



HOSTED VOIP SERVICE

Telava™ VINCE Conferencing Services and Solutions Agreement

1. SERVICE DESCRIPTION. Conferencing Services allow users to conduct audio conferences with a few or up to hundreds of participants from locations served by the Company within the United States, from locations in Canada, and from international locations. The service is available for use by Customers twenty-four (24) hours a day, seven (7) days a week.

2. TERM AND TERMINATION.

2(a) TERM. Services shall commence upon the Service Commencement Date as agreed upon by the parties, in writing, and shall continue for a minimum term of twelve (12) months, unless a different term is specified by the parties on the Services and Pricing of the SOA ("Initial Term"), with one year renewal terms continuing indefinitely thereafter (each a "Renewal Term"). Either party may terminate this Conferencing Agreement at the end of a term by providing written notice to the other party of such termination at least 60 days prior to the end of such term. At the commencement of any Renewal Term, the rates for Services provided pursuant to this Conferencing Agreement shall automatically adjust to 'Telava' then-standard rates.

2(b) TERMINATION FOR CAUSE. Either party may terminate this Conferencing Agreement at any time in the event that the other party breaches any provision of this Conferencing Agreement in any material respect and fails to cure such breach within 30 days after receipt of written notice of such breach. Notwithstanding the foregoing, Telava may terminate this Conferencing Agreement and/or suspend the provision of Services immediately for: illegal, fraudulent or improper use of the Services (including without limitation Customer's use of the Services in contravention of Section 6) or if deemed reasonably necessary by Telava to prevent interruption or disruption to Telava' network, its business or other customers; if any portion of an invoice remains unpaid when due; or for breach, not subject to cure. Telava shall not be liable to Customer or any third party should Telava exercise its right to discontinue Services, in whole or in part, or terminate this Conferencing Agreement pursuant to this Section 2(b).

2(c) EARLY TERMINATION BY CUSTOMER. In the event that Customer terminates this Conferencing Agreement (not due to breach by Telava) or if Telava terminates on account of Customer's breach, Customer shall pay to Telava as liquidated damages, but not as a penalty and representing a reasonable estimate of the probable loss to Telava, a termination charge equal to the Minimum Monthly Charge multiplied by the number of months in the term less any payments for actual usage made by Customer during the term of this Conferencing Agreement; provided, however, no payments over and above the Minimum Monthly Charge for any one month shall apply to or in any way be credited against any other, past or present, Minimum Monthly Charge or the overall shortfall amount for the term of the Conferencing Agreement.

3. CUSTOMER COMPLIANCE AND INDEMNIFICATION. Telava has no control over the content of information transmitted by Customer through the Services (whether visual, written or audible) and that Telava does not examine the use to which Customer puts the Services or the nature of the information Customer or Customer's users send or receive. Customer shall comply with all applicable foreign, federal, state and local laws relating to its use of the Services under this Conferencing Agreement (including without limitation, export and control laws and regulations). Customer agrees not to transmit content through use of the Services that infringes any third party's intellectual property rights or that is unlawful, threatening, abusive, harassing, libelous, deceptive, fraudulent, invasive of another's privacy, vulgar, obscene or otherwise contains objectionable material of any kind or nature. Customer is responsible: (i) for any and all activities that may occur under your account and (ii) to maintain the confidentiality and security of its Services' access numbers, keys and passcodes. Customer agrees to notify Telava immediately if there has been an unauthorized use of any access numbers, keys and passcodes or any other breach of security and Customer shall be liable for fraudulent charges until such time as Customer has notified Telava to suspend any compromised access numbers, keys and/or passcodes. Customer acknowledges that Telava may from time to time monitor the Services for quality assurance and fraud detection. Further, and notwithstanding confidentiality provisions herein, Telava may disclose information about Customer's use of Services to satisfy any law, regulation, government agency request, court order, subpoena or other legal process.

Customer shall indemnify, defend and hold Telava, its officers, directors, employees, affiliates and its suppliers harmless from any claims, losses, damages, penalties or costs (including without limitation reasonable attorneys' or expert witness fees) arising out of: (i) Customer's use of the Services; (ii) Customer's violation or alleged violation of any applicable laws or regulations with respect to the Services; or (iii) infringement of any intellectual property rights of any third party. The obligations contained in this paragraph shall survive any termination or suspension of the

Services contemplated herein, the expiration or termination of this Conferencing Agreement, and shall also survive final payment.

4. WARRANTY AND LIMITATION OF LIABILITY. All Services provided under this Conferencing Agreement are provided on an “as is” And “AS AVAILABLE” basis, and Telava shall not have any liability to any party, including but not limited to Customer, for the content of information transmitted by Customer through the services or any loss, delay, interruption or inaccuracy of such communications. Telava DISCLAIMS any AND ALL representations, warranties or covenants, either express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, or non-infringement regarding the Services. TELAVA MAKES NO WARRANTY OR REPRESENTATION REGARDING THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES, AND ANY MATERIAL, AND/OR DATA DOWNLOADED, UPLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS AT YOUR OWN DISCRETION AND RISK. TELAVA, nor its suppliers, shall in any event be liable for any special, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT OR OTHER MONETARY LOSS; LOSS OR INTERRUPTION OF DATA, COMPUTER TIME OR VOICE TRANSMISSIONS; ALTERATION OR ERRONEOUS TRANSMISSION OF DATA; ACCURACY OF DATA; UNAUTHORIZED ACCESS TO OR USE OF VOICE OR DATA PROCESSED OR TRANSMITTED BY, TO OR THROUGH THE SERVICE; OR PROGRAM ERRORS) EVEN IF TELAVA IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. Telava shall not be liable for any failure to perform, or delay in performance of, its obligations under this Conferencing Agreement caused by reasons beyond Telava’ control. In no event shall Telava’ total liability to Customer arising under this Conferencing Agreement, whether such theory of liability is based in contract, tort or otherwise, exceed an amount equal to the charges by Telava to customer for the particular service performed by Telava during the one month period immediately prior to the date of event, act or omission giving rise to the liability.

5. COUNTERPARTS. This Conferencing Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same document.

6. CAPTIONS AND SECTION HEADINGS. Captions and section headings are for convenience only, are not a part of this Conferencing Agreement and may not be used in construing it.

7. SEVERABILITY. Should any provision of this Conferencing Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining terms of this Conferencing Agreement shall not be affected or impaired thereby, and the illegal, invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the allocation of risk.

8. WAIVERS. Any failure by any of the parties to comply with any of the obligations, agreements or conditions set forth in this Conferencing Agreement may be waived by the other party, but any such waiver must be in writing signed by the waiving party and will not be deemed a waiver of any subsequent failures or of any other obligations, agreements or conditions contained herein.

9. NO AGENCY. The parties’ relationship to each other shall be that of independent contractors. Neither party shall or shall be deemed to be an agent, employee, partner of, or joint venture with the other party.

10. NO THIRD PARTY BENEFICIARIES. Each party enters into this Conferencing Agreement solely for its own benefit and purpose. Except for Telava’ suppliers as expressly provided herein, this Conferencing Agreement in no way confers any rights upon, or imposes obligations on either of the parties toward, any third party, including but not limited to any recipient of content transmitted through the Services.

11. SUCCESSORS AND ASSIGNS; ASSIGNMENT. This Conferencing Agreement shall be binding upon and inure to the benefit of the parties’ successors, legal representatives and authorized assigns. Telava may assign its rights and obligations under this Conferencing Agreement to an entity that either now or in the future controls, is controlled by or is under common control with Telava or as a consequence of merger, acquisition, change of control or asset sale. Customer may not assign its rights and obligations under this Conferencing Agreement without the written consent of Telava, which shall not be unreasonably withheld.

12. NOTICES. Customer notices will be addressed to the address first set forth on this Conferencing Agreement.

Notifications to Telava shall be addressed:

Telava
Attn: Contract Management
353 Sacramento Street
Suite 1500
San Francisco, CA 94111
Notices may also be faxed to 415-321-3496 or sent by electronic mail to notification@telava.com

13. ENTIRE CONFERENCING AGREEMENT. This Conferencing Agreement, including all Schedules attached hereto, constitutes the final, complete and entire Conferencing Agreement between the parties with respect to the subject matter hereof, and supersedes any previous proposals, negotiations, agreements or arrangements, whether verbal or written made between the parties with respect to such subject matter. There are no other verbal agreements, representations, warranties, undertakings or other agreements between the parties. If Customer uses or requires a purchase order in connection with any of the Services to be performed hereunder, Customer hereby acknowledges and agrees that to the extent such purchase order contains any pre-printed or other terms and conditions, such terms and conditions, whether in addition to or in conflict with this Conferencing Agreement, shall have no effect whatsoever and this Conferencing Agreement shall govern the relationship between Telava and Customer. Telava may amend at any time the provisions of this Conferencing Agreement by, at Telava's election: (i) posting revised terms and conditions ("Amended Terms") on www.telava.com (the "Telava Web Site") or (ii) delivering the Amended Terms to Customer at the address, fax or e-mail address provided herein (such delivery may be included in invoices for the Services delivered to Customer). All Amended Terms shall automatically be effective 30 days after such amendment is posted on the Telava Web Site or delivery to Customer as provided above. Customer agrees to BE responsible for regularly reviewing the Telava Web Site to obtain timely notice of ANY SUCH AMENDED TERMS AND Telava's then CURRENT TERMS AND CONDITIONS. By using the Services after POSTING OR DELIVERY OF Amended Terms, Customer will be deemed to have accepted AND BE BOUND BY such Amended Terms. No such amendment by Telava shall serve to constitute a default or termination by Telava of this Conferencing Agreement, nor shall such amendment serve to be a basis for Customer's termination of this Conferencing Agreement. Except as otherwise provided in this Section 13, this Conferencing Agreement may only be amended or modified, in whole or in part, by a written instrument signed by the parties to this Conferencing Agreement.

Revision.20110115