

# **ATTACHMENT 1**



## MASTER SERVICES AGREEMENT (Enterprise)

This Master Services Agreement ("MSA" or "Agreement") is made by and between Vonage Business and CITY OF LAKE FOREST ("Customer" or "THE CITY") with an effective date of May 24, 2015 (the "Effective Date"). The terms and conditions set forth below in this MSA (hereinafter sometimes referred to as the "Terms" or "MSA") apply to the use of products or services provided by Vonage Business ("Vonage Business," "Vonage" or "Company") to the Customer. The Customer and Vonage Business are sometimes collectively referred to herein as the "Parties," or individually as a "Party." By its authorized signature below, or by ordering, purchasing or using the Services, Customer agrees to be bound by these Terms.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions:** The following capitalized terms, as used in this Agreement, shall have the meanings set forth below:

"Affiliate(s)" means any entity that Controls, is Controlled by or under common Control with the entity. "Control," for purposes of this definition, means the direct or indirect ownership or control of more than fifty percent (50%) of the voting equity of the subject entity, by contract or otherwise.

"Applicable Laws" means any and all applicable federal, state or local laws, rules or regulations including applicable restrictions concerning call recording, call monitoring, call interception and/or direct marketing or telemarketing.

"AUP" means the Vonage Business acceptable and reasonable use policy set forth at <https://enterprise.vonage.com/AUP>].

"CPNI" means Customer Network Proprietary Information.

"Customer Data" means any data, information or other materials of any nature whatsoever generated by Customer and/or the authorized users of the Services, or provided to Vonage Business by or through Customer, in the course of implementing or using the Services.

"Customer Equipment" means all equipment owned, leased or otherwise provided by Customer, or which is specifically identified in one or more Sales Orders as Customer Equipment, used in connection with the Services. "Customer Equipment" includes equipment sold by Vonage Business to Customer, but does not include Vonage Business Equipment.

"Customer Location(s)" means the physical premises(s) owned, leased or otherwise occupied by Customer where Services are provided or Vonage Business Equipment will be used or stored.

"E911 Acknowledgement" means the provisions set forth in Exhibit V-A attached hereto and incorporated herein by this reference stating Vonage Business's policies regarding the availability and limitations of E911 service.



“Initial Service Term” means the period of time stated in a Sales Order during which Vonage Business will provide Services to Customer.

“Private Circuit” means a telecommunications circuit provided or managed by Vonage Business and used in connection with the Services.

“Renewal Service Term” means a period of time after expiration of the Initial Service Term as agreed by the parties.

“Sales Order” means a valid and binding agreement for the purchase of Services that has been signed by an authorized representative of Customer and accepted by Vonage Business and shall automatically incorporate these Terms by reference.

“Service” or “Services” means the products and services described in Exhibit V-B attached hereto, and as otherwise provided or made available by Vonage Business to Customer pursuant to a Sales Order.

“Service Date” means the date that Service is installed, activated (including the porting of any numbers) and available for Customer’s use at a Customer Location.

“Service Level Agreement” (or “SLA”) means, individually and collectively, the service level objectives that Vonage Business provides (including the terms and conditions that outline Vonage Business’s responsibilities thereof) in connection with delivery and maintenance of the Service by Vonage Business to Customer as expressly set forth in Exhibit V-C attached hereto.

“Service Term” means the Initial Service Term and all subsequent Renewal Service Terms.

“Shipping and Handling” means any fees and costs payable by Customer to Vonage Business in connection with packaging, shipping or processing Vonage Business Equipment or Customer Equipment to a Customer Location.

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

“Taxes and Fees” means any taxes and fees arising in any jurisdiction imposed on or incident to the provision, sale or use of Service and Vonage Business Equipment, including value added, sales, use, gross receipts, excise, franchise, public utility or other taxes, fees, duties or surcharges (including universal service, 911 and other regulatory fees and surcharges), and certain recovery fees, whether imposed on or by Vonage Business or a Vonage Business Affiliate.

“Vonage Business” means Vonage Business Inc., a Delaware corporation, or any Vonage Affiliate providing Services to a Customer under this Agreement.

“Vonage Business Equipment” means all equipment that is used, leased or otherwise provided by Vonage Business, whether or not at no additional cost or charge to Customer, in connection with the Services, including phones, routers, switches and battery backup placed on the Customer Locations, but expressly excluding any Customer Equipment.

## **2. Services, Pricing and Orders.**



a. **Services and Pricing.** The Services made available to Customer (as may also be specified in the applicable Sales Orders), together with applicable pricing and additional terms and conditions, are set forth on Exhibit V-B attached hereto.

b. **Sales Orders.** All Services will be purchased by Customer pursuant to a Sales Order that may include: (i) the products, price, location, and other information about the Services; (ii) the details relating to any Vonage Business Equipment being provided to Customer; and (iii) any associated installation, maintenance or delivery requirements. Upon execution of a Sales Order by Customer and Vonage Business, Vonage Business will provide, and, commencing on the Service Date for the applicable Customer Location, invoice Customer for each Service pursuant to the terms and conditions of each Sales Order and this Agreement. Vonage Business will provide, and Customer will pay for and receive from Vonage Business each Service pursuant to the terms and conditions of each Sales Order. A Sales Order may only be amended in writing signed by both Customer and Vonage Business. Customer may increase the quantity of Services at existing Customer Locations at any time during the Initial Service Term or Renewal Service Term ("Additional Services") by entering into an addendum or change order that sets forth the specific Additional Services requested. Each such addendum or change order shall be subject to Vonage Business's acceptance (including by the rendering of the Additional Services), and upon such acceptance shall be considered an amendment to this Agreement and subject to the terms herein. Service Fees will be increased to reflect the Additional Services, subject to the same pricing and payment terms as are set forth in the applicable Sales Order. Additional Customer Locations must be contracted under new Sales Orders.

3. **Additional Terms, Conditions and Policies.** These Terms incorporate and include all additional terms, conditions and policies that are (i) set forth in an addendum, schedule, exhibit or amendment to these Terms, (ii) set forth in the SLA, and (iii) set forth at <https://www.vonage.com/legal-policy-center> (at headings labeled "Mid-Market & Enterprise" and "General") ("Additional Terms"). To the extent that these Terms conflict with the provisions of any Additional Terms, then these Terms shall control, unless the Parties have expressly stated or agreed otherwise in writing, and the conflicting provisions of the Additional Terms shall be deemed modified to the minimum extent necessary to be read consistently with the Terms. These Terms and any Additional Terms (collectively, sometimes referred to as "Terms") supersede and replace all terms and conditions set forth in any documents issued by Customer, including Customer-issued purchase orders and specifications not agreed to in writing by the Parties. The Parties agree and acknowledge that Vonage Business may periodically update the AUP and Privacy Policy to ensure the responsible, fair and reasonable use of Vonage Business's networks, services, systems, web sites and products, and to ensure compliance with Applicable Laws; provided however that no such update shall be binding on Customer, its Affiliates or any of its users of the Services unless (a) Vonage has provided Customer with thirty (30) days prior written notice thereof, and (b) Customer has agreed in writing to such update (which agreement shall not to be unreasonably withheld, conditioned or delayed). Notice may be provided by e-mail to the most recent email address associated with Customer's account.

#### 4. **Installation and Equipment.**

a. **Installation Schedule and Process.** Vonage Business will deliver, install, setup and test, and Customer will accept, the Services as specified in an applicable Sales Order.

b. **Permissions and Consents.** Customer shall provide Vonage Business, at no cost to Vonage Business, all reasonable or required permissions, consents or authorizations necessary to install, activate, maintain, inspect, alter, repair and replace the Service and any Vonage Business Equipment, including the right to access and enter Customer's Locations upon reasonable prior notice and agreement of Customer (not to be unreasonably withheld, conditioned or delayed).

c. **Special Installation Costs.** Vonage Business may charge, and Customer shall pay, all recurring and nonrecurring costs, charges and expenses incurred by Vonage Business for Customer's benefit in connection with 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. Special Install Costs will be invoiced to Customer as soon as practicable following the Service Date for the applicable Services.

d. **Customer Equipment.** Customer understands and acknowledges that installation and delivery of the Services may require the use of certain Customer Equipment and/or Vonage Business Equipment. Customer represents that it owns or otherwise has the right to use the Customer Equipment in connection with the Services. Customer shall be fully responsible for the installation, maintenance, repair and operation of any Customer Equipment and shall ensure the compatibility of any Customer Equipment with Vonage Business Equipment. Vonage Business will work with Customer and provide guidance and applicable specifications relating to compatibility of the Customer Equipment. Customer will not (i) relocate, rearrange, repair, disconnect or otherwise modify the Service or any Vonage Business Equipment without Vonage Business' prior written consent; or (ii) create or allow any liens or other encumbrances to be placed on any Vonage Business Equipment. Customer will use commercially reasonable efforts to protect and maintain Vonage Business Equipment in a secure location at the Customer Locations within conditions (including room temperature) that are customary and reasonable for such equipment, and shall be fully liable for all costs, charges or expenses associated with damage to or loss of Vonage Business Equipment beyond normal wear and tear. Any Vonage Business Equipment (and any replacements thereof) may be refurbished equipment, so long as the equipment is of good quality and appearance and supports the Services.

e. **Equipment Returns after Purchase.** Equipment purchased by Customer from Vonage Business may not be returned to Vonage Business for any reason. ALL EQUIPMENT SALES ARE FINAL. Any equipment returned to Vonage Business may be refused. Equipment sold by Vonage Business to Customer may be returned to the manufacturer solely in the event of a defect which arises within the applicable warranty period, provided Customer complies with the terms of this Section and the Return Materials Authorization ("RMA") policy terms provided by Vonage Business. Prior to returning the purchased equipment, Customer must contact Vonage Business so that Vonage Business can determine whether a defect exists, process a warranty claim on behalf of Customer and to provide an RMA number. Customer must ship the equipment, undamaged and in its original packaging and content to the address provided by Vonage Business in accordance with all RMA procedures. Customer has fifteen (15) days after receipt of an RMA to ship the equipment. Customer must pay all shipping fees. Once the equipment is received, the original equipment manufacturer will handle the return in accordance with the applicable warranty policy.

f. **Equipment Return upon Termination.** Upon the termination of this Agreement or any Service, Customer shall securely pack, ship and return to Vonage Business all Vonage Business Equipment at Customer's expense, to the address designated by Vonage Business. If the Vonage Business Equipment has not been timely returned to Vonage Business within fifteen (15) days after the termination of the applicable Service, Vonage Business shall invoice Customer and/or charge Customer's method of payment, and Customer shall pay, for the full replacement value of any Vonage Business Equipment. Vonage Business Equipment remains the property of Vonage Business at all times and Vonage Business reserves all other rights and remedies including retrieval. Customer will not withhold access to Vonage Business to retrieve unreturned equipment, Vonage may charge Customer's selected method of payment,



and Customer will pay and be liable for up to a five hundred dollar (\$500.00) equipment return fee per Customer location.

g. **Equipment and Data Backup.** As part of the Service installation process, system files on Customer Equipment may be modified to the extent required for operation of the Service. Such modifications may disrupt the normal operations of Customer Equipment, including the possible corruption or loss of data stored on computer(s). Customer understands and acknowledges that installation, use, inspection, alteration, maintenance, repair or removal of the Vonage Business Equipment may result in a temporary interruption to Service or damage to Customer Equipment, software and loss of data. Customer covenants to back-up all existing computer files by copying them to another storage medium prior to the installation of Vonage Business Equipment and Software. Customer acknowledges, understands and accepts the risks of not making such a backup, including the loss of some or all of Customer's software or data, or damage to Customer Equipment. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, VONAGE BUSINESS SHALL HAVE NO LIABILITY FOR ANY DAMAGE TO, LOSS OF OR DESTRUCTION OF CUSTOMER'S EQUIPMENT, PERIPHERALS, SOFTWARE OR DATA DURING SUCH INSTALLATION.

## 5. **Software.**

a. **Non-Exclusive License.** If Software is provided by Vonage Business in connection with the Services, Vonage Business grants to Customer a personal, limited, revocable, non-exclusive, non-assignable and non-transferable license to use the Software, in object code form only, solely for the purpose of using the Service. This license will permit such use by Customer and any of its employees or contractors (but only within the scope of their employment or services with Customer) authorized by Customer to use the Service, provided that Customer shall be responsible for all uses of the Service as provided in this Agreement. This license commences upon Vonage Business's acceptance of the Sales Order for the Service and terminates immediately -upon the expiration or termination of this Agreement for any reason. Customer shall return or destroy all Software and any related written material, together with any copies, in its possession or under its control promptly upon the expiration or termination of this Agreement for any reason. Any attempt to sublicense, assign or transfer any of the rights, duties or obligations under this license is void and may result in termination by Vonage Business of this Agreement and the license. No other licenses or rights to the Software are granted or implied.

b. **End User Licenses.** Certain Software Vonage Business provides 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 may be found or identified in documentation or on other media delivered with the Third-Party Software and which are incorporated by reference into this license. Notwithstanding any other terms in this Section 5, such provisions shall govern the use of Third-Party Software. Vonage Business shall provide or make available to Customer all end user license agreements pertaining to Software (including Third Party Software) or plug-ins to Software that are provided in connection with the Services. Vonage Business shall ensure that such end user license agreements grant Customer the right to use such Software as necessary for Customer to use the Services in accordance with this Agreement. Customer agrees to comply with the terms and conditions of all end user license agreements that are provided or made available to Customer for any Software (including Third-Party Software) or plug-ins to such Software distributed in connection with the Service. All end user licenses shall remain in effect for so long as the Services are provided by Vonage, but immediately terminate on the date that the Service expires or this Agreement is terminated.

c. **Copyright / Trademark / Unauthorized Usage of Device, Firmware or Software.** The Service, Vonage Business Equipment and Software and all information, documents and materials on

Vonage Business's website(s) are protected by trademark, copyright, patent and other intellectual property laws and international treaty provisions. All such websites, website content, corporate names, service marks, trademarks, trade names, logos and domain names of Vonage Business are and shall remain the exclusive property of Vonage Business or its Affiliates and nothing in this Agreement shall grant Customer the right or license to use any of the foregoing. All information, documents and materials on the website(s) of Customer and/or its Affiliates are protected by trademark, copyright, patent and other intellectual property laws and international treaty provisions. All such websites, website content, corporate names, service marks, trademarks, trade names, logos and domain names of Customer and/or its Affiliates are and shall remain the exclusive property of Customer or its Affiliates and nothing in this Agreement shall grant Vonage Business or its Affiliates the right or license to use any of the foregoing. Customer agrees that the Vonage Business Equipment is exclusively for use in connection with the Service and that Vonage Business will not provide any passwords, codes or other information or assistance that would enable Customer to use the Vonage Business Equipment for any other purpose. If Customer decides to use the Service through an interface device not provided or expressly approved by Vonage Business (Vonage Business reserves the right to reasonably prohibit such devices in particular cases or generally), Customer warrants and represents that it possesses all required rights, including software and/or firmware licenses, to use that interface device with the Service and Customer will indemnify, defend and hold harmless Vonage Business from and against any and all liability arising out of Customer's use of such interface device with the Service. Customer may not undertake, cause, permit or authorize the modification, creation of derivative works, or translate, reverse compile, disassemble, hack or reverse engineer, or otherwise attempt to derive the source code from the binary code of the Software.

d. **Software Changes.** Customer agrees to implement promptly all fixes, updates, upgrades and replacements of Software and Third Party Software as directed by Vonage Business or by the third party providers of Third-Party Software. Vonage Business shall not be liable for inoperability of the Services due to failure of Customer to timely implement the required changes.

## 6. **Service Term and Termination.**

a. **Service Term.** Each Sales Order will set forth the Initial Service Term. In the absence of a specific period of time stated in the Sales Order, the Initial Service Term shall be thirty-six (36) months. The Initial Service Term will begin on the Service Date. Sales Orders which describe delivery of Service to multiple Customer Locations may identify multiple Service Dates and Service Terms. Following the Initial Service Term, the Services will continue on a month-to-month Renewal Service Term until either Party terminates the applicable Sales Order by giving the other Party thirty (30) days advanced written notice of termination, with termination being effective 30-days following receipt of such notice, unless otherwise stated.. Notwithstanding notice by a Party to terminate this Agreement, Services with a remaining Service Term will remain in effect through the applicable Service Term and the terms and conditions of this Agreement and the applicable Sales Order will continue to apply to such Services until the end of such Service Term. Upon termination of the applicable Service Term, Vonage Business will not be obligated to furnish the Services to Customer; provided, however, if Vonage Business continues to provide Services and Customer accepts and continues to use the Services after termination of the Service Term, such use shall be on a month-to-month basis and Customer shall be obligated to pay for such Services at then-current monthly rates for such Services.

b. **Customer Cancellation and Termination Charges Prior to Service Date.** If Customer cancels all or any part of the Service prior to the Service Date for the applicable Service, except as may be expressly permitted by this Agreement, then Customer's liability for such cancellation shall be an amount equal to: (a) all charges (including applicable taxes) actually incurred by Vonage Business as a result of such cancellation, including recurring and non-recurring charges, third-party license fees or early

termination fees or charges associated with any Private Circuit or other Service; plus (b) two (2) months of the forecasted monthly recurring charges or monthly commitment level payments for the Service. Customer shall pay such cancellation amount within a reasonable time upon receipt of an invoice therefore.

c. **Customer Cancellation and Termination Charges After Service Date.** Customer may terminate specified Service(s) without cause after the applicable Service Date upon thirty (30) days' written notice to Vonage Business. If Customer terminates without cause in accordance with this provision, or if Service is terminated by Vonage Business hereunder as the result of Customer's default, Customer shall pay Vonage Business a termination charge equal to the sum of: (i) all unpaid amounts for Service actually provided; (ii) 100% of the remaining monthly recurring charges for months 1-12 of the Service Term; (iii) 50% of the remaining monthly recurring charges for months 13-24 of the Service Term; (iv) 50% of the remaining monthly recurring charges for month 25 through the end of the Service Term; (v) if not recovered by the foregoing, any termination liability payable to third parties resulting from the termination and any out of pocket costs of construction to the extent such construction was undertaken to provide Services hereunder; and (vi) applicable Taxes and Fees on all of the foregoing.

d. **Early Termination Fees and Charges.** Customer understands and agrees that Vonage Business will incur substantial losses upon an early termination of Service, which may include: (i) upfront costs from third-party service providers and subcontractors; (ii) commitments to subscription-based services related to the provision of the Services; (iii) allocation of substantial labor force resources to mobilize for the provision of the Services; (iv) substantial opportunity costs and lost profits. Customer acknowledges and agrees that the precise losses incurred by Vonage Business as a result of an early termination are difficult to ascertain and that the early termination charges set forth in this Section 6 are fair and reasonable estimates of Vonage Business's anticipated and actual damages, and not a penalty.

e. **Additional Termination Obligations.** Upon termination, expiration or cancellation of the Services, Customer shall discontinue use of any Vonage Business Services, including Vonage Business-provided telephone numbers, log-ins, voicemail access numbers or any web portal sites assigned to Customer by Vonage Business.

## **7. Billing, Credit, Deposits and Payment.**

a. **Commencement of Billing.** Accrual of charges will commence on the Service Date and will not be delayed due to Customer's readiness to accept or use the Service. In the event the Service includes a Private Circuit, billing for the Private Circuit will begin on the date the Private Circuit is delivered to any Customer Location. If Customer notifies Vonage Business within two (2) business days after a Service Date that Service is not functioning substantially in accordance with applicable specifications, with such notice specifying the deficiencies, Vonage Business will work to correct any deficiencies and, subject to the preceding sentence, the Service Date will occur when such issues have been resolved. If the specified issues were not, in Vonage Business's reasonable determination, attributable to Vonage Business, its agents, or contractors, the original Service Date for that Service will remain unchanged.

b. **Information, Installation Responsibilities, Delays and Early Billing.** Customer acknowledges and agrees that the Service may be comprised of multiple Private Circuits and/or other products and services ordered from Vonage Business for installation at one or more designated Customer Locations. Vonage Business will notify Customer of the date for installation of the Services (including Private Circuits) for each Customer Location will be confirmed by Vonage Business and Customer (the "Go-Live Date"). Customer agrees and acknowledges that, in order for Vonage Business to install the Service at each designated Customer Location as of the Go-Live Date, Customer must provide Vonage Business with access to the Customer Location where the Service is to be installed, as well as any required or



requested information (including but not limited to, a complete list of telephone numbers to be ported to the Vonage Business 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. If Customer delays the Go-Live Date for (i) failure to provide any requested information and/or documentation to Vonage Business or access to the Service location in a timely manner; (ii) subsequently cancelling or requesting that the date for such installation, delivery or implementation 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 Vonage Business reserves the right to charge Customer, and Customer agrees to pay for, all costs reasonably incurred by Vonage Business as a result of such Customer delays. Such costs may include but not be limited to, any increase in costs Vonage Business incurs due to a move of the Customer Locations (e.g. increased equipment costs, circuits, build-out/construction costs, etc.), as well as applicable Taxes and Fees. Vonage Business also reserves the right to commence billing Customer for the Services and Vonage Business Equipment as if the Service Date occurred as of the Go Live Date an amount equal to the Monthly Recurring Charge ("MRC") for all Services and Vonage Business Equipment as of the Go Live Date, plus applicable Taxes and Fees. The foregoing payment obligation shall not apply if the Go Live Date is missed or delayed as a direct and sole result of any action of failure to act by Vonage Business or any authorized Vonage Business service or equipment provider. In such situation, Customer's payment obligations shall commence on the date when the Service or Vonage Business Equipment is actually installed and activated by Vonage Business or would have been installed and activated, except to the extent any delay is caused by Customer.

c. **Customer Address Accuracy.** Customer shall provide Vonage Business with the correct address at which Services will be provided. Vonage Business relies on the accuracy and completeness of such information to determine and invoice applicable taxes, fees, surcharges and assessments. If Customer does not provide a valid address, Customer will be responsible for any resulting taxes, fees, surcharges, assessments and penalties.

d. **Expedited Service Date.** Customer may request in writing (email acceptable) an expedited Service Date and Vonage Business will notify Customer of any additional charges, if any, required to process the request for an expedited Service Date, which may include, but not be limited to, any third party charges incurred by Vonage Business to expedite the Service ("Expedite Charges"). If Vonage Business accepts the expedited Service Date request, Customer will be obligated to pay the agreed upon Expedite Charges as set forth on the Sales Order.

e. **Credit Approval and Deposits.** Customer agrees to supply Vonage Business with the information necessary to verify Customer's credit rating prior to providing Customer with access to the Services or Equipment. Vonage Business may also, during the Service Term of this Agreement, update its information regarding Customer's credit rating without notice to or permission from Customer. Customer authorizes Vonage Business to make inquiries and to receive information about Customer's credit experience from others, enter this information in Customer's file, and, subject to the confidentiality provisions herein, disclose such information concerning Customer to appropriate third parties for reasonable business purposes. Vonage Business reserves the right any time during the Service Term, in its sole discretion, to refuse to provide Service based upon lack of Customer's creditworthiness, or in the alternative to require a security deposit that will be returned to Customer, without interest thereon, upon the expiration or termination of this Agreement or other form of secure payment authorization, such as auto-payment. Customer authorizes Vonage Business to offset any amounts due to Vonage Business against the security deposit.

f. **Payment of Invoices and Disputes.** Invoices are delivered monthly. Fixed monthly recurring charges are billed in advance and variable usage-based charges are billed in arrears. Billing for partial



months is prorated. Payment is due no later than thirty (30) days after the invoice date. Shipping and Handling, plus any other charges associated with delivery, installation or activation of Services, as may be stated in the Sales Order or otherwise payable by Customer pursuant to this Agreement, shall be invoiced to Customer. Undisputed past due amounts bear interest at the lower of 1.5% per month or the maximum rate allowed by law. All fees and charges (together, "Service Fees") and any other amounts due to Vonage Business may, at the written direction of Customer's authorized representative, be charged to Customer's Visa, MasterCard, American Express or other valid credit or debit card, and/or electronically debited to Customer's bank account, in which case Customer hereby authorizes Vonage Business to charge Customer's credit/debit card and/or to electronically debit Customer's bank account for all such fees, charges (including termination-related charges), taxes and payment transaction processing costs. Pre-paid cards are not accepted. If Customer reasonably disputes an invoice, Customer must pay the undisputed amount and submit written notice of the disputed amount (with details of the nature of the dispute and the Services and invoice(s) disputed) to the address below on or before the due date. In the event Customer intends to dispute amounts already paid in full, Customer must submit notice of such dispute in writing within ninety (90) days from the date of the invoice (such date at the end of such period being the "Dispute Due Date"). After receipt of notice of the dispute, Vonage Business shall promptly undertake an investigation of the dispute. At the conclusion of the investigation, Vonage Business will notify Customer of any amount determined by Vonage Business to be correctly charged and such amount will become immediately due and payable together with interest from the date originally due. If the dispute notice is not sent by the Dispute Due Date, Customer waives all rights to dispute the applicable charges, unless otherwise provided by law. All billing disputes must be sent to Vonage Business at [bsgbilling@vonage.com](mailto:bsgbilling@vonage.com). If Customer does not deliver full payment for all undisputed billed charges by the due date, Vonage Business may impose late payment fees and/or restrict, suspend or terminate use of the Services or Equipment. Returned checks are subject to imposition of returned check fees and charges. Customer shall also reimburse Vonage Business for all reasonable attorneys' fees and other costs incurred by Vonage Business relating to collecting delinquent payments or Customer's non-payment breach of this Agreement. Vonage Business may also apply any deposits or other payments made by Customer. If Vonage Business applies any portion of a security deposit, Customer shall, within five (5) days following written notice thereof from Vonage Business, replenish the security deposit by the amount so applied by Vonage Business. If Vonage Business restricts, suspends or terminates Customer's Services, Customer remains liable for all Service Fees during any suspension period. Vonage Business may, at its sole option, choose to restore Customer's Services. A restoration fee may apply and any overdue charges must be paid in full. Such restoration shall not be construed as a waiver of Vonage Business's right to (i) receive full payment for all Service Fees due or (ii) again restrict, suspend or terminate the Services at any time for non-payment of any unpaid charges. The failure of Vonage Business to restrict, suspend or terminate the Services for non-payment of any charges shall not operate as a waiver or estoppel to restrict, suspend or terminate Services of such account for non-payment of current or future charges.

g. **Additional, Unrelated Charges.** The Services may allow Customer to access the Internet, on-line services and other information. Customer acknowledges that Customer may incur charges while using the Service in addition to those billed by Vonage Business. For example, Customer may incur charges as a result of accessing certain on-line services or purchasing or subscribing to certain other offerings. Customer agrees that all such charges, including all applicable taxes, are the sole responsibility of Customer, and Customer covenants to timely pay all such charges.

8. **Taxes and Fees.** Prices for Services do not include, and Customer is responsible for, all Taxes and Fees. Customer may present Vonage Business with an exemption certificate eliminating Customer's and Vonage Business's liability to pay certain Taxes and Fees. Vonage Business may charge a regulatory recovery fee to offset costs incurred by Vonage Business in complying with inquiries and obligations imposed by federal, state and municipal regulatory bodies/governments and related legal and billing expenses. The regulatory 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. The regulatory recovery fee is not a tax or charge required or assessed by any government authority and may be recovered by Vonage Business through imposition of a surcharge on cost of the Service.

9. **Regulatory and Legal Changes.** Vonage Business may discontinue, limit, modify any Service, or impose additional requirements to the provision of any Service, as may be reasonably required to comply with any Applicable Laws. If changes in Applicable Laws materially and adversely affect delivery of Service (including the economic viability thereof), Vonage will provide notification to Customer and the Parties will use good faith efforts to negotiate appropriate changes to this Agreement. If the parties cannot reach agreement within thirty (30) days after Vonage Business's notice requesting renegotiation, Vonage may either waive or modify the requirement to Customer's reasonable satisfaction. If Vonage does neither, then Customer can either, within 30 days thereafter, accept the change or terminate those Services affected by the changes without termination liability, without the right to continue to use those Services on a month to month basis.

10. **Prohibited Use of the Service.** Customer shall use the Services only in a manner that complies with all Applicable Laws and the terms and conditions of this Agreement, including the AUP. Any use of the Services or any other action in violation of this Section 10 or that causes a disruption in the Vonage Business network integrity, or in Vonage Business's reasonable determination threatens or compromises the security of Vonage Business, its vendors, its other customers or the Services whether directly or indirectly, is strictly prohibited and permits Vonage Business to suspend or terminate the Services without prior notice at the sole discretion of Vonage Business and further permits Vonage Business to disclose any information, including Customer Confidential Information, to necessary authorities or third parties. Vonage Business shall have the right, in its sole, but reasonably exercised discretion, not to accept, transmit or deliver any messages or content that it reasonably believes contains inappropriate content or that is, or could reasonably become, the subject of any legal, regulatory, or other governmental proceeding or process, including a law enforcement proceeding, process, or inquiry. Any use found to be inconsistent with the restrictions of this Section 10 may result in termination of the Services without prejudice to any other Vonage Business rights or remedies.

11. **Fraudulent Use of Service.** Customer is solely responsible for any and all activities that occur under Customer's account; Customer shall not transfer its login credentials accessing the Services to any third party. Customer agrees to notify Vonage Business if it becomes aware of any prohibited, fraudulent or unauthorized use of the Services, Customer's account, Vonage Business Equipment or Customer Equipment. Vonage shall not be liable for any damages whatsoever resulting from any prohibited, fraudulent or unauthorized use of the Services, Customer's account, Vonage Business Equipment or Customer Equipment, and Customer shall bear the risk of loss and assume all liability arising from any such prohibited, unauthorized or fraudulent usage, except to the extent such usage arose solely from Vonage Business's negligence or willful misconduct. Any such prohibited, unauthorized or fraudulent use shall be deemed a material breach of the Agreement by Customer. Customer is responsible to secure all credentials used to access the Services, including credentials used by telephones or softphones and credentials used by end users or administrators, as well as the media access control (MAC) address of telephones used by Customer. Customer acknowledges that placing telephones on a publicly accessible internet protocol address or a publicly accessible network will subject the Customer to a higher level of risk for fraudulent activity. Customer shall not be excused from paying for Services or any portion thereof on the basis that fraudulent calls, and any charges associated with such calls (e.g. long distance charges), comprised a corresponding portion of the Services. In the event Vonage Business discovers fraudulent calls being made, Customer consents to Vonage Business taking actions it deems reasonably necessary (including blocking access to particular calling numbers or geographic areas), without notice to Customer, to prevent such calls from taking place. Customer acknowledges and agrees that Vonage Business: (a) is under no obligation to investigate the authenticity of calls charged to Customer's account,

(b) is under no obligation to take action to prevent such calls from being made, and (c) is not liable for any fraudulent calls processed by Vonage Business and billed to Customer's account.

12. **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 or otherwise allow any third party to use the Services without receiving Vonage Business's prior written consent, which may be withheld or conditioned in Vonage Business's sole discretion.

13. **Third Party Networks.** In some cases, Vonage Business may utilize the public Internet and third party networks outside of its control in conjunction with the provision and maintenance of the Services and its websites. In such cases, Vonage Business makes no representation that the Internet or any such third party network will adequately secure or protect the privacy of Customer or any end user's personal information, and Vonage Business expressly denies any associated liability except to the extent such liability arises out of or is related to the negligence or willful misconduct of Vonage Business. Actions or inactions caused by these third party networks can result in situations in which Vonage Business customers' connections may be impaired or disrupted. Although Vonage Business will use commercially reasonable efforts to remedy or avoid such events, Vonage Business expressly disclaims warranties with respect to these third party networks or any disruptions that may occur thereon.

14. **Required Maintenance.** Vonage Business reserves the right to perform repair and maintenance on or upgrade, update or enhance (collectively, the "Maintenance") its network, infrastructure, website(s), Services and Vonage Business Equipment pursuant to the applicable terms of the Service Level Agreement, even if the Maintenance causes a partial or full disruption of the Services; provided, however, and subject to Vonage Business's business needs, Vonage Business shall use commercially reasonable efforts to perform the Maintenance in a manner so as to avoid unduly interfering with Customer's use of the Services, including by providing reasonable commercial notice where feasible.

15. **Voice-to-Text and Text-to-Voice Limitations.** Certain Vonage Business Services may provide a function that allows voicemails to be converted to text and vice-versa. Customer understands and agrees that Vonage Business'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 Business expressly disclaims all liability with respect to the conversion of voicemails to text or vice-versa.

16. **Support and Service Level Commitments.** Customer will timely report any issues, trouble or problems affecting Service to Vonage Business using a Customer-initiated trouble ticket (a "Trouble Ticket"). Trouble Ticket procedures and additional information for Vonage Business support can be found at <https://enterprise.vonage.com/support>. Calls to and from Vonage Business customer service, sales or other representatives may be recorded and/or monitored for quality assurance and training purposes and by speaking with such Vonage Business representatives, Customer consents to such recording and/or monitoring. If Vonage Business does not meet a performance or other service level commitment set forth in an applicable Service Level Agreement, and upon Customer's timely request submitted in accordance with this Agreement or the applicable Service Level Agreement, a service credit will be issued to Customer as stated in the applicable Service Level Agreement. 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 Terms.

17. **Customer Data; Suggestions and Feedback.** Customer hereby grants Vonage Business a non-exclusive, non-transferable (except in connection with any assignment of this Agreement) license to copy, store, record, transmit, display, view, print, and use Customer Data, solely to the extent

necessary to provide the Services to Customer. In the event that Customer provides Vonage Business with suggestions, enhancement requests, recommendations, proposals, documents, or other feedback with respect to the Services or Software (collectively, "Suggestions"), Customer grants Vonage Business and its Affiliates a royalty-free, worldwide, irrevocable, perpetual license to use, modify, and distribute such Suggestions solely in connection with efforts to improve, enhance or modify the Services or Software without compensation or attribution to Customer of any kind.

**18. Default and Remedies.**

a. **Customer Default.** If Customer either (a) fails to make any undisputed payment when due and such failure continues for five (5) business days after written notice from Vonage Business, or (b) fails to observe or perform any other material term of this Agreement and such failure continues for thirty (30) days after written notice from Vonage Business, then Vonage Business may elect to: (i) terminate this Agreement and/or any Sales Order, in whole or in part; (ii) immediately suspend Customer's Service, in whole or in part; or (iii) pursue all remedies Vonage Business may have at law or in equity. In the event such failure under (b) above is not capable of cure within the 30-day period, the time for Customer to cure will be extended to sixty (60) days from the date that Customer received notice of such breach so long as Customer is diligently attempting to remedy such breach during that period.

b. **Suspension of Services.** Notwithstanding any other provision of this Agreement, Vonage Business may suspend Customer's right to access or use any portion or all of the Service immediately and without liability to Customer in any of the following circumstances: (i) Customer's use of the Service violates any Applicable Laws or the AUP; (ii) Vonage Business is legally required to suspend or terminate Service; (iii) Customer's use of the Service poses a security risk to the Service or any third party or may subject Vonage Business or any third party to liability; or (iv) the occurrence or threat of any other event or circumstance for which Vonage Business reasonably believes that suspension of Service is necessary to protect the Vonage Business (or other third-party) network, systems or customers.

c. **Vonage Business Default.** If Vonage Business fails to observe or perform any material term of this Agreement, other than non-performance under or failure to comply with any Service Level Agreement, Customer may terminate any applicable Sales Order only after Customer has delivered written notice of such failure to Vonage Business, such notice to contain reasonable detail describing any breach, and Vonage Business has failed to remedy such failure within thirty (30) days of its receipt of Customer's written notice. In the event such failure is not capable of cure within the 30-day period, the time for Vonage Business to cure will be extended to sixty (60) days from the date that Vonage Business received notice of such breach so long as Vonage Business is diligently attempting to remedy such breach during that period.

**19. Warranty Disclaimer.** VONAGE BUSINESS PROVIDES THE SERVICES, EQUIPMENT AND SOFTWARE ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND (EXCEPT FOR ANY THIRD PARTY MANUFACTURER WARRANTIES THAT MAY BE APPLICABLE TO EQUIPMENT PURCHASED BY CUSTOMER FROM VONAGE BUSINESS AND EXCEPT AS MAY BE SPECIFICALLY AND EXPRESSLY PROVIDED IN ANY APPLICABLE SERVICE LEVEL AGREEMENT), WHETHER IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, TITLE FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. VONAGE BUSINESS MAKES NO WARRANTY THAT THE SERVICES WILL MEET CUSTOMER REQUIREMENTS, SPECIFICATIONS, EXPECTATIONS OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE, THAT ANY DEFECTS IN THE SERVICES WILL BE



CORRECTED, THAT THE SERVICES WILL OPERATE IN COMBINATION WITH CUSTOMER CONTENT, CUSTOMER APPLICATIONS, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY VONAGE. CUSTOMER ACKNOWLEDGES THAT VONAGE DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. VONAGE BUSINESS IS NOT RESPONSIBLE FOR MESSAGES OR INFORMATION LOST OR MISDIRECTED DUE TO INTERRUPTIONS OR FLUCTUATIONS IN THE SERVICES OR THE INTERNET IN GENERAL, OR FOR ANY ISSUES RELATED TO THE PERFORMANCE, USE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CUSTOMER'S USE, CUSTOMER CONTENT, CUSTOMER APPLICATIONS, OR THIRD PARTY CONTENT. VONAGE DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES REGARDING THE RELIABILITY, ACCURACY, COMPLETENESS, CORRECTNESS OR USEFULNESS OF THIRD PARTY CONTENT. TO THE EXTENT THAT VONAGE BUSINESS CANNOT DISCLAIM ANY WARRANTIES IN CERTAIN JURISDICTIONS, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW. ALTHOUGH REASONABLE EFFORTS ARE MADE TO PROVIDE SECURITY FOR VOICEMAILS AND FAX TRANSMISSIONS, VONAGE BUSINESS MAKES NO GUARANTEES OR WARRANTIES OF SECURITY. CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT ENABLED TO FUNCTION OUTDIALING SYSTEMS INCLUDING HOME OR OFFICE SECURITY SYSTEMS, TTY EQUIPMENT, MEDICAL MONITORING EQUIPMENT OR SATELLITE TELEVISION SYSTEMS. VONAGE BUSINESS WILL NOT BE LIABLE FOR INTERRUPTION OR DISRUPTION OF SUCH SYSTEMS BY THE SERVICES. CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT DESIGNED, INTENDED OR RECOMMENDED AS A MEANS BY WHICH TO STORE OR TRANSMIT "PROTECTED HEALTH INFORMATION" ("PHI") AS DEFINED UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 AND RELATED OR SIMILAR LAWS (COLLECTIVELY, "HIPAA"). EXCEPT AS OTHERWISE AGREED IN A WRITING SIGNED BY VONAGE BUSINESS, VONAGE BUSINESS 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.

**20. Limitation of Liability.**

NEITHER CUSTOMER NOR VONAGE BUSINESS, NOR ITS AFFILIATES, VENDORS, SUPPLIERS, DISTRIBUTORS, CHANNEL AND OTHER MARKETING PARTNERS OR OTHER REPRESENTATIVES SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, REPLACEMENT COSTS, OR ANY LOSS OF REVENUE OR PROFITS, CONTENT, DATA, OR DATA USE, EVEN IF CUSTOMER OR VONAGE BUSINESS HAS BEEN INFORMED IN ADVANCE OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE REASONABLY BEEN FORESEEN BY VONAGE BUSINESS. VONAGE BUSINESS'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 ACTUALLY PAID TO VONAGE BUSINESS UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO A CLAIM SUBJECT TO THIS SECTION 20. THE PARTIES ACKNOWLEDGE AND ACCEPT THE REASONABLENESS OF THE DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 20.

**21. Indemnification and Insurance.**

a. **By Customer.** Customer agrees to defend, indemnify and hold harmless Vonage Business from and against any loss, damage or costs (including reasonable attorney's fees)(collectively, "Losses") incurred in connection with claims made or brought against Vonage Business by a third party arising from or relating to: (i) the injury of or death to any person or damage to real or tangible personal property to the extent such injury or death is proximately caused by the negligence or misconduct of Customer or its employees, agents, or subcontractors; (ii) any unauthorized or prohibited use of the Services or Vonage Business Equipment by Customer, or its employees, agents or subcontractors; (iii) the gross negligence, or willful misconduct of Customer or its employees, agents or subcontractors; or (iv) any violation of any Applicable Laws by Customer or its employees, agents or subcontractors.

b. **By Vonage Business.** Vonage Business agrees to defend, indemnify and hold harmless Customer from and against any Losses incurred in connection with claims made or brought against Customer by a third party arising from or relating to (i) the injury of or death to any person to the extent such injury or death is proximately caused by the negligence or misconduct of Vonage Business or its employees, agents or subcontractors; (ii) the gross negligence or willful misconduct of Vonage Business or its employees, agents or subcontractors, (iii) infringement of third-party intellectual property rights due to Customer's authorized use of the Software, Services, Vonage Business Equipment or deliverables, or any portion thereof, as provided by Vonage Business to Customer (collectively, the "Materials"); or (iv) a violation of any Applicable Laws by Vonage Business or its employees, agents or subcontractors

Notwithstanding any of the foregoing, Vonage Business shall have no liability for any Losses arising out of or in connection with (i) alteration or modification of the Materials which was not approved by Vonage Business, (ii) combination, operation or use of the Materials with any hardware, software or other device not furnished by Vonage Business if such claim would not have arisen had such combination, operation or use not occurred, (iii) any product or service not provided by Vonage Business; (iv) Vonage Business's compliance with Customer's specifications, designs or instructions, where Vonage Business did not know, and/or should not reasonably have known, such compliance would likely result in any such Losses; (v) Customer's failure to promptly implement an update or modification to the Materials provided by Vonage Business; or (vi) use of the Materials in a manner other than which it was designed or in a manner other than as specified by Vonage Business.

c. **Procedure.** A Party who seeks indemnification pursuant to this Agreement (the "Indemnified Party") shall give written notice thereof to the other Party (the "Indemnitor") promptly after the Indemnified Party learns of the existence of an indemnifiable claim hereunder ("Claim"); provided, however, the failure to give such notice shall not affect the rights of such Indemnified Party except and only to the extent the Indemnitor is prejudiced by such failure. (a) The Indemnified Party shall promptly notify the Indemnitor in writing of a Claim covered by this Section; (b) the Indemnified Party shall not admit any liability whatsoever; (c) the Indemnitor shall be entitled to take sole control of the defense and investigation of the Claim (the "Defense") at its own expense, by providing prompt written notice to the Indemnified Party; (d) the Indemnified Party may approve counsel of the Indemnitor, such approval not to be unreasonably withheld or delayed; (e) the Indemnified Party shall cooperate in all reasonable respects with the Indemnitor and its attorneys in the Defense of such Claim, and may reasonably participate at its own expense, through its attorneys or otherwise, in such Defense, provided that such participation does not interfere with the Indemnitor's Defense. All settlements of Claims subject to indemnification under this Section shall: (i) if requiring any admission of guilt or action by or if imposing any restriction on the Indemnified Party, be entered into only with the consent of the Indemnified Party; and (ii) include an appropriate confidentiality agreement prohibiting disclosure of the terms of such settlement. The Indemnified Party will fully cooperate in any such action at its own cost, shall make available to the other Party any books or records useful for the Defense of any such Claim, and shall make available its representatives with respect to Defense of the Claim.

## 22. Confidentiality.

a. **Confidential Information.** "Confidential Information" means all nonpublic information relating to a Party or its Affiliates that (i) if provided in writing, is marked or labeled as confidential or proprietary, or (ii) if provided verbally, is designated as confidential at the time of disclosure, or (iii) even if not so marked, labeled or identified, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes, without limitation, all nonpublic information relating to (i) a Party's or its Affiliates' technology, customers, employees, business plans, agreements, finances and other business affairs, (ii) the Vonage Business network or service delivery platform, and (iii) the terms of any Sales Order. Confidential Information does not include any information that (i) has become publicly available without breach of this Agreement, (ii) was known to the Party receiving Confidential Information under this Agreement (the "Receiving Party") at the time of its receipt from the Party disclosing the Confidential Information (the "Disclosing Party") or its Affiliates as shown by documentation reasonably acceptable to Disclosing Party, (iii) is received from a third party who did not acquire or disclose such information by a wrongful or tortious act, or (iv) was independently developed by the Receiving Party without use of any Confidential Information as shown by documentation reasonably acceptable to Disclosing Party.

b. **Non-Use; Non-Disclosure.** Each Party hereby agrees to hold Confidential Information in strict confidence and shall, in any case, protect such Confidential Information with no less diligence than that with which it protects its own confidential or proprietary information of a similar nature. The Receiving Party agrees not to use any Confidential Information of the Disclosing Party for any purpose unrelated to the Services. Each Party may disclose the Confidential Information of the other Party on a "need to know basis" and then only to its and its Affiliates' directors, officers, advisors, employees and other legal, business or financial partners or representatives; provided that all such persons are subject to written confidentiality agreements which contain provisions which are no less restrictive than the provisions of this Section 22. In addition, Vonage Business may disclose this 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.

c. **Compelled Disclosure.** If the Receiving Party is legally compelled by any means (including deposition, interrogatory, request for documents, subpoena, civil or regulatory investigative demand or similar process) to disclose Confidential Information of the Disclosing Party, subject to applicable laws, the Receiving Party must provide the Disclosing Party with prompt written notice of such legal requirement in order to allow the Disclosing Party to seek a protective order or other appropriate remedy or waive compliance with this Section 22.

d. **Return or Destruction.** Upon the termination or expiration of this Agreement, or at any time upon the request of the Disclosing Party, the Receiving Party shall, at the Disclosing Party's option, return or destroy (and certify as to such destruction) all Confidential Information of the Disclosing Party in its control or possession, other than copies which the Receiving Party may be required to maintain under applicable law or regulation.

23. **Customer Data.** Vonage Business will use commercially reasonable efforts to protect the security of Customer data. If Vonage Business discovers or is notified of a breach of security relating to the Customer Data, Vonage Business shall promptly, upon its confirmation of an actual data breach impacting Customer Data: (a) notify Customer of such breach; and (b) if the applicable Customer Data was within the reasonable span of control of Vonage Business at the time of such breach, Vonage Business shall: (i) use commercially reasonable efforts to mitigate the effects of the breach or potential breach; and (ii) take commercially reasonable steps to institute safeguards that are designed to prevent or

attempt to prevent the reoccurrence of such breach or potential breach. In addition, Customer shall have the right, at Customer's cost and expense, to investigate any such breach and Vonage Business shall, and shall cause its representatives to, fully cooperate with Customer's investigation.

24. **Emergency 911 Services.** By using the Service or Vonage Business Equipment, Customer acknowledges the limitations of Vonage Business E911 services as described in the E911 Acknowledgement, as well as those set forth in this Section 23. Customer is advised to thoroughly read and understand the E911 Acknowledgement and the options available. Customer acknowledges that it has received the E911 Acknowledgement and has read, understands and agrees to the terms and conditions of the E911 Acknowledgement, and assumes the risks associated with the Vonage Business E911 service limitations.

25. **Local Number Portability.**

a. **Number Transfer on Service Activation.** In the event Customer is not utilizing a new phone number for the Services, but rather is transferring an existing phone number(s) which currently is subscribed to a carrier other than Vonage Business for local, long distance and international telephone services, to Vonage Business, the terms and conditions of this Section 24 shall apply:

i. Customer hereby authorizes Vonage Business to process Customer's order for Services and to notify Customer's current local telephone company or other service provider of its decision to switch all local, local toll and long distance services to Vonage Business, and represents and warrants that Customer is authorized to take this action; and

ii. Customer agrees and acknowledges that if the Vonage Business Equipment is set up prior to the date that the number switch becomes effective ("Port Effective Date"), Customer may only be able to make outgoing calls over the phone connected to the Vonage Business Equipment. In such event, Customer should keep another phone connected to an existing phone extension at its service location to receive incoming calls until the Port Effective Date, after which Customer will be able to both make and receive calls using the Service. Customer agrees and acknowledges that if its Vonage Business Equipment is not yet activated as of the Port Effective Date, its existing phone service for the number being transferred may be disconnected and Customer may have no service for that line. Therefore, to avoid an interruption in Customer's phone service, Vonage Business Equipment must be installed prior to, or on, the Port Effective Date. An estimate of the Port Effective Date will be sent to Customer via e-mail by Vonage Business following completion of the ordering process.

b. **Number Transfer on Service Termination.** Vonage Business or its providers may receive requests from other telephony providers ("Requesting Party") acting as agents on Customer's behalf to port a telephone number currently assigned to Customer to a third party provider ("Port-Out"). Vonage Business will support all such requests and will cooperate with the Requesting Party to perform any Port-Out in accordance with the Requesting Party's reasonable directions and Vonage Business's or its vendors' standard operating procedures. Customer will be responsible for all monthly, usage and disconnect fees associated with Service until the Port-Out date of completion or last date of the service period, whichever comes last. Vonage Business assumes no liability for costs associated with any numbers that cannot be ported or that Customer chooses not to port.

26. **Changes in Services.** Vonage Business reserves the right to (i) remove, add, replace, modify or reduce features and functions of the Services; (ii) provide fixes, updates and upgrades to the Services or (iii) change or replace, any equipment, services and software supporting, supplying or enabling

any of the Services or Vonage Business Equipment, provided that such change will not materially alter the core features, functionality or security of the Software or Services. Vonage Business will provide notice pursuant to any notice method permitted by these Service Terms if such change would have a reasonably foreseeable material adverse impact on the Services. Nothing in this paragraph affects Vonage Business' obligations or Customer's rights under the Service Level Agreement.

27. **Beta Services and Software.** 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. Except as otherwise indicated under separate terms and conditions that may apply to such Beta Versions, Vonage Business may not charge for such Beta Versions, and reserves the right to charge for subsequent versions of the Beta Version, including any potential commercial releases. Customer acknowledges and agrees that the Beta Version may contain, in Vonage Business's sole discretion, more or fewer features or different licensing terms than a subsequent commercial release version of the Beta Version. Vonage Business reserves the right not to release later commercial release versions of the Beta Version. Without limiting any disclaimer of warranty or other limitation stated in these Terms (or any separate terms and conditions that would otherwise be applicable to such Beta Versions), Customer agrees that Beta Versions are not considered by Vonage Business to be suitable for commercial use, and that may contain errors affecting their proper operation. CUSTOMER ACKNOWLEDGES AND AGREES THAT USE OF ANY BETA VERSION MAY EXHIBIT SPORADIC DISRUPTIONS THAT HAVE THE POTENTIAL TO DISRUPT CUSTOMER'S USE OF ANY SERVICES OR SOFTWARE. NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS, INCLUDING VONAGE BUSINESS SPECIFICALLY DISCLAIMS ALL DAMAGES RESULTING FROM CUSTOMER'S USE OF ANY BETA VERSION. The fact and existence of any Beta Version shall be deemed to be Vonage Business Confidential Information under this Agreement.
28. **Vonage-Provided Telephone Numbers.** Telephone numbers provided by Vonage Business (Vonage-provided numbers) to Customer shall be leased and not sold. Customer will use Vonage-provided numbers it leases with the Services and on devices approved or prescribed by Vonage Business. Customer retains no rights in such numbers upon termination of Services. Vonage Business reserves the right to move, change or cancel Vonage-owned numbers in its reasonable discretion.
29. **Electronic Recording.** Customer acknowledges that there are federal and state laws governing the electronic recording of telephone conversations and that Vonage Business 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 Business are represented or warranted to comply with electronic recording laws. Customer agrees that Vonage Business may, in its sole discretion, record any call between Customer and Vonage Business for Vonage Business quality control purposes.
30. **Right to Review Use of Services.** Vonage Business reserves the right to review and monitor Customer's use of the Service for purposes of confirming compliance with this Agreement. Vonage Business may also review Customer's security and anti-fraud protections for select Vonage Business Services.
31. **General.**
- a. **Assignment.** This Agreement inures to and is binding upon the Parties' successors and permitted assignees. Neither Party shall assign this 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 any proposed assignee of Customer shall be at least as creditworthy as Customer (as reasonably determined by Vonage Business), shall agree in advance and in writing to assume and be bound by all provisions of this Agreement, and shall deliver to Vonage Business fully-executed documents reasonably acceptable to Vonage Business establishing the terms of such an assignment. Any assignment by Customer other than as permitted by this Section 26(a) shall be void and of no force or effect.

b. **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, cable cut, adverse weather conditions, governmental action, acts of terrorism or strikes and similar labor difficulties. Either Party's invocation of this clause will not relieve Customer of its obligation to pay for any Services actually provided or permits Customer to terminate any Services except as expressly provided herein. In the event such force majeure event prevents the availability or material use of the affected portion of Services and such event continues for more than thirty (30) consecutive days, either Party may terminate the affected portion of the Services without liability.

c. **Intellectual Property and Publicity.** 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 form of intellectual property of the other Party or its affiliates without the express prior written authorization of the other Party. Customer will not issue any press release or other public statement relating to this Agreement, except as may be required by law or agreed by Vonage Business in a writing signed by an authorized representative of Vonage Business's Corporate Communications department. Customer agrees that Vonage Business may identify Customer using its name, trademarks and/or logos in its marketing collateral, presentations and websites, provided that Customer may revoke such right with written notice to Vonage Business at any time.

d. **Nonexclusive.** This Agreement is non-exclusive. Nothing in this Agreement prevents either Party from entering into similar arrangements with other persons or entities.

e. **Notices.** Except as otherwise provided in this Agreement (e.g., billing disputes described in Section 7), any notice required or given under this Agreement will be in writing and delivered to a Party as follows:

i. **To Customer:**

City of Lake Forest  
Attn: Finance Department  
25550 Commercentre Drive, Suite 100  
Lake Forest, CA 92630

ii. **To Vonage Business::**

Vonage Business  
Attn: Legal Department  
7900 West Park Drive, Suite A-315  
McLean, VA 22102



Copies of notices shall be sent via fax or e-mail (which shall not constitute formal notice) to:  
Office of the Chief Legal Officer  
Vonage Business  
Facsimile: 1.732.202.5221  
E-mail: VonageBusNotices@vonage.com

Such address and contact information may be changed by either Party by prior written notice to the other Party in accordance with this paragraph. A notice will be deemed to be duly given (i) on the date of delivery if personally delivered by hand or by a nationally recognized overnight express courier, or (ii) upon the third day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested. For clarity, e-mail or fax notices are informational only and shall not constitute formal notice.

f. **Facsimile and Electronic Transmission; Counterparts.** Sales Orders, and other documents that may be executed in connection with the Services (collectively "Service Documentation"), may be executed and delivered by facsimile or electronic transmission, and upon receipt, such transmission shall be deemed the delivery of an original. Service Documentation 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.

g. **Electronic Communications and Consent to use of Electronic Signatures and Records.** By ordering, purchasing or using the Services, Customer agrees that Vonage Business may provide to Customer by use of electronic communications any required notices, agreements and other information concerning Vonage Business, including changes to these Terms. In addition, by clicking "I Agree" or "I Accept" (or similar) anywhere on a Vonage Business website or webpage Customer agrees and acknowledges to conduct business electronically and be bound by the applicable agreement, document or transaction.

h. **Basis of Bargain; Failure of Essential Purpose.** Customer acknowledges and agrees that Vonage Business 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.

i. **No Commitments.** Customer represents that Vonage Business 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, either prior to or following the date herein, are informational only, and are not the basis for, nor part of this Agreement or any Sales Order. Vonage Business has no obligation to provide any future releases or upgrades or any features, enhancements or functions, unless specifically agreed to by both Parties. Customer acknowledges that its purchasing decisions are not based upon any future features or functions.

j. **Survival, Modification.** 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. Except for the rights of Vonage Business in Section 3, all modifications, amendments, supplements to or waivers of this Agreement must be in writing and executed by authorized representatives of both parties.

k. **Relationship of the Parties.** The relationship of Vonage Business and Customer 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 purposes. Vonage



Business and Customer shall be independent parties and shall discharge their contractual obligations at their own risk subject to the terms of this Agreement.

a. **Third Party Services.** Vonage Business 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 Business Equipment ("Third-Party Services"). Each provider of such Third-Party Services (a "Third-Party Service Provider") is expressly made a third party beneficiary under the applicable Sales Orders and this Agreement and shall have the right to enforce the terms and conditions of the Sales Orders and this Agreement respecting any terms affecting such Third-Party Service Provider as if such Third-Party Service Provider were a party to the Sales Order and/or this Agreement. Further, Third-Party Services may be governed by separate legal terms and conditions, which may be found or identified in documentation, on a Sales Order or on other media delivered with the Third-Party Services, or at <https://enterprise.vonage.com/third-party-tos/>, and which are incorporated by reference into these Terms and shall govern the use of Third-Party Services. Customer agrees to comply with such terms and conditions of all applicable Third-Party Services and Third-Party Service Providers. Any non-compliance with terms and conditions of Third Party Service Providers shall be considered non-compliance with these Terms.

l. **Waiver.** The failure of either Party to enforce compliance with a provision of this Agreement shall not be construed as a general waiver of such provision or any other provision.

m. **Severability.** If any term, covenant or condition contained in this Agreement or any Sales Order is, to any extent, held invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

n. **Governing Law.** The laws of the State of California will govern this Agreement, without reference to its principles of conflicts of laws. Because this agreement is a transaction in interstate commerce, the Federal Arbitration Act ("FAA"), and not state arbitration law, shall govern the interpretation and enforcement of the arbitration provision in Section 27, below.

o. **Entire Agreement.** This Agreement, together with the applicable Sales Order(s), supersedes any prior or contemporaneous agreements, statements, understandings, writings, commitments, or representations concerning its subject matter, as between Customer and Vonage Business.

p. **Export Controls.** Customer agrees to comply fully with all relevant export laws and regulations of the United States, including the U.S. Export Administration Regulations, administered by the Department of Commerce. Customer also expressly agrees that it shall not export, directly or indirectly, re-export, divert, or transfer any portion of Vonage Business Service, Equipment or Software to any destination, company, or person restricted or prohibited by U.S. export controls.

### **32. Dispute Resolution; Binding Arbitration.**

a. **Management Resolution.** In the event either Party has a dispute or claim against the other Party (except with respect to invoice disputes which are addressed in Section 7), the disputing Party shall provide written notice to the other Party in accordance with the provisions of Section 26(e), above. The Parties agree to escalate 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 (30) 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. In the event the dispute is not resolved, and the claim falls within the dollar limit allowed by applicable state law along with any other

jurisdictional requirements, either Party may seek to have that dispute resolved in small claims court in any state in which Services are provided to the Customer by Vonage Business.

b. **Binding Arbitration.** If negotiations fail to resolve the dispute within thirty (30) calendar 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 one or more arbitrators in accordance with the rules of the American Arbitration Association ("AAA") then in effect. This agreement to arbitrate is intended to be given the broadest possible meaning under Applicable Laws. The initiation of an arbitration dispute shall not otherwise prevent Vonage Business or Customer from terminating Services in accordance with the Terms.

c. **Notice.** A Party who intends to seek arbitration must first send to the other Party a written notice of dispute, which must describe the nature and basis of the dispute and set forth the specific relief sought. If an agreement to resolve the dispute is not reached, an arbitration proceeding may be commenced by downloading or copying a form from the AAA website (<http://www.adr.org>). The amount of any settlement offer made by Customer or Vonage Business shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which Customer or Vonage Business is entitled.

d. **Location.** All hearings conducted as part of the arbitration shall take place at a location, convenient to Customer, based upon Customer's billing address. If Customer claim is for \$10,000 or less, Customer or Vonage may request that the arbitration be conducted solely on the basis of documents submitted to the arbitrator or through a telephonic hearing. If either party objects, then the arbitrator shall proceed to an in-person hearing as established by the AAA Rules. If Customer claim is in excess of \$10,000, the right to a hearing will be determined by the AAA rules.

e. **Costs.** If any proceeding is brought by a Party to enforce or interpret any term or provision of this Agreement, the prevailing Party in such proceeding shall be entitled to recover, in addition to all other relief as set forth in the Agreement, all costs incurred in such dispute or proceeding including any reasonable attorneys' and expert' fees and expenses. If a Party elects to appeal an award, the prevailing Party in the appeal shall be entitled to recover all reasonable attorneys' fees incurred in that appeal.

f. **Waiver of Jury Trial.** Customer and Vonage Business agree that, by entering into this agreement, Customer and Vonage Business are waiving the right to a trial by jury. Customer and Vonage Business agree that 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 AND VONAGE BUSINESS AGREE THAT CUSTOMER MAY BRING CLAIMS AGAINST VONAGE BUSINESS ONLY IN CUSTOMER'S INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING AND THAT CUSTOMER EXPRESSLY WAIVES ITS RIGHT TO BRING A CLASS ACTION SUIT.** Customer and Vonage Business agree that 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.

**SIGNATURES ON FOLLOWING PAGE**



**THIS MSA IS EXECUTED BY VONAGE BUSINESS AND THE CUSTOMER AND IS EFFECTIVE AS OF THE EFFECTIVE DATE.**

<b>VONAGE BUSINESS INC.</b>  <b>Signature:</b> <u>Kristy Thomas</u> <small>Kristy Thomas (Jun 21, 2019)</small> <b>Print Name:</b> <u>Kristy Thomas</u> <b>Title:</b> <u>VP of Western Sales</u>  <b>Date:</b> <u>Jun 21, 2019</u>	<b>CITY OF LAKE FOREST</b>  <b>Signature:</b> <u>[Signature]</u> <b>Print Name:</b> <u>Mark Tettemer</u> <b>Title:</b> <u>Mayor</u>  <b>Date:</b> <u>6/13/2019</u>
	<b>ATTEST:</b>  <b>By:</b> <u>[Signature]</u> <b>Maria D. Huizar</b> <b>City Clerk</b>
	<b>APPROVED AS TO FORM</b>  <b>By:</b> <u>[Signature]</u> <b>Best Best &amp; Krieger LLP</b> <b>City Attorney</b>

**Exhibits**

Exhibit V-A – E911 Acknowledgement

Exhibit V-B – Description of Services/Pricing

Exhibit V-C – SLA

## EXHIBIT V-A

### **VONAGE BUSINESS E911 DISCLOSURE NOTICE AND ACKNOWLEDGEMENT**

This E911 Disclosure Notice and Acknowledgement ("E911 Acknowledgement") is made part of and incorporated by reference into that certain Master Service Agreement, dated \_\_\_\_\_ (the "MSA"), by and between Vonage Business and THE CITY ("Customer"). Any capitalized terms not otherwise defined in this E911 Acknowledgement shall have the meanings ascribed to such terms in the MSA. In the event of any conflict between this E911 Acknowledgement and the MSA, this E911 Acknowledgement shall control.

#### **1. Emergency Services - 911 Calling**

- a. **Non-Availability of Traditional 911 or E911 Calling Service:** Vonage Business E911 Service is a mandatory component of all Vonage Business Voice over Internet Protocol ("VoIP") service ("Service"). Vonage Business E911 Service enables Customers to communicate with emergency services by dialing 911. However, Vonage Business 911 Service is different in important ways from traditional landline 911 and cellular/wireless 911. The differences are detailed in this E911 Acknowledgement and Customer agrees to notify any potential user or agent of the Services, who may place calls using Customer's Services, of the 911 limitations described herein. Vonage Business will provide Customer with warning labels regarding the limitations or unavailability of 911 emergency dialing. Customer agrees to place a label on or near each telephone or other Customer Equipment on which the Services may be utilized.
- b. **Description of Emergency Dialing Capabilities:** When Customer dials 911, the 911 call is routed from Vonage Business's network to the Public Safety Answering Point ("PSAP") or local emergency service personnel designated for the physical address Customer provided to Vonage Business at the time of activation of Service (as may be updated by Customer). In most cases, the dispatcher at the PSAP will also receive Customer's telephone number and address. In certain situations, discussed below, the dispatcher at the PSAP will not receive the Customer's telephone number and address.

#### **2. Registered Location**

- a. **Registered Location Required:** All Customers are required to register the physical location of their Service when placing a Sales Order with Vonage Business. Customer agrees to ensure that the physical location of its Service is correct, and to immediately update such location whenever the physical location of the Service changes. Customer acknowledges and understands that any location information passed to emergency personnel by Vonage Business will be based upon the physical location information provided by the Customer.
- b. **Use of Service Outside The United States.** Customer acknowledges that any caller using the Service from any location outside the United States will be unable to use or access E911 Service or place any E911 emergency calls.
- c. **Failure to Designate and Identify the Correct Physical Address:** Customer's failure to provide and keep current Customer's correct physical location(s) will result in any 911 call or other



emergency communication made by Customer or from Customer's actual location (if different from the location previously supplied to Vonage Business by Customer) being routed to the incorrect local emergency service provider. Customer's physical location(s) may NOT be a post office box, mail drop or similar address. Neither Vonage Business nor Customer shall assume under any circumstances that Customer's physical office location for E911 calling purposes is the same as Customer's billing address for receipt of invoices.

**3. Mobile Applications: Vonage Business mobile applications are not a replacement for your cellular service.** If you subscribe to a Vonage Business mobile application and attempt to place a 911 call from the Vonage Business mobile application, the mobile application will use your device's (e.g. smartphone) dialer and cellular telephone service to make the 911 call. If your device does not have cellular telephone service (e.g. tablet), you will not be able to call 911 from the Vonage Business mobile application.

#### **4. Service Outage**

**a. Power Failure or Disruption:** Emergency dialing will not function in the event of a power failure or disruption. If there is an interruption in the power supply, a power surge or a power failure, the Service and emergency dialing may not function until power is restored. A power failure, power surge or power disruption may require Customer to reset or reconfigure equipment prior to using the Service or being able to make emergency 911 calls.

**b. Service Suspension or Termination by Vonage Business:** A Service outage or suspension (including, without limitation, suspension of Service due to billing issues or delinquent or unpaid invoices) or termination of Service by Vonage Business will prevent ALL Service, including the ability to make emergency 911 calls.

**c. Other Service Outages:** If there is a Service outage for ANY reason, such outage will prevent ALL Service, including the ability to make emergency 911 calls. Such outage may occur for a variety of reasons, including, without limitation, the reasons described elsewhere in this E911 Acknowledgement or the Terms of Service.

**5. Automated Number Identification:** Due to limitations at PSAPs, it may not be possible for the PSAP and the local emergency personnel to identify Customer's telephone number when Customer dials 911 via Vonage Business E911 Service. PSAP and emergency personnel may be unable to identify Customer's telephone number in order to call Customer back in the event that an emergency call is unable to be completed, is dropped or disconnected, or if a caller is unable to speak to provide the telephone number from which the caller is calling, and/or if the Service is not operational for any reason including, without limitation, the reasons and situations listed elsewhere in this E911 Acknowledgement and the Terms of Service.

**6. Automated Location Identification:** Due to limitations at PSAPs, it may not be possible to transmit identification of the Customer physical location address to the PSAP and local emergency personnel for Customer's area when Customer or any caller at Customer's Location dials 911. A caller must state the nature of the emergency promptly and clearly, including the caller's specific physical location, as PSAP and emergency personnel may NOT have this information. PSAP and emergency personnel may not be able to find a caller's location if the call is unable to be completed, is dropped, or disconnected, or if the caller is unable to speak to provide the location from which the caller is calling and/or if the Service is not operational for any reason including, without limitation, those reasons and situations listed elsewhere in this E911 Acknowledgement and the Terms of Service.

**EXHIBIT V-B**

**PRODUCTS AND PRICING**

Vonage Business agrees to provide, and Customer agrees to accept and pay for, the following products, services, features and functionality at the prices and on the terms and conditions set forth below, and otherwise subject to that certain Master Service Agreement, dated \_\_\_\_\_ (the "MSA"), by and between Vonage Business and THE CITY ("Customer"). Any capitalized terms not otherwise defined in this Exhibit V-B shall have the meanings ascribed to such terms in the MSA. In the event of any conflict between this Exhibit V-B and the MSA, this Exhibit V-B shall control. All quoted prices in this Exhibit V-B do not include Taxes and Fees.

- 1. Vonage Business shall deliver products and services to the City as described in the Techstrata Scope of Services EXHIBIT "A" Section C.**
- 2. Subject to Section 26 of the MSA, all products, services, features, and functionality in this Agreement shall be supported by Vonage over the life of the Agreement.**
- 3. City will pay Vonage Business up to \$215,631 for products and services over the 36-month period of the Agreement.**

## EXHIBIT V-C

### **SERVICE LEVEL AGREEMENT**

This Service Level Agreement ("SLA") is made part of and incorporated by reference into that certain Master Service Agreement, dated \_\_\_\_\_ (the "MSA"), by and between Vonage Business Inc., a Delaware corporation ("Vonage Business") and THE CITY ("Customer"). Any capitalized terms not otherwise defined in this SLA shall have the meanings ascribed to such terms in the MSA. In the event of any conflict between this SLA and the MSA, this SLA shall control.

#### **1. Customer Support.**

a. Technical support and customer service is available on a 24/7/365 basis from the Vonage Business support team via a toll free number or trouble ticketing system. A Trouble Ticket may be generated by Vonage (e.g., if Customer contacts Vonage) or by Customer from Vonage Business's trouble ticketing system based on the nature of the incident.

b. If Customer's Service problem cannot be resolved over the telephone and/or the issue is related to a third-party carrier, Vonage Business will use commercially reasonable efforts to diagnose the problem and work directly with the carrier to resolve the problem.

c. If Customer's Service problem is attributed to Vonage Business Services and requires onsite technical support, Vonage Business will dispatch a Vonage Business authorized technician to resolve either network or equipment-related issues. If Vonage Business receives a call to Vonage Business Support during normal business hours of 8:00 am to 5:00 pm, Monday through Friday (except holidays) (Local Time), Vonage Business will use commercially reasonable efforts to schedule a technician to be dispatched to Customer's Location.

2. **Service Level Objectives.** Vonage Business agrees to provide the Services using commercially reasonable efforts to provide a level of network service availability (99.999%) and call processing consistent with industry standards during the Initial Service Term and any Renewal Service Term. Vonage Business will provide service credits for Network Service Outages and Voice Service Outages in accordance with the terms of this SLA (the "Service Credits"). Each of a Network Service Outage or Voice Service Outage may be referred to herein as a "Service Outage." Any other Service-related issues or ticketed incidents are not subject to Service Credits.

#### **3. Network Service Outage.**

a. A "Network Service Outage" means that a particular Customer Location has experienced an interruption in Service relating to a Private Circuit managed by Vonage Business such that Customer is unable to access the Internet, or to communicate with or access any other telecommunications providers via the public switched telephone network ("PSTN"), or Vonage Business is unable to transmit and receive any IP packets on Customer's behalf. A Network Service Outage is measured from the time the Trouble Ticket is opened to the time the Network Service Outage is restored. To qualify for service credits, a Trouble Ticket for a Network Service Outage must be opened within twenty-four (24) hours of the event for which a service credit is claimed. Outages attributable to the events or causes described under Section 5, below (Service Credit Exceptions and Limitations) will not be included in the calculation of Network Service Outages.

b. In the event of a Network Service Outage, Customer will be entitled to credits against monthly recurring charges ("MRC") for the Service affected by the Network Service Outage ("Affected Network Service") as outlined in the following table:

Aggregate Length Of Network Service Outage In Calendar Month	Service Credit
≤ 30 minutes	No Service Credit
> 30 minutes and ≤ 2 hours	2% of the MRC for the Affected Network Service
> 2 hours	5% of the MRC of the Affected Network Service; and an additional 5% of the MRC of the Affected Network Service for each full hour of Network Service Outage over 2 hours.

Upon Customer's request to Vonage Business (which must be made within thirty (30) days after the last day of the calendar month in which the relevant Network Service Outage was reported), Customer shall be entitled to service credits as set forth above, further subject to the terms of Section 5 below. A credit will be applied to the following month's invoice. In no event will service credits in any one (1) month exceed one hundred percent (100%) of the MRC for the Affected Network Service.

c. In the event Customer experiences two (2) or more Network Service Outages each lasting more than four (4) hours during any consecutive two (2) month period, Customer may terminate the Affected Network Service without imposition of early termination fees or charges upon written notice to Vonage Business given within five (5) business days following the end of the calendar month in which the event giving rise to the termination right occurred. Such termination will be effective thirty (30) days after Vonage Business's receipt of such notice.

#### 4. Voice Service Outage.

a. "Voice Service Outage" is defined as all inbound calls to all Customer telephone numbers not reaching at least one of their possible termination points assuming these points have been configured, available and reachable by Vonage Business via either Vonage Business Private Circuit or a Customer-provided network connection (including a desk phone, voicemail, cell phone or any other destination reachable via a configured telephone number). To qualify for service credits, a Trouble Ticket for a Voice Service Outage must be opened within 1 business day of the event for which a service credit is claimed. Any Voice Service Outage attributable to the events or causes described under "Service Credit Exceptions and Limitations" will not be included in the calculation of credits for Voice Service Outages.

b. In the event of a Voice Service Outage, Customer will be entitled to credits to MRC relating to the Service affected by the Voice Service Outage ("Affected Voice Service"), as outlined in the following table:

Aggregate Length Of Voice Service Outage In Calendar Month	Credit

≤ 30 minutes	No credit
> 30 minutes and ≤ 2 hours	2% of the MRC for the Affected Voice Service
> 2 hours	5% of the MRC of the Affected Voice Service; and an additional 5% of the MRC of the Affected Network Service for each full hour of Voice Service Outage over 2 hours.

Upon Customer's request to Vonage Business (which must be made within thirty (30) days after the last day of the calendar month in which the relevant Voice Service Outage was reported), Customer shall be entitled to service credits as set forth above, further subject to the terms of Section 5 below. A service credit will be applied to the following month's invoice. In no event will service credits in any one (1) month exceed one hundred percent (100%) of the MRC for the Affected Voice Service.

c. In the event Customer experiences two (2) or more Voice Service Outages per month, each lasting more than four (4) hours, during any consecutive 2-month period, Customer may terminate the Affected Voice Service without imposition of early termination fees or charges upon written notice to Vonage Business given within five (5) business days following the end of the calendar month in which the event giving rise to the termination right occurred. Such termination will be effective thirty (30) days after Vonage Business's receipt of such notice if during such 30-day period Vonage Business is unable to resolve the Voice Service Outage.

**5. Service Credit Exceptions and Limitations; Sole Remedy.** No service credits or termination rights will be given for Network Service Outages or Voice Service Outages that are (a) caused in whole or in part by the unauthorized use of the Services, use of the Services in violation of the AUP or the negligence or acts or omissions of Customer, its end users, agents or other third parties; (b) due to failure of power, unauthorized equipment, or equipment provided by Customer or other third parties; (c) due to deficiencies in Customer's local area network or in the wiring, cabling, and environmental conditions (including appropriate room temperature) inside the Customer Location; (d) during any period in which Vonage Business is not given access to the applicable Customer Location; (e) during any Emergency Maintenance undertaken in accordance with the Service Terms or as part of a planned outage for Routine Maintenance (as defined in Section 6); (f) any interruption resulting from disconnection or suspension of the Service for non-payment or an interruption of Service resulting from incorrect information from Customer; (g) due to a force majeure event (described in Section 26(b) of the Service Terms); or (h) caused by factors falling within the scope of warranty disclaimers in the Service Terms. Due to the susceptibility of the public internet to outages and other service quality issues beyond the control of Vonage Business, no service credits will be issued for any Network Service Outages relating to any circuit not managed by Vonage Business. Service Credits are not applied to Taxes and Fees. In no event will Service Credits in any calendar month exceed one hundred percent (100%) of the total MRC payable by Customer for the Affected Services in that month. Except as provided in Sections 3.c and 4.c, or otherwise expressly agreed in writing between Customer and Vonage Business, the Service Credits are Customer's sole and exclusive remedy available to Customer in event of any Service Outage, or a failure to meet a target service level, and under no circumstance shall a Service Outage or failure to meet target Service Levels in this SLA be deemed a default under the Sales Order or the Service Terms, or this SLA. Eligibility for Service Credits is subject to Customer's account being held current and having no outstanding past due balance.

6. **Maintenance**. "Routine Maintenance" refers to any action taken by Vonage Business to ensure its ongoing ability to deliver services to Customers, including but not limited to hardware/software upgrades and configuration changes in the Vonage Business network. Vonage Business agrees to provide seventy-two (72) hours' notice to Customer of any planned outage. Such effects related to Routine Maintenance shall not give rise to service credits under this SLA. Routine Maintenance shall be undertaken only on Sunday and Wednesday mornings between the hours of 12:00 AM and 6:00 AM Local Time. Vonage Business may perform maintenance on an emergency basis ("Emergency Maintenance") with or without notice.

7. **Local Time**. For purposes of this SLA, "Local Time" refers to the local time in the time zone in which an Affected Service is located.