUAL CONTRACT EXPIRATION DATE BY CONTACTING TERNIO USING ONE OF THE METHODS SET FORTH IN THE CONTACT INFORMATION SECTION. If you are paying by credit card, your credit card will be charged once a month for the monthly agent count. Ternio will email you a receipt when your card has been charged. If your card cannot be charged, Ternio will notify you and you will need to update your payment information. In the event you do not update your payment information within 22 days of Ternio's notice, your access to the Service may be suspended and you will need to update your card information in order to resume use of the Service. There will be no refunds or credits for partial months of service.

All charges shall be fully accounted for in accordance with this contract. The Client will be entitled to examine Ternio II Inc. records regarding the Client's account and at all reasonable times.

## Free Trial Period.

Ternio may offer a free trial period for the Software from time to time. During the free trial period you may use the Software without being charged, subject in all respects to the terms and conditions of this agreement. By the expiration of the free trial period, you will need to notify Ternio to proceed and keep your account active, or to not proceed in writing. If you decide to not proceed, then this agreement will become null and void. If you decide to keep the account active you will then be required to pay the one-time setup fee as set forth in this agreement and the account will be set to active on that date. The monthly invoicing begins at the end of each month.

➤ <b>Ternio Billing</b>	<b>Customers will receive monthly bills to pay by CC or ACH, or may send checks.</b>
➤ <b>Full Payment Due</b>	<b>Full Payment is due at the time of billing. Ternio will provide an invoice by the 5th of each month.</b>

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## SERVICE AGREEMENT

Ternio II Inc. maintains facilities located in San Juan County, Washington designed to provide top quality contact center software solutions and to provide our client companies with highly effective and quality customer relationship management services designed to answer the corporate needs for organizational efficiency, productivity, growth and profitability 24/7.

We aim to provide our clients with real solutions to help them adapt to the rapidly changing environment of the technology industry.

NOW, THEREFORE, in consideration of the mutual benefits to be derived here from and the covenants and conditions set forth hereafter, the parties hereto have agreed and do agree as follows.

1. This contract shall become effective upon signing by all parties and shall continue unless this contract is terminated by either. Unless otherwise advised, 'Client' shall extend this contract upon the same terms and conditions unless terminated by either party.
2. Either party may terminate this contract, without cause, by giving the other party written notice at least thirty (30) days before the effective date of termination.
3. All contractual obligations in accordance with this contract shall remain in effect during the winding down of all contractual relations between the parties. All rights and liabilities of the parties arising out of this contract shall cease upon the termination of this contract.
4. Client and Ternio II Inc. agree that both Client and Ternio II Inc. shall negotiate in good faith to determine any revisal rates, services and conditions.
5. All failure or impairment of the facilities of Ternio II Inc. or any delay or interruption in telecommunication line servicing of/by/for Ternio II Inc.. or failure at any time to furnish facilities, in whole or in part, due to acts of God, strikes or threats thereof, or force majeure, or due to causes beyond the control of Ternio II Inc. will not subject Ternio II Inc. to any liability whatsoever resulting in its inability to service Client. Should services be, for any reason, impaired or interrupted it shall use its best efforts to restore services without delay.
6. Client shall fully indemnify, hold harmless and defend (collectively "indemnify" and "indemnification") Ternio II Inc. and it's owners, officers, employees, agents and affiliates (collectively, "indemnified parties") from and against claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, reasonable costs and expenses (including but not limited to attorney's fees and costs) whether or not involving a third party claim, which arise out of or related to (1) any breach of any representation or warranty of Business contained in this Agreement or under applicable law, in each case whether or not caused by the negligence of Ternio II Inc. or any other Indemnified Party or whether or not the relevant Claim has merit.
7. Ternio II Inc. shall fully indemnify, hold harmless and defend (collectively "indemnify" and "indemnification") the Client and it's owners, officers, employees, agents, and affiliates from and against all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, reasonable costs and expenses (including but not limited to attorney's fees and costs) which arise out of or related to any direct (1) breach of any representation or warranty of Business contained in this Agreement, (2) any breach or violation of any covenant or other obligation or duty of Ternio II Inc. under this Agreement or under applicable law.
8. Neither a dissolution nor bankruptcy of the Client revokes Ternio II Inc.'s authority to accept, pay or collect items until we know of the dissolution or bankruptcy and have a reasonable opportunity to act on it.
9. Should any dispute arise between parties over the terms and conditions of this agreement or the services provided by Ternio II Inc. and the parties hereto covenant and agree use their best efforts to resolve said disputes through direct negotiation and/or third party mediation. Should the parties be unable to resolve their differences, they agree that any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered by the Court having jurisdiction thereof.
10. Each of the provisions of this contract shall be enforceable independently of any other provision of this contract and independent of any other claim or cause of action. In the event of any dispute arising under this contract, it is agreed between the parties that the laws of the State of Washington will govern the interpretation, validity and effect of this contract without regard to the place of execution or the place of performance thereof. Venue for any dispute shall be in San Juan County, Washington.
11. This contract is between Ternio II Inc. and its Client and neither party can delegate or assign any of its rights or

duties to anyone else without the express written consent of the other party.

12. Should either party be required to retain counsel to enforce the terms of this agreement either in mediation, arbitration or litigation then, in that event, the prevailing party shall be entitled to recover all costs incurred together with reasonable attorney's fees.

13. The legal venue for any and all contract disputes and resolutions shall be in San Juan County, WA.

14. Ternio II Inc. is not responsible for losses incurred by Client for any reason.

15. Business does not condone or knowingly participate in any violation of Federal, State or Local laws. Any suspected violations of laws by Ternio II Inc. or Client need to be revealed in writing within ten (10) days and both Client and Ternio II Inc. will cooperate fully to work, as needed, to fully comply with the law.

16. The Client agrees that the Client will excuse and hold Ternio II Inc. harmless for any failure to act or any delay by us beyond the time limits prescribed by law or permitted by this Contract. If the failure to act or the delay is caused by the Client's negligence, interruption of communications, war, emergency conditions, or other circumstances beyond our control, provided that we exercised such diligence and care as circumstances required. In particular, we and our agents are not responsible or liable for any loss, damage, or injury resulting from any interruption, deficiency or malfunction of equipment, software, modem or telephone lines.

17. Client warrants that their business has the necessary legal authority and is registered to do business in the State it is domiciled in.

18. Should the Client incur a change of business ownership, the Contract in place will become null and void unless renewed, in writing, by the new ownership within thirty (30) days.

19. Any and all legal or formal notices involving this Contract shall be issued in writing to the following parties:  
Client Mailing Address:

Mailing Address:

Attn: Jonathan White

Ternio II Inc., P.O. Box 1047

Eastsound, WA 98245

Ternio II, Inc. provides Client with no warranties with regard to the successful completion of contract services due to involvement of your Contact Center platform and Client's Informational Technology capabilities. Ternio II, Inc. will make every effort to fulfill the contract terms both in keeping with timelines mutually agreed upon as well as a level of services that is jointly represented and expected within the contract terms and conditions.

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## END USER LICENSE AGREEMENT

### ***IMPORTANT INFORMATION – PLEASE READ CAREFULLY***

The herein contained License Agreement ("License" or "EULA") shall be considered a legally binding agreement between You (as an individual or an entity, who then shall, within the constraints of this agreement, be referred to as "You" or "Your") and Ternio II, Inc. for the use of the specified software application of the Ternio Switch through your Contact Center platform, which may include related

printed material, media and any other components and/or software modules, including but not limited to required drivers ("Product"). Other aspects of the Product may also include, but are not limited to, software updates and any upgrades necessary that Ternio II, Inc. may supply to You or make available to You, or that You could obtain after the initial copy of the Product, and as such that said items are not accompanied by a separate license agreement or terms of use.

BY WAY OF THE INSTALLATION, COPYING, DOWNLOADING, ACCESSING OR OTHERWISE USE OF THIS PRODUCT, YOU ARE AGREEING TO BE LEGALLY BOUND BY THE HEREIN CONTAINED TERMS OF THIS LICENSE AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF THIS EULA, YOU THEN HAVE NO RIGHTS TO THE PRODUCT AND SHOULD THEREFORE NOT INSTALL, COPY, DOWNLOAD, ACCESS, OR USE THE PRODUCT.

This Product is hereby protected by copyright laws, as well as any other intellectual property laws. This Product is licensed and not sold.

This Agreement does not in any way constitute a partnership, joint venture or other similar relationship.

### **ADDITIONAL DEFINITIONS**

- a) User means an individual person licensed to access the Software.

### **LICENSE GRANT**

Ternio II, Inc. shall grant to you a non-exclusive license for the use and installation of the Product subject to all the terms and conditions set forth herein. Furthermore, this EULA shall also govern any and all software upgrades provided by Ternio II, Inc. that would replace, over write and/or supplement the original installed version of the Product, unless those other upgrades are covered under a separate license, at which those terms of that license will govern.

### **LICENSE TERM**

This License is effective when the Software has been installed by Licensee. The license granted to the Software remains in force until Licensee stops using the Software or until Licensor terminates this License because of Licensee's failure to comply with any of its terms and conditions.

### **BILLING AND PAYMENTS**

Licensee agrees to pay the fees set forth in this agreement at each interval on the billing date determined at the time of installation. Licensor reserves the right to temporarily or permanently terminate access to the Software upon failure of payment. Licensor is not responsible for any damages that may occur due to non-payment, (see **LIMITATION OF LIABILITY AND REMEDIES** for additional limitations). Billing shall be temporarily suspended upon Software defect as determined solely by Licensor until defect is resolved. Licensor reserves the right to issue a refund for the defective period if a temporary suspension is unable to be established.

Fees shall be calculated and collected using the following criteria:

- A registered user shall be defined as
  - Their email or username has been registered with the Software.
  - Each User must use their own unique email or username activated with the Software without exception.
  - Ternio has a minimum user count of 10.

- This agreement is set for 1 year, renewing annually

### **TERMINATION**

Should Licensee breach this EULA at any time, including but not limited to Licensee becomes bankrupt or insolvent or if Licensee fails to pay the agreed upon fees, your right to the use of the Product will immediately terminate and shall terminate without any notice being given. However, all provisions of this EULA, with the exception of the License Grant, will remain in effect and thus shall survive termination. Upon termination of the License Grant, You MUST destroy any and all copies of the Product.

### **COPYRIGHT**

The aforementioned Product is protected by copyright and other intellectual property laws and treaties, and as such all rights, title, and interest in and to the content offered, including but not limited to, any photographs, images, video animation, text, and music, that may be incorporated as part of the offered content. Such offered content is protected by copyright laws and international treaty provisions. Therefore, offered content must be treated as any other copyrighted material, with the exception that it is allowable for you to make copies as provided by the License. However, printed material, which may accompany any offered content, may not be copied.

### **RESTRICTIONS ON USE**

As a Licensee, You may not:

- (a) Make use of the offered content for more than one user, without prior purchase of additional licenses;
- (b) You may not share, distribute, lend, lease, sublicense or otherwise make available, in any manner whatsoever, to any third party the offered content;
- (c) Modify, adapt, create derivative works from or translate any part of the offered content other than what may be used within Your work in accordance with this License;
- (d) Reverse engineer, decompile or disassemble the offered content, nor attempt to locate or obtain its source code;
- (e) Attempt to alter or remove any trademark, copyright or other proprietary notice contained within the offered content; or
- (f) Make use of any offered content in any manner not stipulated within this EULA or the documentation accompanying the offered content.

### **UPDATES AND SUPPORT**

Ternio II, Inc. reserves the right to update the Software at any time without notice in accordance with the herein contained terms and conditions of this EULA. Ternio II, Inc. will attempt to give advanced notice of updates, but does not make a guarantee of any kind in regards to said attempts. Should you elect to install or make use of these updates, you are therefore agreeing to be subject to all applicable license, terms, and conditions of this EULA and/or any other agreement. Ternio II, Inc. reserves the right to log in to the Software for the sole purpose of diagnosis and/or resolution of a support request initiated by You.

### **DASHBOARD**

Authorized administrators shall access the TernioSwitch dashboard only.

### **ASSIGNMENT**

The rights conferred by this License shall not be assignable by the Licensee without Licensor's prior written consent. Licensor may impose a reasonable license fee on any such assignment.

### **DISCLAIMER OF WARRANTY**

With regard and with relationship to the maximum extent permitted by applicable law, Ternio II, Inc., and, if applicable, related suppliers, shall provide the Product and any support services, if needed, related to the Product, and hereunto disclaim all warranties and conditions, either express, implied or statutory, which may include, but are not limited to, any implied warranties or conditions of merchantability, of suitability for a specified purpose, that it contains absolute accuracy or completeness of responses, of results, and of any lack of negligence or lack of workmanlike effort, all with respect to the Product, and the provision of or failure to provide Support Services. FURTHERMORE, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, OR NON-INFRINGEMENT WITH REGARDS TO THE HEREIN CONTAINED PRODUCT. THE ENTIRE RISK AS TO THE QUALITY OF OR PERFORMANCE OF THE PRODUCT AND SUPPORT SERVICES, IF ANY, REST WITH YOU.

### **LIMITATION OF LIABILITY AND REMEDIES**

Licensor shall not be liable for any fees or damages that you may or may not incur for any reason, which may include, but are not limited to, any and all direct or general damages, Ternio II, Inc. and/or any of the aforementioned suppliers covered under the herein contained provisions of this EULA, along with Your exclusive remedy with regards to all of the foregoing. Therefore, the aforementioned limitations, exclusions and any disclaimers shall apply to the maximum extent allowable by law, even should any proposed remedy fail its essential purpose.

Licensor's entire liability and Licensor's sole and exclusive remedy for breach of the foregoing warranty shall be Licensor's option to either:

- Return to Licensee the license fee for the period in which the Software did not perform according to this warranty as determined solely by Licensor, or
- Repair the defects or replace the Software.

### **CONFIDENTIALITY**

Licensee will treat the Software as a trade secret and proprietary know-how belonging to Licensor that is being made available to Licensee in confidence. Licensee agrees to treat the Software with at least the same care as it treats its own confidential or proprietary information.

### **PRIVACY REGULATIONS**

Licensee shall be solely responsible for compliance with any and all privacy regulations that may apply to use with the Software.

### **EXPORT CONTROLS**

By clicking on the install button, you hereby agree that you will comply with any and all applicable export laws, restrictions and all regulations of the U.S. Department of Commerce, U.S. Department of Treasury, and any other U.S. or foreign agency or authority with regards to this provision of the EULA. You expressly agree not to export or re-export, nor allow the export or re-export of the offered content in violation of any such law, restriction or regulation, including without limitation, export or re-export to any country subject to any and all applicable U.S. trade embargoes or to any prohibited

destination, in any group specified in the current "Supplement No. 1 to Part 740 or the Commerce Control List specified in the then current Supplement No. 1 to Part 738 of the U.S. Export Administration Regulations (or any successor supplement or regulations)."

### ***U.S. GOVERNMENT END USERS***

The offered content is licensed by the U.S. Government with RESTRICTED RIGHTS. The use, duplication of, or the disclosure by the U.S. Government, shall be subject to restrictions in accordance with DFARS 252.227-7013 of the Technical Data and Computer Software clause, and 48 DCR 52.227-19 of the Commercial Computer Software clause, as applicable.

### ***MISCELLANEOUS***

This EULA, in its entirety, shall be legally binding upon and inure to the benefit of Ternio II, Inc. and you, our respective successors and permitted assigns. Should any of this provision be deemed invalid or unenforceable, such determination will not affect the validity or enforceability of any other provision contained herein. If there is any waiver of any breach or failure to enforce any of the provisions contained herein, it shall not be deemed as a future waiver of said terms or a waiver of any other provision of this EULA. Any waiver, supplementation, modification or amendment to any provision of this EULA, shall only be effective when done so in writing and signed by Ternio II, Inc. and you. This EULA shall be governed solely by the laws of the State of Washington and of the United States. Should any action arise out of or in relation to this EULA, such action may be brought exclusively in the appropriate federal or state court in San Juan County, Washington, and as such, you and Ternio II, Inc. irrevocably consent to the jurisdiction of said court and venue for San Juan County, Washington.

### ***ATTORNEY FEES***

If any legal action is necessary to enforce this License, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses in addition to any other relief to which it may be entitled.

### ***CONTACT INFORMATION***

Ternio II, Inc.  
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Eastsound, Washington 98245  
1-800-429-9277  
support@ternio.com