VONAGE

UK G-Cloud 12 Framework
Supplier's Master Services Terms and Conditions

By executing an Order that references these Master Services Terms and Conditions, the Customer agrees to these Master Services Terms and Conditions. These Master Services Terms and Conditions were last updated on July 20, 2020.

1 Definitions

1.1 Capitalized terms used but not otherwise defined in these Master Services Terms and Conditions will have the meaning ascribed to such terms in the Order.

1.2 The following definitions and rules of interpretation in this clause apply to these Master Services Terms and Conditions:

"Acceptable Use Policy" means the Supplier's acceptable and reasonable use policy which can be accessed here.

"**Agreement**" means an Order and these Master Services Terms and Conditions, and incorporates any Statement of Work executed as at the Effective Date or subsequently by the parties during the Term, any data processing agreement, Change Order and/or addenda which shall collectively form a legally binding agreement.

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

"**Authorized User**" means those individuals who are authorized by the Customer to use the Subscription Services and Documentation.

"**Call Charges**" means the charges payable by the Customer for Connected Minutes not falling within a relevant bundle of pre-purchased Connected Minutes (if any), or for SMS texts (if any) at the rates set out in the Service Description for *Telephony and Messaging Services* or as otherwise defined in the Agreement.

"**Change Order**" means any mutually agreed change to a Statement of Work effected by a change order form, signed by the Customer and Supplier detailing the relevant change.

"**Connected Minutes**" shall have the meaning set out in the Service Description for *Telephony and Messaging Services*.

"**Consumer Guarantees**" means, if applicable to the parties, the consumer guarantees in Division 1 of Part 3-2 of the Australian Consumer Law.

"**Customer**" means the customer defined in the Order.

"**Customer Data**" means data, information or material, including voice recordings, submitted by the Customer, or the persons to whom the Customer Data relates, or Authorized Users to the Subscription Services.

"**Customer Equipment**" means any equipment, software, software data storage, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

"**Customer Support Service**" means, in respect of the Subscription Services, the maintenance and support services provided by the Supplier as described in the applicable Service Description.

"**Day**" means a day consisting of 7.5 hours between the local hours of 0800 and 1800, other than on a Saturday, Sunday or public holiday in the region from which Professional Services are being delivered.

"**Documentation**" means the Supplier's published user documentation which describes the Services and includes the Service Description and the Technical, Organizational and Security Practices , as updated from time to time. Documentation does not include source code, sales brochures, proposals, training materials or marketing information. All Documentation is published in the English language.

"**Effective Date**" shall have the meaning set out on the Order.

"Fees" means the total fees and charges payable for all items detailed on the Order.

"Half-Day" means a day consisting of 3.75 hours between the local hours of 0800 and 1800, other than on a Saturday, Sunday or public holiday in the region from which Professional Services are being delivered.

"**Initial Term**" means the initial term of the Subscription Services as detailed on the Order.

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

"**Master Services Terms and Conditions**" means these Master Services Terms and Conditions together with any schedules.

"**Order**" means any order form/s (together with any schedules), signed by the Customer and Supplier detailing the specific Services purchased.

"**Professional Services**" means the telecommunication set-up, installation, configuration and other professional services identified as such in an Order (and more fully described in a Statement of Work) that are to be provided by the Supplier in connection with the Subscription Services.

"**Professional Service Fees**" means the fees for the Professional Services as set out in the Order.

"**Service Description**" means individually or collectively the documents that describe the Subscription Services which can be accessed here as published and updated from time to time.

"**Services**" means collectively the Subscription Services, Professional Services and any Third Party Equipment.

"**Statement of Work**" or "**SOW**" means the document signed by the Customer that describes the Professional Services to be

provided hereunder.
"Subscription Fees" means the recurring fees for the Subscription Services as detailed on the Order.
"Subscription Services" means the cloud contact centre services, telephone services, Customer Support Service and any other services which are provided on a subscription basis, and for which the Customer pays a Subscription Fee, and that are to be provided as detailed on the Order. Certain Subscription Services may be subject to additional terms and conditions ("Product-Specific Terms"), which will in the event of any conflict prevail over these Master Services Terms and Conditions, and can be accessed here.
"Subscription Services Invoicing Frequency" means the intervals at which the Supplier will deliver its invoices for Subscription Fees calculated from Term Start Date, as detailed on the Order.
"Subsequent Term" means in respect of the Subscription Services, one or more periods of the same duration as the Initial Term and which immediately follows the expiry of Initial Term or any Subsequent Term.
"Supplier" means the NewVoiceMedia or Vonage corporate entity identified on the Order.
"Support Level" means the level of customer service subscribed by the Customer for the Customer Support Service as set out in the Order and described more fully in the Service Description for *Customer Support Service*.
"Technical, Organizational and Security Practices" means the document that describes the standards for security (administrative, technical and physical controls) and privacy applied to the Services, which can be accessed here as published and updated from time to time.
"Term" means the term of the Subscription Services and shall include the Initial Term together with any Subsequent Term.
"Term Start Date" means the commencement date for the Subscription Services which shall be the first day of the month following the Effective Date, unless stated otherwise on the Order.
"Third Party Equipment" means equipment (if any) that is, at the Customer's request, procured by the Supplier from a third party on behalf of the Customer.
"Total Initial Invoice Value" means the value of the first invoice for Fees in respect of: (a) Subscription Services (in accordance with the Subscription Services Invoicing Frequency); (b) Professional Services; (c) any Third Party Equipment; and (d) any other one time fees or charges.

2 Agreement Term and Duration

2.1 The Agreement shall commence on the Effective Date and shall continue until all Subscription Services have been terminated in accordance with the terms of this Agreement or have otherwise expired.

2.2 Subscription Services shall commence on the Term Start Date and shall continue for the Initial Term, and thereafter shall, subject to Clause 2.3 below, automatically renew for one or more Subsequent Terms.

2.3 Either party may terminate the Agreement by providing no less than ninety (90) days' prior written notice to the other party before the last day of the Initial Term or any Subsequent Term, in which case the Agreement shall terminate on the last day of such Initial Term or Subsequent Term; such notice shall be delivered in accordance with Clause 24 (Notices)

3 Subscription Services

3.1 Subject to the Customer paying the Fees, and the terms and conditions of this Agreement, the Supplier hereby agrees to provide the Subscription Services to the Customer and grants to the Customer a non- exclusive, non-transferable right to permit the Authorized Users to use the Subscription Services and Documentation during the Term solely for the Customer's internal business operations.

3.2 During the Initial Term or any Subsequent Term, additional Subscription Services, including additional Authorized Users ("Additional Subscription Services") can be purchased, with such Additional Subscription Services being co-terminus with the then-remaining Initial Term or Subsequent Term. To purchase Additional Subscription Services, the Customer will execute an additional Order and pay the additional Subscription Fees, which shall be prorated for the then-remaining Initial Term or Subsequent Term. Furthermore, the Customer can self-create and delete additional Authorized Users via the Customer portal, at will and without commitment to the then remaining Initial Term or Subsequent Term and for which the charges described in Clause 9.4(b) shall apply.

3.3 The Supplier is not obligated to deliver future functionality or services which are not generally available currently and the Customer agrees that the Agreement is not contingent upon the availability of such functionality or services.

3.4 During the Term, the Supplier reserves the right to change the Subscription Services to reflect changes in, among other things, applicable law, regulations, rules, technology, industry practices and security requirements. To the extent that such changes are not compliance-related, the Supplier will use commercially reasonable efforts to ensure that such changes do not materially reduce the level of functionality, performance, availability and/or security of the Subscription Services during the Term.

3.5 During the Term, the Supplier reserves the right to (i) remove, replace, add, or modify features and functions of the Subscription Services; and/or (ii) provide fixes, updates and upgrades to the Subscription Services. Notwithstanding the foregoing, the Supplier will use commercially reasonable efforts to ensure that such changes and updates do not materially reduce the level of functionality, performance, availability or security of the Subscription Services during the Term.

3.6 In respect of Clauses 3.4 and 3.5 above, the Supplier will provide reasonable advance notice of any material changes via email, via its website or Support Services, or by posting such notice to the Customer's account portal; the Customer accepts that reasonable advance notice may not be possible if the change or update is urgent or security-related. The Customer shall use commercially reasonable efforts to cooperate with updates and changes as reasonably necessary.

3.7 In the performance of its Subscription Services, the Supplier is expressly authorized by the Customer to collect statistics, response rates and other measures of the use and performance of the Subscription Services, provided that such data is aggregated and anonymized ("Aggregate Data"). The Supplier will retain all right, title and interest in and to the Aggregate Data.

4 Professional Services

4.1 Subject to the Customer paying the Professional Service Fees, and the terms and conditions of this Agreement, the Supplier hereby agrees to provide the Professional Services as specified in the Order and/or Statement of Work using trained, qualified personnel exercising reasonable skill and care.

4.2 Professional Services may be utilised in Day, and/or Half-Day quantities, or as otherwise specified in the relevant Order.

4.3 Professional Services are available either on a time- and-materials or fixed-fee basis (as determined by the Supplier) as described in the relevant Order and/or SOW. Any amount set forth on a time-and-materials basis is solely a good-faith estimate and may vary following the completion of a site survey and/or solutions design workshop and/or during the course of the project. If the estimated time is to be increased, the Supplier will seek approval from the Customer to provide additional Professional Services and any such additional time will be provided under the same rates and terms. If the estimated time is less than the actual time expended, the Customer shall be entitled to utilise unused full Days or Half-Days on other projects, such days to be utilised within twelve (12) months of the Effective Date of the Order in which the Professional Services were originally purchased and prior to the expiry of the Term.

4.4 All timescales detailed in a SOW are indicative only.

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

4.6 Without prejudice to the provisions of Clause 6.1.4, upon completion of the Professional Services, the Supplier will request that the Customer complete an acknowledgement of acceptance of the Services. Notwithstanding this, should the Customer begin use of the Services, or part thereof, for any business purpose other than for testing without completing the acknowledgement, such usage shall constitute acceptance of the Services.

4.7 The Supplier may subcontract the performance of any or all of its obligations under this Clause 4 (Professional Services). Any such subcontract shall not affect the Supplier's liability to the Customer for the performance of its contractual obligations.

5 Third Party Equipment

5.1 Where Third Party Equipment is to be procured by the Supplier pursuant to an Order, the Supplier will procure Third Party Equipment in accordance with this Clause 5 (Third Party Equipment).

5.2 The Supplier acts in the capacity of procurement agent in respect of Third Party Equipment.

5.3 The Supplier will make payments to the third party supplier for Third Party Equipment in accordance with the third party supplier's terms of supply, provided that the Supplier has received the corresponding fee from the Customer.

5.4 The Customer will be responsible for any default in making payments to the third party supplier, caused by Customer's failure to make payment of the relevant fee to the Supplier.

5.5 Any claim by the Customer in respect of warranty for Third Party Equipment will be between the Customer and the third party supplier.

5.6 THIRD PARTY EQUIPMENT IS PROVIDED BY THE SUPPLIER ON AN 'AS IS' BASIS WITHOUT ANY WARRANTY OR WARRANTY SERVICE FROM THE SUPPLIER OF ANY KIND.

5.7 THE SUPPLIER MAKES NO REPRESENTATIONS AS TO THE AVAILABILITY, QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THIRD PARTY EQUIPMENT.

5.8 In the event of any conflict between the payment terms in the Agreement, and the third party supplier's payment terms, the third party supplier's payment terms will prevail.

5.9 Supplier accepts no liability whatsoever for the supply or use of Third Party Equipment, except where such liability may not be excluded by law.

6 Warranties and Exclusive Remedies

6.1 The Supplier warrants that during the Term:

6.1.1 the Subscription Services will be provided substantially in accordance with the relevant Service Descriptions; the Customer's exclusive remedy and the Supplier's entire liability for a breach of this Clause 6.1.1 are set forth in the Service Description for *Service Commitment and Service Credit* if applicable and Clause 14 (Termination);

6.1.2 it will comply with its Technical, Organizational and Security Practices and will not materially decrease the overall security of the Subscription Services;

6.1.3 the Customer Support Service will be provided as detailed in the Service Description for *Customer Support Service*, and in compliance with the Support Level;

6.1.4 the Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards.

6.2 For any breach of the warranty provided in Clause 6.1.4 the Customer's exclusive remedy and the Supplier's entire liability will be the re-performance of the Professional Services unless the Supplier is unable to re- perform the Professional Services as warranted, in which case, the Customer will be entitled to recover the Professional Service

Fees paid in respect of the deficient Professional Services. A claim under this warranty shall be submitted to the Supplier in writing within ninety (90) days of the incident giving rise to the alleged breach of warranty.

7 Supplier's Obligations

7.1 The Supplier shall:

7.1.1 be fully responsible for the acts and/or omissions of any of its subcontractors, agents and employees;

7.1.2 use reasonable efforts to prevent the introduction of any virus into the Subscription Services, including: (a) installing virus detection software with active mode enabled; (b) configuring systems to scan all removable media inserted into the system; (c) maintaining processes to ensure latest virus definitions apply to all systems; and (d) maintaining a process for continuous and timely updates of virus detection software; and

7.1.3 provide information, announcements, surveys and other email communications from time to time in connection with the Services to the Customer and/or its Authorized Users; communications may also include security-awareness information, incident reports, newsletters, invitations and relevant information pertaining to new features and other products and services.

7.2 If the Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly from such prevention or delay.

8 Customer's Obligations

8.1 The Customer shall:

8.1.1 grant the Supplier a non-exclusive, non-transferable license to use the Customer Data to deliver and monitor the Services in accordance with this Agreement;

8.1.2 cooperate reasonably and in good faith with the Supplier, its agents, subcontractors, consultants and employees in its performance of Professional Services by: (a) allocating sufficient resources and timely performing any tasks reasonably necessary to enable the Supplier to perform the Professional Services, (b) informing the Supplier of the health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises, (c) providing, in a timely manner and at no charge to the Supplier, office workspace, access to telephone, internet access for Supplier equipment, (or suitably configured computer equipment with internet access), and other facilities, and (d) providing access to Customer's appropriate and knowledgeable employees and agents where required by Supplier;

8.1.3 cooperate with the Supplier in all matters relating to the Services, particularly but not limited to, complying with the obligations of the Customer as set out in the Service Description for *Customer Support Service*;

8.1.4 ensure that all Customer Equipment is in good working order and conforms to the technical prerequisites as published by the Supplier which can be accessed here;

8.1.5 in respect of the Subscription Services, comply with the Supplier's Acceptable Use Policy.

8.1.6 not permit any third party access to the Services for any competitive monitoring of its availability, performance or functionality or any other benchmarking purposes; and

8.1.7 be responsible for the accuracy, quality and legality of Customer Data, including its content and use, obtaining and maintaining all necessary licenses and consents and comply with all relevant legislation in relation to the collection, transfer and disclosure of the Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, and any Customer information technology infrastructure that interfaces or interoperates with the Service.

9 Fees, Charges and Payment

9.1 In consideration for the provision of the Services, the Customer shall pay the Fees in accordance with this Clause 9 (Fees, Charges and Payment).

9.2 The Customer agrees that: (a) Subscription Fees will be calculated and chargeable commencing the first (1st) day of the month in which the Term Start Date falls; (b) payment obligations are non-cancellable and Fees paid are non-refundable (except as otherwise specified in this Agreement); (c) Subscription Fees are based on Subscription Services purchased and not on actual usage and (d) quantities purchased cannot be decreased during the Initial Term or during any Subsequent Term.

9.3 Unless otherwise detailed on the Order, the Supplier shall submit its invoice for the Total Initial Invoice Value on or after the Effective Date; thereafter, the Supplier shall submit invoices for Subscription Fees in accordance with the Subscription Services Invoicing Frequency.

9.4 In addition to the Fees, the Supplier shall invoice the Customer monthly in arrears: (a) for Call Charges (if any); (b) for the number (if any) of Authorized Users created by the Customer via the Customer portal that each month exceed the per Order contracted number of Authorized Users and for which the Supplier will apply a charge as follows: {no. of excess Authorized Users per month × Subscription Fee for equivalent Authorized User × 2}; (c) ancillary expenses (if any) reasonably incurred in connection with the delivery of any on-site Professional Services, including travel, hotel and subsistence expenses; such expenses shall be invoiced by the Supplier at cost; and (d) for time spent providing additional Professional Services pursuant to clause 4.3 and/or Change Order.

9.5 The Customer shall pay each undisputed invoice submitted to it by the Supplier in full within thirty (30) days of the date

of the relevant invoice.

9.6 All Fees payable under the Agreement are exclusive of any country, province, federal, state or local taxes, including without limitation, use, sales, value-added, privilege, or other taxes, levies, imports, duties, fees, surcharges, governmental assessments and withholdings ("**Taxes**"). Customer will be solely liable for and will pay upon demand all Taxes associated with the Customer's access to and use of the Services and shall not deduct any such amounts, or any other withholdings, set-offs or deductions, from amounts that the Customer owes to the Supplier, but will not be responsible for taxes based on the Supplier's net income. The Customer may present the Supplier with an exemption certificate eliminating the Customer's and Supplier's liability to pay certain Taxes. Once the Supplier has received and approved the exemption certificate, the Customer shall be exempt from those Taxes on a going-forward basis. If a taxing jurisdiction determines that Customer is not exempt from Taxes and assesses those taxes, the Customer shall pay those Taxes to the Supplier, plus any applicable interest or penalties. Such determination will not affect invoices submitted before the Supplier reasonably could act.

9.7 On the commencement of each Subsequent Term, the Supplier shall be entitled to apply an increase to the Subscription Fees of seven percent (7%).

9.8 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay an invoice (which has not been properly disputed) within fifteen (15) days of the due date, the Supplier may, without liability to the Customer, suspend all or part of the Services until the undisputed payment has been made in full. If the Supplier suspends the Services in full or part, the Customer continues to remain liable for all Fees during any suspension period. The Supplier may, at its sole option, choose to restore the Services during any period of delinquency; such restoration shall not be construed as a waiver of the Supplier's right to (i) receive full payment for Fees due or (ii) again suspend the Services at any time for non-payment of any unpaid charges. The failure of the Supplier 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 for non-payment of current or future charges.

9.9 If the Customer fails to pay any undisputed amount payable by it under this Agreement on the due date, the Supplier may charge the Customer interest on the overdue amount from the due date up to the date of actual payment at the highest rate permissible by applicable law.

9.10 In the event that the Customer disputes in good faith any portion of the Supplier's invoice:

9.10.1 the Customer shall pay the undisputed amounts and submit a written claim for the disputed amount, together with adequate information relevant to the dispute. Invoice disputes must be submitted to the Supplier within thirty (30) days of the date of the applicable invoice unless the Customer intends to dispute amounts already paid, in which case, the Customer must submit notice of such dispute in writing within ninety (90) days from the date of the invoice. The Customer acknowledges that it is reasonable for the Supplier to require the Customer to dispute charges within the stated timeframes and, notwithstanding the provisions of Clause 17.1, the Customer therefore waives the right to dispute any charges after such time; and

9.10.2 the Customer and Supplier will make all reasonable efforts to agree on how much of the disputed sum, if any, is payable as soon as possible.

9.10.3 if the Customer is unable to reasonably substantiate its dispute, the disputed amount shall be considered valid.

10 Data Protection

To the extent that the Supplier processes any personal data on behalf of the Customer, the terms of the data processing addendum ("**DPA**") which can be accessed here, shall apply to such processing, and in the event of any conflict, prevail over these Master Services Terms and Conditions.

11 Intellectual Property Rights

11.1 All Intellectual Property Rights and all other rights in the Services and Documentation shall be owned by the Supplier or its licensors, including without limitation any improvements, enhancements, modifications and derivative works thereof made pursuant to any of the Services.

11.2 Upon termination of this Agreement, any licenses granted under this Agreement will automatically, without notice, terminate.

11.3 Subject to Clause 26, neither party shall use the other's trademarks, trade name, brands or images without the other's prior written permission.

12 Confidentiality

12.1 A party ("**the Receiving Party**") shall, using a commercially reasonable standard of care (no less than the standard used to treat its own information as confidential), keep in strict confidence and ensure its employees, agents and representatives shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by the other party ("**the Disclosing Party**"), to the Receiving Party, or to its employees, agents, consultants or subcontractors and any other confidential information concerning the other party's business or its product which the Receiving Party may obtain ("**Confidential Information**") except as permitted by Clause 12.2.

12.2 The Receiving Party may disclose such Confidential Information:

12.2.1 to its employees, officers, representatives, advisers, agents or subcontractors (and in the case of the Supplier, to its parent company or subsidiaries) who need to know such Confidential Information for the purposes of carrying out their obligations under this Agreement; or

12.2.2 if the Disclosing Party gives its prior, written, informed consent to this disclosure.

12.3 The Receiving Party's obligations under this Clause 12 (Confidentiality) shall not apply to particular Confidential Information:

12.3.1 if the Confidential Information is already public knowledge;

12.3.2 if the Confidential Information subsequently becomes public knowledge, without restrictions and other than by breach of this Agreement;

12.3.3 if the Confidential Information is already known without restrictions, to the Receiving Party at the time of disclosure;

12.3.4 if the Confidential Information subsequently comes lawfully into the possession of the Receiving Party from another party;

12.3.5 if the information is independently developed by the Receiving Party without use or reference to the Confidential Information of the Disclosing Party; or

12.3.6 to the extent that it is required to be disclosed by any law, court order or any governmental or regulatory authority provided that the Receiving Party gives the Disclosing Party written notice of such requirement as soon as reasonably possible after learning of such requirement and, to the extent reasonably possible, an opportunity to take such steps as may be available to avoid disclosure or retain confidential treatment.

12.4 Each party shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such Confidential Information comply with the substance of this Clause 12 (Confidentiality).

12.5 Neither party shall use any such Confidential Information for any purpose other than to perform its obligations under this Agreement.

12.6 At the Disclosing Party's written request, the Receiving Party will immediately destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession and shall make no further use of such Confidential Information and confirm to the Disclosing Party in writing that it has done so.

13 Indemnification; Limitation of Liability

13.1 The Supplier shall indemnify and defend the Customer and its officers, directors and employees, against any claim, demand, suit or proceeding ("**Claim**") made or brought against the Customer by a third party (i) alleging that the use of the Services as permitted hereunder infringes the Intellectual Property Rights of a third party; or (ii) the proven gross negligence or wilful misconduct of the Supplier or its employees, agents or subcontractors; and shall indemnify the Customer for any damages finally awarded against, and for reasonable attorney's fees incurred by, the Customer in connection with any such Claim.

13.2 The Customer shall defend the Supplier against any Claim made or brought against the Supplier by a third party alleging: (i) that the Customer Data infringes the proprietary rights of such third party, or that its use by the Customer or any direction by the Customer for use by the Supplier is in violation of this Agreement or applicable law; (ii) any unlawful, unauthorized or prohibited use of the Services; (iii) the proven gross negligence or wilful misconduct of Customer or its employees, agents or subcontractors; and shall indemnify the Supplier for any damages finally awarded against (or agreed settlements), and for reasonable attorney's fees incurred by the Supplier in connection with any such Claim.

13.3 Each indemnifying party's obligations in Clause 13.1 and 13.2 above are subject to the conditions that the other party: (a) promptly gives the indemnifying party written notice of the Claim; (b) gives the indemnifying party sole control of the defence and settlement of the Claim (provided that the indemnifying party may not settle any Claim that adversely affects the other party without the other party's consent and the indemnified party has the right to participate with its own counsel at its expense); (c) must not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the indemnifying party; and (d) provides to the indemnifying party, at its expense, all reasonable assistance.

13.4 The Supplier's obligations in Clause 13.1(i) will not apply to the extent that the infringement arises from: (a) the use of the Services in breach of the terms of this Agreement and/or not in accordance with the Documentation; and/or (b) additions, changes or modifications to the allegedly infringing items not performed and/or not authorised by the Supplier; and/or (c) combinations of the allegedly infringing items with other products, materials or services not authorized by the Supplier.

13.5 In the event that a Claim of infringement pursuant to Clause 13.1(i) is made or in the Supplier's opinion is likely to occur, then the Supplier may, at its sole option and expense: (a) procure for the Customer the right to continue using the allegedly infringing item; (b) replace or modify such allegedly infringing item so that it becomes non-infringing; or if such remedies are not reasonably available, (c) terminate this Agreement and refund any monies paid to it by the Customer for Subscription Services not yet rendered, if any.

13.6 Clauses 13.1 through 13.5 above state the indemnifying party's sole liability to, and the other party's exclusive remedy against, the indemnifying party for any type of Claim described in this clause.

13.7 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND IF APPLICABLE SUBJECT TO CLAUSE 13.11, EACH PARTY DISCLAIMS ANY AND ALL WARRANTIES (OTHER THAN THOSE WARRANTIES STATED HEREIN), REPRESENTATIONS AND OTHER TERMS OR CONDITIONS, INCLUDING BUT NOT LIMITED TO THE IMPLIEDWARRANTIES, REPRESENTATIONS, CONDITIONS OR OTHER TERMS OF MERCHANTABILITY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. THE CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT: (A) THE SUBSCRIPTION SERVICES AND THIRD PARTY EQUIPMENT MAY CONTAIN BUGS, ERRORS AND DEFECTS; (B)

USE OF THE SUBSCRIPTION SERVICES AND THIRD PARTY EQUIPMENT IS AT ITS RISK; AND (C) THE ENTIRE RISK OF THE SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH THE CUSTOMER. ACCORDINGLY, THE SERVICES AND THE DOCUMENTATION ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITH ALL FAULTS, DEFECTS AND ERRORS AND WITHOUT WARRANTY OF ANY KIND; NO VERBAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THE SUPPLIER OR ITS AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY. THE CUSTOMER ACKNOWLEDGES THAT THE SERVICES MAY NOT BE DESIGNED, INTENDED OR RECOMMENDED AS A MEANS BY WHICH TO STORE OR TRANSMIT "PROTECTED HEALTH INFORMATION" (OR 'PHI') AS DEFINED UNDER THE UNITED STATES' HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 AND RELATED OR SIMILAR LAWS (COLLECTIVELY, "HIPAA"). EXCEPT AS OTHERWISE AGREED IN A SEPARATE WRITING SIGNED BY THE SUPPLIER, THE SUPPLIER 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.

13.8 SUBJECT TO CLAUSES 13.9, 13.10, AND IF APPLICABLE 13.11 AND 13.12, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNTS PAID BY THE CUSTOMER HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE MOST RECENT INCIDENT GIVING RISE TO LIABILITY. FOR THE AVOIDANCE OF DOUBT, THE SUPPLIER'S LIABILITY UNDER THE DPA IS INCLUDED AND SUBJECT TO THE LIMITATION OF LIABILITY PROVISIONS AND EXCLUSIONS FROM LIABILITY UNDER SECTION 13.10 OF THIS AGREEMENT. THE FOREGOING LIMITATIONS SHALL APPLY, WHETHER AN ACTION IS IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY.

13.9 NOTWITHSTANDING THE PROVISIONS IN CLAUSE 13.8, NOTHING IN THIS AGREEMENT SHALL LIMIT FINANCIAL LIABILITY IN RESPECT OF THE CUSTOMER'S PAYMENT OBLIGATIONS UNDER CLAUSE 9 (FEES, CHARGES AND PAYMENT); OR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER 13.1 AND 13.2; ; OR EITHER PARTY'S LIABILITY FOR DEATH, BODILY INJURY, OR DAMAGE TO TANGIBLE PERSONAL PROPERTY; OR ANY FINALLY ADJUDICATED FINDING OF GROSS NEGLIGENCE, FRAUD, FRAUDULENT MISCONDUCT OR FRAUDULENT MISREPRESENTATION; IN WHICH CASE NO LIMIT WILL APPLY.

13.10 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 13, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, EXEMPLARY OR PUNITIVE DAMAGES HOWEVER CAUSED INCLUDING SUCH DAMAGES AND COSTS FOR ANY DAMAGE TO REPUTATION OR LOST OPPORTUNITIES, PROFITS, REVENUES, DATA OR DATA USE WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

[Clauses 13.11 and 13.12 shall only be applicable to this Agreement if it is entered into under Australian law in accordance with the provisions of Schedule 1. Where the Agreement is not governed by Australian law the provisions of Clauses 13.11, 13.12 and any references to them within the Agreement shall be disregarded for the purposes of construing the terms of the Agreement.]

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

13.11.1 the application of any Consumer Guarantee that applies to the supply of the Services;

13.11.2 the exercise of a right under any Consumer Guarantee that applies to the supply of the Services; or

13.11.3 subject to Clause 13.12 any liability of the Supplier for a failure to comply with a Consumer Guarantee that applies to the supply of the Services.

13.12 To the extent permitted by law, the Supplier's liability for breach of any Consumer Guarantee is limited, at the Supplier's option to:

13.12.1 the re-supply of the Services that breached the Consumer Guarantee; or

13.12.2 the payment of the cost of having those Services supplied again.

14 Termination

14.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this Agreement without liability to the other immediately on giving written notice to the other party if:

14.1.1 the other party commits a breach of a material obligation of this Agreement, which is irremediable or, if such breach is remediable does not cure such breach within thirty (30) days of written notice thereof;

14.1.2 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or

14.1.3 the other party: (a) files a voluntary petition in bankruptcy, (b) makes a general assignment for the benefit of its creditors, (c) suffers or permits the appointment of a trustee or receiver for its business assets, (d) becomes subject to any proceeding under any bankruptcy or insolvency law which is not dismissed within sixty (60) days, (e) initiates actions to wind up or liquidate its business voluntarily or otherwise, (f) ceases doing business in the ordinary course, or (g) suffers, permits or initiates the occurrence of anything analogous to any of the foregoing events under the laws of any applicable jurisdiction.

14.2 On termination of this Agreement:

14.2.1 due to a material breach by the Customer, all Fees shall become due immediately on the date of termination. The Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and in respect of Services for which no invoice has been submitted at the date of termination, the Supplier may submit an invoice, which shall be payable immediately on receipt;

14.2.2 due to a material breach by the Supplier; notwithstanding the provisions of Clause 9.2(c), the Customer shall be entitled to a refund of any Fees paid for Services which have not yet been delivered from the date of notification of the issue leading to the material breach;

14.2.3 if termination by Customer was other than as permitted pursuant to Clauses 3.4 or 14.1, or unless otherwise expressly stated in the relevant Order or other written agreement between the Parties, the Customer's liability for such termination shall be an amount equal to all Fees due under a relevant Order calculated over the remaining duration of the then-current Initial Term or Subsequent Term

14.2.4 for any reason, the accrued rights remedies obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and

14.2.5 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15 Force Majeure

Each party will be excused from performance for any period during which, and to the extent that, it or its subcontractor(s) is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond its reasonable control, and without its fault or negligence including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, telecommunication network failures and power failures.

16 Variation

No variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

17 Waiver

17.1 A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

17.2 No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of any such right or remedy.

18 Cumulative Remedies

Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

19 Severance

If a provision of this Agreement (or part of any provision) is found illegal, invalid or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and to the greatest extent possible, achieves the parties' original commercial intention.

20 Entire Agreement and Order of Precedence

20.1 This Agreement and any other documents annexed to it constitute the entire Agreement between the parties and supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of this Agreement.

20.2 The parties agree that any pre-printed terms or conditions contained in the Customer's purchase orders, delivery schedules, invoices or general terms and conditions of trade are void and without effect.

20.3 In the event of any conflict or inconsistency between the following documents, the order of preference shall be: (a) special conditions on the Order, (b) the rest of the Order, (c) DPA (d) Product-Specific Terms (where relevant), (e) the Master Services Terms and Conditions, (f) the Statement of Work, then (g) the Service Descriptions and the Technical, Organizational and Security Practices .

20.4 Each party acknowledges that, in entering into this Agreement, it does not rely on, and shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not expressly set out in this Agreement.

21 Assignment

21.1 Neither the Supplier nor Customer shall, without the prior written consent of the other party (such consent not to be unreasonably withheld), assign all or any of its rights or obligations under this Agreement except that either party may assign this Agreement without such consent to a surviving entity in a merger, de-merger, corporate restructuring or consolidation in which it participates, or to a purchaser of all or substantially all of its assets. However, notwithstanding the foregoing, with respect to any assignment by the Customer, the proposed assignee or Affiliate shall be at least as creditworthy as Customer (as reasonably determined by the Supplier), shall agree in advance and in writing to assume

and be bound by all provisions of this Agreement, and shall deliver to the Supplier fully-executed documents reasonably acceptable to Vonage establishing the terms of such an assignment. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

21.2 Each party that has rights under this Agreement is acting on its own behalf and not for the benefit of another person.

22 No Partnership or Agency

Nothing in this Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorize either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23 Rights of Third Parties

A person who is not a party to this Agreement shall not have any rights under or in connection with it.

24 Notices

24.1 A notice given to a party under or in connection with this Agreement shall be: (a) in writing in English (or accompanied by a properly prepared translation into English); (b) signed by or on behalf of the party giving it; (c) sent to the Supplier in accordance with Schedule 1, and to the Customer for the attention of the person at the address specified in this Agreement (or to such other person or address as that party may notify to the other, in accordance with the provisions of this clause); and (d) delivered personally, sent by commercial courier with a tracking system, or sent by first class or registered mail, return receipt requested.

24.2 If a notice has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows: (a) if delivered personally, at the time of delivery; (b) if delivered by commercial courier, at the time of delivery shown on the courier's receipt; and (c) if sent by first-class mail or registered mail, return receipt requested at the time of delivery shown on the receipt.

24.3 The provisions of this Clause 24 (Notices) shall not apply to the service of any process in any legal action or proceedings.

25 Dispute Resolution

25.1 If any dispute arises in connection with this Agreement, the parties shall each nominate a senior representative who shall, within seven (7) days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.

25.2 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the commercial mediation rules of the relevant arbitration association set out in the table in Schedule 1 in effect at the time such mediation is commenced. To initiate the mediation, a party must give notice in writing ("ADR Notice") to the other party requesting mediation. The parties will use reasonable endeavours to agree on a mediator provided, however, if the parties cannot agree on a mediator, the president or equivalent of the relevant arbitration association set out in Schedule 1 shall appoint a mediator. The mediation will start not later than fifteen (15) days after the date of the ADR Notice. The mediation shall take place in the city set out in Schedule 1 and apply the governing law set forth in Schedule 1 to the mediation.

25.3 No party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

26 Customer Participation and References

26.1 The Customer agrees that, following the Effective Date:

26.1.1 it will (if required) participate in a call with the Supplier to discuss the reason/s for its selection of NewVoiceMedia;

26.1.2 the Supplier may publish on its website and issue to the media a new business press release, subject to the Customer's approval of its content, together with the Customer's logo and a brief description of the Customer's business.

26.2 The Customer further agrees that, following the commencement of the Subscription Services:

26.2.1 it will participate in a call with the Supplier to discuss the impact of the Subscription Services upon the Customer's operations;

26.2.2 the Supplier may publish a case study on its website and issue a press release to the media (based upon the case study), subject to the Customer's approval of its content, together with the Customer's logo and a brief description of the Customer's business.

27 Supplier Contracting Party, Notices, Governing Law and Jurisdiction

27.1 The table in Schedule 1 details, according to where the Customer is domiciled: (a) the Supplier address for notices to be sent, (b) the law which will apply to any lawsuit arising out of or in connection with this Agreement and (c) which courts have jurisdiction over any such lawsuit.

27.2 As detailed in Schedule 1, each party agrees to the applicable governing law without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts.

28 Export Compliance

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

Crimea) or in violation of any United States' export law or regulation.

29 Anti-Bribery

29.1 The Customer warrants that neither its employees, agents or representatives have received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of the Supplier, its employees, agents or representatives in connection with this Agreement. If the Customer learns of any violation of the above restriction, the Customer agrees to promptly notify the Supplier in accordance with the provisions of Clause 24 (Notices).

29.2 The Supplier warrants that it will comply with all applicable laws relating to anti-bribery and shall not engage in any activity, practice or conduct which would constitute an offence under applicable laws.

SCHEDULE 1

SUPPLIER CONTRACTING PARTY, NOTICES, GOVERNING LAW AND JURISDICTION

Customer Domiciled In	Supplier Contracting Entity	Address for Notices	Governing Law	Courts Having Exclusive Jurisdiction	Arbitration Association and Place of Arbitration
United Kingdom	NewVoiceMedia Limited, a company registered in England and Wales. Registered Number: 3602868	Legal Department, NewVoiceMedia House, Jays Close, Basingstoke, Hampshire, RG22 4BS, UK	England & Wales	England & Wales	London Court of International Arbitration (LCIA) having its seat of arbitration in London