

VONAGE BUSINESS NETWORKS, INC. UNIVERSAL TERMS AND CONDITIONS OF SERVICE

The Vonage Business Networks, Inc. Universal Terms and Conditions of Service set forth below (hereinafter referred to as the "Universal Terms") apply to Customer's use of the Service and Equipment (as defined below) provided by Vonage Business Networks, Inc. ("Vonage" or "Company") pursuant to Exhibit A – Cloud Services Agreement, Exhibit B - Information Technology Support Services Agreement, the applicable Customer Service Order ("CSO"), Customer Premises Equipment Order ("CPE"), Statements of Work ("SOW"), or any other agreement(s) entered into between the parties (collectively referred to as the "Agreement"), and Customer's access to the Vonage website (the "Website").

- 1. Definitions.** The following definitions apply to this Agreement, Exhibit A – Cloud Services Agreement, Exhibit B – IT Support Services Agreement, and the applicable Customer Services Agreement and the Customer Premises Equipment Order Agreement.

"Acceptable Use Policy" or "AUP" means the Vonage Acceptable Use Policy posted at www.icore.com as may be amended from time to time by us in our sole discretion

"Account" means the account established by Customer for the use of the Services and Equipment.

"Affiliate" means any entity which 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.

"Billing Commencement Date (BCD)" means, for each of the Services, (i) the date on which Customer uses (except during the Acceptance Period, if applicable) the Services, (ii) the date Vonage notifies Customer in writing that the installation of the Services is complete, (iii) the date Vonage determines the estimated in service date pursuant to Section 2 (k) in its sole discretion.

"Business Day" or "Business Hours" means 9:00 a.m.– 5:00 p.m. Monday through Friday, United States eastern time, excluding federal public holidays in the United States and holidays otherwise observed by Vonage.

"Cloud Services" means Vonage's provision for Customer's use of the specific services and features described in Exhibit A and the Customer Service Order Agreement.

"Confidential Information" of a party means all confidential or proprietary information, including, without limitation, all information not generally known to the public, the terms of this Agreement and the Exhibit, the Customer Service Order, the Customer Premises Equipment Order, information relating to either party's customers, technology, operations, facilities, consumer markets, products, capacities, systems, procedures, security practices, research, development, business affairs, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, software, copyrightable subject matter, and other proprietary information regardless of whether marked as such or not.

"Content" means any and all information, files, applications, email, software (including machine images), data, text, audio, music, graphics, recordings, programs, video, images, or other media or content Customer or any End User (a) causes to interface with the Services, (b) is uploaded to the Services per Customer's account, or (c) is installed, uploaded,

stored, or transferred on, from or through the Cloud Services.

"Contractor" means a person or entity, other than Vonage, who is retained or used by Vonage to assist in the sales, marketing, delivery, installation, provision, maintenance, servicing, repair, or operation of any Vonage Service and/or Equipment.

"Covered Services" means the network, consulting, and other information technology support services provided by Company as described in one or more Customer Order Forms signed by the parties.

"Customer", "Client", "you" or "your" means the firm, corporation, or other entity which orders Vonage's Service and Equipment, and who is responsible for the payment of charges and for compliance with this Agreement.

"Customer Premises Equipment Order Agreement" (CPE) means the agreement which itemizes the equipment purchased by Customer from Vonage states the particular services Customer is licensing/buying from Vonage, including but not limited to, the agreed upon fees, term commitment, and any other terms and conditions contained in such document, all of which are incorporated by reference into this Agreement.

"Customer Equipment" refers to equipment or wiring that Customer acquires from a source other than Vonage and used in conjunction with the Service.

"Direct Inward Dialing" or "DID" refers to a Service feature that allows callers from the PSTN to directly reach a specific network telephone number or User of the Service.

"E911 Disclosure Notice and Acknowledgement" or "E911 Disclosure" means the provisions set forth in the Vonage E911 Disclosure Notice and Acknowledgement posted on the Website at www.Vonage.com and/or attached to and incorporated by reference into the Customer Service Order Agreement stating Vonage's policies regarding the availability and limitations of E911 Service and as may be amended from time to time by Vonage. In the event of any conflict or inconsistency between the E911 Disclosure provisions set forth on the Website and the E911 Disclosure attached to any Customer Service Order Agreement, the E911 provisions set forth on the Website are the most current provisions and shall apply and govern this Agreement and any Customer Service Order Agreement.

"End User" or "end user" means any individual or entity that directly or indirectly through another user: (a) accesses or uses Customer Content; or (b) otherwise accesses or uses the Services per Customer's account.

"Vonage Equipment" (Equipment) means equipment at Customer's location(s) that is directly provided or maintained by Vonage and used in conjunction with the Service.

"Excluded Services" means information technology services and any related support services Company provides (i) to respond to and remedy problems caused by Client's failure to comply with its obligations under this Agreement and Exhibit B; or (ii) that are outside the scope of and not included within, any Covered Services or Project Services purchased by Client. Client agrees to pay for Excluded Services on a time and materials basis.

"Hosted System" means a combination of hardware, software and networking elements that comprise an information technology system. Depending on the Services Customer is contracting for, the Hosted System may consist of a dedicated system for Customer's use only, or the right to use certain parts of a shared multi-tenant system that Vonage maintains for many customers, or a combination of some dedicated elements and some shared elements.

"Internet Protocol" or "IP" refers to a standard protocol designed for use in interconnected systems of packet-switched computer communication networks.



"Project" or "Project Services" means consulting or information technology support services provided by Vonage pursuant to Exhibit B. Vonage will provide Customer good faith estimates for all Projects contemplated by the parties. The parties will negotiate in good faith and sign a Statement of Work describing the Services to be provided by Company in connection with a Project ("Project Services"). Unless otherwise specified in the applicable Statement of Work, Customer agrees to pay for Projects on a time and materials basis.

"Public Switched Telephone Network" or "PSTN" refers to the traditional circuit switched local telephone network, which connects telephone users with each other for the purpose of communications. In common usage, the term PSTN may also include local wireless networks.

"Service" and "Services" refers to the services provided to Customer by Vonage, including voice, data, cloud, professional services, and all other services provided by Vonage pursuant to this Agreement, the Customer Service Order, and the applicable Exhibit. The specific services to be provided by Vonage to Customer are listed in the Customer Service Order

Agreement executed by Customer and may be described in detail on the Website.

"Service Activation Date" means the date appearing on Customer's services invoice specifying when voice communications, data, and/or cloud services are made available by Vonage at any Customer location. In any situation where data services are made available for Customer's use prior to the Service Activation Date, the data services are being provided by Vonage subject to the terms and conditions of this Agreement and Customer shall be financially responsible for paying for all such data services in accordance with the terms of this Agreement but the Service Activation shall still be determined based on the date when voice communications service was first made available by Vonage at any Customer location.

"Service Level Agreement" (SLA) means the agreement which outlines Vonage's responsibilities for its provision of Services to Customer.

"Statement of Work" means a document provided by Vonage that describes specific Project Services which Vonage will provide to the Customer, as well as the associated fees, schedule, and any Work Product the parties anticipate will result from such Services. Each Statement of Work will incorporate, and is subject to, this Agreement and Exhibit B, and must be signed by both parties.

"Supplementary Services" means those services (e.g., database administration services, training, assistance or support for the application that you operate on your Hosted System), other than the Services which Customer purchases or licenses from Vonage pursuant to the Customer Service Order Agreement or a separate written agreement or Statement of Work executed by both parties.

"User" means any person or entity that obtains or uses Vonage's Service and/or Equipment provided under this Agreement, regardless of whether such person or entity is authorized by Customer.

"Voice over Internet Protocol" or "VoIP" refers to a technology that enables people to use the Internet as the transmission medium for telephone calls by sending voice data in packets using IP rather than by traditional circuit switched technology.

"Website" means the Vonage website identified by the domain name www.Vonage.com, along with any content set forth therein, as updated from time to time by Vonage in its sole discretion.

"Work Product" means written reports, analyses, or other working papers developed by Company specifically at the request of Client and described in a Statement of Work signed by both parties.

2. Terms and Conditions.

(a) Acceptance. By executing a CSO (and CPE if applicable), SOW, or any other agreement with Vonage, and/or by ordering, activating, using, or paying for a Service or Equipment, Customer agrees to be bound by this Agreement, and as applicable, Exhibit A, Exhibit B, and the related CSO and CPE. Vonage reserves the right, with at least thirty (30) days advanced notice to Customer, to amend or modify the Universal Terms, and Customer agrees to be bound by any amendment or modification after such thirty

(30) day notice, provided that any such amendment or modification is due to a mandatory change in a law, rule or regulation. Modifications or amendments to the Agreement shall be effective on the next business day following the thirty (30) day notice period, and the new/amended Agreement will be posted at www.Vonage.com. In addition to these terms and conditions, the specific terms and conditions set forth in each Exhibit shall apply to those particular Services. For example, Exhibit A (Cloud Services Agreement) shall apply and govern Vonage's provision and Customer's use of any such Cloud Services. Exhibit A shall neither apply nor have any force or effect unless Customer orders Vonage Cloud Services as set forth in a Customer Service Order Agreement or otherwise documented by Vonage after agreement with Customer.

Exhibit B (Information Technology ("IT") Support Services) shall apply and govern Vonage's provision and Customer's use of any such IT Support Services. Exhibit B shall neither apply nor have any force or effect unless Customer orders Vonage IT Support Services as set forth in a Customer Service Order Agreement or otherwise documented by Vonage after agreement with Customer. The Vonage Universal Terms and Conditions of Service Agreement, Exhibit A, and Exhibit B are available to Customer upon request, and/or through the Vonage Website at www.icore.com.

(b) Use. Customer is responsible for all use of the Service and Equipment associated with the Account. Customer accepts full responsibility and liability for such use, including damage to any Equipment, and shall be and remain solely liable for the full amount of the Equipment per the terms of the CSO. The Service and Equipment provided under this and the applicable Exhibit, CSO and CPE Agreement may be used for any lawful purpose for which they are technically suited. Customer agrees not to utilize the Service or Equipment for any unlawful purpose. Customer shall not use Services for transmitting or receiving any communication or material of any kind when the transmission, receipt or possession of such communication or material (i) would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national, or international law, or (ii) encourages conduct that would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law. Vonage, in its sole discretion, may terminate Service immediately and without advance notice if Customer violates any of the above restrictions, leaving Customer responsible for the all charges as set forth in Section 3(b).

(c) Fraud. Customer agrees to notify Vonage promptly if it becomes aware of any fraudulent or unauthorized use of its Account, Service, or Equipment. Vonage shall not be liable for any damages whatsoever resulting from fraudulent or unauthorized use of Customer's Account, and the payment of all charges to Customer's account shall be and remain the responsibility of Customer.

(d) Limitations of E911 Service. By using the Service and/or Equipment, Customer acknowledges the limitations of Vonage E911 Service as described in the E911 Disclosure, as well as those set forth below. Customer agrees and acknowledges that while some individual services offer access to E911 Service, others may not. Customer is advised to thoroughly understand the Vonage E911 Service and the options available. By accepting these Universal Terms,



Customer acknowledges that it has received the information regarding the limitations of Vonage E911 Services, has read, understands, and agrees to the terms and conditions of the E911 Disclosure, and assumes the risks associated with the Vonage E911 Service limitations. Vonage may disclose to the Federal Communications Commission that Customer has acknowledged the E911 Disclosure by virtue of Customer having accepted this Agreement.

(e) Availability. The Service and Equipment are offered subject to the availability of the necessary facilities, services, and equipment, and subject to the provisions of this Agreement. Vonage shall not be responsible or liable for any delay(s) in installing or providing any Service or Equipment ordered by Customer.

(i) Connectivity. To the degree Customer orders any broadband circuit from Vonage and the specific circuit bandwidth and/or speed requested by Customer is unavailable at the designated Customer location, Vonage will make commercially reasonable efforts to provide the closest bandwidth and/or speed available under the circumstances and the provision of such reduced bandwidth and/or speed shall not constitute a default or breach of this Agreement or be grounds for Customer to terminate the Agreement or any Customer Service Order Agreement ("Service Order"). If the requested bandwidth and/or speed is unavailable at all or unavailable at the price designated by Vonage in the Service Order, Customer, by giving Vonage written notice within ten (10) business days of being notified by Vonage that the requested bandwidth and/or speed is unavailable at all or unavailable at the price quoted in the Service Order, has the right to terminate the order for the specific broadband circuit ordered by Customer. If, within the enumerated ten (10) business day time period, Customer fails to provide written notice of termination of the specific broadband circuit ordered by Customer, Customer shall be deemed to have waived its right to terminate the broadband circuit. If the broadband circuit is available at the bandwidth and speed ordered by Customer but not at the price quoted in the Service Order and Customer has not terminated broadband circuit in accordance with the written notice requirements of this Section 2(e), Customer agrees to execute an addendum to the Service Order to reflect the revised price, bandwidth, and/or speed, as applicable.

(ii) Access and Build-out. Vonage may charge Customer additional non-recurring charges and/or monthly recurring charges not otherwise set forth in the Service Order for such implementation where it is determined that it is necessary to extend the demarcation point, or through the provision of additional infrastructure, cabling, electronics or other materials necessary to reach or otherwise install the Customer premises. Vonage will notify Customer of any additional non-recurring and/or monthly recurring charges as soon as practicable. Standard installation does not include 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 at its sole discretion.

(f) Compatibility and Customer Equipment. The Service and Equipment may not be compatible with Customer Equipment, and Vonage is not required to maintain or repair Customer Equipment, or modify the Service to make it compatible with Customer Equipment. Customer acknowledges that it may be required to acquire, use, or maintain at its own expense certain Customer Equipment (not supplied or maintained by Vonage) to properly or fully make use of the Services and the Vonage Equipment.

(g) Right to Suspend. Vonage reserves the right to suspend, limit or discontinue offering or providing Service, when necessitated by conditions beyond its control, when Customer or any User is using the Service in violation of the provisions of this Agreement, when Customer or any User is using the Service in violation of the law, when, in Vonage sole discretion, doing so would prevent the risk of damage or loss to data, systems or property of Vonage or its customers, or when Customer is delinquent in its payment responsibilities per the terms of this Agreement, any Exhibit, or any Customer Service Order.

(h) Limitations of Service and Equipment. Customer or any User may not be able to utilize the Service or Equipment, if: (i) the Equipment or Customer Equipment fails; (ii) the power required to operate Customer's or any User's computer, router, or modem, if applicable, fails; (iii) Customer's or any User's computer experiences hardware or software problems and/or viruses; (iv) in situations where Vonage is not the Internet service provider, Customer's or any User's Internet service provider fails to provide adequate services for any reason; (v) Customer's or any User's hardware or software is improperly installed; (vi) Customer or any User fails to use or maintain all Customer Equipment that is required to fully and properly make use of the Service and Equipment; (vii) any Customer Equipment is not compatible with the Service or Equipment; or (viii) Customer or any User is blocked or otherwise unable to access the Vonage network. Under no circumstances shall Vonage be responsible for any failure or inability of Customer or any User to utilize the Service or Equipment as a result of any of the foregoing circumstances. By using the Service and Equipment, Customer and its Users acknowledge that the Service and/or Equipment may be limited in certain circumstances and may not be available 100% of the time. Vonage will not be liable for errors in transmission or for failure to establish connections. In addition, Customer acknowledges and agrees that the Service and/or Equipment may not be compatible with certain fax machines, firewalls, or other equipment not supplied by Vonage.

(i) Customer Responsibilities. By using the Service and Equipment, Customer and all of its Users acknowledge that there are certain rules and regulations that may apply to the location(s) from which Customer and its Users are utilizing the Service, and that such rules and regulations may be materially different from jurisdiction to jurisdiction. Customer, on behalf of itself and all Users at Customer's premises agrees to abide by all rules and regulations, including the exportation of data from the U.S. or other applicable jurisdictions. With respect to Customer's use of the Service and/or any Equipment as well as any Customer Equipment, Customer shall be responsible for any claim or damages arising from or related to: libel; slander; invasion of privacy; infringement or unauthorized use of any copyright, trademark, trade name, service mark, or any other intellectual property right; interference with or misappropriation or violation of any proprietary or creative right; and any injury to any person, property, or entity arising out of the material, data, information, or other content used, received, or transmitted by Customer or any User; any act, error, or omission by Customer or any User. Customer shall also be responsible and liable for any personal injury, property damage, or death of any person caused, directly or indirectly, by Customer, any User, or any Customer employee, agent, or contractor, arising from or related to the installation, maintenance, location, condition, operation, failure, presence, use, or removal of the Service, Equipment, or any Customer Equipment.

(j) Services. Customer acknowledges and agrees that Vonage does not have complete management and control over, nor can Vonage prioritize voice traffic over other types of traffic (data, video, etc.) on any service or circuit which routes traffic through the public internet. Accordingly, Vonage shall not be responsible for any service interruption, degradation, delay, transmission error, operational failure, and/or unavailability (individually and collectively referred to as "Service Problem") at any location where Customer orders or uses an unmanaged service. For purposes of this Agreement, an "unmanaged service" means any Customer service or circuit (e.g., T-1, DSL, cable, Ethernet) which, instead of routing voice and data traffic directly to Vonage's data center, routes traffic over the public internet before it is sent to an Vonage data center. Although Vonage agrees to take commercially reasonable efforts to work with Customer to try to identify, address, and resolve any Service Problem on an unmanaged service ordered by Customer, Vonage is unable to control the reliability or quality of traffic routed on an unmanaged service. Vonage is not responsible for any Service Problem experienced by Customer at any location where Customer orders or uses an unmanaged service. Customer shall not be entitled to any service credits or any other remedy, including, without limitation, a termination right under Section 3(c), for any Service Problem on any unmanaged service.



(k) Information and Installation Responsibilities. Customer acknowledges and agrees that the Service may be comprised of multiple circuits and/or services ordered from Vonage for installation at one or more designated Customer locations. The estimated in service date (EISD) for each Service and circuit ordered by Customer for each Customer designated location will be sent by Vonage to Customer after Customer's execution of the Customer Service Order Agreement. Customer agrees and acknowledges that, in order for Vonage to install the Service at each designated Customer location as of the EISD, Customer is obligated to provide to Vonage access to the location where the service(s) is to be installed, as well as requested information (including but not limited to, a complete list of telephone numbers to be ported to the Vonage network, exact location of circuit installation and designated demarcation point, site survey information, equipment information, etc.) and documentation (e.g., completed and signed Letter of Agency) in a timely manner. Once the EISD for each service and circuit ordered for each designated Customer location has been sent to Customer, if, for any reason, Customer (i) fails to provide any requested information and/or documentation to Vonage, or access to the service location in a timely manner; (ii) subsequently cancels or requests that the EISD for any service or circuit be moved to a later date or alternate location, and/or (iii) any other delay caused by the Customer for any reason not directly attributable to Vonage's fault, then Customer shall remain responsible and agrees to pay for all applicable monthly recurring charges, non-recurring charges, and any other applicable charges and fees (as described in the Customer Service Order Agreement executed by Customer), including any increase in costs Vonage suffers as a result of any such delay or costs to Vonage due to a move of Customer's location (e.g. increased equipment costs, circuits, etc.), as well as applicable taxes for each service and circuit ordered by Customer as if the service and circuit was installed as of the EISD which was provided by Vonage to Customer. Customer's financial obligation to pay shall apply irrespective of Customer's reason for failing to provide requested information, documentation, and/or access to the service location in a timely manner, or reason for canceling or requesting a delay in any EISD, and irrespective of whether the Vonage service and/or circuit ordered by Customer is actually installed and used by Customer as of the EISD. The foregoing payment obligation as of the EISD shall not apply if the EISD is missed or delayed as a direct result of any delay in installing a circuit or service caused solely by Vonage or any Vonage service or equipment provider. In such situation, Customer's payment obligations shall commence on the date when the service is actually installed by Vonage or would have been installed, except to the extent any delay is caused by Customer's (a) failure to provide any requested information, documentation or access to the service location to Vonage in a timely manner as described above; (b) cancellation or request by Customer that the EISD for any service or circuit be moved to a later date; and/or (c) any other delay caused by the Customer.

(l) Required Maintenance. Vonage reserves the right to perform maintenance on or upgrade its network, its infrastructure, the Website, the Service and Equipment, and Customer's Account, without prior notice or liability, even if such actions cause a partial or full disruption of the Service; provided, however, and subject to Vonage's business needs, Vonage will use commercially reasonable efforts to perform maintenance on and upgrades to its network and the Service in a manner so as to avoid unduly interfering with Customer's use of the Service. Vonage may, in its sole discretion, add, change or delete features of the Website, features or functionality of the Service and Equipment, or features of Customer's Account.

3. Term and Termination.

(a) Unless otherwise terminated pursuant to this Agreement, the Service is offered for an initial term of service (the "Initial Term") specified in the Customer Service Order Agreement ("Service Order"), which shall be a

minimum of thirty-six (36) months and could be longer depending on the length of term selected by Customer in the CSO. Subject to Section 2(k), the Initial Term shall begin on the Service Activation Date and continue until the expiration of the Initial Term. If Customer orders installation of Service at more than one location, the Initial Term for all Customer locations shall begin on the Service Activation Date at the last location where the Vonage Service is installed. Customer agrees and acknowledges that, for multi-location Service Orders, the Initial Term for those Customer locations installed prior to the last Customer location will be longer than the Term Commitment set forth in the original Customer Service Order Agreement. Following expiration of the Initial Term, this Agreement shall automatically renew for successive terms that are identical in length to the Initial Term (each, a "Renewal Term") unless and until either party notifies the other party in writing at least ninety (90) days prior to the end of the Initial Term or any Renewal Term that it does not wish to renew the Service Order. If Customer provides Vonage with ninety (90) days prior written notice of its intent not to renew the Initial Term or any Renewal Term in accordance with this Section 3(a), Customer agrees and acknowledges that Vonage, upon receipt of such written notice from Customer, shall have the right to: (i) request and receive pre-payment for all amounts that Customer might owe for the remainder of the Initial Term or Renewal Term that is not being renewed; and (ii) charge Customer at Vonage's prevailing professional services rates for any services provided by Vonage to Customer for discontinuing Customer's use of the Service and assisting with migrating Customer to another vendor. If, during the Initial Term or any Renewal Term, Customer adds any additional services to its use of the Service, the amount of Customer's monthly recurring charges shall, in accord with Vonage's prevailing rates at the time, increase the sum set forth in the original Customer Service Order Agreement. The term for any such additional services shall be the longer of: (i) a minimum of twelve (12) months from the Service Activation Date for such additional services; or (ii) the remaining length of the unexpired Initial Term or Renewal Term. To the extent that the term for any such additional services extends beyond the Initial Term or any Renewal Term, the terms and conditions of this Agreement shall remain in full force and effect with respect to such additional services until the expiration of the term for such additional services.

(b) Early Termination. If this Agreement is terminated by Customer and such termination is not due to Vonage's uncured breach as set forth in Section 3(c) or if Vonage terminates this Agreement pursuant to Section 2(b) or 3(c) due to Customer's uncured breach, Customer shall pay to Vonage an early termination charge, which Customer agrees is reasonable, equal to all non-recurring and monthly recurring charges set forth in the Customer Service Order Agreement, including all applicable taxes and fees. For avoidance of doubt, Customer agrees and acknowledges that the foregoing early termination charges shall apply even if Customer terminates the Agreement and/or any Customer Service Order Agreement prior to commencement of the Initial Term, or prior to the commencement of the Renewal Term (even if terminated within the 90 day period between the Initial Term and Renewal Term, and/or any subsequent Renewal Term, in which case the early termination charge shall be based upon the full amount of the subsequent Term), as well as prior to the Service Activation Date. Customer understands and agrees that in contracting with Customer, Vonage has incurred and will incur substantial losses upon an early termination of this agreement (including termination before the Service Activation Date). Such losses include, but are not limited to the following: (i) Vonage incurs substantial upfront costs for the provision of the Services from third-party service providers and subcontractors; (ii) Vonage commits to subscription-based services related to the provision of the Services; (iii) Vonage allocates substantial labor force resources to mobilize for the provision of the Services; (iv) Vonage incurs substantial opportunity costs and lost profits. Customer acknowledges and agrees that the precise losses incurred by Vonage as a result of an early termination are difficult to ascertain that the early termination charges set forth in this Section 3(b), are fair and reasonable estimates of Vonage's anticipated and actual damages, and not a penalty. Any such charges shall be due and payable within ten (10) days of the effective date of termination.

(c) Termination for Breach. Either party may terminate this Agreement (or



any Service Order) if the other party (a) is in material breach of this Agreement and such breach is not cured within thirty (30) days after the breaching party's receipt of written notice thereof, or (b) becomes insolvent, makes an assignment for the benefit of creditors, is adjudged bankrupt, or if a receiver is appointed over such party's assets. Notwithstanding any other provision of this Agreement, Vonage has the right to suspend Service, and terminate this Agreement for Customer's material breach, immediately upon written notice if any amount owed by Customer is delinquent for more than thirty (30) days from the invoiced date.

In addition, Vonage may terminate this Agreement for breach if: (i) the information provided for the purpose of subscribing to or using the Services is materially inaccurate or incomplete and the Customer fails to provide accurate and complete information within five (5) business days of receipt of written notice, (ii) it is determined, in Vonage's sole discretion, that the use of the Cloud Services poses a threat to the security or performance of Vonage's network, the Services, or to any other customer or suppliers; (iii) Customer's use of the Cloud Services is illegal, or that it misappropriates or infringes the property rights of a third party; (iv) Customer's use of the Cloud Services has or will subject Vonage to civil or criminal liability; (v) Customer uses cloud resources in an attempt to gain unauthorized access to computer systems (i.e., "hacking"). Vonage may also terminate the Agreement for breach if the Customer violates the AUP more than once for any service Vonage is providing to Customer. Upon such an occurrence, the cure period provisions shall be considered null and void. Upon any termination of the Cloud Services Agreement: (i) all Customer rights under said Agreement and this Agreement immediately terminate; (ii) Customer remains fully responsible for all fees and charges incurred through the date of termination, including fees and charges for in-process tasks completed after the date of termination; (iii) Customer will immediately return or, if instructed by Vonage, destroy all Vonage Confidential Information in Customer's possession or control; and (iii) during the thirty (30) day period after the expiration or termination of the Agreement, Vonage will provide post-termination Content retrieval assistance only upon a written agreement for Supplementary Services signed by Customer and Vonage, and prepayment of the applicable fees agreed upon in such written agreement for Supplementary Services. Customer agrees and acknowledges that, effective thirty (30) days after the expiration or termination of the Cloud Services Agreement for any reason, Vonage has the right, without liability or further obligation, to permanently erase all Content and data stored on the Vonage Cloud Services and Infrastructure.

(d) **Effect of Termination.** Upon the expiration or any termination of this Agreement, Customer shall immediately cease any and all use of and access to any Vonage Service and any Vonage Confidential Information. Vonage shall have no liability from any termination of this Agreement provided that it is conducted in accordance with the terms of this Agreement. Sections 1 through 5, Section 9, Section 10, and Section 12 through 27 shall survive any termination or expiration of this Agreement.

(e) **Government or Regulatory Developments.** Vonage has the right to terminate any Customer Service Order Agreement if, regardless of the cause or reason, Vonage cannot legally provide some or all of the Equipment or Services for a period exceeding ten (10) days, including, without limitation, loss of governmental or regulatory authorizations required to provide the Equipment or Services; or, if changes in laws or regulations make the provision of some or all of the Services impracticable or illegal for Vonage to install, maintain, or operate any of the Equipment or provide any Service.

4. Limitation of Liability

(a) Vonage's liability for damages arising out of any mistake, negligence, interruption, omission, delay, error, or defect which occurs in the course of installing, providing, maintaining, or modifying Service and/or Vonage Equipment or for any other reason solely attributable to Vonage's fault, shall in no event exceed proven direct damages in an amount equal to the net charges incurred by Customer for the affected Service during the three (3)

months preceding the month in which the claim arose. Vonage shall have no liability whatsoever for any damage to, or loss of, any equipment or other property under the care, custody or control of Customer or any User unless caused by Vonage's gross negligence or willful misconduct, in which case Vonage's maximum liability is set forth herein. In the event that Customer experiences a loss of service due to Vonage's fault, negligence, act, error, or omission, Vonage will provide Customer with a credit on a pro-rata basis for the period of time that the Service was unavailable to Customer (measured monthly). In order to receive a credit, Customer must provide Vonage written notice within ten (10) days of the service interruption and the credit will be applied to a future Customer invoice. Notwithstanding anything to the contrary in this Agreement, Vonage shall have no liability to Customer for any losses or damages of any kind if any loss of Service is caused by events outside of Vonage's control, scheduled maintenance, or problems and/or issues that were caused by Customer.

(b) **NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR ANY CUSTOMER SERVICE ORDER AGREEMENT, IN NO EVENT SHALL VONAGE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, AND CONTRACTORS, BE LIABLE TO CUSTOMER, ANY USER, OR ANY THIRD PARTY FOR ANY CLAIM, LOSS, EXPENSE, OR DAMAGE DUE TO LOSS OF REVENUES, PROFITS, SAVINGS, BUSINESS, OR GOODWILL, NOR WILL VONAGE, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, AND CONTRACTORS, BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY, WITHOUT LIMITATION, TO ANY CLAIM, LOSS, EXPENSE, OR DAMAGE, RELATING TO OR ARISING FROM ANY OF THE FOLLOWING: (i) ANY MALFUNCTION OF ANY SERVICE, EQUIPMENT, OR FACILITY PROVIDED BY VONAGE OR ANY OTHER SERVICE PROVIDER; (ii) ANY FAILURE OR INABILITY TO ACCESS 911 SERVICE OR ANY EMERGENCY SERVICE; OR (iii) ANY BREACH BY VONAGE OF THIS AGREEMENT.**

(c) **NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT OR ANY CUSTOMER SERVICE ORDER AGREEMENT, IN NO EVENT SHALL VONAGE, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, AND CONTRACTORS, BE LIABLE TO CUSTOMER OR ANY USER OF THE SERVICE AND/OR EQUIPMENT DUE TO THE INABILITY OF CUSTOMER, ANY USER, OR ANY OTHER PERSON OR PARTY TO BE ABLE TO DIAL 911 OR ACCESS AND/OR SPEAK TO 911 EMERGENCY PERSONNEL THROUGH SERVICES OR EQUIPMENT PROVIDED BY VONAGE; OR VONAGE'S SUSPENSION OR TERMINATION OF SERVICES IN ACCORDANCE WITH THESE UNIVERSAL TERMS. THE LIMITATIONS SET FORTH IN THIS SECTION 4 APPLY TO ALL CLAIMS, DAMAGES, AND ALLEGATIONS WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCTS LIABILITY, TORT, AND ANY AND ALL OTHER THEORIES OF LIABILITY.**

5. Representations and Warranties

THE SERVICES WILL BE PERFORMED IN A MANNER CONSISTENT WITH PREVAILING STANDARDS IN THE INDUSTRY AND PURSUANT TO THE APPLICABLE CSO, EXHIBIT, AND SLA. SUBJECT TO THOSE AGREEMENTS, THE EQUIPMENT AND SERVICES ARE PROVIDED BY VONAGE ON AN "AS IS" BASIS, AND CUSTOMER'S AND ITS USERS' USE OF THE EQUIPMENT AND SERVICE ARE AT CUSTOMER'S OWN RISK. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AND EXCEPT FOR ANY THIRD PARTY MANUFACTURERS' WARRANTIES THAT MAY BE APPLICABLE TO THE EQUIPMENT PURCHASED BY CUSTOMER, AND EXCEPT TO THE EXTENT PROHIBITED BY LAW, VONAGE AND ITS AFFILIATES, SUPPLIERS, AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FUNCTION, USAGE OF TRADE, COURSE OF DEALING, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, RELIABILITY, QUIET ENJOYMENT, OR THAT THE SERVICE OR EQUIPMENT WILL OPERATE UNINTERRUPTED OR ERROR FREE.

UNLESS EXPRESSLY STATED, VONAGE DOES NOT WARRANT THAT ANY SERVICE OR EQUIPMENT WILL BE AVAILABLE ON A SPECIFIED DATE OR TIME OR THAT THE NETWORK WILL HAVE THE CAPACITY TO MEET THE DEMAND OF USERS DURING SPECIFIC HOURS, AND DISCONNECTION FROM THE SERVICE



MAY OCCUR FROM TIME TO TIME. FURTHER, OTHER THAN AS EXPRESSLY STATED, VONAGE DOES NOT WARRANT THAT THE EQUIPMENT OR SERVICES WILL MEET THE CUSTOMER'S REQUIREMENTS OR THAT THE SERVICES OR EQUIPMENT WILL OPERATE IN COMBINATION WITH OTHER SERVICES OR EQUIPMENT NOT PROVIDED BY VONAGE. VONAGE SHALL NOT BE RESPONSIBLE FOR ANY OF CUSTOMER'S INFORMATION AND/OR DATA THAT MAY BE LOST, DAMAGED OR CORRUPTED DURING CUSTOMER'S USE OF THE SERVICES, IF AND TO THE EXTENT SUCH INFORMATION AND/OR DATA RESIDES ON THE CUSTOMER'S PC, SYSTEM, OR NETWORK AND HAS NOT BEEN PROVIDED BY VONAGE AS PART OF THE SERVICES.

CUSTOMER UNDERSTANDS AND AGREES THAT NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY VONAGE, ITS EMPLOYEES, AGENTS, OR CONTRACTORS, SHALL CREATE ANY ADDITIONAL WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF VONAGE'S OBLIGATIONS.

Customer represents and warrants that: (a) the Customer or the Customer's licensors own all right, title, and interest in and to the Content or are authorized to use the Content in accordance with this Agreement; (b) Customer has all rights in the Content necessary to grant the rights contemplated by this Agreement; and (c) none of the Content or End Users' use of the Content or the Services will violate the Acceptable Use Policy or any applicable law; (d) the information provided by Customer in connection with registration for, subscription to, and use of the Cloud Services is accurate and complete; (e) no Content Customer uploads to or stores on the Cloud Services is illegal, defamatory, malicious, harmful, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age; (f) Customer accurately and adequately discloses how it collects and treats data collected from visitors to any website.

Vonage personnel may from time to time recommend third party software or other products and services for Customer's consideration. Vonage MAKES NO REPRESENTATION OR WARRANTIES WHATSOEVER REGARDING PRODUCTS AND/OR SERVICES THAT ARE NOT PURCHASED FROM Vonage. Customer's use of any such products and/or services is governed by the terms of Customer's agreement with the provider of those products and services.

6. Equipment.

Customer is responsible for all costs at its premises, including, without limitation, costs related to Customer's personnel, wiring, computer equipment, Customer Equipment, Internet access (in situations where Vonage is not the Internet service provider), electrical power, and similar costs, all of which may be necessary for the use of the Service and any Equipment.

7. Software

Vonage uses certain software and related components licensed by Vonage from third parties. Customer shall not use any such third party software and related components except only in conjunction with the proper and authorized use of the Service and Equipment. Customer agrees to be bound by and will comply with, any and all third party license terms and conditions as applicable. Vonage shall not be responsible for or liable to Customer for Customer's use of any third party software or products.

8. Third Party Networks and Network Monitoring

(a) Vonage utilizes the public Internet and third-party networks in conjunction with its provision of the Service and the Website. Vonage makes no representation that the Internet or any third-party network will adequately protect the privacy of Customer's or any User's personal information, and Vonage expressly denies any liability associated therewith.

(b) Monitoring. Vonage may monitor Customer's Account and Customer's and Users' use of the Service, and Customer authorizes

Vonage to do so, in all of the following situations: to respond to service or technical problems; to monitor compliance with this Agreement or any Service Order; if there has been an actual or suspected violation of this Agreement or any Service Order; to assess or determine that the Service and any Equipment are properly implemented and configured; at Customer's request; or to protect the integrity of the Vonage network or Customer's use of the Service, in any emergency situation; or any other situation in which Vonage, in its good faith judgment, deems appropriate under the circumstances.

9. Financial Terms

Prices and Charges. In addition to paying for all applicable non-recurring and professional services charges, Customer shall, throughout the Initial Term and any Renewal Term, pay the monthly recurring charges set forth in the Customer Service Order Agreement. All such monthly recurring charges shall apply irrespective of whether Customer decreases, abandons, and/or cancels the number of users that use the Service during such the Initial Term or any Renewal Term. Subject to Section 2(k), Customer agrees and acknowledges that Vonage may start billing, and Customer is obligated to pay, for data services once the data circuit ordered by Customer has been delivered at the designated Customer premises. Vonage may increase, decrease, change, or modify any of its rates for any Service at any time; provided, however, that such changes shall not be effective until at least thirty (30) days after written notice is given to Customer. If Vonage incurs additional costs due to (i) an increase in the price of equipment due to any delay caused by Customer in the installation of a Service pursuant to Section 2(k), (ii) if Customer changes the original installation location, causing Vonage to move equipment and circuits, (iii) Customer upgrades any Service which causes increased costs to Vonage; then Customer shall be responsible for any such increased and additional costs to Vonage, which may include but not be limited to, duplicate/additional billing costs (e.g. Vonage paying for multiple circuits simultaneously – circuits at the original installation location and also for circuits at the new Service location until the Customer is fully installed in the new location).

(a) Taxes, Fees, and Professional Services.

(i) Taxes. Federal, state, local, county, municipal, and other government or regulatory agencies may assess taxes, including, without limitation, excise, franchise, sales, value-added, use, personal and real property taxes, surcharges and/or fees ("Taxes") on Customer's purchase and/or use of the Service and/or Equipment. These Taxes may change from time to time, with or without notice to Customer. Customer is responsible for the payment of all applicable Taxes now in force or enacted in the future. Such amounts are in addition to the charges paid for the Service and Equipment. If Customer is exempt from any or all Taxes, it must provide Vonage with an original certificate that satisfies applicable legal requirements attesting to its tax exempt status. Tax exemption shall only apply from and after the date that Vonage receives such valid certificate.

(ii) Fees. In addition to any Taxes imposed by governments or regulatory agencies, Vonage reserves the right to charge or increase various government or regulatory related fees ("Fees"), including, without limitation, activation fees, E911 Service fees, universal service fees, and regulatory recovery fees. Any imposition of or increase in Fees that are imposed by a government or regulatory agency or that are intended to recover costs associated with government or regulatory programs may, in Vonage's sole discretion, be effective immediately upon posting to the Website.

(iii) Professional Services. If, at any time during the Initial Term or any Renewal Term, Customer requests Vonage to provide any type of support service(s) which is outside the scope of routine customer support (i.e., unrelated to an operational problem with the Vonage network or Vonage service) or a situation or matter not caused by Vonage (e.g., equipment setup not requested during the initial installation; additional



training after any requested formal training; questions about customer-provided equipment), Vonage shall have the right to charge, and Customer agrees to pay, a professional services fee for any such support services provided by Vonage to Customer which are outside the scope of routine customer support. As of January 1, 2013, the professional service fee in effect is up to two hundred and ninety-five dollars (\$295) per hour with a thirty (30) minute minimum charge. The imposition of a professional services fee as set forth in this Section shall not constitute a rate increase as described in Section 9(a) and shall not give Customer a right to terminate this Agreement or any Service Order pursuant to Section 9(a).

(b) **Billing and Payment.**

Payment. All Vonage invoices are due upon receipt and all payments must be made in U.S. currency. Customer shall pay monthly recurring charges for any partial month during the Initial Term or any Renewals Term on a pro rata basis. Customer is solely responsible for any and all charges incurred as the result of the use of the Service associated with its Account, whether or not such charges were authorized or intended. Vonage may suspend, restrict, or cancel use of the Service and Equipment, if Customer does not make full payment of all billed charges by the due date. Any amounts not paid to Vonage within thirty (30) days of the date of the applicable invoice shall accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum amount allowed by law, whichever is less. Customer shall also reimburse Vonage for all reasonable attorneys' fees and all other costs incurred by Vonage in connection with collecting delinquent payments or with Customer's breach of this Agreement. Customer shall be responsible for all sales, use, value added or other tax or duty arising from or related to this Agreement and the provision of Services and Equipment, except for taxes on Vonage's net income. For Cloud Services, the calculation of all fees for Services will be based solely on Vonage's records and data. All computing overheads, including storage and bandwidth, will be included in the calculation of Customer fees. Customer is solely responsible for all fees relating to servers and storage that are associated with the applicable Cloud Services account pursuant to the CSO, and for any fees that are incurred until the Services are deactivated.

(i) **Invoice and Statement Periods, Format and Delivery.** Billing periods and invoice formats may vary. Vonage reserves the right to change the billing period, invoice format, or method of delivery from time to time, with or without notice to Customer. Unless otherwise agreed, all invoices shall be delivered electronically via the email address on file for Customer's Account. Customer is obligated to keep its Account information accurate and current. An incorrect or obsolete email address shall not release Customer from any of its payment obligations.

(ii) **Methods of Payment.** In its sole discretion and in limited instances, Vonage reserves the right to accept payment by credit card. Customer acknowledges and agrees that each credit card payment is subject to a credit card processing fee of twenty-five dollars (\$25) and an additional charge of 0.04% of the amount due. In situations where Vonage agrees to accept payment by credit card, Vonage reserves the right to discontinue acceptance of payment by credit card at any time.

(iii) **Prepayment.** Unless otherwise agreed to in writing by Vonage, all monthly recurring charges for Service and Equipment will be billed and paid one calendar month in advance. Vonage has the right to bill and Customer shall pay for all non-recurring and professional services plus applicable taxes prior to the Service Activation Date. All usage and related charges will be billed and paid in arrears as and when they are incurred and remain subject to the payment terms set forth in this Agreement.

(iv) **Billing Disputes.** If Customer believes that it has been charged in error, or if Customer believes that it is due a credit or refund, Customer must notify Vonage in writing per the Section 16 (b), within thirty (30) days after delivery of Vonage's invoice. Any billing disputes must be submitted using the Vonage Credit Request Form, including a detailed statement describing the nature and amount of the disputed charge(s) and the reason(s) why a credit or refund is being requested, and sent

via certified or overnight mail, return receipt requested, to the attention of:

Billing Department
Vonage Business Networks, Inc.
7900 Westpark Drive, Suite A-315
McLean, Virginia 22102

Customer shall cooperate fully with Vonage to promptly address and attempt to resolve the disputed charge(s). If Customer fails to provide proper written notice of dispute within the enumerated thirty (30) day deadline, the charges and invoice will be considered correct and binding on Customer. Irrespective of the foregoing, Customer shall pay the full amount of the invoice, including the disputed amounts, in a timely manner and in accordance with the payment terms set forth in this Agreement.

(c) **Service Suspension, Termination and Restoration.** Vonage may suspend or terminate Customer's Service, and may terminate this Agreement, if Customer fails to meet any or all of its' payment obligations. If Customer's Service has been suspended or terminated, Vonage may, at its sole option, choose to restore or re-establish Customer's Service prior to the payment of all charges due. Such restoration or re-establishment shall not be construed as a waiver of Vonage's right to receive full payment for all charges due or as a waiver of any rights to suspend or disconnect Service for non-payment of any such charges due and unpaid or for the violation of any provision of this Agreement; nor shall the failure to suspend or disconnect Service for non-payment of any past due amount operate as a waiver or estoppel to suspend or disconnect Service for non-payment of such Account or of any other past due Account. If Service is suspended for non-payment of charges, it will be only restored when all charges are paid in full and at Vonage's discretion.

(d) **Authorization to Verify Credit Rating.** Customer agrees to supply Vonage with the information necessary to verify Customer's credit rating prior to providing Customer with access to any Service or Equipment. Vonage may also, during the term of this Agreement, update its information regarding Customer's credit rating without notice to Customer.

(e) **Deposit.** If Vonage determines, prior to providing Customer with access to any Service or Equipment, or during the term of this Agreement or any Service Order, that it requires a deposit to ensure Customer's payment, Customer may be required to provide a deposit. In the event Vonage requires a deposit, the deposit will be held and applied as required by law. Vonage may apply Customer's deposit to past due obligations as well as to any fees or other assessments to Customer's Account.

10. Trademarks and Intellectual Property

Customer shall not to use any of Vonage's trade names, trademarks, service marks, or logos without Vonage's express written consent.

Except for the specific rights stated herein, this Agreement does not convey to either party any ownership right or license to use, sell, exploit, copy or further develop the other party's Confidential Information or intellectual property, including patents, copyrights, trademarks, trade names and trade secrets. Each party retains all right, title and interest in and to its confidential information, and respective trade secrets, inventions, copyrights, and other intellectual property. Customer acknowledges that Vonage or its licensors or vendors own all right, title and interest in and to the Services, all copies thereof, and all proprietary rights therein, including copyrights, patents, trademarks, logos, domain names, or other brand features of Vonage. Any intellectual property developed by Vonage during the performance or provision of the Services shall belong to Vonage. The Services may include various utility and deployment scripts, customizations to templates, code extending the functionality of third party applications licensed to Vonage, printed and electronic documentation, and other data that Vonage may have or may develop



at its own expense before and while the Agreement is in effect (the "Vonage Content"). Subject to Customer's compliance with this Agreement, Vonage grants a limited, revocable, non-exclusive, non-transferable, non-assignable, worldwide, royalty-free license to use Vonage Content while the Agreement is in effect solely to access and use the Services in accordance with the terms and conditions of this Agreement and the applicable Exhibit. You may not translate, reverse engineer, decompile, disassemble, rent, lease, assign, transfer, redistribute, or sublicense any Vonage Content, Vonage Equipment, or Services.

Customer does not acquire any ownership interest in or right to possess the Hosted System, Vonage Content, Vonage Equipment, or any of the Services, and Customer has no right of physical access to a Hosted System. We do not acquire any ownership interest in or right to the Content you transmit to or from or store on the Cloud Services, any Vonage servers, or other devices or media.

11. Service Disconnection.

Vonage reserves the right to terminate the Service or Customer's use of the Equipment in the event Customer or any User is in violation of this Agreement. Vonage may be required by law to interrupt the service in the event it causes interference to the Vonage network, any party, or any equipment.

12. Indemnification.

(a) Vonage shall, at its expense, indemnify, defend and hold harmless Customer, its officers, directors, employees, agents, and contractors, from and against any third party claim, action, proceeding, liability, loss, damage, cost and expense, including reasonable attorneys' fees and court costs to the extent caused by the gross negligence or willful misconduct of Vonage and arises from the Vonage Service infringing a thirdparty's rights under any United States registered patent, copyright, or trademark.

(b) Customer shall, at its expense, indemnify, defend and hold harmless Vonage, its officers, directors, employees, agents, and contractors, from and against any and all losses, damages, claims, allegations, causes of action, liabilities, penalties, fines, costs and expenses, including, without limitation, reasonable attorneys' fees and court costs, arising from or relating to: (i) any act, error, omission, fault, negligence, or misconduct of Customer or any User of the Service or Equipment; (ii) any breach by Customer of any term or condition of any Service Order or this Agreement or Customer's breach of any warranty, representation or covenant in any Service Order or this Agreement; (iii) any claim by any employee or invitee of Customer or User other than a claim based on the gross negligence or willful misconduct of Vonage; (iv) any claim by any customer of Customer, User, or any other third party relating to, or arising from, Customer's use of the Services or Equipment; or (v) violation of any law or regulation by Customer, any User, or any Customer employee, contractor, or agent.

(c) Each party's indemnity obligations are subject to the following: (i) the aggrieved party shall promptly notify the indemnifier in writing of the claim; (ii) the indemnifier shall have sole control of the defense and all related settlement negotiations with respect to the claim (provided that the indemnifier may not settle or defend any claim unless it unconditionally releases the aggrieved party of all liability); and (iii) the aggrieved party shall cooperate fully to the extent necessary, and execute all documents necessary for the defense of such claim.

13. Confidentiality.

(a) Each party (a "Receiving Party") acknowledges that it and its employees, contractors, or agents may, in the course of providing or using the Services and/or otherwise satisfying its obligations hereunder, be exposed to or receive information which is proprietary or confidential to the other party (a "Disclosing Party"). Any and all such information in any form obtained by a Receiving Party

or its employees, contractors, or agents in the provision or use of the Services or the satisfaction of such party's obligations under this Agreement, including but not limited to the financial terms of this Agreement or any Service Order, product and business information, financial information, trade secrets, know-how and information regarding processes, shall be deemed to be the confidential and proprietary information ("Confidential Information") of the Disclosing Party. The Receiving Party agrees (a) to hold all Confidential Information in strict confidence; (b) to disclose Confidential Information only to employees and/or contractors of the Receiving Party who have a need to know such Confidential Information and who are obligated to hold such Confidential Information in strict confidence; and (c) not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose such Confidential Information to third parties, or to use such Confidential Information for any purposes whatsoever other than in connection with the Receiving Party's performance under this Agreement.

(b) Confidential Information shall exclude all information, which (a) is at the time of disclosure or thereafter becomes a part of the public domain through no act or omission of the Receiving Party, its employees, contractors, or agents; (b) was in the Receiving Party's possession as shown by written records prior to the disclosure and had not been obtained by Receiving Party either directly or indirectly from the Disclosing Party; (c) is hereafter disclosed to the Receiving Party by a third party who did not acquire the information directly or indirectly from the Disclosing Party hereunder; (d) was independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information, as evidenced by written records; or (e) was required by law to be disclosed, but only to the extent and for the purposes of such required disclosure.

14. Governing Law and Dispute Resolution.

(a) This Agreement and the terms of any CSO, CPE, SOW's, or any other Agreement(s) between the parties in connection with the Services and/or Equipment, including but not limited to, any Exhibits, Amendments and Addendums, shall be governed by and enforced according to the laws of the Commonwealth of Virginia without giving effect to any conflicts of laws rules, and regardless of where the Services are being provided.

In the event of any controversy or claim arising from or related to any of the Services and/or Equipment provided by Vonage, this Agreement, its performance or interpretation, or any other dispute between the parties, the parties agree that they will, in good faith, initially attempt to resolve the dispute between them pursuant to the terms and conditions as stated in this Agreement. Any and all disputes, controversies, claims, collection efforts, and any other breach or claimed breach by either party, including but not limited to, any and all disputes, controversies and claims arising out of or relating to this Agreement or any related agreement for any reason, shall be brought in the state courts in Fairfax County, Virginia. The parties agree that said venue is proper, and the parties hereby irrevocably consent and submit to the exclusive jurisdiction of such court for the resolution of any claim under this Agreement. Each party hereto waives any objection based on forum non-conveniens, and agrees not to assert any defense to any suit, action or proceeding initiated by the other based upon improper venue or inconvenient forum, and agrees to waive any objection to venue of any action instituted hereunder. Each party irrevocably consents to personal jurisdiction and venue exclusively in, and agrees to service of process issued or authorized by, any such court identified above. The parties also waive any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement and any applicable agreements related thereto. Vonage shall be reimbursed for all attorneys' fees and costs in the event it institutes any action to enforce its rights under this Agreement and any related agreement.

15. Severability.

This Agreement is made subject to all present and future valid orders and regulations of any regulatory body or court having jurisdiction over the subject matter hereof and to the laws of the United States, any of its' states



or any foreign governmental agency having jurisdiction. In the event that any of the provisions of this Agreement or any part thereof shall be determined by a competent authority to be invalid, unlawful or unenforceable to any extent, such provision or part thereof shall to that extent be severed from the remaining provisions of this Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.

16. Notice.

(a) To Customer: Unless expressly stated otherwise in this Agreement, in the event Vonage is required or desires to provide Customer with notice under this Agreement, it will provide electronic notice to the e-mail address on file. In the event that Customer changes its e-mail address, Customer shall advise Vonage immediately in writing. By Customer's acceptance of these Universal Terms, Customer agrees to electronic delivery of all required notifications including invoices, unless otherwise provided for herein.

(b) To Vonage: Unless expressly stated otherwise in this Agreement, in the event Customer is required or desires to provide Vonage with notice, **all correspondence must be in writing and sent, via certified mail, return receipt requested, or overnight courier service, to the following address:**

**Legal Department
Vonage Business Networks, Inc.
7900 Westpark Drive, Suite A-315
McLean, Virginia 22102**

17. Waiver.

The failure of either party to enforce or insist upon compliance with any of the provisions of this Agreement or the waiver thereof, in any instance, shall not be construed as a general waiver or relinquishment of any other provision of this Agreement.

18. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns and any User who uses the Services under Customer's Account.

19. Assignment.

Customer shall not assign any of its' rights or obligations under this Agreement, or transfer ownership of the Account or any Service or Equipment, without Vonage's prior written consent.

20. Entire Agreement and Merger.

This Agreement, along with the Customer Service Order Agreement(s) and the E911 Disclosure, supersedes and merges all prior agreements, promises, understandings, statements, representations, warranties, indemnities, covenants, and all inducements to the making of this Agreement relied upon by either party, whether written or oral, and embodies the parties' complete and entire agreement with respect to the subject matter hereof. Subject to Sections 2(a) and 20, no statement or agreement, oral or written, shall vary or modify the written terms hereof in any way whatsoever.

21. Independent Contractors.

Vonage and Customer are independent contractors and any Service Order(s) and this Agreement do not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties. Neither party has the power to bind the other or incur obligations on the other's behalf without the other party's prior written consent.

22. Basis of Bargain; Failure of Essential Purpose.

Customer acknowledges and agrees that Vonage has established its prices and entered into one or more Customer Service Order Agreements in reliance upon the limitations and exclusions of liability and the warranty

disclaimers set forth in these Universal Terms 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 disclaimers specified in these Universal Terms 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 these Universal Terms by reason of such failure.

23. Third Party Beneficiaries.

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 incorporated into, provided in conjunction with, or licensed with, the Services and/or Equipment provided by Vonage, and each such licensor, service provider, equipment provider and equipment lessor is expressly made a third party beneficiary under the applicable Customer Service Order Agreement(s) and this Agreement. Such licensor, service provider, equipment provider, and equipment lessor shall have the right to enforce the terms and conditions of the Customer Service Order(s) and this Agreement respecting any terms affecting such licensor, service provider, equipment provider, or equipment lessor as if such person, company, or entity were a party to the Customer Service Order(s) and/or this Agreement.

24. Facsimile Transmission/Counterparts.

This Agreement including any Service Orders may be executed and delivered by facsimile or email, and upon receipt such transmission shall be deemed delivery of an original. This Agreement including any Service Orders may be executed in several counterparts each of which when executed shall be deemed to be an original, and such counterparts shall each constitute one and the same instrument.

25. Force Majeure.

Neither party to this Agreement shall be liable to the other for any failure or delay in performance by circumstances beyond its control, including, without limitation, acts of God, flood, fire, labor difficulties, governmental action, or terrorism, provided that the party seeking to rely on such circumstances gives written notice of such circumstances to the other party hereto and uses reasonable effort to overcome such circumstances.

26. Interpretation of Agreement/Order of Interpretation.

This Agreement, any Exhibit, any CSO, and any CPE Agreement will be construed and interpreted fairly in accordance with the plain meaning of its terms, and there will be no presumption or inference against the party drafting any such Agreement. In the event of any inconsistency between or among any of the aforementioned Agreements, the following order of precedence shall apply and govern: (1) the applicable CSO; (2) the terms and conditions of this Agreement; and (3) any Exhibit to this Agreement. If any Service provided or provisioned by Vonage is undetermined by the CSO as being provided pursuant to the terms and conditions contained in this Agreement, Exhibit A or Exhibit B, Vonage shall have the exclusive right to designate which document shall apply and govern with respect to such Service.

27. Non-solicitation. During the Term of this Agreement or while Company is otherwise providing any Services to Customer, and for a period of two (2) years thereafter, Customer shall not, directly or indirectly, for its own benefit or for, with or through any other person, firm, corporation, or other entity solicit or attempt to solicit any employee, subcontractor or customer of Company, including but not limited to, ending his or her employment or business relationship with Company or to work in any capacity for any person or entity other than Company; or (ii) attempt to hire, employ, or associate in business with any person employed by Company or who has left the



employment of Company within the preceding twenty four (24) months, or discuss any potential employment or business association with such person. If Customer breaches this provision, it shall promptly pay to Company, as liquidated damages and not as a penalty, an amount equal to the employee's or subcontractor's total annual compensation amount based on the annualized run rate which was in effect immediately before the termination of his or her employment or engagement with Company, plus lost profits and business opportunities Vonage suffers as a result.