

"Effective Date": The date signed by Participant below

Participant:

Participant Address:

This Non-Disclosure Agreement ("Agreement") is entered by and between Nexmo Inc., a Vonage company ("Nexmo") having offices at 217 Second Street 4th Floor, San Francisco, CA, U.S.A. 94105 and the "Participant" identified above (each a "Party" and together the "Parties"). In order to protect certain Confidential Information, as described below, Nexmo and the Participant agree as follows:

1. **Disclosing Party** The Party disclosing the Confidential Information (the "Discloser") is (check one only): ☐ Nexmo ☐ Participant ☒ Both Parties

2. **Description of Confidential Information** "Confidential Information" is any information in whatever form or medium (and includes any copies of such information that receiving Party ("Recipient") is authorized to make hereunder) that is: (a) proprietary or confidential to Discloser or its Affiliates (as that term is defined below) or to their respective customers, suppliers or other business partners including, without limitation, information that is embedded in, or related to a Nexmo or Participant project, service or product or the development, testing or commercial exploitation thereof, in whatever form or media; (b) either specifically identified as confidential prior to or at the time of its disclosure or would generally be considered confidential in either of the Parties' industries; and/or (c) directly or indirectly disclosed or to which the Recipient is otherwise provided access by Discloser or on Discloser's behalf. The fact or subject matter of the discussions between the Parties that are taking place is also Confidential Information. Further, Confidential Information includes Customer Proprietary Network Information ("CPNI") and personally identifiable information of a Participant's prospects, customers and employees ("PII"). For the purposes of clarification, in relation to any discussions relating to patent rights, any prior art identified by Discloser as a result of Discloser expending time and/or money shall constitute Confidential Information and may be used, reproduced or disclosed only as specifically provided herein.

3. **Purpose** In this Agreement "Purpose" means: (i) assessing the desirability or viability of establishing or furthering an imminent and mutually beneficial business or contractual relationship between the Parties; and (ii) to the extent this Agreement is incorporated by reference into any other agreement between the Parties, achieving the objectives of that agreement. Notwithstanding anything to the contrary, any and all communications between the Parties (whether oral, email, etc.), are not binding on either Party unless reduced to, or provided accordance with, a mutually executed agreement signed by authorized officers of each of the Parties.

4. **Use, Disclosure and Reproduction** Except as specifically provided herein, Recipient shall hold Confidential Information in strict confidence. Recipient shall use and reproduce the Confidential Information only to the extent reasonably required to fulfill the Purpose. This Agreement shall govern Confidential Information provided to or from Participant, Nexmo or any of either Party's Affiliates. "Affiliate" shall mean a person or entity that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Party, and may be considered a Recipient or Discloser bound by this Agreement, as applicable. It shall not be a breach of the obligations of the Recipient if the Recipient provides access to Confidential Information to, and authorizes the use and reproduction of the Confidential Information as is reasonably required to fulfill the Purpose by: (a) Affiliates (b) Recipient's and Affiliates' employees and contractors ("Personnel"), provided that Recipient is vicariously liable for the failure of any Affiliate and/or Personnel to whom Confidential Information is disclosed to comply with Recipient's obligations hereunder and further provided that the Affiliate and/or Personnel: (i) has a need to know the Confidential Information to fulfill the Purpose; and (ii) is bound by confidentiality obligations to Recipient with terms that afford no less protection to the Confidential Information than the terms of this Agreement. Recipient may also disclose Confidential Information if and only to the extent: (i) it is required to do so by law provided that Recipient gives Discloser sufficient notice to enable it to seek an order limiting or precluding such disclosure unless otherwise legally prohibited from doing so; or (ii) Discloser gives its prior written authorization to do so which is signed by an officer of the Discloser. Recipient agrees that except to the extent that the Discloser is expressly precluded by law from prohibiting Recipient from doing so, Recipient shall not alter, modify, adapt, create derivative works, translate, deface, decompile, disassemble, convert into human readable form, or reverse engineer all, or any part, of any materials to which it is provided access by Discloser.

5. **Disclosure Period** This Agreement applies to Confidential Information that is disclosed on and between the Effective Date and thereafter unless this Agreement is sooner terminated in writing by either Party, effective upon receipt of written notice.

6. **Confidentiality Period** Recipient's duties with respect to Confidential Information under this Agreement expire three (3) years from the date of its disclosure hereunder (except for NEXMO INC.

By:

Name:

Title:

Date:

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GENERAL MANAGER

trade secrets, CPNI and PII, for which confidentiality obligations shall be perpetual and survive any termination of this Agreement).

7. **Standard of Care** Recipient shall use a commercially reasonable degree of care to prevent the unauthorized use, reproduction or disclosure of the Confidential Information, which care shall not be less than the degree of care that Recipient uses to protect its own Confidential Information of a similar nature. For clarification, this does not permit Recipient to allow third parties to whom it generally permits access to Recipient's Confidential Information, access to Discloser's Confidential Information.

8. **Exclusions** Information that Recipient can establish: (a) was lawfully in Recipient's possession before receipt from Discloser; or (b) is or becomes a matter of public knowledge through no fault of Recipient; (c) was lawfully disclosed to a Recipient by a third person who has a right to make such disclosure without breach of any obligation of confidentiality to Discloser; or (d) was independently developed or discovered by Recipient without use of Discloser's Confidential Information, shall not be considered Confidential Information under this Agreement.

9. **Warranty** This Agreement shall not obligate either Party to disclose any Confidential Information to the other Party. ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED "AS IS". Discloser makes no representation, warranty or guarantee whatsoever about the Confidential Information.

10. **Rights** The Recipient hereby acknowledges and agrees that it shall not acquire any rights in or to the Confidential Information under this Agreement other than the rights expressly granted in Paragraph 4. In particular, Recipient shall not acquire any ownership right, interest or title in or to the Confidential Information or any intellectual property rights therein or the right to obtain or apply for such rights under this Agreement. Recipient agrees that disclosure or inappropriate use of the Confidential Information may cause Discloser irreparable harm. Recipient further agrees therefore that Discloser will have the right to seek, in addition to any of its other rights and remedies, injunctive relief for any violation of this Agreement without posting bond, or by posting bond at the lowest amount required by law.

11. **No Agency** This Agreement does not create any agency, employment or partnership relationship between the Parties.

12. **Entire Agreement/Modifications** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and cancels and supersedes any prior discussions, correspondence, understandings, agreements, or communication of any nature relating to the subject matter of this Agreement. All additions or modifications to this Agreement must be made in writing and must be signed by both Parties.

13. **Assignment** This Agreement may not be assigned by Recipient without Discloser's express prior written authorization. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the Parties, their successors and assigns.

14. **Counterparts** This Agreement may be signed in two or more counterparts each of which together will be deemed to be an original and all of which together will constitute one and the same instrument. Faxed, electronically delivered and scanned executed documents will be considered originals for purposes of confirming an enforceable agreement.

15. **Return of Confidential Information** Except as otherwise required by applicable law, upon expiration or termination of this Agreement, at the Discloser's request, the Recipient shall promptly return all Confidential Information received from the Discloser (including, without limitation, any summaries of orally disclosed information and all copies thereof in its possession or control and/or in the possession or control of its Personnel and Affiliates) or will certify through an officer of the Recipient that all Confidential Information received from the Discloser (including, without limitation, any summaries of orally disclosed information and all copies thereof in its possession or control) have been destroyed. Failure of the Discloser to make such request of Recipient shall not entitle Recipient to make any further use of the Confidential Information or otherwise extend Recipient's rights set forth herein after expiration or termination of this Agreement and Recipient specifically agrees to cease any further use of Discloser's Confidential Information.

16. **Severability** If a court of competent jurisdiction declares any provision in this Agreement invalid or unenforceable, such invalidity or unenforceability shall have no effect on the remainder of the Agreement which shall remain in full force.

17. **Governing Law** This Agreement shall be governed by and construed under the laws of the State of New York, United States. Each Party hereto irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction of the courts of the State of New York as applicable. The Parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.

PARTICIPANT

By:

Name:

Title:

Date: