

Professional Services Policy for Vocera Solutions

Territory: United States and Canada

1. Preamble. This Professional Services policy (“Policy”) governs the provision by Vocera of certain professional services described in one or more Statement of Work (each a “Statement of Work” or “SOW”) and purchased by End User from Vocera. The Services relate to Vocera Solutions consisting of hardware that End User may have purchased from Vocera or Vocera’s authorized reseller pursuant to a separate agreement, and the associated Vocera Software and Product Documentation licensed to End User by Vocera pursuant to Vocera’s EULA.

2. Services and Statement of Work. Each Statement of Work will include, without limitation, the applicable Statement of Work I.D., a description of the professional services to be provided thereunder, which shall be defined as the “Services” for purposes of this Policy and the SOWs only, the consideration to be paid for the Services, the site where Services are to be delivered, the term of the engagement, and other particulars of the Services.

3. Procedure. Each Purchase Order for Services must reference and must not contain terms or conditions inconsistent with such Statement of Work. Changes to the Services or other deliverables described in a Statement of Work will be effective only if agreed to by the parties in a written change order referring to a modified or existing Statement of Work setting forth the modifications and any resulting changes to the scope, delivery schedule, price, or payment terms.

4. Manner of Performance. Vocera has the sole and exclusive right to control or direct the manner or means by which the Services are performed and has the right in its sole discretion to subcontract any or all of its obligations and rights under the Statement of Work. Vocera shall be responsible for actions of its subcontractors with respect to End User and this Professional Services policy and any related Statement of Work as if performed by Vocera itself.

5. Responsibilities of the Parties.

5.1 Contacts. Each party will designate a management level person who will act as a point of contact for all matters relating to the Services for each Statement of Work.

5.2 Vocera Responsibilities. Vocera will implement the Services in the manner described in the Statement of Work. Vocera will assign qualified personnel to perform the Services. Vocera will have sole control over the methods and means of accomplishing the Services.

5.3 End User Responsibilities. End User agrees to:

- (i) review and approve the content and the format of documents, procedures, and report(s) developed in connection with the delivery of Services;
- (ii) provide and maintain End User systems, e.g. networks, servers, databases and applications, as contemplated in the Statement of Work;
- (iii) provide the resources and facilitate the assumptions set forth in the Statement of Work; and
- (iv) cooperate with Vocera in a timely and responsive manner, so that Vocera can fulfill its Services obligations; and
- (v) provide information, data, or other materials (“End User Materials”) to Vocera as stated in the Statement of Work, and provide assistance in the interpretation of End User Materials; and
- (vi) provide written notification to Vocera, of receipt of the final implementation report, as further described in the Statement of Work.

End User is solely responsible for the selection and content of End User Materials and assistance provided to Vocera and the availability and efficiency of any End User systems. End User’s failure to provide materials, training, assistance, and contemplated systems sufficient to enable Vocera to fulfill its Services obligations, or the unavailability or inefficiency of third party systems required or provided by End User for performance of the Services, will excuse performance by Vocera to the extent of the deficiency.

5.4 Joint Responsibilities. The parties will agree on processes and procedures, including communications, status reporting, and escalation guidelines.

6. Ownership of Intellectual Property.

6.1 End User Materials. End User will own and maintain all intellectual property rights to any and all pre-existing End User intellectual property, including End User Materials, and any enhancements, modifications and/or derivatives thereto.

6.2 Vocera. Vocera will own all right, title, and interest in and to all inventions and discoveries developed hereunder, whether or not developed in provision of the Services by Vocera or jointly by Vocera and End User, including all rights in copyrights or other intellectual property rights pertaining thereto. Vocera grants to End User a royalty-free, non-exclusive, non-transferable, worldwide license in perpetuity, to use, modify, and reproduce (provided Vocera intellectual property rights are protected as stated herein), for End User's internal use only, any design specifications, or any other tangible deliverable developed hereunder.

6.3 License to Training Materials. Vocera grants to End User a non-exclusive, worldwide, royalty free license to use and reproduce the training materials, manuals, instructions, and guides ("Training Materials") that Vocera provides to End User in connection with the Services, solely for purposes of, and in such quantities as are reasonably necessary for, training End User's end users, employees, consultants, and agents in the use of Vocera products in accordance with the EULA. The Training Materials do not include materials provided to End User for use in a course of Vocera University. Such license is granted subject to the following restrictions: (i) End User must not copy the Training Materials, except as expressly authorized in the foregoing grant, and if End User does copy for these purposes, End User must preserve any proprietary rights notices on the Training Materials, and place such notices on any and all copies End User has made or makes; (ii) End User must not modify the Training Materials and must not create or attempt to create any derivative works from the Training Materials, except for derivative works used solely for purposes of training End User's end users, employees, consultants, and agents in the use of Vocera products as expressly authorized in the foregoing license grant; and (iii) End User must not sell or distribute the Training Materials. Vocera reserves all rights not expressly granted herein.

7. Fees and Payment.

7.1 Hourly Rate and Minimum. Vocera provides Services both on a time and materials basis and a fixed price basis. Time and materials services are provided at Vocera's standard hourly consulting rates with a minimum charge of one hour time at such rate. Fixed price services are custom quoted for each Statement of Work.

7.2 Travel and Expenses. In addition to billable on-site time for Vocera consultants, End User is responsible for all reasonable travel and expenses associated with the performance of the Services in accordance with End User's Travel and Expense Policy, if any, attached hereto. Vocera shall only invoice End User for expenses incurred as a direct result of performing Services in accordance with the applicable Statement of Work. Such expenses shall be limited to reasonable out-of-pocket expenses necessarily and actually incurred by Vocera in the performance of its services.

7.3 Invoice and Payment. Vocera invoices all fees and expenses on a periodic basis, and such invoices are due and payable thirty (30) days from the date of the invoice. End User will pay Vocera such charges, rates and expenses without deduction, setoff or delay for any reason. End User represents and agrees that it has not relied on the future availability of any software update, upgrade, enhancement, improvement, or new function, feature, release, or version, in entering into the payment obligations for the Services. Unless this is a fixed price engagement, all invoices submitted shall specify in detail the time spent, and the tasks performed during the period for which the invoice has been submitted. Vocera will provide copies of receipts for travel expenses of \$25 or such other amount as the End User specifies in its standard Travel and Expense Policy provided to Vocera prior to the start of the engagement.

8. Segmentation. The Services are bid by Vocera separately from any Vocera software licenses. End User understands that it has the right to acquire the Services and any Vocera Software licenses separately.

9. Limited Professional Services Warranty.

9.1 Limited Professional Services Warranty. Vocera warrants that it will perform the Services in a timely, commercially reasonable and workmanlike manner, materially conforming to any additional representations concerning the Services to which Vocera has agreed in writing and subject to Product Documentation. This limited warranty extends only to the original recipient of the Services. The original recipient of the Services must provide written notice to Vocera that any the Services are not as warranted no later than thirty (30) days after completion of the applicable Services, or the right to assert such claim will be deemed waived. As the sole and exclusive remedy, the defective Services will be reperformed to the extent they are capable of being reperformed and to the extent necessary to cure such breach.

9.2 Limited Services Warranty Exclusions. Vocera makes no warranty and accepts no responsibility for failures in Services due to: (a) deficiencies in or the late delivery of materials required from End User; (b) non-conformities of End User systems to specifications in the description of Services in an applicable Vocera Statement of Work for professional services; (c) the inaccessibility or insufficient accessibility of End User systems or third party systems required by End User; (d) End User's failure to perform its responsibilities as required under this Policy and Product Documentation; or (e) the lack of reasonable cooperation on End User's part as required under this Policy and Product Documentation.

9.3 Disclaimer. EXCEPT FOR THIS EXPRESS WARRANTY, ALL EXPRESS, IMPLIED OR STATUTORY TERMS, CONDITIONS, REPRESENTATIONS, AND WARRANTIES (INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT) ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. VOCERA'S RESELLERS HAVE NO AUTHORITY TO MAKE ANY REPRESENTATIONS OR COMMITMENTS ON BEHALF OF VOCERA OR TO MODIFY, IN ANY RESPECT, THIS LIMITED WARRANTY, ANY OF ITS PROVISIONS OR ANY RIGHTS HEREUNDER.

10. Damages Exclusions and Limitations. WITHOUT PREJUDICE TO ANY OF THE FOREGOING, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, TO THE FULL EXTENT PERMITTED BY LAW, VOCERA'S LICENSOR'S (AS DEFINED IN THE APPLICABLE EULA) DISCLAIM ALL LIABILITY TO END USER FOR DAMAGES OF ANY KIND AND VOCERA WILL NOT BE LIABLE FOR:

- (A) LOST PROFITS, LOST REVENUE, LOST INTEREST, LOST GOODWILL, LOSS OR CORRUPTION OF DATA OR FOR ANY LOSS OF OR INTERRUPTION TO BUSINESS;
- (B) COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES;
- (C) SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO TRANSACTIONS UNDER THIS AGREEMENT (I) HOWEVER CAUSED OR ALLEGED TO BE CAUSED, (II) EVEN IF VOCERA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (III) WHETHER GROUNDED IN WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY, BREACH OF CONTRACT, CIVIL LIABILITY OR OTHER CAUSE OF ACTION OR CLAIM UNDER OR IN CONNECTION HERewith OR THE SUBJECT MATTER HEREOF, AND (IV) REGARDLESS OF WHETHER MADE IN THE FORM OF AN ALLEGATION, DEMAND, SUIT, ACTION OR OTHER PROCEEDING OF ANY KIND (COLLECTIVELY, "CLAIM"); OR
- (D) ANY AMOUNT EXCEEDING THE "LIABILITY LIMIT" (AS DEFINED BELOW).

THE "LIABILITY LIMIT" IS THE AMOUNT ACTUALLY PAID BY END USER FOR THE SPECIFIC PRODUCT UNITS, SOFTWARE, OR SERVICES SUBJECT TO THE CLAIM WITHIN THE TWELVE (12) MONTHS PRIOR TO THE DATE OF THE CLAIM FOR (I) SOFTWARE WHERE THE CLAIM PRIMARILY RELATES TO SOFTWARE, INCLUDING BUT NOT LIMITED TO SOFTWARE LICENSED TO VOCERA BY THIRD PARTIES, OR TO VOCERA'S EULA; (II) HARDWARE PRODUCTS WHERE THE CLAIM RELATES PRIMARILY TO HARDWARE PRODUCTS OR TO THE HARDWARE WARRANTY; (III) SUPPORT SERVICES WHERE THE CLAIM PRIMARILY RELATES TO VOCERA'S SUPPORT SERVICES; (IV) SERVICES OTHER THAN SUPPORT SERVICES WHERE THE CLAIM PRIMARILY RELATES TO SUCH SERVICES, AND/OR AN STATEMENT OF WORK PURSUANT THERETO; AND, WHERE CLAUSES (I) THROUGH (IV) ARE NOT APPLICABLE, (V) PRODUCTS AND/OR SERVICES AS APPLICABLE.

IF ANY PART OF THIS SECTION 10 IS FOUND TO BE UNENFORCEABLE BY ANY COURT OR COMPETENT AUTHORITY OR WOULD BE FOUND TO BE UNENFORCEABLE IF IT WERE INTERPRETED OR CONSTRUED IN A PARTICULAR WAY, THEN, THE RELEVANT WORDING SHOULD BE INTERPRETED OR CONSTRUED SO AS TO AVOID SUCH A FINDING AND THAT, IN THE EVENT OF SUCH A FINDING, THE REMAINDER OF THE PROVISION IN QUESTION SHALL BE INTERPRETED OR CONSTRUED TO GIVE IT FULL EFFECT.

11. General.

11.1 Governing Law. This Agreement is governed by the laws of Delaware, excluding its principles of conflicts of laws. In any claim hereunder, the parties consent to the non-exclusive jurisdiction of, and venue in, the federal courts situated in Delaware. This consent to jurisdiction and venue supersedes any contrary provisions in any attachments to

this Agreement. The United Nations Convention on the International Sale of Goods, and any local implementing legislation shall not apply to this Agreement.

11.2 Language. The parties have expressly requested and required that this Agreement and all other related policies and documents be drawn up in the English language. Les parties conviennent et exigent expressément que ce Contrat et tous les politiques et documents qui s'y rapportent soient rédigés en anglais. If a version of this Agreement exists in a different language, the English language version shall prevail to the extent of any inconsistency.

11.3 Conflict. The terms of this Agreement shall prevail in the event of a conflict with any otherwise applicable law for the protection of proprietary rights. Any different or additional term preprinted on any End User purchase order or similar document are hereby rejected, notwithstanding any term set forth therein to the contrary.

11.4 Notices. Any notice required to be given hereunder shall be in writing and shall be given by facsimile or email (confirmed by regular mail), personal delivery (including by professional courier), or mailing (by first class prepaid mail, return receipt requested). Notices to Vocera shall be sent as follows:

Notices to Vocera:	
Address:	Vocera Communications, Inc. Attention: Law Department 5900 Optical Ct. San Jose, CA 95138
Telephone:	888-986-2372
E-mail:	smartcarelegal@stryker.com

Notices to End User shall be sent to any address specified in a written agreement between the parties. In the case of personal delivery, notice shall be deemed to have been given upon actual receipt. In the case of email or facsimile, notice shall be deemed to have been given upon the date the transmitting machine confirms such transmission. In the case of mailing, such notice shall be deemed to have been given seven business days after such mailing.

11.5 Vocera Policies. Please see <https://www.stryker.com/us/en/acute-care/vocera/legal.html> for the EULA and the Vocera policies referenced herein.