

RESOLUTION NO. 2020- 2711

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN AGREEMENT WITH VONAGE BUSINESS INC FOR TELEPHONE SERVICES; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (“Town”) needs to replace its existing telephone service (“Services”) due to quality issues with its existing provider and in order to reduce service costs; and

WHEREAS, pursuant to Section 3-7(a) of the Town’s Purchasing Code, the Town received three (3) quotes for the Services and received the lowest priced quote over the three-year term from Vonage Business Inc (“Vonage”), which quote represents approximately a 50% savings from the current provider; and

WHEREAS, Vonage has agreed to provide the Town with the Services pursuant to the quote attached hereto as Exhibit “A” and the contractual services agreement attached hereto as Exhibit “B” (the “Agreement”); and

WHEREAS, the Town Commission wishes to approve the quote for the Services attached hereto as Exhibit “A”, and the Agreement with Vonage, in substantially the form attached hereto as Exhibit “B”; and

WHEREAS, the Town Commission finds that this Resolution is in the best interest and welfare of the residents of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. Each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Approval of Agreement. The Town Commission hereby approves the quote for the Services attached as Exhibit “A”, and the Agreement with Vonage, in substantially the form attached hereto as Exhibit “B.”

Section 3. Implementation. The Town Commission hereby authorizes the Town Manager to execute the Agreement with Vonage, together with such changes as may be approved by the Town Manager, subject to approval by the Town Attorney as to form and legality, and to take any action which is reasonably necessary to implement the purposes of this Resolution.

Section 4. Authorization to Expend Funds. The Town Manager is authorized to expend funds in accordance with the quote attached hereto as Exhibit “A”, and the terms of the Agreement attached hereto as Exhibit “B,”

Section 5. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this 11th day of August, 2020.

Motion By: Commissioner Kesl

Second By: Commissioner Velasquez

FINAL VOTE ON ADOPTION:


Commissioner Charles Kesl Yes

Commissioner Eliana R. Salzhauer Yes

Commissioner Nelly Velasquez Yes

Vice Mayor Tina Paul Yes

Mayor Charles W. Burkett Yes



Charles W. Burkett, Mayor

ATTEST:



Sandra McCready, MMC
Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney



Town of Surfside

Attn: Jose Feliz **Quote Date:** Jun 11, 2020
Tel: (305) 861-4863 **Quote Expiration:** Jun 30, 2020 at 11:59 pm ET
Agreement Term: 3 Year

Account Executive

Alex Comstock
alexander.comstock@vonage.com
 404-900-5146

Contact your Account Executive with any questions

Included at no extra cost:

The "Vonage Business Cloud" Mobile app! Call and text using your personal business number on-the-go, check voicemails, access paid add-ons and more. Available on the App Store and Google Play. Mobile data charges may apply.

Quote #Q-57020

Name	Address	One time	Monthly price ^
Primary Primary	9293 HARDING AVE SURFSIDE, FL 33154 US	\$ 1,245.00	\$ 1,596.76

Primary
 9293 HARDING AVE, SURFSIDE, FL 33154 US

Purchase order:

One time set up charge **

Product	Quantity	Unit price	Subtotal
Implementation Support			\$ 400.00
Implementation Support Discount			(\$ 400.00)
Product total			\$ 0.00
Shipping			
Standard Shipping	83	\$ 15.00	\$ 1,245.00
Taxes			
County - Sales Tax			\$ 12.45
State - Sales Tax			\$ 74.70
Local - Communications Service Tax NFR			\$ 0.00
State - Communications Service Tax NFR			\$ 0.00
State - Statutory Gross Receipts NFR (Business)			\$ 0.00
State - Statutory Gross Receipts NFR			\$ 0.00
Subtotal (excludes taxes)			\$ 1,245.00

Monthly charge (upon activation)[^]

Product	Quantity	Unit price	Subtotal
Unlimited Extension	83	\$ 13.99	\$ 1,161.17
Local Company Number	4	\$ 0.99	\$ 3.96
Call Group	14	\$ 0.00	\$ 0.00
Company Call Recording	1	\$ 25.00	\$ 25.00
US Fax Number	4	\$ 4.99	\$ 19.96
Polycom VVX 250 w/Power Supply - Rental	83	\$ 0.00	\$ 0.00
Fees			
Recovery Fee			\$ 304.50
E911 Fee			\$ 82.17
Subtotal [^]			\$ 1,596.76

[^] Taxes and other surcharges not included.

Total (all locations)	One time	Monthly price [^]
	\$ 1,245.00	\$ 1,596.76

[^] Taxes and other surcharges not included.

Vonage Terms of Service

Effective Date: February 7, 2019

[Link to Previous version](#)

These Vonage Business Terms of Service (hereinafter referred to as the "Terms" or "Agreement") apply to the use of products or services provided by Vonage Business Inc. ("Vonage Business", "Vonage" or "Company") to the entity identified in a valid and binding Sales Quotation or Sales Order (the "Customer") and are an integral part of the agreement between Vonage Business and Customer. The Customer and Vonage Business are sometimes collectively referred to herein as the "Parties," or individually as a "Party". By ordering, purchasing or using the Services, Customer agrees to be bound by these Terms, which among other things, require mandatory arbitration of disputes instead of a jury trial and limit Vonage Business's liability.

PURSUANT TO FCC REQUIREMENTS, VONAGE BUSINESS IS REQUIRED TO ADVISE ITS CUSTOMERS OF ANY LIMITATIONS THAT E911 SERVICE MAY HAVE IN COMPARISON TO TRADITIONAL E911 SERVICE, WHICH ARE SET FORTH AT SECTION 32 BELOW AND IN THE E911 DISCLOSURE NOTICE AND ACKNOWLEDGEMENT, WHICH CAN BE FOUND AT:

[HTTPS://WWW.VONAGE.COM/BUSINESS/LEGAL-POLICY-CENTER/BUSINESS-CLOUD/E911/](https://www.vonage.com/business/legal-policy-center/business-cloud/e911/).

AGREEMENT

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

"Activation" means that Customer's Service is first available for Customer's use at a Customer Location.

"Activation Date" means the date of Activation, which is the date on which all Services are installed, activated and available for Customer's use at a Customer Location.

"Affiliate(s)" means, with respect to a Party, any entity that Controls, is Controlled by or is 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.

"Applicable Laws" means any and all applicable federal, state or local laws, rules or regulations, including, but not limited to applicable restrictions concerning call recording, call monitoring, call interception and/or direct marketing or telemarketing.

"RUP" means the Vonage Business acceptable and reasonable use policy set forth in Sections 18 & 19.

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

"E911 Disclosure" means the provisions set forth in the [Vonage Business E911 Disclosure Notice and Acknowledgement](#) and incorporated by reference into a Sales Order stating Vonage Business' policies regarding the availability and limitations of E911 Service.

"In-App Purchase" means the Customer's purchase of Vonage Business products or services from within a mobile application made available on a third-party online app store such as the Apple® App Store® or Google Play™ online app stores, and where payment is processed by the third-party online app store.

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

"Renewal Service Term" means an annual period of time, unless the Parties otherwise agree in writing, after expiration of the Initial Service Term.

"Sales Order" means a Sales Quotation as described in Section 2 that has been accepted by an authorized representative of Customer and shall automatically incorporate these Terms by reference. A Sales Order arises once a Customer accepts a Sales Quotation following: (a) initiation of the Vonage Business Services; or (b) upon Customer's successful addition of Vonage Business Products and/or Services via the online process or via phone by a Customer administrator; and the Sales Quotation is subsequently accepted by Vonage Business.

"Service" or "Services" means products or services provided or made available by Vonage Business to Customer that are (a) set forth in a Sales Order, or (b) purchased by Customer via In-App Purchase.

"Service Term" or "Term" means the period of time (commencing upon the Activation Date) during which Vonage Business provides Services to Customer.

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

"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), whether imposed on Vonage Business or a Vonage Business Affiliate.

"Vonage Business" or "Vonage" means Vonage Business Inc., a Delaware corporation, or any Affiliate providing Services to Customer.

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

2. Sales Agreement. Services will be described in a "Sales Quotation" that shall include: (i) the price, location, and other information about the Services; (ii) the details relating to equipment being offered for sale or lease to Customer; and (iii) if applicable, associated installation, maintenance, shipping or delivery requirements. The Sales Order incorporates by reference these Terms, and when executed by Vonage Business and Customer, becomes a binding contract between Vonage Business and Customer. 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. Notwithstanding the foregoing, for In-App Purchases only, the "Sales Quotation" shall be deemed to be the description of Services presented to Customer and information provided by Customer within the in-app sign-up process, prior to Customer's confirmation of the purchase of the Services. Upon acceptance of a Sales Order by Vonage Business, 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 and this Agreement. 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' 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. Terms, Conditions and Policies. These Terms incorporate all additional terms, conditions and policies that are set forth in an addendum, schedule, exhibit or amendment to a Sales Order or this Agreement, or set forth at <https://www.vonage.com/legal-policy-center> (collectively, the "Terms"). These Terms supersede and replace all terms and conditions set forth in any documents issued by Customer, including purchase orders and specifications not agreed to in writing by the Parties. Vonage Business may update or replace the Reasonable Use Policy and E911 Acknowledgement from time to time, and will provide notice to Customer at the email address on file with the Account. Such updates will become effective thirty (30) days after such

notice to Customer. In addition, Vonage Business reserves the right to change any of the Terms at any time, but only on a prospective, not retroactive, basis. Vonage Business will provide Customer thirty (30) days advance notice basis. In the event the Terms are changed, amended and/or modified pursuant to this Section (herein referred to as a "Policy Change") and such Policy Change is (a) applicable to Customer, and (b) materially and detrimentally alters any Service and/or the applicable terms and conditions under which such Service is then being provided to Customer, then notice shall be provided through Customer's invoice or by e-mail to Customer's email address on file. Upon receipt of notice, Customer will have thirty (30) days to notify Vonage that such changes are materially and adversely impacting, stating specifically which changes are impactful, and the Parties will engage in an up to 30-day executive escalation to reach a mutually agreeable workaround agreement. If agreement cannot be reached on commercially reasonable terms, 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 Policy Change or terminate those Services affected by the Policy Changes without termination liability, without the right to continue to use those Services on a month to month basis. Notwithstanding the foregoing, Customer's right to object or terminate shall not apply to Policy Changes required by applicable law, regulation or governmental authority to which Vonage or Customer is subject, or to acceptable use policy changes mandated by Vonage providers to protect the security, operability and integrity of Vonage facilities, services or factors that would adversely affect its other customers, or to comply with reasonable acceptable use policies of its providers supporting the Services.

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

5. Authorizations. Customer shall provide Vonage Business, at no cost to Vonage Business, all permissions, consents or authorizations necessary to activate, maintain, inspect, and repair the products and/or Services and any Vonage Business Equipment, including (if applicable) the right to access and enter Customer's Location.

6. High Speed Internet Connection Required. Customer understands, acknowledges, and agrees that: (i) Customer must have a high-quality high speed internet connection to use the Services; and (ii) Vonage Business is not providing an internet connection for Customer. Vonage

Business does not control and is not responsible for: (i) Customer's internet connection; (ii) the quality of Customer's internet connection; (iii) any third party products and/or services related to Customer's internet connection; or (iv) problems with the Services that are caused by or related to Customer's internet connection. Vonage Business will not contact any of the internet providers and/or service or product providers on Customer's behalf.

7. User Designation. Customer may designate one or more users to be an account administrator with full administrative control of Customer's account from the Vonage Business user interface. For most Vonage Business customers, the primary administrator for your account is known as the Superuser or, in some cases, a primary administrator (collectively hereinafter, "Superuser"). The individual assigned to be the Superuser is an individual designated by Customer through the online sign-up process or, if the agreement was not entered into online, the individual whose name is identified on the Sales Order. The Superuser: (i) has the ability to make changes to the Customer account (e.g., service additions, service deletions, assignment of users, account cancellations, updates to credit cards, etc.); and (ii) is the authorized individual on Customer's account with respect to transferring (or "porting") of your telephone numbers to a carrier other than Vonage Business. The Superuser may assign one or more additional administrators on the account and may re-assign "Superuser" status to another user. In the event that Customer desires information regarding a customer service record or actual call log details, the information requests must come from Superuser or an administrator. However, Vonage Business shall respond to these requests by transmitting the requisite information to the email address on file for the Superuser.

a) Company Contact. The "Company Contact" for the account is assigned through the online sign-up process. The Company Contact shall refer to the individual(s) who will receive messages from Vonage Business concerning matters of general relevance to the account (e.g., notices of updates to the account, billing notices, maintenance alerts, etc.). Such notices are typically provided through electronic mail. A Company Contact may or may not be the Superuser or an administrator for the account.

b) Reassigning Superuser Designation. In the event that Customer seeks to re-assign the Superuser designation on Customer's account and the Superuser is unable to make the change, Vonage Business requires that Customer either: (i) submit an email from the Superuser's email address on file with Vonage Business; or (ii) provide a written request, on Customer's letterhead and executed by an officer or owner of the company which Customer represents.

c) Adding Services. Additional Services can be purchased by a Superuser through the Vonage Business user interface or by calling Vonage Business Customer Care. Customer hereby authorizes a Superuser to: (i) add Services to Customer's Vonage Business account; and (ii) commit Customer to pay for these Services on a recurring monthly basis. Customer further authorizes Vonage Business to obtain payment of Customer's then-current statement balance from Customer each month from Customer's credit card account. A Superuser has the ability to authorize an account cancellation and make changes to the account (e.g., service additions, service deletions, assignment of users, updates to credit cards, etc.) but may not: (i) designate himself/herself as the Superuser or (ii) designate any other user as a Superuser. The ability to

purchase Additional Services may be restricted or unavailable for accounts opened via an In-App Purchase.

8. Equipment.

Customer understands and acknowledges that Activation of the Services may require the use of certain Customer Equipment and/or Vonage Business Equipment.

a) Customer 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. Vonage Business shall not be responsible for ensuring compatibility of any Customer Equipment with Vonage Business Equipment.

i. Vonage Business may, upon Customer's request, facilitate the provision of equipment from a third party supplier or resell certain equipment. While Vonage Business recommends some equipment brands and may facilitate Customer's purchase of some equipment as an accommodation, the original equipment manufacturer and not Vonage Business shall be responsible for any equipment defects, if applicable. Vonage Business will pass through all original equipment manufacturer warranties for the equipment to you. Vonage Business shall have no liability to Customer of any nature regarding such equipment. Please check the equipment manufacturer's website for warranty, return rules and other terms and conditions applicable to such third party equipment.

ii. Purchased equipment may not be returned to Vonage Business unless otherwise directed. ALL EQUIPMENT SALES ARE FINAL. 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. Prior to returning the equipment, Customer must contact Vonage Business so that Vonage Business may confirm the correct location to send the equipment, confirm that a defect exists to process a warranty claim on behalf of Customer, and to provide a RMA number. Customer must ship the equipment to the address provided by Vonage Business in accordance with all RMA procedures within ten (10) days after receipt of a RMA number, including the payment of all shipping fees. Once the equipment is received, if applicable the original equipment manufacturer will handle the return in accordance with its applicable warranty policy.

b) Vonage Business Equipment. With respect to Vonage Business Equipment rented, leased, loaned or otherwise provided by Vonage Business for use by Customer, Customer will not: (i) repair or otherwise modify 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 must notify Vonage Business prior to relocating any Vonage Business Equipment.

i. Customer will use commercially reasonable efforts to protect and maintain Vonage Business Equipment in a secure location at the Customer Location 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, including the replacement cost of Vonage Business Equipment beyond normal wear and tear.

ii. During the Term of any applicable Service, Vonage Business shall repair or replace defective Vonage Business Equipment rented (or otherwise provided by Vonage for use) by Customer. Notwithstanding the foregoing, Vonage Business shall not be obligated to replace Vonage Business Equipment if it is determined by Vonage Business that Customer or another third party is responsible for damage to Vonage Business Equipment. Customer will be responsible for the replacement cost of such damaged equipment.

iii. Vonage Business Equipment (and replacements) may be refurbished equipment.

iv. Upon the termination of this Agreement or any Service, or if Customer is returning Vonage Business Equipment during the Service Term, Customer must contact Vonage Business for the relevant RMA information. Customer shall securely pack, ship and return to Vonage Business all Vonage Business Equipment in accordance with the RMA instructions to the address designated by Vonage Business. Failure to obtain an RMA and/or to adhere to Vonage Business' RMA instructions will give rise to Customer's full liability for the replacement cost of the Vonage Business Equipment. The RMA must be received before the Vonage Equipment may be shipped back to Vonage Business. All wires, cables and power supplies provided with the Vonage Business Equipment must be returned with the Vonage Business Equipment. If the Vonage Business Equipment has not been timely returned to Vonage Business within thirty (30) 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. The "replacement cost" shall be the then current list purchase price of the 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, and in such case, Vonage may charge Customer's selected method of payment, and Customer will pay and be liable for up to a one thousand dollar (\$1,000.00) equipment return fee per Customer location in the event Customer does not pay for such unreturned Vonage Business Equipment, and Vonage Business is required to retrieve such equipment (which is a non-exclusive remedy to obtaining the replacement cost chargeable to Customer, as applicable).

9. Software.

a) **Non-Exclusive License.** If Software is provided by Vonage Business in connection with 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(s). 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' 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) Software Upgrades and Modifications. Vonage Business reserves the right to upgrade the Software or discontinue support for earlier versions of the Software at any time, provided that such upgrade will not materially alter the features and/or functionality of the Services. 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.

c) 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 9, such provisions shall govern the use of Third-Party Software. Customer agrees to comply with the terms and conditions of all end user license agreements accompanying any Software (including Third-Party Software) or plug-ins to such Software distributed in connection with the Service. All end user licenses shall immediately terminate on the date that the Service expires or this Agreement is terminated.

d) Copyright / Trademark / Unauthorized Usage of Device, Firmware or Software. The Service(s), 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 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. 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 by Vonage Business (which Vonage Business reserves the right to prohibit 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.

10. Service Term and Service Cancellation.

a) Service Term; Notice of Cancellation. The Service Term will begin on the Activation Date. Sales Orders which describe delivery of Service to multiple Customer Locations may identify multiple Service Dates and Service Terms.

i. Month-to-Month Services. For Services provided on a month-to-month basis, Customers may terminate the Services by providing at least 30-days' notice, with termination being effective the month following the month notice was provided.

ii. Fixed Term Services. For Services provided on a fixed-term basis, the Service Term will automatically renew for a Renewal Service Term (with automatic renewal of subsequent Renewal Service Terms) equal in length to the previous Service Term unless either Party terminates the Service(s) by giving the other Party written notice of non-renewal not less than ninety (90) days prior to the expiration of the then-current Service Term. The Service Term shall continue unless and until Customer provides notice of cancellation in accordance with this Section 10, or Vonage Business terminates the Services in accordance with the terms set forth herein. Notwithstanding notice by a Party to terminate this Agreement, Services will remain in effect through the effective date of termination and the terms and conditions of this Agreement and the applicable Sales Order(s) will continue to apply to such Services. 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. Either party may terminate such month-to-month term pursuant to Section 10.a.i. above.

b) Early Termination Charges - Fixed Term Services.

i. Customer Cancellation and Termination Charges Prior to Activation Date. If Customer cancels all or any part of the Service prior to the Activation Date for the applicable Service for convenience, except as may be expressly permitted by this Agreement, Customer's liability for such cancellation shall be an amount equal to: (a) all charges (including applicable taxes) incurred by Vonage Business as a result of such cancellation, including recurring and non-recurring charges, third-party license fees/costs, or early termination fees or charges associated with any other Service; plus (b) three (3) months of the forecasted monthly recurring charges or monthly commitment level payments for the cancelled Service. Vonage Business may automatically charge Customer's selected method of payment or Customer shall pay such cancellation amount immediately upon receipt of an invoice therefore, at Vonage Business' option.

ii. Customer Cancellation and Termination Charges After Activation Date. If Customer is subject to a minimum Service Term in excess of thirty (30) days and terminates specified Service(s) after the applicable Activation Date for convenience, Customer must provide at least thirty (30) days' written notice to Vonage Business. If Customer does so, 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) a prescribed percentage of the remaining monthly recurring charges as of

the date of termination through the end of the Service Term; (iii) if not recovered by the foregoing, any termination liability/costs payable to third parties resulting from the termination; and (v) applicable Taxes and Fees on all of the foregoing. Vonage Business may automatically charge Customer's selected method of payment or Customer shall pay such cancellation amount immediately upon receipt of an invoice therefore, at Vonage Business' option.

iii. 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 10 are fair and reasonable estimates of Vonage Business' anticipated and actual damages, and not a penalty.

c) 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.

d) Cancellation Process. The Agreement may be cancelled by Customer only through the Superuser by contacting Vonage Business' Customer Care by telephone during normal business hours. (If Customer contacts a Marketing Partner or Authorized Distributor to cancel the Services or any portion thereof, that Marketing Partner or Authorized Distributor will collect the pertinent information and provide the information to Vonage Business to effect cancellation in accordance with Customer's instructions.) **CUSTOMER MAY CANCEL SERVICES ONLY THROUGH THIS METHOD. VONAGE BUSINESS WILL NOT ACCEPT CANCELLATION VIA EMAIL, FAX, SMS OR OTHER ELECTRONIC METHODS. FAILURE TO CANCEL SERVICES IN ACCORDANCE WITH THIS SECTION WILL RESULT IN ONGOING SERVICE CHARGES, FEES AND TAXES.** Vonage Business will provide Customer with email confirmation of the Services cancelled. If Customer does not receive a confirmation of Service cancellation, Customer must notify Vonage Business by sending an email to customercare@vonagebusiness.com or contact Vonage Business Customer Care by telephone.

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.

f) Ancillary Services Termination. In the event Customer subscribes to ancillary services provided by Vonage Business (including such things as voicemail recording, call recording, etc.), cancellation of the Services for any reason shall also result in the cancellation of such ancillary services.

g) In-App Purchases. Sections 10(a) through (e) above shall not apply for Services purchased via In-App Purchase. Services purchased via In-App Purchase are provided on a monthly basis and the Term will begin on the Activation Date. The terms of service for the app store from which Customer downloaded the mobile application shall govern renewals, refunds and cancellations of the Services, and such terms are hereby incorporated by reference.

11. Billing, Credit, and Payment.

a) Billing and Payment Processing.

i. Payment of Invoices. Invoices are delivered monthly. Except for usage based fees, all fees are due in advance on the first day of each billing period. Fees may include monthly recurring charges ("Service Fees") and other non-recurring charges including but not limited to, activation fees, porting fees, early termination fees ("ETF"), and other fees further described in Section 12 (collectively, "Fees"). All usage based charges (including charges for international calls) are due and payable in arrears on the first day of each billing period following the month they were incurred. Customer agrees to pay for all equipment as the equipment order is processed and set up fees upon acceptance of the Sales Order. Customer agrees to pay for the first month of Services upon Activation of the Services. Failure to pay all undisputed amounts in full may result in account suspension pursuant to this Section and Section 27.a, and Vonage Business shall have no liability for such suspension under any circumstances. In the event that Customer's use of the Services involves usage-based charges, Vonage Business may, in its sole discretion, process charges against Customer's payment method prior to Customer's regular monthly billing cycle date.

ii. Customer agrees to pay Vonage Business the recurring monthly service charges, Taxes and Fees, Shipping and Handling, set-up charges and usage charges, if applicable, for Customer's use of the Services. Vonage Business may also 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. Billing will commence on the Activation Date. Customer agrees to provide Vonage Business with a valid email address, billing address, and a valid payment method prior to activation of Service. Customer shall advise Vonage Business immediately if Customer's Company Contact or Superuser email addresses change and/or if the payment method changes or expires.

b) Payments via Credit Card or ACH. With respect to all amounts chargeable to Customer under this Agreement, Customer authorizes Vonage Business to: (a) automatically bill the credit/debit card Customer provided on the same day of each month; or (b) automatically debit (charge) Customer's checking account electronically via ACH on the same day of each month. "ACH" shall mean the automated clearing house, which is the nationwide network of banking institutions that process electronic payments automatically between bank accounts. Customer

agrees that Vonage Business may receive updated information about Customer's account from the financial institution issuing Customer's credit/ debit card. Customer's payment method is also subject to charge for applicable fees and charges arising from a cancellation of Service or required Vonage Business Equipment returns.

c) Alternative Payment Methods. Under certain circumstances, and except for pre-paid cards, Vonage Business may agree to accept alternative payment methods. In such case, Customer shall agree to Vonage Business' reasonable requirements, as well as certain fees, related to the aforementioned pre-approved, alternative payment methods. In such case, Customer authorizes Vonage Business to either: (a) use information from the check to make a one-time electronic transfer from Customer's account as soon as the Customer submits the payment; or (b) to process the check as a check transaction, in which case Customer may not receive the check back from Customer's financial institution. In the event that Customer presents a check to Vonage Business for payment that is returned by Customer's bank for non-sufficient funds, Vonage Business may suspend or terminate the account pursuant to Section 27.a. Customer shall pay a reconnect fee to re-activate service as set forth in Section 11. iv. Late payments and returned checks are subject to late payment fees and returned check fees, respectively.

d) Suspension of Services. Failure to pay all undisputed amounts in full may result in suspension of Services pursuant to Section 27.a and Vonage Business shall have no liability for such suspension under any circumstances. During any period of suspension, Services and features and functions of the Services (including, but not limited to call recording service and any other service Vonage Business is providing) will be unavailable to Customer until the undisputed amount owed is paid in full. Customer will be unable to record calls or access any data or recordings that have previously been stored by Vonage Business. If Vonage Business restricts, suspends or terminates Customer's Services pursuant to Section 27.a., 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 of \$25.00 may apply and any overdue charges must be paid in full. Such restoration shall not be construed as a waiver of Vonage Business' 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.

e) Billing Disputes. 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 undertake an investigation of the dispute, so long as Customer has not waived its rights pursuant to this paragraph to make the dispute. At the conclusion of the investigation, Vonage Business will notify Customer of the amount to be correctly charged and such amount will become immediately due and payable. Vonage Business may charge interest on such amount 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
Billing Department (Disputes)
23 Main Street
Holmdel, NJ 07733

With a copy to:

Office of the Chief Legal Officer
Vonage Business
23 Main Street
Holmdel, NJ 07733

If Customer does not deliver full payment for all undisputed billed charges by the due date, Vonage Business may restrict, suspend or terminate use of the Services or Vonage Business Equipment pursuant to Section 27.a. 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 other payments made by Customer towards any past-due undisputed amounts owed. If Vonage Business restricts, suspends or terminates Customer's Services, Vonage Business may, at its sole option, choose to restore Customer's Services prior to the payment of all charges due. Such restoration shall not be construed as a waiver of Vonage Business' right to (i) receive full payment for all undisputed amounts due or (ii) again restrict, suspend or terminate the Services pursuant to Section 27.a at any time for non-payment of any unpaid undisputed charges. The failure of Vonage Business to restrict, suspend or terminate the Services for non-payment of any undisputed 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.

f) Additional, Unrelated Charges. 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.

g) In-App Purchases. The terms of service for the app store from which Customer downloaded the mobile application shall govern payment for the Services, and such terms are hereby incorporated by reference. Failure to comply with such terms may result in the suspension or termination of Services pursuant to Section 27.a. Due to payment notification requirements of certain app store platforms, Customer may be required to open their mobile app to enable automatic delivery of their monthly subscription payment notification to Vonage Business. If Customer fails to open (or if Customer deletes) their mobile app within fourteen (14) days after the end of the prior monthly subscription period, Vonage Business may not receive payment notification despite Customer's account having been charged by the app store platform. If Vonage Business does not receive payment notification within fourteen (14) days after the end of

the prior monthly subscription period for any reason, Customer's account may be suspended or terminated pursuant to Section 27.a.

12. Taxes and Fees. Prices for Services do not include, and Customer is responsible for, all Taxes and Fees. Customer may also be charged taxes by a Marketing Partner or Authorized Distributor for non-Vonage Business products and services sold or licensed by that Marketing Partner or Authorized Distributor in connection with Customer's order for Vonage Business Services. In addition, a regulatory recovery fee for every phone number assigned to Customer's account, including toll free and virtual numbers, will be charged monthly 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. This recovery fee may also include recovery of costs for legal, intellectual property, cybersecurity, compliance and other related expenses, including those related to number portability, customer privacy protection and anti-fraud protection. This fee is not a tax or charge required or assessed by any government and may be recovered by Vonage Business through imposition of a surcharge on cost of the Service. Customer may present Vonage Business with an exemption certificate eliminating Customer's and Vonage Business's liability to pay certain Taxes and Fees. If any amounts paid for the Services are refunded by Vonage Business, Marketing Partner or Authorized Distributor, applicable taxes may not be refundable. The foregoing shall not apply to In-App Purchases. The terms of service for the app store from which Customer downloaded the mobile application shall govern taxes and fees for the Services, if any, and such terms are hereby incorporated by reference.

13. 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) or would impose further compliance requirements, then Vonage Business will provide notice to Customer (in accordance with Section 37(e)) to the extent that said changes impact Customer's obligations and details of regulatory changes and if requested by Customer, 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 Business may, on a prospective basis after such 30-day period, pass any increased costs (if applicable) resulting from such changes on to Customer; provided, however, that Vonage Business shall provide Customer written notice of any increased costs or charges and Customer may upon notice given to Vonage Business within sixty (60) days after delivery of the notice of the increased charges terminate Service without liability for an early termination fee or charge. If Customer does not terminate Service within such 60-day period, Customer's termination right shall expire and Customer shall be obligated to accept and pay for the Service until expiration or termination of the Service Term.

14. Metered Usage. There are certain calls which will incur additional usage charges, such as calls made outside of the United States and Canada ("International Calls"). In addition, certain features such as call forwarding from auto attendants to an outside number, calls to a queue, and each line on a conference bridge will incur charges at the then current rate established by Vonage Business. Metered usage is billed in full-minute increments, and actual usage is rounded up to

the next full-minute increment at the end of each call for billing purposes. International Calls may not be made available for certain types of Services.

15. Bundled Usage. Vonage Business or its Marketing Partners or Authorized Distributors may offer bundled plans which include a defined combination of services and which may offer a specified number of minutes or unlimited usage (subject to Sections 19 and 20 herein). Bundled plans may also include usage based charges that differ from other Vonage Business, Marketing Partner or Authorized Distributor plans. In some bundled plans, the number of minutes used may be aggregated into a pool of minutes available to extensions on an account with excess usage charges applying for any usage above the allotted aggregate minutes at a specified rate.

16. Unlimited Calling & Unlimited Voice Services. For unlimited calling plans, unlimited calling applies only to calls made within the United States and Canada, and are subject to Section 19. All non-Canadian international calls are subject to additional charges. Unlimited voice services are provided solely for live dialog between two individuals. Unlimited voice services may not be used for conference calling, call forwarding, monitoring services, data transmissions, transmission of broadcasts, transmission of recorded material, or other connections which do not consist of substantially uninterrupted live dialog between individuals. If Vonage Business finds that Customer is using an unlimited voice service offering for other than live dialog between two individuals, Vonage Business may, at its option, terminate Customer's service or change Customer's plan. Vonage Business may provide commercially reasonable written or email notice that it intends to take any of the above actions. Notwithstanding the foregoing, Customer shall be entitled to use Vonage Business conference calling services such as three way calling and Vonage Business-provided conference calling bridges. See Section 19 below for additional limitations pertaining to Customer's use of unlimited voice services.

17. Ancillary Services; Voicemail and Call Recording Retention Policy.

a) Caller name identification (i.e., caller ID with name) Services provided by Vonage Business are based on availability of such Services from Vonage Business' underlying providers. Vonage Business does not guarantee that such Services are available for all numbers in all serving areas.

b) Each voicemail message and call recorded by Vonage Business is retained for ninety (90) days from the date the message was recorded. Following said retention period, the recordings are automatically purged.

c) In the event Vonage Business is providing any other ancillary service, all of Customer's data associated with such ancillary service, including all recordings, will be deleted pursuant to Section 17.b. In the event that an end user account is cancelled or terminated prior to the termination of all of Customer's Services (whether by the Customer or due to termination of the Services), the user data associated with such end user account and related ancillary services will be deleted per Section 17.b.

d) Certain Services provided by Vonage Business may be subject to separate end-user license agreements ("EULAs"). The terms of such EULAs will be provided to Customer and shall be binding upon the parties to this Agreement. If any such EULAs, or any provisions in such

EULAs, are held to be unenforceable for any reason, the terms of this Agreement shall apply with respect to the supply of that Service.

e) Vonage Business may introduce new ancillary Services to new and existing customers. Such ancillary Services may sometimes be offered on a trial basis for a specified period of time during which fees may or may not apply to Customer. In some cases, the terms of a trial may involve an automatic re-enrollment at the end of the trial unless the customer opts out of the trial and/or cancels the service during the term of the trial. In no event shall Vonage Business impose Service Fees on Customer for ancillary services without providing Customer the opportunity to opt-out of the trial and/or to cancel the ancillary Service during a no-cost trial period.

f) Vonage Business offers additional training and support packages for purchase. The details associated with cancelling those support packages can be found at:

<https://businesssupport.vonage.com/articles/answer/Service-Level-Package-Cancellation-Policy>.

18. Use of the Services. Customer shall use the Services only in a manner that fully complies with all Applicable Laws, as well as the terms and conditions of this Agreement. Use of the Vonage Equipment, the Services or other action that is in violation of this Section 18 or Section 19 or that causes a disruption in the Vonage Business network integrity, or in Vonage's 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 relevant information, including Customer Confidential Information, to necessary authorities or third parties. In the event Vonage Business is required to suspend Services pursuant to this Section 18, Customer will be provided with notice as soon as reasonably practicable following any such suspension. 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.

19. Service Use Restrictions.

a) **Commercial Use.** Customer agrees and represents that Customer is purchasing the Services and/or the equipment for Customer's own use only, and Customer shall not resell, transfer or make a change to the Services without the advance express written permission of Vonage Business. Customer shall not in any way interfere with other users, the services or equipment of the network.. Customer may not attempt to, in conjunction with any device, software program or service, circumvent technological measures employed to control access to the Service.

b) **Fair Use.** Vonage Business' business service plans and features are for normal, reasonable business use and consistent with the types and levels of usage by typical customers on the same business calling plan. "Typical" refers to the calling patterns of at least 95% of Vonage Business' business customers on the same business calling plan. Certain calling and messaging plans,

including unlimited calling and messaging plans, are designed for normal commercial use and are not intended to represent typical usage by unique organizations such as call centers, resellers, fax messaging services, telemarketing firms, or for use without live dialog, such as transcription services, intercom or monitoring services. Unauthorized or excessive use beyond that normally experienced by typical, similarly situated business customers may cause extreme network capacity and congestion issues and interfere with Vonage's network and the third party networks with which Vonage connects for call initiation and completion services. Any use of the Services or any other action that causes a disruption in the network integrity of Vonage services or its vendors, whether directly or indirectly, is strictly prohibited and may result in suspension or termination of the Services.

i. Evaluation of Usage. Vonage evaluates Customer usage in comparison to typical levels of permissible usage engaged in by Vonage's customers (business use under business service plans or affiliate use under co-branded business service offers or business plans). Co-branded use is defined as Vonage's service that is provided by a third party partner under that third party partner's marketing brand, with or without reference to Vonage. The following is a non-exhaustive list of impermissible uses under Vonage's business plans and is considered outside of normal use, whether obtained directly from Vonage, an authorized reseller, or from a co-branded Vonage partner:

- Resale to others;
- Auto-dialing or fax/voice blasts;
- Without live dialog, including use as a monitor or for transcription purposes;
- Iterative dialing;
- Fax broadcast;
- Fax blasting;
- Telemarketing uses not pre-approved by Vonage in writing, further subject to compliance with Applicable Laws; and
- Call or contact center uses not used in conjunction with Vonage pre-approved contact center systems or software platforms, or not otherwise pre-approved by Vonage in writing.

ii. Review of Unlimited Usage. Vonage reserves the right to review usage of unlimited usage plans to ensure that customers are not abusing such plans. Customer agrees to use unlimited voice plans for normal voice and/or text message related communications with aggregate usage that falls within the range of similarly situated business customers. Use of unlimited "paperless facsimile" service must also fall within the normal range of similarly situated business customers and shall be considered abusive if usage exceeds 500 transmitted pages sent or received per month. In addition, Customer agrees that Customer will not employ methods or use devices to take advantage of unlimited plans by using the Services excessively or for means not intended by Vonage. Vonage may suspend or terminate service pursuant to Section 27.a if it determines, in its sole discretion, Customer is abusing an unlimited minute plan. Vonage deems usage that substantially exceeds the average volume of its other unlimited usage plan customers as abusive. Customer agrees that Vonage has the right to suspend or terminate Customer's service and/or

charge Customer additional fees if Customer's usage is considered abusive pursuant to Section 27.a in the sole discretion of Vonage.

c) **Excessive Usage.** If it is determined that Customer's usage is abusive, Customer agrees to pay a per minute, per text message, or per page fee for use in excess of typical levels at the then current rate established by Vonage, of at least \$.06 per minute for voice calls and/or \$.06 per facsimile page.. **THIS OVERAGE FEE APPLIES TO ALL PLANS INCLUDING THE UNLIMITED PLANS.** A Customer's aggregate usage may be considered outside of normal use if involves excessive:

- Number of calls made to a conference calling service during a month;
- Number of calls terminated and re-initiated consecutively, which, in the aggregate, result in excessive call lengths during a specific time frame;
- Number of text messages;
- Number of inbound domestic toll free calling patterns during a month; or
- Other abnormal calling patterns indicative of an attempt to evade enforcement of this Reasonable Use Policy

Based on such a combination, Vonage may determine that abnormal, unreasonable or impermissible usage is occurring when compared to typical customers on the same calling plan, and may take appropriate steps described below to enforce this Section 19 and 20, as well as the Terms of Service. If, in Vonage's sole discretion, Vonage affords Customer the opportunity to correct Customer's abnormal usage patterns and Customer fail to immediately conform to normal use, Vonage may exercise its right to transfer Customer's service to a more appropriate plan, charge applicable rates for that plan, implement other limitations or suspend or terminate Customer's service pursuant to Section 27.a.

d) **Prohibited Use of the Services.** Customer may not use any automated means to manipulate our Service or use our Service to violate any law, rule, regulation or any third parties' intellectual property or personal rights. By way of example, Customer shall not use our Service or our device to:

- Impersonate another person;
- Send bulk unsolicited messages;
- Use robots, data mining techniques or other automated devices or programs to catalog,
- Download, store or otherwise reproduce or distribute information from our Service or use any automated means to manipulate our Service;
- Violate any law, rule or regulation;
- Violate any third party's intellectual property or personal rights; or
- Exceed Customer's permitted access to our Service.

Vonage may remove or block all communications if Vonage suspects a violation of this Agreement, or if Vonage thinks it necessary in order to protect Vonage's Service, or Vonage, its parent, affiliates, directors, officers, agents, and employees from harm. Vonage may take such

action without advanced notice if required to protect Vonage and other Vonage customers; otherwise Vonage will provide notice and an opportunity to cure pursuant to Section 27.a.

e) For Lawful and Appropriate Purposes Only; Vonage's Rights. Customer may not use Vonage Business Services or devices in any way that is illegal, improper or inappropriate. The following is a non-exhaustive list of examples of illegal, improper, or inappropriate uses of Vonage Business Services and or devices:

- Threatening;
- Abusive;
- Harassing;
- Defamatory;
- Libelous;
- Deceptive; or
- Invasion of another's privacy or any similar behavior

20. 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 gross 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 for implementing generally accepted security measures to protect all access points. 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 is also solely responsible for terminating credentials and access for any end users no longer authorized by Customer to use the Services. 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 or has reason to believe (i) suspicious or fraudulent calls being made, (ii) calling patterns or volumes materially outside of Customer's regular usage patterns or (iii) other usage in violation of this Agreement, Customer consents to Vonage Business taking actions it deems reasonably necessary (including temporary suspension of the affected Service or blocking or limiting access to particular calling numbers or geographic areas) to prevent such calls from taking place. Vonage Business may provide notice prior to taking such action, otherwise if Vonage Business is required to take such action to avoid harm to Vonage Business, Vonage Business customers or 3rd parties, Vonage Business will provide notice as soon as reasonably practicable thereafter. Customer acknowledges and agrees that Vonage Business is

under no obligation to do so, but may: (a) upon request investigate the authenticity of calls charged to Customer's account, (b) 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 unless such calls are the result of Vonage Business' gross negligence or willful misconduct.

21. No Resale. Customer represents and warrants that it will be the ultimate end user of the Service. Customer shall not in any way resell, license, permit nor allow any third party to use the Services without receiving Vonage Business' prior written consent.

22. 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. 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. Unless required by law, subpoena, court order, warrant or other valid governmental request, Vonage Business will only share Customer's personally identifiable information with other Vonage Business entities and/or business partners (including Marketing Partners and Authorized Distributors) that are acting on Vonage Business' behalf to perform the activities described herein and in accordance with the Vonage Business Privacy Policy, located at <https://www.vonage.com/privacy-policy/>.

23. Required Maintenance; Customer Support. Vonage Business reserves the right to perform repair and maintenance or to upgrade, update or enhance (collectively, the "Maintenance") its network, infrastructure, website(s), Services and/or Vonage Business Equipment with prior notice if such Maintenance would cause a partial or full disruption of the Services. In addition, Vonage reserves the right to perform emergency maintenance ("Emergency Maintenance") without prior notice to maintain the security and stability of the Vonage Business services and network. Notice will be provided as soon as reasonably practicable following an Emergency Maintenance event. 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://businesssupport.vonage.com/businesscloudhome>. 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. 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.

24. 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.

25. Suggestions and Feedback. 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 in connection with efforts to improve, enhance or modify the Services or Software without compensation to Customer or attribution of any kind.

26. Changes to Services. Vonage Business reserves the right to remove, add, or modify features and functions of the Services, and to provide fixes, updates and upgrades to the Services without notification to Customer, provided that material changes shall be noticed by Vonage Business Inc. on its website or communicated to Customer pursuant to the methods in Section 3, and the features and functionality of any such change or replacement will be materially comparable to the changed or replaced Service.

27. Default and Remedies.

a) Customer Default. If Customer either (a) fails to make any 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; and/or (iii) pursue all remedies Vonage Business may have at law or in equity.

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 Applicable Laws or this RUP; (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; (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; or (v) Customer's failure to make payment (as set forth in Section 11).

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 an applicable service level agreement between the parties which contains exclusive remedies therein), Customer may terminate any applicable Sales Order without early termination charges 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

and/or prevent its recurrence within thirty (30) business days of its receipt of Customer's written notice.

28. 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), WHETHER EXPRESS, 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.

29. Limitation of Liability. NEITHER 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 VONAGE BUSINESS HAS BEEN INFORMED IN ADVANCE OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE REASONABLY BEEN FORESEEN BY VONAGE BUSINESS. VONAGE BUSINESS' 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 29. THE PARTIES ACKNOWLEDGE AND ACCEPT THE REASONABLENESS OF THE DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 29.

30. Indemnification. ~~Customer Vonage Business~~ agrees to defend, indemnify and hold harmless ~~Vonage Business Customer~~ from and against any loss, damage or costs (including reasonable attorney's fees) incurred in connection with claims made or brought against ~~Vonage Business Customer~~ by a third party arising from or relating to: (i) any act, error, omission, fault, negligence, or misconduct of ~~Customer Vonage Business~~ or any user of in connection with the Services, Software or Vonage Business Equipment, whether authorized or unauthorized by ~~Customer Vonage Business~~; (ii) ~~Customer's Vonage Business'~~ breach of any obligation, warranty, representation, or covenant of this Agreement or the RUP; (iii) any claim by any employee or invitee of ~~Customer Vonage Business~~ or user other than a claim based on the gross negligence or willful misconduct of ~~Vonage Business Client~~; (iv) any claim by any customer of ~~Customer Vonage Business~~, end user or other third party relating to, or arising from, ~~Customer Vonage Business Data~~ or ~~Customer's use Vonage Business' provision~~ of the Services, Software or Vonage Business Equipment; or (v) violation of any Applicable Laws by ~~Customer Vonage Business~~ or any ~~Customer Vonage Business~~ employee, contractor or agent.

31. Confidentiality.

a) "Confidential Information" means all nonpublic information, subject to the requirements of Chapter 119, "Public Records," of the Florida Statutes, 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) 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, in the case of Vonage Business, 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 31. 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) 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 31.

d) 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.

32. EMERGENCY 911 SERVICES. BY USING THE SERVICE AND/OR VONAGE BUSINESS EQUIPMENT, CUSTOMER ACKNOWLEDGES THE LIMITATIONS OF VONAGE BUSINESS E911 SERVICE AS DESCRIBED IN THE E911 DISCLOSURE, AS WELL AS THOSE SET FORTH IN THIS SECTION 32. CUSTOMER AGREES AND ACKNOWLEDGES THAT WHILE MOST VONAGE BUSINESS SERVICES OFFER ACCESS TO E911 SERVICE, OTHERS MAY NOT. CUSTOMER IS ADVISED TO THOROUGHLY READ AND UNDERSTAND THE E911 DISCLOSURE AND THE OPTIONS AVAILABLE. CUSTOMER ACKNOWLEDGES THAT IT HAS RECEIVED THE E911 DISCLOSURE AND HAS READ, UNDERSTANDS AND AGREES TO THE TERMS AND CONDITIONS OF THE E911 DISCLOSURE, AND ASSUMES THE RISKS ASSOCIATED WITH THE VONAGE BUSINESS E911 SERVICE LIMITATIONS.

33. Local Number Portability.

a) Number Transfer on Service Activation. In the event Customer is not utilizing a new phone number or numbers for the Services, but rather is transferring existing phone number(s) which currently is subscribed to a carrier other than Vonage Business to Vonage Business, the terms and conditions of this section shall apply:

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

ii. Customer agrees and acknowledges (i) that the porting of Customer's numbers requires Customer's provision of specific, detailed and accurate information to Vonage Business and other service providers, as applicable, and the completion of certain steps and procedures, as well as third parties' completion of certain tasks, and (ii) that numbers may not be ported in or ported out unless such information matches the information on record with Vonage Business or other service providers. The completion of a port request is dependent upon these and other factors which may be outside the control of Vonage Business or other service providers, and accordingly, Vonage Business is not responsible for delayed or incomplete ports. FAILURE TO PROVIDE ANY INFORMATION REQUESTED BY VONAGE BUSINESS OR THE THIRD PARTY SERVICE PROVIDER WILL DELAY THE PORTING OF THE NUMBER TO VONAGE BUSINESS. VONAGE BUSINESS SHALL NOT BE RESPONSIBLE FOR ANY DELAY IN THE PORT OF CUSTOMER'S NUMBER AND WILL NOT PROVIDE CREDIT FOR ANY SUCH DELAYS.

iii. Customer agrees and acknowledges that if the Services are set up prior to the date that the number transfer becomes effective ("Port Effective Date"), Customer may only be able to make outgoing calls using the Services. In such event, Customer should keep another phone connected to the existing phone number 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 the Activation Date has not occurred 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 number. Therefore, to avoid an interruption in Customer's phone service, Services must be activated prior to the Port Effective Date. An estimate of the Port Effective Date will be sent to Customer via e-mail by Vonage Business.

b) Number Transfer on Service Termination. After the Activation Date, 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' or its vendors' standard operating procedures. Until the effective date of Customer's proper termination (in accordance with the terms of this Agreement), Customer will: (a) remain a Vonage Business customer; and (b) be responsible for all charges and fees associated with Customer's Vonage Business Service. Customer will not receive any refund or partial refund or any credits for any charges already billed to Customer's

account. Vonage Business assumes no liability for costs associated with any numbers that cannot be ported or that Customer chooses not to port. Customer acknowledges that in the event of any account termination or cancellation, all telephone numbers associated with Customer's account may be released. Similarly, the cancellation of individual services that have associated telephone numbers will result in the release of such numbers. Customer acknowledges that it is Customer's responsibility to work with a third party provider to port out those numbers prior to Customer's termination or cancellation of Customer's account or termination of Services.

c) Ported Telephone Numbers Upon Cancellation.

i. Cancellation. If Customer requests that a new service provider port a number from Vonage Business, then Customer is required to inform Vonage Business of Customer's intent to terminate the specific affected Services on Customer's account or Vonage Business will continue to bill for such Services. Customer will continue to be responsible for all the charges and fees associated with the remaining Services on Customer's Vonage Business account. Customer will not receive any refund or partial refund or any credits for any charges already billed to Customer's account.

ii. Consent & Electronic Submission. In some cases, Vonage Business may permit Customer to submit documentation required to port numbers using a web-enabled user interface. Customer may withdraw Customer's consent to submit Customer's porting request electronically by contacting Vonage Business Customer Care prior to our submitting the porting request to the carrier. Customer's consent to electronic submission applies only to the specific porting request Customer submit through web-enabled interface.

iii. Facsimile Service. Numbers assigned by Vonage Business for Vonage Business's facsimile service cannot be ported to a new service provider without the assistance and cooperation of Vonage Business' underlying partner. Vonage Business will use commercially reasonable efforts to facilitate a port of a facsimile number which was ported on Customer's behalf to Vonage Business by another service provider. Customer may be required to pay a porting fee to Vonage Business not to exceed One Hundred Dollars (\$100.00) per facsimile number ported.

d) 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 may port any such numbers upon termination of the Services. In the event Customer does not port Vonage-provide numbers following termination of Service, Customer thereafter relinquishes any rights in such numbers. Vonage Business reserves the right to move, change or cancel Vonage-Provided Numbers not ported by Customer following termination in its reasonable discretion.

34. 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 or 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' 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, 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.

35. 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.

36. 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.

37. General.

a) Assignment. This Agreement inures to and is binding upon the Parties' successors and permitted assignees. Customer shall not assign this Agreement without Vonage Business' prior written consent, not to be unreasonably conditioned, withheld or delayed; provided that Customer may, without consent, but with reasonable prior written notice, assign its rights and obligations hereunder to any parent, affiliate or subsidiary of Customer or pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets; provided, however, that any proposed assignee 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 37(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, denial of service attacks, 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 for more than ten (10) 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. Neither party will issue any press release nor other public statement relating to this Agreement, except as may be required by law or agreed by the Parties in a writing signed by an authorized representative of a Party's Corporate Communications department. Neither Party may identify the other Party using a Party's name, trademarks and/or logos in its marketing collateral, presentations and websites without the non-disclosing Party's express written consent, and a Party may revoke such right with written notice to the other Party 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,

Any notice required or given under this Agreement to Vonage Business (except for billing dispute as described in Section 11) will be in writing and delivered to Vonage Business as follows:

Vonage Business Inc.
Attn: Legal Department
7900 Westpark Drive, Suite A-315
McLean, VA 22102

Copies of notices shall be sent via fax or email (which shall not constitute formal notice) to:

Office of the Chief Legal Officer
Vonage Business Inc.
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. As a convenience and courtesy to you, Vonage Business provides access to its Services online which may require Customer to enter into agreements or receive notices electronically. Accordingly, Customer acknowledges and agrees:

- i. To conduct electronically the particular transaction into which Customer thereby enters including, without limitation, entering into this Agreement;
- ii. That it has read and understands the electronic copy of electronic contracts, notices and records, including, without limitation, this Agreement, and any policies and any amendments hereto or thereto;
- iii. That it intends to be bound by, the terms of the particular transaction into which Customer thereby enters;
- iv. That it is capable of printing or storing a copy of electronic records of transactions into which Customer enters including, without limitation, this Agreement and any amendments hereto;
- v. To receive electronically information about the Services and other electronic records into which Customer thereby enters including, without limitation, this Agreement; and
- vi. That that any personally identifiable information that Customer provides may be used by Vonage Business and its Authorized Distributors or Marketing Partners in accordance with the Vonage Business Privacy Policy located at <https://www.vonage.com/privacy-policy/>.

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. The Parties agree that the limitations and exclusions of liability and warranty disclaimers specified in this Agreement will survive and apply even if found to have failed their essential purpose, and Customer hereby waives its right to contest the enforceability of any provision of this Agreement by reason of such failure.

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 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.

l) 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"). Such Third Party Services may also be provided under Vonage Business' trademarks or otherwise branded as a Vonage Service. Third-Party Services may be governed by separate legal terms and conditions, which, if applicable, may be found or identified in documentation or on other media delivered with the Third-Party Services and otherwise will be provided to Customer. Such Third Party Services terms and conditions 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 Third-Party Services. Any non-compliance with terms and conditions of Third Party Services shall be considered non-compliance with these Terms.

m) 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.

n) 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.

o) Governing Law. The laws of the State of ~~Delaware~~ Florida 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, validity and enforceability of the arbitration provision in Section 38, below.~~

p) **Entire Agreement.** This Agreement supersedes any prior or contemporaneous agreements, statements, understandings, writings, commitments, or representations concerning its subject matter, as between Customer and Vonage Business.

q) **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.

r) **Choice of Language.** The parties hereby confirm their express wish that this Agreement and all related documents be prepared in the English language only. Les parties reconnaissent avoir exigé que le presente convention et tous les documents connexés soient redigés en anglais seulement.

38. Dispute Resolution; Binding Arbitration Notice; Waiver of Jury Trial.

a) **Written Notice.** 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 11, the disputing Party shall provide written notice to the other Party in accordance with the provisions of Section 37(e), above.

b) **Initial Escalation to Management.** ~~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.~~

c) **Resolution in Small Claims Court.** ~~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.~~

d) **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 set forth in subsection (f) below) must be resolved by binding arbitration before a single arbitrator in accordance with the commercial rules of the American Arbitration Association ("AAA") (available on the AAA website, www.adr.org) in effect as of the date this Agreement goes into 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.~~

e) **Disputes About This Agreement to Arbitrate.** Disputes about the arbitrability of any claims and/or the scope, enforceability, or validity of this arbitration agreement shall be decided by an arbitrator.

f) **Disputes That Need Not Be Arbitrated.** Disputed claims involving either Party's intellectual property rights, indemnity, or confidentiality obligations; fraudulent or unauthorized use, theft, or piracy of service; or matters relating to injunctions or other relief may be resolved by binding arbitration as set forth in subsection (d), but are not required to be resolved by binding arbitration and may be heard in a court of law, at the option of the entity asserting the disputed claim.

g) **Notice for Commencing Arbitration.** 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.

h) **Location.** All hearings conducted as part of the arbitration shall take place at a location, convenient to Customer, based upon Customer's billing address (or, if no business address is provided, your service 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.

i) **Costs.** Each Party will be responsible for its own costs incurred in the arbitration, including arbitration filing fees and attorneys' or expert witness fees. The arbitrator's costs and expenses shall be shared equally between the Parties. If a Party elects to appeal an award or seeks to vacate the award in court, the prevailing Party in the appeal or judicial proceeding shall be entitled to recover all reasonable attorneys' fees incurred in that appeal or judicial proceeding.

jb) **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.

k) **Severability.** If any term, covenant, or condition contained in this dispute resolution/arbitration provision section, is, to any extent, held invalid or unenforceable in any

~~respect under the laws governing this dispute resolution/arbitration provision, the remainder of this dispute resolution/arbitration provision shall be valid and enforceable to the fullest extent permitted by law.~~

END OF TERMS OF SERVICE