



## **TERMS AND CONDITIONS**

### **1. Introduction**

Vantage shall provide and Customer shall accept the services as listed on the executed Purchase Order and these Terms and Conditions (collectively "Agreement") and more fully defined below in Section 2, ("Services"). Customer may issue billable work orders supplementing the Services, which shall be effective upon Vantage's acceptance or performance thereof. All terms and conditions of this Agreement shall apply to all such accepted work orders. Vantage will bill Customer for additional Services at Vantage's then current one time prices.

### **2. Services**

#### **a) MAXvoice Service**

MAXvoice Service is a bundled data communications service that provides a single station with unlimited outbound local, intrastate, and interstate domestic long distance service, a direct inward dial number, voice mail, and web portal access service. MAXvoice Service also includes a single (white pages) directory listing per Customer. For new installations, MAXvoice Service shall include the provision of station and voicemail software programming changes for a period of Ninety (90) days after the date of service commencement without additional charge. After ninety (90) days, not less than three (3) software programming changes will be provided at no cost to Customer each month. Software programming charges beyond the three (3), or greater as detailed in Section 1 of the Purchase Order, shall be billed at their current rates.

#### **b) Optional Services**

Provided that Customer remains in good standing in accordance with the terms and conditions of this Agreement, Vantage will provide and bill Customer for Optional Services not included within the MAXvoice Service bundle as defined above. Such Optional Services and rates therefore are set forth in this Agreement's Purchase Order. Optional Services include, but are not limited to, IP fax, automated attendant, outbound international calls, inbound toll free calls, directory assistance calls, reserved DID numbers, additional local/main lines, and internet access.

### **3. Commencement and Term**

The term of this Agreement ("Service Term") shall be, unless noted differently on the Purchase Order, thirty six (36) months, and shall commence on the earlier of the date of installation of the Services or ninety (90) business days after the date of acceptance by Vantage. The term will automatically renew for subsequent twelve (12) months unless written notice to terminate is provided by either party to the other party not less than sixty (60) days prior to the expiration of the then current Service Term.

### **4. Price and Payment**

Customer shall pay for the Services at the rates specified in this Master Services Agreement Purchase Order or on any amendment hereto executed by the Parties. Any Services the Parties agree to add hereto after the Commencement Date shall be added to the Agreement at Vantage's list prices in effect at that time, unless otherwise agreed to in writing by Vantage. Usage and one-time charges shall be billed at the end of the month in which they are incurred. Monthly recurring charges shall be billed in advance in the month preceding the month to which such charges apply. All charges are due and payable ten (10) days after Customer's receipt of Vantage's invoice to Customer. Failure to pay any sum when due, after three (3) days' written notice to Customer, may result in interruption of Services or termination of this Agreement pursuant to Section 11 below. A charge of one and one-half percent (1.5%) of the amount owed shall be added to the total outstanding balance owed as of the last day of the current calendar month. Customer shall be deemed to have approved Vantage's invoice if it fails to object thereto in writing within sixty (60) days after the invoice date.

Equipment purchased from Vantage shall be billed to Customer upon Equipment order placement and is due immediately upon Customer's receipt of Equipment invoice. Charges for purchased equipment must be paid in full prior to delivery to site, unless otherwise agreed to by Vantage and specified in writing.

**5. Installation and Maintenance**

**a) Customer Premises Local Area Network (“LAN”) Equipment**

Customer shall be responsible for procuring and operating all of the Customer premises equipment, vertical and horizontal cabling infrastructure, and power, required to facilitate the use of the Services (“Premise Hardware”), and the premise (labor) services required to install and maintain such equipment during the Service Term, including onsite technical response and support. The Premises Hardware shall meet the minimum system requirements (the “Minimum System Requirements”) as defined by Vantage. Customer's LAN shall be configured to include virtual LANs for both voice traffic and data traffic. At Customer's request, Vantage may perform installation services which will be billed at Vantage's then current hourly rates.

**b) Customer Premises Personal Computer Equipment**

Customer shall be responsible for procuring, installing and maintaining its desktop computer equipment (“Customer Premises PC Equipment”) for use in connection with the Services during the Service Term. The Customer Premises PC Equipment shall meet the requirements specified by Vantage.

**c) On-site Maintenance Duties of Customer**

Customer hereby acknowledges its sole responsibility for routine and/or emergency on-site and/or remote maintenance support of any and all Premise Hardware, and as such, Customer is solely responsible for negotiating the applicable hardware/software Service Level Agreement(s) with its selected IT resource. At Customer's request, and with Vantage's acceptance of said request, Vantage may perform LAN support services which will be billed at Vantage's then current hourly rates.

**d) Acceptable Use Policy**

Customer shall comply with all requirements of Vantage's Acceptable Use Policy and shall not use the Services for any purpose in violation of such Acceptable Use Policy or any law or regulation or for any use for which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents or permits. Customer hereby acknowledges having read and received the Vantage Acceptable Use Policy, which is available for viewing at [www.vantageunified.com](http://www.vantageunified.com).

**e) Customer's Security Measures**

Customer is solely responsible for establishing and maintaining security measures (including, but not limited to; firewall, other hardware and/or software, codes, passwords, or other security functionality) necessary to restrict access to its Services, computers, servers, or other equipment through the Services.

**f) Proactive Maintenance**

Customer acknowledges that Vantage will from time to time perform proactive maintenance tasks on the Services platform, including but not limited to routine diagnostics, scheduled and unscheduled monitoring activities, hardware and software replacements and upgrades, and planned component and/or network services failover testing. Customer agrees that any service interruptions resulting from such proactive maintenance measures will not be eligible for Service Credits under the Vantage Service Level Agreement. Vantage will use every effort to conduct such maintenance tasks in a manner and at a time so as to limit any impact on Customer's operations. Vantage reserves the right to perform any and all repair tasks immediately and without notice, regardless of time and day, as Vantage deems necessary to resolve service impacting issues.

**6. Title to Equipment and Risk of Loss**

**a)** Vantage shall retain title to all equipment and software residing in Vantage's data center used in connection with the Services (“Vantage Equipment”).

**b)** Customer shall retain title to all Customer Premises Network Equipment and Customer Premises PC Equipment. Customer shall bear the risk of loss or damage to any Customer Premises Network Equipment and Customer Premises PC Equipment, except that Vantage shall be liable to Customer for the cost or repair of any such equipment which is lost, stolen or damaged as a result of Vantage's negligence or actions, provided that Vantage shall have no liability for the negligence or actions of Customer IT Resource.

**7. Force Majeure**

Vantage shall not be liable to Customer for any loss, injury, delay, expense, damages, or other casualty suffered or incurred by Customer arising out of any cause or event not within Vantage's reasonable control and without its fault or negligence, including but not limited to; riots, wars or hostilities between any nations, Acts of God, third-party carrier service interruptions, fires, storms, floods or earthquakes; strikes, labor disputes, vendor delays, labor, power or other utility services; government restrictions or trade disputes.

**8. Taxes and Surcharges**

Customer shall pay all taxes and surcharges imposed on or based upon the provision or use of the Services, including, but not limited to, local, county, state, federal, federal excise tax, 911 fees, universal service fee, applicable surcharges, and other regulatory fees which may be adjusted by Vantage from time to time.

**9. Limitation of Liability**

a) VANTAGE SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST INCOME OR LOST REVENUE (WHETHER SUCH DAMAGES WERE FORESEEN OR NOT AT THE TIME THIS AGREEMENT WAS ENTERED INTO), SUSTAINED OR INCURRED IN CONNECTION WITH THE SERVICES FURNISHED UNDER THIS AGREEMENT. THIS LIMITATION APPLIES TO CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCTS LIABILITY, TORT, INCLUDING BOTH THE ACTIVE AND PASSIVE NEGLIGENCE OF VANTAGE, OR ANY OTHER THEORY OF LIABILITY.

b) The liability of Vantage for direct damages arising from Vantage's performance under this Agreement, or any order issued hereunder, shall be limited to the lesser of: (i) the amount of actual direct damages proved by Customer, or (ii) Three (3) months' of the monthly recurring charges for the MAXvoice Services specified in Section 1 of this Agreement.

c) VANTAGE SHALL HAVE NO LIABILITY FOR ANY DAMAGES RESULTING FROM UNAUTHORIZED ACCESS TO CUSTOMER'S LAN, SYSTEMS OR EQUIPMENT BY ANY PARTIES.

d) Customer understands and acknowledges that, unless specified separately and in writing by Vantage, Vantage provides no 911 service for calls originated from any locations other than the Service Address specified above.

e) Customer agrees to defend and hold Vantage and all Vantage employees harmless from any and all claims, damages, and any other liabilities, including attorney fees, arising out of inaccuracy of information or the inadequacy of any procedure or personnel relating to the activation, implementation, maintenance, or provision of 911 service or in the identification of the telephone number, address, name, location or other information of any person accessing or attempting to access an emergency "911" or similar system. Vantage and Vantage employees shall not be liable for civil damages to any person, corporation, or other entity for any loss or damages caused by any act or omission in design, development, installation, maintenance or provision of 911 service other than an act or omission constituting gross negligence or willful misconduct.

Customer acknowledges that the Customer is not permitted to relocate an active telephone from the service address without thirty (30) days prior written notice to Vantage. In the event Customer desires to relocate a telephone, Customer must inform Vantage immediately, and acknowledges that additional recurring and one time charges may apply in order to support "911" functionality. If telephone is moved to a non-supported location, Vantage reserves the right to terminate all services to said telephone immediately without notice to Customer.

f) Customer is solely responsible for all fraudulent or unauthorized use of the Services. Customer shall indemnify and hold Vantage harmless from all costs, expenses, claims or actions arising from fraudulent calls of any nature. Customer shall not be excused from paying Vantage for the Services provided to Customer or any portion thereof on the basis that fraudulent calls comprised a corresponding portion of the Services. In the event Vantage, or its carrier vendors, discovers fraudulent calls being made (or reasonably believes fraudulent calls are being made), nothing contained herein shall prohibit Vantage or its carrier

vendors from taking immediate action that is reasonably necessary to prevent such fraudulent calls from taking place, including without limitation, denying service to particular stations or terminating service to or from specific locations. Vantage shall use reasonable efforts to notify Customer in the event Vantage takes action upon discovery of fraudulent calls.

**10. Cost of Collection**

Customer shall be liable to Vantage for any costs incurred by Vantage in enforcing any payment or other obligation of the Customer under this Agreement including, without limitation, collection agency costs, reasonable attorneys' fees, and court costs, if any.

**11. Termination after Service Commencement**

**a) By Customer:**

(i) Customer may terminate portions of the Services without incurring a termination charge, provided that the total monthly recurring charge(s) for the remaining Services are equal to or higher than sixty percent (60%) of the initial Services (the "Initial Services") specified in the Purchase Order and its attachments of this Agreement. Vantage requires that Customer provides a written (e-mail) request for reduction of services not less than 30 days prior to date of the requested discontinued service. Vantage provided circuits are not eligible for termination prior to the expiration of the service term for the circuit. Customer acknowledges that the billing end date for the discontinued service will be thirty (30) days after written notice is received by Vantage.

(ii) Customer may terminate this Agreement prior to the expiration of the then current Service Term, but will be charged a termination penalty in an amount equal to seventy five percent (75%) of the total monthly recurring charges of the initial Services specified in the Purchase Order and its attachments of this Agreement multiplied by the number of months remaining in the Service Term. Vantage requires that Customer provides a written (e-mail) request for termination of all services not less than sixty (60) days prior to date of the requested termination.

(iii) Customer may terminate this Agreement without liability for any termination charge if Vantage fails to perform any material condition of this Agreement and such failure continues for a period of thirty (30) days after Vantage's receipt of written notice from Customer specifying the nature of such failure; provided Customer shall pay in full all charges for Services rendered through the termination date.

(iv) In the event Customer terminates this Agreement prior to the commencement of Services, Customer agrees to pay Vantage a sum equal to the greater of the Total Non-Recurring Charges listed on Page One of the Purchase Order and its attachments of this Agreement or five hundred dollars (\$500.00) plus the actual termination costs charged to Vantage by any of its carrier partners for the cancellation of any active orders placed to support the Services as ordered by Customer. Any termination by Customer after commencement of Services will be subject to the termination charge as defined in Section 11 (a)(ii).

**b) By Vantage:**

(i) Services may be terminated by Vantage in the event Customer: (a) fails to perform any obligation to make payments under this Agreement and such failure continues for a period of three (3) days after Customer's receipt of written notice from Vantage specifying the nature of such failure, (b) fails to perform any other material condition or obligation under this Agreement and such failure continues for a period of thirty (30) days after Customer's receipt of written notice from Vantage specifying the nature of such failure, or (c) is in violation of any of the conditions and restrictions as defined in Section 12 below. In the event Services are terminated pursuant to this Subsection 11 (b)(i) Customer shall be liable for a termination charge calculated pursuant to Subsection 11 (a)(ii) above, as applicable and shall pay in full all charges for Services rendered through the termination date.

(ii) Services may be terminated by Vantage in the event Customer unreasonably denies Vantage or the Customer's IT Resource access to the Customer Premises LAN Equipment, including access to its premises to examine or maintain same. In such event, Customer shall pay the termination charge specified in Subsection 11 (a)(ii) above and shall pay in full all charges for Services rendered through the termination date.

**12. Conditions and Restrictions**

Customer agrees that it shall not, nor shall it permit others to: (a) alter, adjust, repair or circumvent any aspect of the Services; (b) in any way copy, modify, decompile, disassemble or reverse engineer the performance data or any part thereof, Vantage's proprietary technology or the Services provided hereunder nor shall any attempt to do so be undertaken or permitted directly or indirectly; (c) use or allow the use by Customer personnel or third party agents or representatives of Customer of the Services or performance data for the development or modification of new or existing Customer or third party product lines, analysis reports or for public release; or (d) resell, pass-through, sublicense, rent, lease, timeshare or re-brand the Services or otherwise provide the Services to any party not within Customer's enterprise and related personnel. Additionally, Customer shall not use, nor shall it permit others to use the Services: (a) for any unlawful, invasive, infringing, defamatory, fraudulent or obscene purpose; (b) to send unsolicited, bulk email of any kind, regardless of the content or nature of such messages, post the same or similar message to one or more newsgroups or host or accept bulk replies resulting from such unsolicited email; (c) to forge IP address information or mail headers; (d) to send any virus, worm, Trojan horse or harmful code or attachment; (e) to alter, steal, corrupt, disable, destroy, trespass or violate any security or encryption of any computer file, database or network; (f) so as to interfere with the use of Vantage Services or voice or data connectivity partner networks by other Customers or authorized users; or (g) in violation of the Vantage Acceptable Use Policy. If Customer, or a third party through Customer, violates any of the foregoing prohibitions, Vantage may immediately, and without notification, suspend the Services, and/or terminate this Agreement without further liability or obligation to Vantage.

**13. Liquidated Damages**

Customer agrees that the termination charges specified in Subsections 11(a) and 11(b)(i) above shall constitute liquidated damages and not a penalty, since the precise amount of such damages cannot be determined in advance.

**14. Indemnity**

Customer will indemnify and hold Vantage harmless from and against all loss, liability, damage and expense, including reasonable attorneys fees, caused by Customer's officers, employees, agents, vendors, partners or contractors arising from claims or demands: (a) for damages to property or for injury or death to persons, including without limitation any disability, death or Worker's Compensation benefits; (b) arising from data transmitted, received or stored on or over the Vantage service platform by or through Customer; (c) of infringement of a third party's proprietary rights based on any information, materials or access to property provided by Customer; or (e) relating to the use by Customer or any end user of Customer of any Services provided under this Agreement.

**15. Assignment**

This Agreement is not assignable by Customer without the prior written consent of Vantage. Vantage may subcontract any or all of the work to be performed by it under this Agreement but shall retain responsibility for the work subcontracted.

**16. Guarantees; Advance Payments**

In the event that Customer fails to pay any invoice on or before the forty-fifth (45<sup>th</sup>) day after its date or to pay any sum when due within three (3) days after receipt of Vantage's written notice pursuant to Section 18(f) below, or if Customer is unable generally to pay its debts when due, Vantage may require Customer to pay Vantage an advance payment in the form of a cashier's or certified check, or to provide a letter of credit or a satisfactory guaranty. Any such advance payment may be applied against Customer's past due amounts.

**17. DID Numbers**

Upon expiration or termination of this Agreement for any reason, other than termination pursuant to Subsection 11(b)(i) above, Vantage shall release to Customer's new carrier any and all Direct Inward Dial ("DID") numbers assigned to Customer for use in connection with the Services under this Agreement, provided that the carriers holding any such DID numbers consent to such transfer and Customer pays any administrative costs associated with such transfer. Customer acknowledges it is Customer's selected carrier's responsibility to complete such transfer of DID numbers. Vantage will terminate/release all remaining DID numbers three (3) days after Service termination.

**18. General**

**a) Severability**

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term and provision hereof shall be valid and enforced to the fullest extent permitted by law.

**b) Dramatic Increases in Customer's Calling Volume**

Vantage's rates are based upon general commercial and business calling averages. In the event that Customer makes a dramatic change in its business application which results in a dramatic increase in data and/or voice usage, Vantage reserves the right to adjust the rates specified in this Agreement.

**c) Governing Law**

This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania.

**d) Authority to Enter into this Agreement**

Vantage and Customer each represent that it has the power and authority to enter into this Agreement.

**e) Entire Agreement**

This Agreement, including the Purchase Order and its attachments hereto, constitutes the entire agreement of the parties regarding the subject matter hereof and supersedes any and all prior written or oral agreements, understandings, discussions and representations by and between the parties.

**f) Notices**

All notices to Vantage hereunder must be in writing and delivered via certified mail or courier delivery to the addresses below or to such alternate address or facsimiles as may be provided by one party to the other in writing at least 10 days prior to such notice:

**If to Vantage at:**

Vantage Communications  
Attn: Kristin Tyler  
6805 Route 202  
New Hope, PA 18938

**If to Customer:**

At address identified on Master Services Purchase Order.

**19. Service Level Agreement**

The Vantage network is based on a carrier-grade network designed to support and deliver the Services described herein. This section sets forth the credit(s) that Customer will receive if the service levels, as defined below, are not met, in addition to those rights and remedies available under this Agreement;

**a) Service Interruption Definition**

A Service interruption is defined as the inability for all, or some, stations to complete inbound and/or outbound calling connections to and from the Service Address as listed on this Agreement's Purchase Order.

**b) Proactive Credits**

From time to time and at the sole discretion of Vantage, these credits are automatically administered by Vantage based upon Vantage internal Services availability analysis, proactive network monitoring routines, and platform alarm investigations. Affected Customers will be notified by Vantage in the event Vantage detects a service interruption that affects one or more Customers. A description of the service interruption will be provided by Vantage via e-mail to those Customers known to have

been affected, detailing the affected Service Category, date, time, and duration of the interruption, cause of the interruption, and the measures undertaken by Vantage to resolve the issue. Vantage will use its reasonable business efforts to provide said description within twenty-four (24) business hours from the resolution. The amount credited to Customer's account will be applied to the next regularly scheduled invoice generation.

**c) Requested Credits**

These credits must be requested by Customer in writing to Vantage no later than ten (10) business days following Customer's first notice to Vantage regarding the event for which the credit is being requested. Customer must include the nature of the service interruption, service ticket number(s), date and time of first notification to Vantage, affected service location(s), and a Customer contact. Upon completion of its investigation, Vantage will provide to Customer a description of the service interruption, or its findings, via e-mail to Customer, detailing the affected Service Category, date, time, and duration of the interruption, cause of the interruption, and the measures undertaken by Vantage to resolve the issue. Vantage will use reasonable business efforts to provide said description within twenty-four (24) business hours from the resolution. At Vantage's request, Customer must meet with Vantage operations management personnel in order to qualify for any credits. Upon determination by Vantage that said service interruption is a covered event, the amount credited to Customer's account will be applied to the next regularly scheduled invoice generation.

**d) Credit Amounts**

Duration of Service Interruption

a) less than 10 minutes	None
b) > 10 minutes, but < 61 minutes	5% of MRC
c) > 1 hour, but < 8 hours	15% of MRC
d) > 8 hours	25% of MRC
e) Second qualifying interruption	in Amounts defined above

Credit percentages detailed are calculated based on the Monthly Recurring Charges ("MRC") for the affected Service Address only.

In no single calendar month shall the amount of credits issued as a result of Service Interruptions be greater than one full MRC.

**e) Exclusions**

(i) The scope of this Section 19, Service Level Agreement does not include services not provided by Vantage, any Customer premise equipment, acts or omission by Customer, Customer's agents, internal Customer IT support personnel, or other IT Resources.

(ii) This Section 19, Service Level Agreement, does not apply to any Customer requested service interruptions or scheduled interruptions due to Vantage's performance of routine maintenance services as described in Section 5F.

(iii) This Section 19, Service Level Agreement does not apply to feature interruptions resulting from user error.

(iv) Service tickets related to Customer CPE maintenance, configuration changes, configuration errors, negligence, accidents, or omissions.

(v) Time attributed to Customer's delay in responding to Vantage's requests for assistance to repair, including Customer's on-site or remote access to equipment and appropriate Customer personnel (i.e. local LAN Administrator).

(vi) Eligibility for any credits is subject to Customer's account being held current and having no outstanding balances due.

**20. Disclaimer for Products**

Notwithstanding anything else in this Agreement, Customer acknowledges and agrees that Vantage: (a) is acting as the distributor of Products; (b) is NOT a manufacturer of Products or importer of Products (unless otherwise disclosed); (c) makes no warranty in relation to any Products, including as to their conditions, state, safety, fitness for purpose, or otherwise; and (d) is not liable to Customer or any third party for any loss, damage or claim relating (directly or indirectly) to the Products or conditions, state of safety, fitness for purpose or otherwise of the Products.