

# Vonage Business Communications Global Terms of Service Agreement

Effective Date: October 5, 2020

THESE ONLINE TERMS OF SERVICE (“Service Terms” or “Terms of Service”), including the Sales Order(s), which by this reference are incorporated herein (“Agreement”), govern Customer’s use of the Services provided by Vonage and its Affiliates (individually or collectively “Vonage”), and constitutes a binding agreement between Vonage and the Customer legal entity identified in a Sales Order (“Customer”). Vonage and Customer may be individually referred to as a “Party” or collectively as the “Parties”.

The Vonage Affiliate providing Services under a Sales Order shall be as set forth in Schedule 2 (based on Customer’s domicile), unless otherwise set forth in a Sales Order), and all references to “Vonage” shall be deemed to refer to such Vonage Affiliate. Vonage may update the applicable Vonage Affiliate (within domicile) by providing reasonable written notice in accordance with this Agreement.

Country-specific terms and conditions are set forth in Schedule 3 and shall apply to Customers domiciled in those countries.

Vonage provides services and equipment intended solely for business use, pursuant to the terms and conditions set forth in this Agreement, and on the condition that customer Accepts a Sales Order and complies with this Agreement. By Accepting a Sales Order, Customer (a) accepts this Agreement and agrees that Customer is legally bound by its terms; and (b) represents and warrants that it has the right, power, and authority to enter into this Agreement on behalf of the corporation, governmental organization, or other legal entity, and to bind such organization to these Service Terms. If Customer does not agree to the terms of this Agreement, Customer may not download, install, or use the Services or Vonage Equipment.

## **-1. DEFINITIONS**

Capitalized terms used but not otherwise defined in this Agreement will have the meaning ascribed to such terms in Schedule 1 and/or in the Sales Order.

## **2. SUBSCRIPTION SERVICES; SALES ORDERS**

### **A. Subscription Services**

a. Pursuant to the terms of this Agreement, Vonage shall provide to Customer: (i) telephony, conferencing, messaging and related subscription-based services as described in one or more Sales Order(s), and the Service Descriptions which describe the features and functionality of the Services, or other documentation Vonage may provide from time-to-time; and (ii) the set-up, installation, implementation, configuration, and other Professional Services identified in Sales Orders (if applicable) and a Statement of Work (if applicable) in connection with the Subscription Services. Customer’s use of the Subscription Services are governed by Vonage’s Acceptable Use Policy.

**b.** Subject to Customer's compliance with this Agreement, Vonage hereby grants Customer and its Affiliates, a limited, revocable, personal, non-exclusive, non-transferable, and non-sublicensable license during the Service Term to: (i) provide Authorized Users access to the Services via Customer's Account; and (ii) download, install, and use Software made available by Vonage in connection with the Services, subject to any additional terms and conditions accompanying such Software, as applicable.

**c.** Certain Software Vonage provided to Customer may contain third-party software ("Third-Party Software"), including open source software. Use of such Third-Party Software may be governed by separate copyright notices and license provisions, which will be provided to Customer and which are incorporated by reference into this Agreement. Such provisions shall govern the use of Third-Party Software. Customer agrees to comply with the terms and conditions of all end user license agreements accompanying any Software (including Third-Party Software) or plug-ins to such Software distributed in connection with the Service. All end user licenses shall immediately terminate on the date that the Service expires, or this Agreement is terminated.

**d.** To access the Services, Customer must maintain an active Account in good standing. Customer shall provide and maintain accurate, complete, and up-to-date information within its Account. Customer is solely responsible for the activity that occurs on its Account (which includes its sub-Accounts), and for keeping its Account credentials secure. Vonage will not be liable for losses caused by any unauthorized use of the Account; provided, however, that Customer shall not be responsible for unauthorized Charges on its Account to the extent that it took reasonable precautions and the unauthorized use is demonstrated to be solely due to Vonage's gross negligence or willful misconduct. Customer represents and warrants that it is duly authorized to do business and use the Services in all jurisdictions in which Customer operates. Customer must notify Vonage promptly of any change in Customer's eligibility to use the Services, breach of security, or any unauthorized use of Customer's Account. Notwithstanding closure of Customer's Account, Vonage may retain Customer Data as reasonably necessary for compliance with applicable law.

**e.** The foregoing licenses shall extend to Customer Affiliates, provided that such Customer Affiliates are acting via Customer's Account (or subaccounts thereof), and provided further that Customer remains liable to Vonage for all acts and omissions of such Affiliates (or any other entities authorized by Customer to use the Services or act via Customer's Account) as if they were Customer's own acts or omissions, including payment for the Services.

**f.** Vonage may use or rely on one or more licensors, service providers, and/or equipment providers or equipment lessors whose products, equipment and/or services are provided in conjunction with, or incorporated into, the Services and/or Vonage Equipment ("Third-Party Services"). Such Third-Party Services may also be provided under Vonage's trademarks or otherwise branded as a Vonage Service. Third-Party Services may be governed by Third-Party Terms, or identified in documentation or on other media delivered with the Third-Party Services and will be provided to Customer; such Third-Party Terms are incorporated by reference into this Agreement and shall govern the use of Third-Party Services. Customer agrees to comply with such terms and conditions of all Third-Party Services. Such Third-Party Terms are deemed to be between Vonage and Customer and do not create a contractual relationship between Customer and such third party. Any non-compliance with terms and conditions of Third-Party Services shall be considered non-compliance with this Agreement.

## **B. CX Contact Center Services**

Terms applicable to Vonage Contact Center Services (including VCXC-CC Extension and CX Cloud Express) are set forth [here](#). The Service Description and the scope of Professional Services for the Vonage CX Contact Center Service identified on the Sales Order is set forth [here](#).

## **C. Sales Order Submission and Acceptance**

Customer may order Subscription Services by accepting or executing one or more Sales Orders in a manner and format as required by Vonage, including via Vonage's ordering portal. Applicable Professional Service Fees and/or installation Charges will be set forth in a Sales Order. Vonage may, in its sole discretion, accept or reject a Sales Order prior to Acceptance or execution. Once a Sales Order is accepted or executed, along with an executed SOW (if applicable), Vonage shall provision the Subscription Services and provide access credentials to the Account or applicable sub-account thereof. Customer may also order additional Subscription Services via Vonage's online ordering portal (described below).

#### **D. Service Term and Automatic Renewal**

Each Sales Order shall state the Initial Term. The Initial Term will commence on the date set forth in the Sales Order as the Subscription Service Term Start Date. Sales Orders which describe delivery of Subscription Services to multiple Customer Locations will identify multiple Subscription Service Term Start Dates and Subscription Terms. The Initial Term will automatically renew for successive periods of the same length as the previous Initial Term or Renewal Term (as applicable) except where either Party provides written notice of intent not to renew at least ninety days prior to the end of the then-current Initial Term or Renewal Term. Upon termination of the applicable Initial Term or Renewal Term, Vonage will not be obligated to furnish the Subscription Services to Customer; provided however, if Customer continues to use the Subscription Services after termination of the Initial Term or Renewal Term, such use shall be on a month-to-month basis and Customer shall be obligated to pay for such Subscription Services at Vonage's then-current monthly rates. Either party may terminate such month-to-month term by providing at least thirty days advance notice. Except as expressly provided in the applicable Sales Order, renewal of promotional or one-time priced subscriptions may be, in Vonage's discretion, at Vonage's applicable list price in effect at the commencement of the applicable Renewal Term.

#### **E. Service Adds; Co-Term**

Services added to an existing Customer Location will be deemed to be part of the existing Sales Order for the purposes of determining the remaining Subscription Term for such additional Service (i.e. co-term). However, some Services require a minimum commitment term which may not be co-terminus with the Subscription Term of the existing Sales Order (e.g. Vonage Equipment and CX Contact Center Services). For any such Services, a separate Sales Order is required, and the Subscription Term will be set forth in the applicable Sales Order. Services ordered for additional Customer Locations (i.e. multi-locations) will have separate Subscription Terms as stated in the Sales Order unless the Parties mutually agree otherwise via an addendum executed by both Parties.

#### **F. Service Platform Migration**

When Customer migrates from the Vonage Enterprise service platform to the VBC service platform, Customer acknowledges that upon Acceptance of a VBC Sales Order, the Vonage Enterprise services and all associated agreements shall be terminated, effective upon migration of the services.

#### **G. Changes**

Vonage may update, upgrade, discontinue, or otherwise modify the Services or specific Services in whole or in part in accordance with this section. Vonage shall make commercially reasonable efforts to provide at least ninety days' notice prior to any material changes of the specific Services, subject without limitation to urgency and security issues. Customer shall use commercially reasonable efforts to cooperate with Vonage to effect modifications to the Services, including by promptly implementing all fixes, updates, upgrades, and replacements of Software as reasonably required by Vonage, and Vonage shall not be responsible for Customer's failure to do so. Notwithstanding the foregoing, modifications to the Services shall not materially reduce the features, level of functionality, performance, availability, or security of the Services during the Service Term, unless Vonage makes available to Customer, at no additional cost, an alternative Service that is substantially equivalent to the modified Service;

provided that Customer's sole remedy for non-compliance with the foregoing shall be the right to terminate any affected Service within ninety days of receiving written notice of the modification.

#### **H. Reservation of Rights**

Notwithstanding anything to the contrary herein, Vonage reserves the right, but is not obligated, to (i) monitor and review Customer's use of the Services, including to ensure Customer's compliance with the Agreement; (ii) reject, refuse to transmit, block, or remove any content (including Customer Data); and (iii) access, read, preserve, or disclose any information that Vonage reasonably believes is necessary to (a) comply with applicable law, regulation, legal process, or government request, (b) enforce the Agreement, including investigation of potential violations hereof, (c) detect, prevent, or otherwise address fraud, security or technical issues, (d) respond to Customer's support requests, or (e) protect the rights, property or safety of Vonage, its customers, its customers' end users, and/or the public. Customer agrees to provide Vonage with any information Vonage reasonably requests to investigate and resolve issues relating to Customer's Account.

#### **I. Required Maintenance; Customer Support**

**a.** Vonage has the right to perform repair and maintenance or to upgrade, update or enhance (collectively, the "Maintenance") its network, infrastructure, website(s), Services and/or Vonage Equipment with prior notice per the Service Level Agreement if such Maintenance would cause a partial or full disruption of the Services.

**b.** Customer will timely report any issues, trouble or problems affecting Service to Vonage using a Customer-initiated trouble ticket (a "Trouble Ticket"). Trouble Ticket procedures and additional information for Vonage support can be found [here](#). Calls to and from Vonage customer service, sales or other representatives may be recorded and/or monitored for quality assurance and training purposes. Customer's sole remedies for any non-performance, outages, failures to deliver or defects in Service are set forth in the applicable service level agreement and these Service Terms.

#### **J. Voice-to-Text and Text-to-Voice Limitations.**

Certain Vonage Services may provide a function that allows voicemails to be converted to text and vice-versa. Customer understands and agrees that Vonage's voice-to-text ("VTT") and text-to-voice ("TTV") features may not accurately transcribe voicemails or articulate text messages, respectively. Customer is solely responsible for checking the original message and verifying the accuracy of the message when using any VTT or TTV features. Vonage expressly disclaims all liability with respect to the conversion of voicemails to text or vice-versa.

#### **K. Acceptable Use Policy**

Customer shall not, and shall ensure that end users and Affiliates do not, and shall not authorize, assist, or enable any other third party to, use the Services in any manner that violates the [AUP](#).

#### **L. No Resale**

Customer represents and warrants that it will be the ultimate end user of the Service. Customer shall not in any way resell, license, permit nor allow any third party to use the Services without receiving Vonage's prior written consent.

#### **M. Electronic Recording**

Customer acknowledges that there are laws governing the electronic recording of telephone conversations and that Vonage is not liable for any illegal use of the Services. It is Customer's responsibility to determine and comply in full with its own compliance obligations. No Services or products offered by Vonage are represented or warranted to

comply with electronic recording laws. Customer agrees that Vonage may, in its sole discretion, record any call between Customer and Vonage for quality control and training purposes.

### **3. FEES AND PAYMENT**

#### **A. Invoices; Billing and Payment Terms**

Vonage will invoice Customer pursuant to the Subscription Services Invoicing Frequency and Customer shall pay pursuant to the Payment Terms as set forth in the Sales Order. Charges are based on Subscription Services and equipment purchased and not actual usage. Recurring charges for the Subscription Services begin on the Subscription Service Term Start Date and will continue for the Term. Payment obligations are non-cancellable, and Charges paid are non-refundable unless otherwise set forth in this Agreement. Quantities purchased cannot be decreased during the relevant Subscription Term without the imposition of the applicable early termination charges. Usage based Charges (including Charges for international calls), Marketplace Service Charges, Change Order fees, and ancillary expenses (e.g. incurred in connection with the Professional Services, if any, such as travel, hotel and subsistence expenses; such expenses to be invoiced by Vonage at cost) are payable in arrears. Equipment purchase Charges are billable upon Acceptance of a Sales Order. Professional Services provided on a fixed price basis will be billed in advance and Professional Services provided on a time and material basis will be billed as completed monthly in arrears pursuant to the Payment Terms. An invoice for Professional Services will be sent promptly following Acceptance of the Sales Order, with payment due per the Payment Terms. Invoices will be sent by email to the address specified in Customer's Account. The foregoing shall not apply to In-App Purchases. The terms of service for the app store from which Customer downloaded the mobile application shall govern the Payment Terms and taxes and fees for the in-app Services, if any, and such terms are hereby incorporated by reference.

Overdue amounts other than amounts disputed in good faith bear interest at the lower of 1.5% per month or the maximum rate allowed by governing law. Vonage may suspend the Subscription Services upon prior written notice if Customer's payment on any undisputed amounts remains overdue at the end of the tenth day following such notice. Customer agrees to supply Vonage with the information necessary for Vonage to complete an initial credit evaluation prior to providing Customer with access to the Services or the Vonage Equipment. Vonage may also update its information regarding Customer's credit rating from time to time. Vonage may limit Customer's purchasing of additional Services or Vonage Equipment or require another form of payment such as auto-payment in its reasonable discretion based on changes in Customer's creditworthiness or habitual payment delinquency.

#### **B. Pricing**

Pricing shall be set forth in the applicable Accepted Sales Order or as stated in the Vonage ordering portal and shall remain fixed until the end of the applicable Subscription Term. Upon auto-renewal of the Subscription Services, the Subscription Charges will increase by 7%. In the event Vonage continues to provide Services to Customer on a month-to-month basis following a committed term, Vonage reserves the right to increase pricing to Vonage's then-current month-to-month pricing.

#### **C. Commitment**

Customer agrees it is responsible for the full value of each Sales Order effective upon Acceptance of the applicable Sales Order, subject to termination due to Vonage's uncured default. Notwithstanding anything to the contrary herein, if Subscription Services are reduced or terminated other than due to a Party's uncured default, all Charges due under the reduced or terminated Sales Order will be accelerated and Customer shall pay Vonage the sum of all unpaid amounts for Subscription Services actually provided, plus the remaining contracted Charges as of the date of termination through the end of the Subscription Term stated in the Sales Order(s), as well as any additional incurred Charges (e.g. usage, Equipment purchases, etc.); or, if such termination is prior to the Subscription Service Term Start Date, the total amount of the Sales Order, and applicable Taxes and Fees on all of the foregoing.

## **D. Taxes and Fees**

Prices for Subscription Services and Equipment purchases do not include applicable Taxes, Fees, Duty and Customs charges. Customer will be solely liable for and will pay upon demand all Taxes, Fees, Duty and Customs charges associated with Customer's purchase of Equipment, and access to or use of the Services as set forth in the applicable Invoice, and shall not deduct any such amounts, or any other withholdings, set-offs, or deductions, from owed amounts, but will not be responsible for taxes based on Vonage's net income. Customer may present Vonage with an exemption certificate eliminating Customer's and Vonage's liability to pay certain Taxes. Once Vonage has approved the exemption certificate in writing, Customer shall be exempt from those Taxes on a go-forward basis. If a tax authority determines that Customer is not exempt from Taxes and assesses those Taxes, Customer shall pay those Taxes to Vonage, plus any applicable interest or penalties. Customer may be charged Taxes and Fees by a marketing partner or authorized distributor for non-Vonage products and services sold or licensed by that marketing partner or authorized distributor in connection with a Sales Order.

In addition, a regulatory recovery fee for every phone number assigned to Customer's account, including toll free and virtual numbers, may be charged monthly to offset costs incurred by Vonage in complying with inquiries and obligations imposed by regulatory bodies/governments and related legal and billing expenses. This recovery fee may also include recovery of costs for legal, intellectual property, cybersecurity, compliance and other related expenses, including those related to number portability, customer privacy protection and anti-fraud protection. This fee is not a tax or charge required or assessed by any government and may be recovered by Vonage through imposition of a surcharge on the cost of the Service.

## **E. Billing Disputes**

Billing disputes must be initiated within ninety days of the disputed invoice date. Upon expiration of such ninety-day period, Customer waives its right to dispute any fees paid or payable to Vonage. The Parties will work together in good faith to resolve billing disputes. A pending billing dispute shall not exempt Customer from timely paying any undisputed amounts. Other than as stated in this Agreement, fees paid are non-refundable.

## **4. PROFESSIONAL SERVICES**

### **A. Performance**

**a.** Vonage will provide and Customer shall pay for Professional Services (set up/installation Charges) as applicable and as specified in the Sales Order(s) and/or SOW using trained and qualified personnel, who will provide such Professional Services in a professional and workmanlike manner.

**b.** Customer's exclusive remedy for breach of the foregoing shall be the re-performance of such Professional Services, except where Vonage is unable to re-perform the Professional Services, in which case, Customer may recover fees paid with respect to such deficient Professional Services by written claim no later than ninety days after the claimed deficient performance.

**c.** Professional Services are available either on a time-and-materials or fixed-fee basis (as determined by Vonage) as described in the relevant Sales Order and/or SOW. Professional Service Fees may be subject to change if Customer modifies the scope of the Services or delays the Services to be installed.

**d.** A change to the scope or execution of the Professional Services shall be agreed via Change Order prior to implementation of the changes. The Change Order shall set out the proposed changes and the likely effect on the Professional Services and/or the Professional Service Charges.

e. Upon completion of the Professional Services, if the Customer uses the Subscription Services or part thereof for any purpose other than for testing, such use shall constitute Acceptance of the Subscription Services.

f. Vonage may subcontract the performance of, or Customer may utilize a third-party to perform any or all of the Professional Services. Any subcontract by Vonage shall not affect Vonage's liability to the Customer for the performance of its contractual obligations, and Customer shall be solely responsible for any Professional Services performed by Customer's third-party.

## **B. Scheduling**

The Parties will mutually agree upon the scheduling of Professional Services ordered by the Customer. Vonage shall use all reasonable efforts to meet the agreed-upon schedule. In the event Customer reschedules or cancels scheduled Professional Services, Vonage shall make reasonable efforts to mitigate incurred expenses and reschedule its resources to other engagements; provided that, to the extent Vonage cannot reasonably avoid such expenses or reschedule the applicable resources, Customer shall be responsible for such losses. In addition, in the event Customer reschedules the Professional Services and the rescheduling is not due to delays caused by Vonage, the Subscription Service Term Start Date will commence on the date stated in the Sales Order unless otherwise agreed by the Parties in writing.

## **C. Cooperation**

Customer shall cooperate reasonably, timely, and in good faith with Vonage (including its subcontractors and personnel) in its performance of Professional Services, including by providing to Vonage in a timely manner and without charge (a) support as reasonably requested by Vonage; (b) information regarding health and safety rules and regulations and any other reasonable security requirements that apply at the applicable service location; (c) physical space, equipment, telephone and internet access, and access to other facilities; (d) access to appropriate and knowledgeable personnel; and (e) as applicable, permissions, consents, or authorizations reasonably necessary to activate, maintain, inspect, or repair applicable Services or Vonage Equipment, including (if applicable) the right to access and enter the applicable service location upon reasonable prior notice.

## **D. Special Install Costs**

Vonage may charge, and Customer shall pay, all recurring and nonrecurring costs, Charges and expenses incurred by Vonage for Customer's benefit in connection with non-standard installation, delivery or implementation of the Services (collectively, the "Special Install Costs"). For clarification and by way of example, standard installation does not include (and the following may comprise a portion of any Special Install Costs) core drilling, wiring extensions for excessive distances, installation of new conduit runs, installation of water proof shielding, installation of aerial circuit runs, or removal of hazard materials, as determined by Vonage Business at its sole discretion, as well as after-hours installation of Services ("Non-Standard Installation"). Non-Standard Installation will be purchased by Customer as an additional Service. Non-Standard Installation is the installation of Services Monday to Friday between 5pm to 8am (local time), any time on Saturday and/or Sunday, and holidays. Non-Standard Installation will include appointment coordination, the provisioning of the Service, basic external wiring, call tests, and remote Vonage technical support as needed. Special Install Costs will be invoiced to Customer as soon as practicable following the Subscription Service Term Start Date for the applicable Services.

## **E. Telephone Number Porting**

Vonage's policies and procedures for telephone number porting is set forth [here](#).

## **5. FREE TRIAL SERVICES; BETA SERVICES**

### **A. Free Trial Services**

If Customer's Sales Order or registration with Vonage includes a free trial ("Free Services"), then the applicable Services will be made available to Customer until (i) the end of the free trial period; (ii) the Subscription Service Term Start Date for Free Services, or (iii) the termination of Free Services for cause by Vonage, whichever is earlier. Any additional terms upon which the Free Services are provided as part of the trial registration process, are incorporated herein. Use of Free Services is subject to the terms and conditions of this Agreement. Customer agrees that Vonage, in its sole discretion and for any or no reason, may terminate Customer's access to the Free Services or any part thereof.

### **B. Beta Services**

Certain Services or Software may be designated or offered as a beta version ("Beta Version") of a Service or Software, which may or may not be released as a full commercial service in the future. Customer may choose to try such Beta Services or not in its sole discretion. Any use of Beta Services is subject to this Agreement. Customer agrees that Beta Versions may contain errors. The fact and existence of any Beta Version shall be deemed to be Vonage Confidential Information under this Agreement.

NOTWITHSTANDING SECTION 11 (INDEMNIFICATION), VONAGE SHALL HAVE NO LIABILITY NOR INDEMNIFICATION OBLIGATIONS OF ANY KIND; WHERE LIABILITY CANNOT BE EXCLUDED BY APPLICABLE LAW, VONAGE'S LIABILITY IS LIMITED TO \$500.00 USD. CUSTOMER WILL BE FULLY LIABLE FOR CUSTOMER'S USE OF SERVICES DURING ANY FREE TRIAL OR BETA SERVICE PERIOD, ITS INDEMNIFICATION OBLIGATIONS AND ANY BREACH OF THIS AGREEMENT.

## **6. TECHNICAL REQUIREMENTS; EQUIPMENT**

**a.** It is Customer's sole responsibility to ensure that it meets the minimum hardware, Software, connectivity, and other technical requirements for accessing the Subscription Services. Vonage's minimum technical prerequisites are available upon request.

**b.** Customer understands, acknowledges, and agrees that: (i) Customer must have a high-quality high-speed internet connection to use the Services; and (ii) Vonage is not providing an internet connection for Customer. Vonage does not control and is not responsible for: (a) Customer's internet connection; (b) the quality of Customer's internet connection; (c) any third party products and/or services related to Customer's internet connection; or (d) problems with the Services that are caused by or related to Customer's internet connection. Vonage will not contact any of the internet providers and/or service or product providers on Customer's behalf.

**c.** Customer understands and acknowledges that use of the Services may require the use of certain Customer Equipment, Vonage Equipment, and/or Third-Party Equipment. Vonage's Equipment Policy is set forth [here](#) and shall apply to all equipment used, purchased or leased in connection with the Services.

## **7. SUPPLEMENTAL TERMS; POLICIES; APPS MARKETPLACE**

**a.** These Service Terms incorporate applicable Supplemental Terms set forth [here](#), which shall apply to the specific Third-Party Services purchased by Customer, if any. Certain Subscription Services may be subject to other third-party terms which shall be made available to Customer prior to the purchase of such Third-Party Services, and shall supersede any conflicting terms with respect to such Subscription Services.

**b.** These Service Terms also incorporate all additional terms, conditions and policies that are set forth in an addendum, schedule or exhibit, as well set forth in the Legal Policy Center [here](#) under the heading "Unified

Communications – VBC” (collectively, the “Additional Terms”), and supersede and replace all terms and conditions set forth in any documents issued by Customer, including purchase orders and specifications not agreed to in writing by the Parties.

c. Vonage may update or replace the [AUP, Privacy Policy, Copyright Policy, Telephone Number Porting Policy](#) and [Emergency Services Acknowledgement](#) (“Policies”) from time to time (a “Policy Change”), and will provide notice to Customer either via email to the address on file, or through Customer’s invoice. If such Policy Change is (a) applicable to Customer, and (b) materially and detrimentally impacts the Services, upon receipt of notice, Customer will have thirty days to notify Vonage that such changes are materially and adversely impacting, stating specifically which changes are impactful. The Parties will then attempt to reach a mutually agreeable workaround agreement. If agreement cannot be reached, Vonage may either waive or modify the requirement to Customer’s reasonable satisfaction. If Vonage does neither, then Customer can either, within thirty days following Vonage’s notice of its refusal to waive or modify the requirement, accept the Policy Change or terminate those Services affected without termination liability, without the right to continue to use those Services thereafter. Notwithstanding the foregoing, Customer’s right to object or terminate shall not apply to Policy Changes required by applicable law, regulation or governmental authority, or to changes required to protect the security and operability of Vonage, the Services, Vonage’s other customers.

d. Vonage offers third party products and services on its App Marketplace (“Third-Party Apps”). When Customer subscribes to use such Third-Party Apps, Customer shall agree separately to the required terms of use or service with such Third-Party App provider (“App Terms”), in addition to these Service Terms. Vonage is responsible for the billing and collection of amounts owed to such third-party provider and to tax and regulatory authorities, and will charge Customer’s method of payment. Charges for these services will appear on Customer’s monthly Vonage invoice. Vonage will also handle all billing questions. Customer acknowledges that Vonage is not responsible for support or technical assistance with respect to any Third-Party App and that Customer’s use of the App itself is subject to the App Terms; Customer shall direct its App questions and support requests directly to the provider of the Third-Party App at the contact email address or number set forth on the Marketplace and/or in the App Terms. However, Customer may only modify or terminate Third-Party Apps or related accounts through the App Marketplace in order to modify or terminate billing for such Third-Party Apps. Failure to do so through the App Marketplace will not modify or terminate billing, for which Customer is liable. Customer is solely responsible for its use of the Third-Party App, and will indemnify Vonage and its Affiliates against any and all claims arising from Customer’s misuse of the Third-Party App or its breach of the App Terms.

e. Vonage may enter into marketing arrangements with marketing partners (each a “Marketing Partner”) or resale/distribution agreements with authorized distributors (each an “Authorized Distributor”) who market Vonage Services to prospective customers who then subscribe to these Service Terms. When these Service Terms are accepted by a Customer, the Customer is considered a customer of Vonage only with respect to Vonage Services. As an example, if the distributor of internet services also markets Vonage-branded solutions and a Customer subscribes to both internet services and Vonage Services with Vonage under these Service Terms, the customer is considered, with respect to Vonage Services, only a customer of Vonage. The terms, conditions and policies pursuant to a Marketing Partner or Authorized Distributor’s contractual arrangement with Customer for other products and services may differ from these Terms of Service, Privacy Policy and other policies applied by Vonage to similarly situated customers, but such Marketing Partner’s or Authorized Distributor’s terms, conditions and policies will not apply to Vonage Services, nor supersede these Service Terms as applicable to Vonage Services.

## **8. INTELLECTUAL PROPERTY; CUSTOMER DATA AND DATA DELETION**

### **A. Customer Data.**

As between Customer and Vonage, Customer owns and reserves all right, title, and interest in Customer Data. Customer authorizes Vonage to use the Customer Data to provide the Services and perform in accordance with the Agreement.

## **B. Retention and Deletion of Call Recordings and Voicemails.**

Except as agreed by Vonage and Customer in writing, Vonage shall delete Call Recordings and Voicemails as follows:

**a.** if CX Contact Center Services, in accordance with data storage terms set forth in the CX Service Description set forth [here](#);

**b.** if VBC Services, call recordings are retained until Customer deletes the data, or the Service(s) are cancelled, or until Customer utilizes all allotted storage space. Customer may download the data at any time prior to cancellation or termination of Service(s). Voicemail messages are retained for 90 days from the date the message was recorded and 7 days after cancellation or termination of the Service(s).

**c.** Following the stated retention periods, the VBC Call Recordings and Voicemails are purged.

## **C. Suggestions.**

Customer's suggested improvements to and feedback regarding the Services are not Confidential Information, and Customer grants to Vonage an unrestricted, irrevocable, fully paid-up, and non-exclusive right to use such suggestions and feedback for any purpose.

## **D. Vonage Services and Vonage Content.**

Vonage owns and reserves all right, title and interest in and to the Services and all improvements, modifications, and derivative works thereof. Other than the Customer Data, all Vonage Content is as between Customer and Vonage owned by Vonage. Customer shall not (and shall not allow third parties to) (i) decipher, decompile, disassemble, reverse engineer, or otherwise attempt to derive any source code or underlying ideas or algorithms of Vonage Content, except to the limited extent applicable laws specifically prohibit such reverse-engineering restrictions; or (ii) alter, modify, translate, or otherwise create derivative works of any part of the Vonage Content, except as may be authorized by specific licensing terms accompanying certain Software.

## **E. Other Rights.**

Except as explicitly granted herein, neither Party is granted a license or other right (express, implied, or otherwise) to use any trademarks, copyrights, service marks, logos, trade names, patents, trade secrets, or other intellectual property of the other Party or its Affiliates without the express prior written authorization of the other Party.

## **F. Restrictions.**

The Services may contain Vonage Content provided by Vonage, Vonage's partners and customers, or other third parties, that are subject to and protected by copyrights, trademarks, service marks, patents, trade secrets, or other proprietary rights and laws. Customer shall abide by and maintain all copyright notices, information, and restrictions contained in any Vonage Content accessed through the Services.

# **9. CONFIDENTIALITY AND DATA PROTECTION**

## **A. Confidential Information**

“Confidential Information” means any non-public information or data, regardless of whether it is in tangible form, disclosed by either Party that is marked or otherwise designated as confidential or proprietary or that should otherwise be reasonably understood to be confidential given the nature of the information and the circumstances surrounding disclosure, including the material terms of this Agreement. The terms of the Agreement are the Confidential Information of both Parties. Neither Party may identify the other Party using its name, trademarks, and/or logos in marketing collateral, press releases, presentations, websites, and/or case studies without the other Party’s written consent. Confidential Information does not include any information which: (i) is publicly available through no fault of receiving Party, (ii) was properly known to receiving Party, without restriction, prior to disclosure by the disclosing Party, (iii) was properly disclosed to receiving Party, without restriction, by another person without violation of disclosing Party’s rights, or (iv) is independently developed by the receiving Party without use of or reference to the disclosing Party’s Confidential Information.

## **B. Restrictions**

Each Party agrees that it will use the Confidential Information of the other Party solely in accordance with the provisions of the Agreement (and for Vonage to provide the Services) and it will not disclose such Confidential Information to any third party without the other Party’s prior written consent, except as otherwise permitted hereunder or for Vonage to provide the Services or make other uses and disclosures identified in Vonage’s Privacy Policy. Each Party agrees to exercise due care in protecting the other Party’s Confidential Information from unauthorized use and disclosure. Each Party may also disclose the Confidential Information of the other Party to its employees, representatives, actual or potential investors, and subcontractors who have a need to know and are bound to keep such information confidential consistent with the terms of this section. In addition, Vonage may disclose the Agreement under a comparable non-disclosure agreement in response to a third-party due diligence request supporting a financing or non-ordinary course of business corporate transaction. Either Party may disclose the Confidential Information of the other as required by law, legal process, or court order; provided that, subject to applicable law, it promptly notifies the other Party of such required disclosure in order to allow the other Party to seek a protective order or other appropriate remedy.

## **C. Data Security**

Vonage agrees to use commercially reasonable efforts to safeguard the security of Customer Data it handles, stores, processes, or transmits within its reasonable span of control in accordance with applicable law. If Vonage discovers or is notified of a breach of security relating to Customer Data, Vonage shall promptly (a) notify Customer of such breach; and (b) if the applicable Customer Data was within the reasonable span of control of Vonage at the time of such breach, Vonage shall: (i) use commercially reasonable efforts to mitigate the effects of the breach; and (ii) take commercially reasonable steps to institute safeguards that are designed to prevent or attempt to prevent the recurrence of such breach.

## **D. Personal Data**

Processing of personal data by Vonage on behalf of Customer shall be subject to the terms of the Vonage Data Processing Addendum (“DPA”), which is automatically incorporated into the Agreement by this reference.

## **10. WARRANTIES AND DISCLAIMERS.**

### **A. Vonage Warranty**

Vonage will provide the Services using a commercially reasonable level of skill and care, in material compliance with all applicable laws and otherwise subject to the terms of this Agreement. To the extent permitted by law, Vonage shall pass through to Customer any and all warranties Vonage receives in connection with equipment provided to Customer. The Services will be provided substantially in accordance with the applicable Service Level

Agreement. Customer's exclusive remedy and Vonage's entire liability for a breach of this Section are set forth in the applicable Service Level Agreement and Section 13 (Termination).

## **B. Customer Warranty**

Customer and its Authorized Users' use of the Services must at all times comply with all applicable laws and this Agreement.

## **C. Assumption of Risk**

Vonage has no special relationship with or fiduciary duty to Customer. Notwithstanding anything to the contrary herein, Vonage shall have no liability for acts, faults, or omissions of any third party telecommunications systems, networks, or operators (including, without limitation, suspension or termination of Vonage's connections, or faults in or failures of such apparatus or network).

## **D. Disclaimer of Warranties**

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, SALES ORDER, OR APPLICABLE SERVICE LEVEL AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES AND VONAGE CONTENT ARE PROVIDED "AS IS", "AS AVAILABLE," AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, QUALITY (E.G., AS TO LATENCY AND THROUGHPUT), AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. VONAGE, AND VONAGE'S SUPPLIERS, PARTNERS, AND LICENSORS, AND EACH OF VONAGE'S AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, DO NOT WARRANT (AND HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES) THAT: (I) THE SERVICES (OR ANY MOBILE OPERATORS) WILL BE SECURE OR AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, (II) ANY DEFECTS OR ERRORS WILL BE CORRECTED, (III) THE CONTENT ON THE VONAGE WEBSITES OR SERVICES (OR ANY THIRD PARTY SITES OR SERVICES LINKED THERETO) IS ACCURATE, ERROR-FREE, OR COMPLETE, OR (IV) THE RESULTS OF USING THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS. VONAGE DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY CONTENT OF, COMMUNICATION BY, OR PRODUCT OR SERVICE ADVERTISED OR OFFERED BY, A THIRD PARTY THROUGH THE SERVICES, AND VONAGE WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN CUSTOMER AND THIRD PARTIES. EXCEPT AS OTHERWISE AGREED IN A BUSINESS ASSOCIATE AGREEMENT SIGNED BY VONAGE, VONAGE MAKES NO REPRESENTATION OR WARRANTY THAT THE SERVICES OR THEIR USE WILL COMPLY WITH HIPAA OR WILL RENDER ANY PARTY COMPLIANT WITH HIPAA, AND IS RELEASED FROM ANY LIABILITY FOR ITS ACTS OR OMISSIONS RELATING TO HIPAA.

## **11. INDEMNIFICATION**

### **A. By Customer**

Customer agrees to defend, indemnify, and hold harmless Vonage, its Affiliates, and each of their respective employees, licensors, contractors, directors, officers and representatives, from and against any damages, liabilities, claims, demands, obligations, losses, fines, penalties, and expenses (including reasonable attorney's fees) (collectively, "Losses") incurred in connection with claims made or brought by a third party arising from or relating to: (i) use of the Services in a manner not authorized by this Agreement, including violations of the AUP or applicable law, by Customer, its Affiliates, or its or their Authorized Users, employees, agents, or subcontractors; (ii) claims relating to Customer Data; or (iii) gross negligence, fraud or willful misconduct of Customer, its Affiliates, or its or their employees, agents or subcontractors.

## **B. By Vonage**

Vonage agrees to defend, indemnify and hold harmless Customer from and against any Losses incurred in connection with claims made or brought by a third party arising from or relating to (i) infringement of third-party Intellectual Property Rights due to Customer's authorized use of the Services (other than Customer Data); or (ii) gross negligence, fraud or willful misconduct of Vonage or its employees, agents, or subcontractors. Notwithstanding any of the foregoing, Vonage shall have no liability for Losses arising out of (x) any combination, operation, or use of the Services with any hardware, software, or services not provided by Vonage, except to the extent such combination, operation, or use is necessary for the use of the Services; or (y) use of any sample or reference code made available by Vonage or any third party, via the Vonage Website or otherwise.

## **C. Procedure**

The indemnified Party shall notify indemnitor promptly after the indemnified Party learns of the existence of an indemnifiable claim hereunder; provided, however, that failure to give such notice shall only affect the rights of the indemnified Party to the extent that indemnitor is prejudiced. The indemnified Party shall not admit any liability whatsoever. The indemnitor shall be entitled to take sole control of the defense and investigation of the indemnifiable claim at its own expense, by providing prompt written notice to the indemnified Party. The indemnified Party shall cooperate in all reasonable respects with the indemnitor and its attorneys in the defense of the claim (including by making available books, records, and personnel), and may reasonably participate at its own expense, through its attorneys or otherwise, provided that such participation does not interfere with the indemnitor's defense. All settlements of indemnifiable claims under this Section shall: (i) be entered into only with the indemnified Party's consent if such settlement requires any admission of guilt or imposes any restriction or obligation on the indemnified Party; and (ii) include an appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement.

## **12. LIMITATION OF LIABILITY**

### **A. Exclusions**

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY OR VONAGE'S SUPPLIERS, LICENSORS, PARENT, SUBSIDIARY, AFFILIATE, CONTENT PROVIDERS, OR ANY OF ITS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS, BE LIABLE UNDER ANY CONTRACT, TORT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SERVICES OR OTHER SUBJECT MATTER OF THIS AGREEMENT FOR: (I) ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, COMPENSATORY, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, LOST PROFITS, GOODWILL, REVENUE, INCOME OR BUSINESS, DATA LOSS, INTERRUPTION OF BUSINESS, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, RIGHTS, OR SERVICES (HOWEVER ARISING AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES);

### **B. Direct Damages; Limitations**

**a.** VONAGE'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED THE TOTAL AMOUNTS PAID OR ARE PAYABLE TO VONAGE UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO A CLAIM SUBJECT TO THIS SECTION. THE PARTIES ACKNOWLEDGE AND ACCEPT THE REASONABLENESS OF THE DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION.

**b.** NOTWITHSTANDING THE PROVISIONS IN THIS SECTION, NOTHING IN THIS AGREEMENT SHALL LIMIT FINANCIAL LIABILITY IN RESPECT OF THE CUSTOMER'S PAYMENT OBLIGATIONS, EITHER PARTY'S INDEMNIFICATION OBLIGATIONS, OR EITHER PARTY'S LIABILITY FOR DEATH, BODILY INJURY, OR DAMAGE TO TANGIBLE PERSONAL

PROPERTY, OR ANY OTHER ACT OR OMISSION FOR WHICH LIABILITY SHALL NOT BE LIMITED UNDER APPLICABLE LAW.

### **13. TERM AND TERMINATION**

#### **A. Term**

This Agreement shall be effective beginning on the Effective Date and continue for so long as Services are being provided to Customer.

#### **B. Termination**

Either Party may terminate the Agreement for cause: (i) if the other Party is in material breach of the Agreement and has failed to cure such breach within thirty days after written notice thereof, or (ii) upon the other Party's liquidation, commencement of dissolution proceedings, disposal of substantially all assets, failure to continue its business in the ordinary course, assignment for the benefit of creditors, or becoming the subject of a voluntary or involuntary bankruptcy or similar proceeding.

#### **C. Effect of Termination and Survival**

Upon termination of the Agreement, and without limiting any of Vonage's other remedies hereunder: (i) Customer remains liable for all Charges and any other obligations accrued and owed by Customer through the effective date of such termination, and (ii) except in the case of termination owing to Vonage breach, Customer remains liable for all Charges and any other obligations accrued and owed by Customer from the date of termination through the end of the contracted Service Term, and (iii) except as expressly set forth herein, all of Customer's rights and licenses under the Agreement will immediately terminate and Customer shall cease using the Services. All amounts accrued or owed to Vonage in connection with the Agreement, and any other provisions which by their nature would reasonably survive, shall survive any termination of the Agreement. Following any suspension or termination of the Agreement or Customer's Account other than for breach, Customer may request any post-termination assistance that Vonage may elect to make generally available with respect to the Services, subject to and conditioned upon Customer's advance payment of any applicable fees and acceptance of all terms and conditions that Vonage specifies in writing with respect thereto.

### **14. NOTICES**

**a.** Vonage shall send notices hereunder via email to the email address Customer provides in its Account. It is Customer's responsibility to keep its email address current, and Customer will be deemed to have received any email sent to the last known email address Vonage has on record for Customer.

**b.** Customer shall send notices hereunder as follows:

**i. Formal Legal Notices** - via email to [legalnotices@vonage.com](mailto:legalnotices@vonage.com).

**ii. Billing Disputes** - via email to [customercare-vb@vonage.com](mailto:customercare-vb@vonage.com).

**iii. Cancellation/Non-Renewal of Services** - by contacting Vonage Customer Care, or Customer's account manager via email..

**c.** The addresses to which notices may be given by either Party may be changed upon written notice given to the other Party pursuant to this Section (Notices) or by Customer via the Customer portal.

## **15. EMERGENCY SERVICES**

BY USING THE SERVICE AND/OR VONAGE EQUIPMENT, CUSTOMER ACKNOWLEDGES THE LIMITATIONS OF VONAGE'S EMERGENCY SERVICE AS DESCRIBED IN ITS EMERGENCY SERVICES POLICY, AS WELL AS THOSE SET FORTH IN THIS SECTION. CUSTOMER AGREES AND ACKNOWLEDGES THAT WHILE MOST VONAGE SERVICES OFFER ACCESS TO APPLICABLE EMERGENCY SERVICES, OTHERS MAY NOT. CUSTOMER IS ADVISED TO THOROUGHLY READ AND UNDERSTAND THE APPLICABLE EMERGENCY SERVICES ACKNOWLEDGEMENT AND THE OPTIONS AVAILABLE. CUSTOMER ACKNOWLEDGES THAT IT ASSUMES THE RISKS ASSOCIATED WITH THE EMERGENCY SERVICE LIMITATIONS AS SET FORTH IN THE EMERGENCY SERVICES DISCLOSURE NOTICE AND ACKNOWLEDGMENT.

## **16. GOVERNING LAW AND VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the country indicated on Schedule 2 based on Customer's domicile, in any case without reference to conflicts of law rules, and jurisdiction and venue for all claims shall be held in accordance with Schedule 2. The United Nations Convention on Contracts for the International Sale of Goods shall be inapplicable hereto.

## **17. ARBITRATION AND DISPUTE RESOLUTION**

### **A. Management Resolution**

In the event either Party has a dispute or claim against the other Party, the disputing Party shall provide written notice to the other Party per Section 14 (Notices). The Parties agree to escalate disputes (other than invoice disputes) to their respective management, who will use commercially reasonable efforts to resolve the dispute by consulting with each other in good faith to reach an equitable resolution satisfactory to both parties within thirty days of the receipt of notice. Neither Party shall pursue or commence proceedings regarding the dispute in any court, administrative arbitral, or other adjudicative body prior to engaging in such consultations and negotiations.

### **B. Binding Arbitration**

If negotiations fail to resolve the dispute within thirty days, and/or small claims court is not a valid option due to the size or nature of the claim, all disputed claims (except for claims relating to Intellectual Property Rights, indemnity, or confidentiality obligations, fraudulent or unauthorized use, theft, or piracy of service, or matters relating to injunctions or other equitable relief) must be resolved by binding arbitration before a single arbitrator, in the English language. This agreement to arbitrate is intended to be given the broadest possible meaning under applicable law. The initiation of an arbitration dispute shall not otherwise prevent Vonage or Customer from terminating Services in accordance with the Agreement.

### **C. Location and Procedure**

A Party who intends to seek arbitration must first send to the other Party a written notice of dispute per Section 14 (Notices), which must describe the nature and basis of the dispute and set forth the specific relief sought. The arbitration location and arbitration organization will be according to the terms of Schedule 2, based on the principal business location of Customer. The amount of any settlement offer made by Customer or Vonage shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which Customer or Vonage is entitled. Judgment on the award rendered by the arbitrator may be entered in any court having competent jurisdiction. Any provision of applicable law notwithstanding, the arbitrator will not have authority to award damages, remedies or awards that conflict with this Agreement. The prevailing Party in any action or proceeding to enforce this Agreement shall be entitled to recover its reasonable attorneys' fees and costs.

#### **D. Jury Trial and Class Action Waiver**

Subject to applicable law, each Party waives its right to a trial by jury for claims subject to arbitration hereunder. The arbitrator may award relief only in favor of the individual Party seeking relief and only to the extent necessary to provide relief warranted by that Party's individual claim. The arbitrator may not award special, indirect, punitive, incidental or consequential damages. CUSTOMER MAY BRING CLAIMS AGAINST VONAGE ONLY IN CUSTOMER'S INDIVIDUAL CAPACITY AND NOT AS A CLAIMANT / PLAINTIFF, CLASS MEMBER OR GROUP ACTION IN ANY PURPORTED CLASS OR GROUP ACTION OR REPRESENTATIVE PROCEEDING AND CUSTOMER EXPRESSLY WAIVES ITS RIGHT TO BRING A CLASS OR GROUP ACTION SUIT. The arbitrator may not consolidate more than one person's or entity's claims and may not otherwise preside over any form of a representative or class proceeding.

#### **E. Equitable Relief**

Notwithstanding the foregoing, each Party shall be entitled to enforce its Intellectual Property Rights and seek equitable relief in any court of competent jurisdiction at any time.

### **18. MISCELLANEOUS**

#### **A. Entire Agreement; Headings**

This Agreement constitutes the entire agreement between Customer and Vonage with respect to the Services, and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between the Parties with respect thereto. The section and paragraph headings in the Agreement are for convenience of reference only and shall not affect their interpretation. No oral or written information or advice given by Vonage or its employees and other representatives will create any obligations or warranty on behalf of Vonage unless otherwise agreed in a writing signed by an authorized Vonage representative. Any purchase orders, confirmations, payment documentation, or other terms provided by Customer, even if signed by the Parties after the date hereof, shall have no force or effect. In the event that the Parties have executed versions of the Agreement drafted in more than one language, the English language version shall govern and prevail. Customer represents that Vonage has made no commitments or promises orally or in writing with respect to delivery of any future features or functions. In relation to any future features or functions, all presentations, RFP responses, and/or product roadmap documents, information or discussions are informational only and are not the basis for, nor part of this Agreement or any Sales Order.

#### **B. Modifications and Waivers**

Except as expressly provided elsewhere in the Agreement, the Agreement may not be changed or modified, nor may any provisions hereof be waived, nor may any consent or confirmation be considered to have been given, except by an agreement in writing signed by the Party against whom enforcement of the change or modification is asserted, and any such modification, change, waiver, consent, or confirmation on Vonage's behalf may only be given by an authorized signatory of Vonage. The failure of either Party to exercise in any respect any right provided for herein shall not be deemed a waiver of any other rights hereunder.

#### **C. Severability**

If any provision of the Agreement, or any part thereof, is found to be unenforceable or invalid, that provision will be (to the minimum extent necessary) replaced by a valid and enforceable provision the effect of which comes as close as possible to the intended economic effect of the unenforceable or invalid provision, so that the Agreement will otherwise remain in full force and effect.

#### **D. Force Majeure**

Neither Party is liable for any failure of performance (other than for delay or performance in the payment of money due and payable hereunder) to the extent such failure is due to any cause or causes beyond such Party's reasonable control, including acts of God, fire, explosion, vandalism, adverse weather conditions, governmental action, acts of terrorism, strikes and similar labor difficulties, war, pandemic, sabotage, or denial of service attacks. Neither Party's invocation of this clause will relieve Customer of its obligation to pay for any Services actually provided or permit Customer to terminate any Services except as expressly provided herein. The affected Party shall make all reasonable efforts to mitigate the effects of the force majeure event on the performance of its obligations under this Agreement.

#### **E. Relationship of the Parties; No Third-Party Beneficiaries**

The relationship of the Parties shall not be that of partners, agents, or joint venturers for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between the Parties for any purpose. Vonage and Customer are independent contractors and shall discharge their contractual obligations at their own risk subject to the terms of the Agreement. Except as explicitly stated herein, nothing in the Agreement shall confer upon any third parties any rights, benefits, or remedies.

#### **F. Assignment**

This Agreement inures to and is binding upon the Parties' successors and permitted assignees. Neither Party shall assign the Agreement without the other Party's prior written consent, not to be unreasonably conditioned, withheld or delayed; provided that such assigning Party may, without consent, but with reasonable prior written notice, assign its rights and obligations hereunder to any parent, affiliate, or subsidiary of such assigning Party or pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets; provided, further, that with respect to an assignment by Customer, (i) the successor shall not provide services that compete with Vonage; (ii) the successor must be at least as creditworthy as Customer, as reasonably determined by Vonage; (iii) the successor shall agree in advance and in writing to assume and be bound by all provisions of the Agreement, and shall deliver to Vonage upon request fully-executed documents reasonably acceptable to Vonage establishing the terms of such an assignment; (iv) such assignment may not constitute or result in a violation of applicable trade control, export, or other law; and (v) Customer shall remain liable for all of Customer's obligations that accrued prior to such assignment. Any assignment by a Party other than as permitted by this section shall be void and of no force or effect.

#### **G. Trade Compliance**

By using the Services, Customer represents and warrants that (i) its use of the Services will not violate any embargoes, sanctions, trade restrictions, or similar restrictions issued by any applicable governmental entity; and (ii) Customer, its Affiliates, and its Authorized Users have not been designated by any applicable government or any government agency as a prohibited or restricted party under any trade restrictions, export laws, or the like. Customer shall not use the Vonage Website or Services for any purpose prohibited by applicable law, including the development, design, manufacture, or production of missiles, or nuclear, chemical or biological weapons. Customer may not use, export, re-export, import, or transfer any technology or data related to the Services except as authorized by the Agreement and all applicable laws, rules, and regulations.

#### **H. Government Terms**

If Customer is an agency, department or other entity of any government, then any use, modification, duplication, reproduction, release, performance, display, transfer, or disclosure of the Services and accompanying documentation shall be governed solely by this Agreement. Any other use shall be prohibited and no other rights are granted.

## **I. Authority and Execution**

Each Party represents that (i) it has full authority to enter into and perform under this Agreement; (ii) the person accepting the Sales Order(s) and any other applicable documents on its behalf is properly authorized; and (iii) it has read the Agreement, understands it, and agrees to be bound by all of its terms, conditions, and provisions. This Agreement shall become effective upon Acceptance of a Sales Order. Electronic Acceptance of Sales Orders and any other applicable documents, and the incorporation by reference of this Agreement into all applicable documents shall be deemed valid, binding and enforceable by and against both Parties.

## **J. Basis of Bargain; Failure of Essential Purpose**

Customer acknowledges and agrees that Vonage has established its prices and entered into this Agreement in reliance upon the limitations and exclusions of liability and the warranty disclaimers set forth in this Agreement, and that they are an essential basis of the bargain between the parties and are material terms of this Agreement. The Parties agree that the limitations and exclusions of liability and warranty disclaimers specified in this Agreement will survive and apply even if found to have failed their essential purpose, and Customer hereby waives its right to contest the enforceability of any provision of this Agreement by reason of such failure.

## **K. Export Compliance**

The Services and any derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on the United States' government denied-party list. Additionally, the Customer shall not permit its Authorized Users to access or use the Services while located in a United States embargoed country (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any United States' export law or regulation.

## **L. Order of Precedence**

In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (a) the DPA and BAA (if applicable); (b) the Sales Order; (c) Product-Specific Terms (where relevant); (d) the Service Descriptions and Service Level Agreement (if applicable); (e) this Agreement; (f) the Statement of Work (if applicable).

## **M. Choice of Language**

Each Party hereby confirms its express wish that this Agreement and all related documents be prepared in the English language only.

## **N. Survival**

Survival. The terms and conditions of this Agreement will survive the expiration or other termination of this Agreement to the fullest extent necessary for their enforcement and for the realization of the benefit thereof by the Party in whose favor they operate.

## SCHEDULE 1

### Definitions

**“Acceptance”** of an Sales Order (or “Accepts” or “Accepted”) shall mean (a) with respect to the Customer: (i) clicking a box indicating acceptance; (ii) executing a Sales Order, amendment or Change Order, (iii) using Vonage’s online portal to order Services; (iv) conveying Sales Ordering instructions to Vonage followed by implementation of such Sales Order instructions; (v) using free or N/C Services; and (b) as to Vonage, the written or electronic confirmation of its acceptance of an Sales Order.

**“Account”** means the numbered account established with Vonage and associated with Customer and the Services provided to Customer under this Agreement.

**“Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**“Agreement”** means a Sales Order, this Agreement, and all applicable documents incorporated by reference and/or mutually Accepted by the Parties, which shall collectively form a legally binding agreement.

**“AUP”** means the Acceptable Use Policy accessible [here](#).

**“Authorized User”** means the authorized individual accepting this Agreement on behalf of Customer, and to whom Vonage has supplied a user identification and password. Authorized Users may include, for example, employees, consultants, contractors and agents of Customer and its Affiliates, and third parties with which Customer authorizes to access Customer’s Account and use the Services.

**“Change Order”** means any mutually agreed change to a SOW affected by a Change Order form, signed by the Customer and Vonage detailing the relevant change.

**“Charges” or “Subscription Charges”** means the charges and fees payable under this Agreement.

**“Customer”** means the customer identified in the Sales Order.

**“Customer Data”** means all data, information or material submitted by the Customer or the persons to whom the Customer Data relates, or Authorized Users to the Subscription Services, in connection with Customer’s use of the Services.

**“Customer Equipment”** means any equipment, software, software data storage, systems, cabling or facilities provided by the Customer and used directly or indirectly with the Services.

**“Customer Location”** means the physical location(s) where the Services are provided.

**“Effective Date”** means the date of acceptance or execution of the applicable Sales Order.

**“Initial Term”** means the initial term of the Subscription Services as stated on a Sales Order.

**“Intellectual Property Rights”** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**“Marketplace”** means an online exchange, catalogue or marketplace of applications, sponsored or operated by Vonage, that interoperate with the Services.

**“Other Data”** means information obtained by Vonage from publicly available sources or its third-party content providers and made available to Customer through the Services, Beta Services or pursuant to a Sales Order.

**“Payment Terms”** means the period of time Customer is required to remit payment for an invoice in full, without deduction or set-off, as stated in the Sales Order.

**“Professional Services”** means the set-up, installation, configuration and other professional services identified in a Sales Order (and more fully described in an applicable SOW) that are to be provided by Vonage in connection with the Subscription Services.

**“Professional Service Fees”** means the fees for the Professional Services as set out in the Sales Order.

**“Renewal Term”** means the period immediately following expiration of the Initial Term which is the same duration as the Initial Term except as otherwise set forth in the Sales Order or amendment.

**“Sales Order”** means the Vonage Services ordering document, electronic or paper format, (together with any schedules), accepted by Customer and Vonage detailing the specific products and Services purchased by the Customer. By entering into a Sales Order Customer agrees to be bound by the terms of this Agreement.

**“Service Description”** means individually or collectively the documentation that describes the Subscription Services.

**“Services”** or **“Subscription Services”** means all products, software and services provided under this Agreement (including Vonage Equipment) that are ordered by Customer, which are provided on a recurring or subscription basis, and for which the Customer pays one or more Charges, and that are provided by Vonage as detailed on the Sales Order. Services exclude non-Vonage products and services and Other Data.

**“Shipping and Handling”** means any fees and costs payable by Customer to Vonage in connection with packaging, shipping, or processing Vonage Equipment or purchased equipment to a Customer Service location.

**“Software”** means proprietary software (including documentation relating to such software) owned or licensed by Vonage, or which Vonage has a right to sublicense under this Agreement, which software is either provided to Customer under this Agreement or is used by Customer in connection with the Services.

**“Statement of Work”** or **“SOW”** means the document signed by Parties which describes the Professional Services to be provided.

**“Subscription Services Invoicing Frequency”** means the intervals at which Vonage will deliver its invoices for Subscription Charges as detailed on the Sales Order.

**“Subscription Term”** means the term of the Subscription Services and shall include the Initial Term together with any Renewal Term. The term of Subscription Services shall be as specified in the applicable Sales Order.

**“Subscription Service Term Start Date”** means the date that the Account is created, Customer has platform access, the subscription licenses are first made available (activated), and the Subscription Term and payment obligation for the Subscription Services commences.

**“Taxes and Fees”** means those country, province, federal, state, or local taxes, including without limitation, use, sales, value-added, privilege, or other taxes, levies, imports, duties, fees, surcharges, governmental assessments, and withholdings assessed against Customer or the Subscription Services, equipment purchases and Professional Services. Taxes and Fees do not include Vonage fees, recovery fees and surcharges that may be imposed on specific Services, and which are described in the applicable Sales Order and/or Invoice.

**“Usage Charges”** means the variable, usage-based charges payable by the Customer for connected minutes of telephony not falling within a relevant bundle of pre-purchased connected minutes of telephony or other monthly recurring charges for Services including minutes of telephony, or for SMS texts (if any) at the rates set out in the applicable Service Description or as otherwise defined in the Agreement.

**“Vonage”** means the Vonage business entity identified on the Sales Order.

**“Vonage Content”** means all content made available by Vonage through the Vonage Website or the Services.

**“Vonage Business Communications Services”** or **“VBC Services”** means the telephony, conferencing, messaging and related Subscription-based services.

**“Vonage Contact Center Services or VCC Services”** means the contact center services provided by Vonage.

**“Vonage Equipment”** means all equipment that is used, leased or otherwise provided by Vonage to Customer for use in connection with the Services, including phone hardware (e.g., phones, routers, switches, SD-Wan devices, and battery backup). Vonage Equipment does not include Customer Equipment or Third-Party Equipment.

**“Vonage Website”** means the website set forth at <https://www.vonage.com/> and/or other localized Vonage website as may be available or applicable in certain countries, through which Vonage’s products and services are described, as well as the online administrative portal through which Customer manages the Account and/or can make additional purchases for the Account.

**SCHEDULE 2**

**Vonage Contracting Entities, Governing Law, Venue**

Customer Domiciled In	Supplier Contacting Entity	Address For Notices	Governing Law	Courts Having Exclusive Jurisdiction	Arbitration Association and Place of Arbitration
Europe, Middle East or Africa	Vonage Business Limited, a company registered in England and Wales. Registered Number: 3602868	Legal Department, Vonage Business Limited Rosalind House, Jays Close, Basingstoke, Hampshire, RG22 4BS, UK	England	England	London Court of International Arbitration (LCIA) having its seat of arbitration in London
North America or South America	Vonage Business Inc., a company registered in the United States of America. Registered Number: 4437638	Legal Department, 23 Main Street, Holmdel, NJ 07733 Email: <a href="mailto:LegalNotices@Vonage.com">LegalNotices@Vonage.com</a>	Delaware	Delaware	American Arbitration Association
The Asia Pacific Region	Vonage Australia Pty Ltd, a company registered in Australia. Registered Number: 153693326	Legal Department, Level 12680, George Street, Sydney, NSW 2000, Australia	New South Wales, Australia	New South Wales, Australia	The Institute of Arbitrators & Mediators Australia having its seat in Sydney

## SCHEDULE 3

### Country-Specific Terms

The following additional terms and conditions (“Country-Specific Terms”) shall apply if and to the extent the Customer is domiciled under the laws of one of the countries listed below. In the event of a conflict between the Country-Specific Terms and the other provisions of the Agreement, the Country-Specific Terms shall prevail.

#### **Australia**

Except to the extent permitted by law, nothing in this Agreement has the effect of excluding, restricting or modifying:

1. The application of any Consumer Guarantee that applies to the supply of the Services (“Consumer Guarantees” means, if applicable to the Parties, the consumer guarantees in Division 1 of Part 3-2 of the Australian Consumer Law);
2. The exercise of a right under any Consumer Guarantee that applies to the supply of the Services; or
3. Any liability of Vonage for a failure to comply with a Consumer Guarantee that applies to the supply of the Services.
4. To the extent permitted by law, Vonage’s liability for breach of any Consumer Guarantee is limited,

at the Vonage’s option to:

- i. the re-supply of the Services that breached the Consumer Guarantee; or
- ii. the payment of the cost of having those Services supplied again.

#### **Belgium**

Customer may terminate a Sales Order for convenience at any time, provided that (a) if Customer terminates the Sales Order for convenience prior to the end of the sixth month of the Subscription Service Term, it shall be liable to Vonage for all Charges that would have been due under the applicable Sales Order through the end of the sixth month of the Subscription Service Term; and (b) Customer shall not be liable for any early termination charges if it terminates the Sales Order for convenience on or after the end of the sixth month of the Subscription Service Term.

#### **Canada**

Each Party hereby confirms its express wish that this Agreement and all related documents be prepared in the English language only. Les parties reconnaissent avoir exigé que le présente convention et tous les documents connexes soient rédigés en anglais seulement.

## **European Union**

The following terms ("EU Terms") shall apply to the extent the Customer is organized under the laws of a Member State of the European Union.

1. Changes to the Agreement. A unilateral change to the Agreement by Vonage shall be effective thirty days after Vonage provides notice to Customer. If Customer reasonably objects to such change and such change is not to the exclusive benefit of Customer, it may terminate the Agreement by providing notice of termination to Vonage no later than thirty days following Vonage's notification of the change to Customer.
2. Use of Customer Data. Customer shall ensure that Vonage is enabled to use all Customer Data (including content) necessary to provide the Services).
3. Primary Characteristics of Services. The primary characteristics of the Services will remain available to the Customer during the Subscription Service Term of the Agreement.
4. Waiver of Certain Provisions of the European Electronic Communications Code. If Customer is a microenterprise, small enterprise, or not-for-profit organization (as defined under European Union law), it hereby explicitly waives the applicability of sections 102, 105, and 107 of Directive 2018/1972 of the European Parliament and of the Council of December 11, 2018 establishing the European Electronic Communications Code ("EECC"), and any Member State law or regulation implementing these EECC provisions.

## **Germany**

Customer may dispute an invoice by providing written notice within eight weeks after receipt. Handling of the dispute shall be in accordance with the German Telecommunications Act.

## **Sweden**

1. Limits on Usage Charges. Customer may at any time during the Term, free of charge, request the Services be suspended when call and other charges have reached an amount specified by Customer. The specified amount may be amended by Customer without additional charges.
2. Blocking High-Cost Calls. Customer may at any time during the Term, free of charge, request that numbers with elevated calling fees be blocked.

## **The Netherlands**

No limitations on liability shall apply to losses arising from Vonage's deliberate recklessness or intentional misconduct.