



## STANDARD TERMS AND CONDITIONS FOR COMMERCIAL BULK VIDEO SERVICES

### ARTICLE 1 – INTRODUCTION

Wave Business Solutions, LLC (“**Provider**”) and its Affiliates provide bulk video services (“**Services**”) to commercial customers. These Standard Terms and Conditions for Commercial Bulk Video Services (these “**Bulk Video T&Cs**”) may be incorporated by reference into one or more bulk video Service Orders that are executed by and between Provider and the customer specified in such Service Order(s) (“**Customer**”). Customer’s use of any Services purchased pursuant to these Bulk Video T&Cs will also be governed by Provider’s Acceptable Use Policy for Commercial Services (the “**AUP**”) which is posted on Provider’s website at <http://wavebusiness.com/commercial-AUP> and is incorporated into these Bulk Video T&Cs by this reference. These Bulk Video T&Cs together with any Service Order(s) executed by the Parties shall be collectively referred to as the “**Agreement**” between Provider and Customer and shall govern Provider’s provision of Services to Customer. In the event of a conflict between the provisions of these Bulk Video T&Cs and the provisions of a Service Order, the provisions of these Bulk Video T&Cs shall prevail unless the Service Order expressly states that the conflicting provision of the Service Order is intended to control. For purposes of the Agreement, the term “**Affiliate**” shall mean any other person which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the first person or any of its subsidiaries. Each of Provider and Customer may be referred to in the Agreement as a “**Party**” and together as the “**Parties**.” Depending on the location of Customer’s Service Site, in some instances Services may be provided by an Affiliate of Provider.

### ARTICLE 2 – SERVICE ORDERS AND PRICING

2.1 Service Orders. The purchase of Services shall be accomplished only through the negotiation and mutual execution and delivery of a service order memorializing the terms and conditions pursuant to which Provider shall provide the desired Services to Customer (each, a “**Service Order**”). Service Orders shall clearly specify the following: (i) the bulk video programming and any related equipment being ordered; (ii) the location(s) at which the Service is to be provided (each, a “**Service Site**”); (iii) the number of units at which the Service will be displayed; (iv) the initial term of the Service Order (the “**Initial Service Term**”); (v) the initial pricing for the Service, including (a) the initial monthly recurring charges (“**MRC**”) for the Service, and (b) any non-recurring charges (“**NRC**”) associated with installation of the Service; and (vi) any other terms or conditions specific to the particular Service Order.

2.2 Additional Charges. The MRC specified on a Service Order does not include Applicable Taxes, franchise fees, FCC regulatory fees, broadcast station retransmission fees (aka RTC fees), certain sports programming fees or any charges or fees imposed by a governmental authority on the provision of the Services, all of which shall be passed through to Customer as additional line items on Customer’s monthly invoice.

2.3 Price Increases. After the first twelve (12) months of the Initial Service Term, the MRC for the Services is subject to increase; provided, that in no event shall any such increase exceed Provider’s increased direct costs to deliver the Services. Should Provider elect to increase the price of some or all of the Services provided pursuant to this Order, Provider shall deliver at least thirty (30) days advance written notice to Customer specifying the amount of the price increase.

### ARTICLE 3 – TERM AND RENEWAL

The Initial Service Term of each Service Order shall be as specified in the Service Order. Upon expiration of the Initial Service Term of a Service Order, unless either Party terminates the Service Order by delivering written notice of termination to the other Party not less than thirty (30) days prior to the end of the Initial Service Term, the Service Order will begin to automatically renew on a month-to-month basis (the “**Renewal Term**”). During the Renewal Term for a Service Order, either Party may terminate the Service Order by giving no less than thirty (30) days’ advance written notice of termination to the other Party. The total period of time a Service Order is in effect is referred to as the “**Service Term**” for the Service Order at issue.

### ARTICLE 4 – ACCESS, INSTALLATION AND EQUIPMENT

4.1 Customer Is Responsible For Providing Access. Customer shall provide Provider with access to the Service Site and the building in which the Service Site is located as and to the extent reasonably necessary for Provider to install, test, inspect and maintain the Service(s) ordered during the Service Term. Provider shall have access to the Provider Equipment twenty-four (24)

hours per day, seven (7) days per week, three hundred sixty-five (365) days per year for purposes of maintaining, troubleshooting, repairing and replacing the Provider Equipment. Customer shall be responsible for providing appropriate HVAC, electrical power and security for Provider's Equipment within the building and at the Service Site. If a third-party owns, operates or otherwise controls the building in which the Service Site is located (the "**Property Owner**"), Provider shall reasonably cooperate with Customer and the Property Owner in obtaining access to the Service Site, including by negotiating and executing a commercially reasonable license agreement with the Property Owner. Any license fees, utility charges or other costs or expenses imposed on Provider by the Property Owner shall be paid by Customer.

4.2 **Equipment.** Provider shall be solely responsible for the provision, operation and maintenance of all equipment, cabling and other facilities (the "**Provider Equipment**") necessary to connect Provider's network facilities to the Customer demarcation point(s) at the Service Site and hand-off the video signal. Customer shall be solely responsible for the provision, operation and maintenance of all equipment, cabling, cable home-run wiring, telephony inside wiring and other facilities (the "**Customer Equipment**") used to receive the video signal at the demarcation point(s), distribute the video signal within the Service Site, and view the video programming. Customer shall ensure that all Customer Equipment employs industry standard security protections and supports Provider's delivery of fully encrypted video content to Customer. Title to the Provider Equipment shall at all times remain vested in Provider. Customer shall not re-arrange, disconnect, tamper with, attempt to repair, or otherwise interfere with the Provider Equipment, nor shall Customer permit any third party to do so. Upon the expiration or earlier termination of a Service Order, Provider shall have sixty (60) days in which it may (but is not required to) remove the Provider Equipment from the Service Site and the building in which the Service Site is located.

4.3 **Testing, Acceptance and Service Commencement Date.** Provider shall use commercially reasonable efforts to install the Services consistent with Provider's usual and customary installation timeline, and shall endeavor to keep Customer regularly informed regarding installation progress. Provider shall notify Customer when a Service has been installed and is ready for testing and use. Customer may, at Customer's option, participate in Provider's final testing of the Service. The Initial Service Term for the Service at issue shall commence on the date on which the Service has been installed, tested and is active and available for use by Customer (the "**Service Commencement Date**"). Customer shall have a period of five (5) business days after the Service Commencement Date in which Customer may notify Provider that the Service at issue is not functioning properly. If Customer notifies Provider of problems with a Service pursuant to this Section 4.3, Provider shall investigate and correct same and the Service Commencement Date shall be revised to be the first calendar day after the date on which Provider has corrected the problems. Unless Customer delivers notification of problems to Provider within the time period set forth above, Customer shall be deemed to have accepted the Service at issue and to have confirmed that the Service has been installed and is functioning properly as of the Service Commencement Date.

## ARTICLE 5 – PAYMENT AND BILLING

5.1 **Invoicing.** All amounts owed by Customer to Provider under the Agreement shall be collectively referred to as "**Fees**." Provider shall begin billing Customer for the MRC applicable to a Service as of the Service Commencement Date. Invoices shall be delivered monthly, and shall be paid by Customer within thirty (30) days of receipt. Fixed Fees shall be billed in advance and usage-based Fees shall be billed in arrears. Fixed fees for any partial month shall be pro-rated. For Services having an NRC, unless otherwise stated in the Service Order, Provider shall invoice Customer for the NRC upon full-execution of the Service Order. Except for amounts disputed in good faith by Customer pursuant to Section 5.2 below, past due amounts shall bear interest in the amount of 1.5% per month, or the highest amount allowed by law, whichever is lower.

5.2 **Disputed Invoices.** If Customer in good faith disputes any portion of a Provider invoice, Customer shall pay the undisputed portion of the invoice and submit written notice to Provider regarding the disputed amount, which notice shall include documentation supporting the alleged billing error (each such notice, a "**Fee Dispute Notice**"). A Fee Dispute Notice must be submitted to Provider within thirty (30) days from the date the invoice at issue is received by Customer. Customer waives the right to dispute any Fees not disputed within such thirty (30) day period. The Parties shall negotiate in good faith to attempt to resolve any such disputes within sixty (60) days after Customer's delivery of the applicable Fee Dispute Notice. Fee disputes unresolved within that time period shall be resolved by the mediation and arbitration procedures set forth in Sections 13.2 and 13.3 below.

5.3 **Applicable Taxes.** All charges for Services set forth in Service Orders are exclusive of Applicable Taxes (as defined below). Except for taxes based on Provider's net income or taxes for which Customer possesses a valid exemption certificate,



Customer shall be responsible for payment of all applicable taxes and regulatory fees, however designated, that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, or other taxes, fees, duties, charges or surcharges, that are imposed on, incident to, or based upon the provision, sale, or use of the Service(s) (collectively "**Applicable Taxes**"). The Applicable Taxes will be individually identified on invoices. If Customer is entitled to an exemption from any Applicable Taxes, Customer is responsible for presenting Provider with a valid exemption certificate (in a form reasonably acceptable to Provider). Provider will give prospective effect to any valid exemption certificate provided in accordance with the preceding sentence.

#### ARTICLE 6 – VIDEO PROGRAMMING

6.1 Channel Line-Up. Provider may at any time and from time to time change the number and/or identity of the signals comprising the Services and/or the placement of those signals (aka the "channel line-up"). In connection with providing Services to Customer, Provider, its authorized agents and equipment manufacturers may send code updates to the Customer Equipment including, but not limited to, cable modems, digital interactive televisions with CableCARDS, MTAs, HD DTAs or other similar equipment at any time. Such code updates may change, add or remove features or functionality of any such Customer Equipment or the Services.

6.2 Restricted Viewing in Public Areas. Pursuant to the provisions of one or more of Provider's programming agreements with video content providers, Customer may be restricted from showing certain channels of the Services in public areas (e.g., meeting rooms, lobbies, exercise rooms, restaurants, etc.). Customer agrees that Customer will not display the Services in public areas. Provider shall not be liable to Customer or to any third party should Customer violate the preceding sentence.

6.3 Separate Music Licenses. Customer may be required by law to obtain separate music performance license(s) if Customer uses the audio component of the Services in public areas (e.g., meeting rooms, lobbies, exercise rooms, restaurants, etc.). Customer is solely responsible for (i) investigating and determining the need for such license(s), and (ii) taking all steps necessary to obtain and pay for such license(s).

6.4 No Unauthorized Distribution. Any Services provided to Customer pursuant to the Agreement are for the sole benefit of Customer and Customer's end users who occupy the units at the Service Site. Customer shall not re-sell or allow redistribution of the Services to any third party, either in whole or in part, whether directly or indirectly, and whether on an integrated or unintegrated basis. Customer is responsible for all access to and use of the Services by means of the Customer Equipment and Customer's internal wiring, whether or not Customer has actual knowledge of or authorizes such access or use. Customer shall implement commercially reasonable security measures to prevent unauthorized use of, access to, or redistribution of the Services.

6.5 Performance; Technical Support. Provider shall use commercially reasonable efforts in keeping with normal industry standards to ensure that the Services are available to Customer twenty-four (24) hours per day, seven (7) days per week. It is possible, however, that there will be interruptions of the Services. Customer understands and agrees that the Services may be unavailable from time to time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond Provider's reasonable control. Temporary service interruptions for such reasons, as well as all service interruptions caused by Customer, will not constitute failures by Provider to perform its obligations under the Agreement. If Provider responds to a request from Customer for technical support and Provider determines that the problem was due to or caused by Customer (including Customer's end-users) or the Customer Equipment rather than any aspect of Provider's network or the Provider Equipment, Customer shall compensate Provider for its time spent troubleshooting the problem at Provider's then-current rates.

6.6 Right to Audit. Provider may, at any time during the Service Term, upon reasonable advance notice to Customer, enter onto the Service Site to perform an audit verifying that Customer's use of the Services complies with the provisions of the Agreement. Should Provider reasonably determine, whether through an audit or otherwise, that Customer's use of the Services has violated any provision of the Agreement, Customer shall immediately correct same.

#### ARTICLE 7 – DEFAULT AND REMEDIES

7.1 Customer Default. Each of the following shall constitute a default by Customer under the Agreement (each a separate event of "**Default**"): (i) if Customer fails to pay any undisputed Fees when due, the failure of Customer to cure same within ten

(10) days after receiving written notice from Provider regarding such failure to pay; (ii) if Customer fails to comply with any other material provision of the Agreement, the failure of Customer to cure same within thirty (30) days of receiving written notice from Provider regarding such non-compliance; or (iii) if Customer files or initiates proceedings, or has proceedings initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or other such official) under any bankruptcy, insolvency or other similar law, and the same is not dismissed within sixty (60) days.

7.2 Remedies for Customer Default. In the event of a Default by Customer under the Agreement, Provider may, at its option: (i) suspend any applicable Services until such time as the Customer Default has been corrected (provided, however, that any suspension shall not relieve Customer's on-going obligation to pay Provider all Fees and other amounts due under the Agreement as if such suspension of Services had not taken place); (ii) terminate the applicable Service(s) and the applicable Service Order(s); and/or (iii) pursue any other remedy available to Provider under the Agreement or applicable law. In the event of early termination for Customer Default pursuant to this Section 7.2, Customer shall pay to Provider the Termination Charge described in Section 8.3 below.

7.3 Provider Default. Each of the following shall constitute a Default by Provider under the Agreement: (i) if Provider fails to comply with any material provision of the Agreement, the failure by Provider to cure same within thirty (30) days of receiving written notice from Customer regarding such non-compliance; or (ii) Provider files or initiates proceedings, or has proceedings initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or other such official) under any bankruptcy, insolvency or other similar law, and the same is not dismissed within sixty (60) days.

7.4 Remedies for Provider Default. In the event of a Default by Provider under the Agreement Customer may, at its option: (i) terminate the applicable Service(s) and the applicable Service Order(s); and/or (ii) pursue any other remedy available to Customer under the Agreement or applicable law. Early termination by Customer shall be accomplished by providing termination notice to Customer's account manager and to the notice address specified in Article 15 below. In the event of early termination for Provider Default pursuant to this Section 7.4, Provider shall reimburse Customer for any pre-paid, unused monthly service Fees attributable to the terminated Service(s), and Customer shall have no further liability to Provider for the terminated Service(s). Early termination by Customer pursuant to this Section 7.4 shall not relieve Customer of its obligations to pay all Fees incurred prior to the early termination date.

## **ARTICLE 8 – EARLY TERMINATION AND TERMINATION CHARGE**

8.1 Early Termination for Customer Convenience. Customer may, at any time after executing a Service Order, discontinue one or more of the Services ordered and/or terminate the Service Order by giving at least thirty (30) days' advance written notice to Customer's account manager and to the notice address specified in Article 15 below. Any early termination of a Service pursuant to this Section 8.1 shall be referred to as "**Termination for Customer Convenience.**" In the event of Termination for Customer Convenience, Customer shall pay to Provider the Termination Charge described in Section 8.3 below.

8.2 Early Termination for Default. In accordance with Article 7 above, either Party may elect to terminate a Service Order prior to the scheduled expiration date in the event of an uncured Default by the other Party.

8.3 Termination Charge. In the event of Termination for Customer Convenience pursuant to Section 8.1 above, or termination for Customer Default pursuant to Section 7.2 above, Customer shall pay a Termination Charge to Provider. The "**Termination Charge**" shall equal the sum of the following: (i) all unpaid amounts for Services actually provided prior to the termination date; (ii) any portion of the NRC for the terminated Service(s) that has not yet been paid to Provider; and (iii) one hundred percent (100%) of all remaining MRCs Customer was to pay Provider for the Service during the remainder of the applicable Service Term. If incurred, the Termination Charge will be due and payable by Customer within thirty (30) days after the termination date of the Service at issue. Customer acknowledges that the calculation of the Termination Charge is a genuine estimate of Provider's actual damages in the event of early termination of a Service Order and is not a penalty.

## **ARTICLE 9 – CONFIDENTIAL INFORMATION**

9.1 Definition of Confidential Information. "**Confidential Information**" shall mean all information, including the Agreement,

regarding the business operations of either Party and/or the Services that Provider offers under the Agreement which is disclosed by one Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”), to the extent that such information is marked or identified as confidential or proprietary or would be reasonably deemed confidential or proprietary given the circumstances surrounding its disclosure. All written or oral pricing and contract proposals exchanged between the Parties shall be deemed Confidential Information, whether or not so designated. The fact that Customer is a customer of Provider shall not be deemed Confidential Information and may be freely disclosed by either Party. Information shall not be deemed Confidential Information if (i) it is independently developed by or for the Receiving Party, (ii) it is lawfully received by the Receiving Party free of any obligation to keep it confidential, (iii) it becomes generally available to the public other than by breach of the Agreement, or (iv) it was known to the Receiving Party prior to the Disclosing Party’s disclosure of same.

9.2 Obligations Regarding Confidential Information. Confidential Information is the property of the Disclosing Party and shall be returned to the Disclosing Party upon request. The Receiving Party shall hold all Confidential Information in confidence. The Receiving Party: (i) shall use such Confidential Information only for the purposes of performing its obligations and/or enforcing its rights under the Agreement; (ii) shall reproduce such Confidential Information only to the extent necessary for such purposes; (iii) shall restrict disclosure of such Confidential Information to employees or contractors that have a need to know for such purposes (with disclosure to contractors being limited to contractors that have signed a non-disclosure agreement to protect the Confidential Information of third parties); (iv) shall not disclose Confidential Information to any third party without prior written approval of the Disclosing Party except as expressly provided in the Agreement or as required by law, by court order, by administrative order of an agency having jurisdiction, or in the enforcement of its rights under the Agreement; and (v) shall use at least the same degree of care (in no event less than reasonable care) as it uses with regard to its own proprietary or confidential information to prevent the disclosure, unauthorized use or publication of Confidential Information. In the event a Receiving Party is required to disclose Confidential Information of the Disclosing Party pursuant to law, court order or administrative order of an agency having jurisdiction, the Receiving Party will, if such notice is permitted by law, notify the Disclosing Party of the required disclosure with sufficient time for the Disclosing Party to seek judicial relief from the required disclosure, and reasonably cooperate with the Disclosing Party in any efforts the Disclosing Party may take to obtain protective measures in respect to the required disclosure. The Parties agree that breach of this Article 9 may cause irreparable injury for which monetary damages are not an adequate remedy; accordingly, each Party may seek injunctive relief and any other available equitable remedies to enforce the provisions of this Article 9.

#### **ARTICLE 10 – LIMITATION OF LIABILITY**

10.1 General Limitations. Provider shall not be liable for any loss or damage occasioned by a Force Majeure Event. Except as expressly provided to the contrary elsewhere in the Agreement, Provider’s aggregate liability for any and all causes and claims arising under the Agreement, whether based in contract, tort, warranty or otherwise shall be limited to the lesser of: (i) the actual direct damages sustained by Customer; or (ii) an amount equivalent to the total MRC received by Provider from Customer for the Service(s) at issue during the six (6) month period immediately preceding the event giving rise to the claim.

10.2 No Special Damages. EXCEPT FOR (i) EACH PARTY’S CONFIDENTIALITY OBLIGATIONS UNDER ARTICLE 9 ABOVE, (ii) EACH PARTY’S THIRD-PARTY INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 11 BELOW, AND (iii) CLAIMS ARISING FROM A PARTY’S INTENTIONAL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER, ARISING OUT OF OR INCURRED IN CONNECTION WITH A PARTY’S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, INCLUDING, BY WAY OF EXAMPLE AND NOT BY WAY OF LIMITATION, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF DATA OR COST OF PURCHASING REPLACEMENT SERVICES, EVEN IF THE OTHER PARTY HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH SPECIAL DAMAGES.

10.3 Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PROVIDER MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, EITHER IN FACT OR BY OPERATION OF LAW, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, FITNESS FOR A PARTICULAR PURPOSE OR USE OF ANY SERVICES PROVIDED PURSUANT TO THIS AGREEMENT.

## ARTICLE 11 –INDEMNIFICATION FOR THIRD PARTY CLAIMS

11.1 Indemnification by Customer. Customer shall indemnify, defend and hold Provider and its members, managers, officers, agents and employees (collectively, the “**Provider Indemnified Parties**”) harmless from and against any and all claims, lawsuits or damages asserted against the Provider Indemnified Parties by any third-party to the extent the same arise out of or are due to: (i) Customer’s negligence or willful misconduct in exercising its rights or performing its obligations under the Agreement; (ii) Customer’s noncompliance with or Default under the Agreement; and/or (iii) Customer’s failure to comply with applicable law in connection with its performance under the Agreement.

11.2 Indemnification by Provider. Provider shall indemnify, defend and hold Customer and its members, managers, officers, agents and employees (collectively, the “**Customer Indemnified Parties**”) harmless from and against any and all claims, lawsuits or damages asserted against the Customer Indemnified Parties by any third-party to the extent the same arise out of or are due to: (i) Provider’s negligence or willful misconduct in exercising its rights and performing its obligations under the Agreement; (ii) Provider’s noncompliance with or Default under the Agreement; and/or (iii) Provider’s failure to comply with applicable law in connection with its performance under the Agreement.

11.3 Indemnification Procedures for Third-Party Claims. Should any third-party claim arise under this Article 11, the indemnified Party shall promptly notify the indemnifying Party of same in writing, and shall take such action as may be necessary to avoid default or other adverse consequences in connection with such claim. The indemnifying Party shall have the right to select counsel and to control the defense and settlement of such claim; provided, however, that the indemnified Party shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in handling the claim, and provided further, that the indemnifying party shall not take any action in defense or settlement of the claim that would negatively impact the indemnified Party without the consent of the indemnified Party. The indemnified Party shall reasonably cooperate with the indemnifying Party in the defense of the third-party claim, including making its files and personnel reasonably available to the indemnifying Party, all at the cost and expense of the indemnifying Party.

## ARTICLE 12 – FORCE MAJEURE EVENTS

Neither Party shall be liable for any delay in or failure of performance hereunder (other than Customer’s payment obligations under Article 5) due to causes beyond such Party’s reasonable control including, but not limited to, acts of God, fire, flood, earthquake, ice storms, wind storms, or other sever weather events, explosion, vandalism, cable cut, terrorist acts, insurrection, riots or other civil unrest, national or regional emergency, a governmental authority’s failure to timely act, inability to obtain equipment, material or other supplies due to strike, lockout or work stoppage, or any law, order, regulation, direction, action or request of any civil or military governmental authority (each, a “**Force Majeure Event**”). If any Force Majeure Event causes an increase in the time required for performance of any of its duties or obligations, the affected Party shall be entitled to an equitable extension of time for completion. If the delay in performance caused by the Force Majeure Event exceeds thirty (30) days, either Party may terminate the applicable Service Order(s) immediately on written notice to the other Party, without incurring any liability in connection with such termination.

## ARTICLE 13 – DISPUTE RESOLUTION

13.1 General Provisions. Except for actions seeking a temporary restraining order or injunction, or suits to compel compliance with this dispute resolution process, the Parties agree to use the dispute resolution procedures set forth in this Article 13 with respect to any controversy or claim (each, a “**Dispute**”) arising out of or relating to the Agreement. All discussions occurring and documents exchanged pursuant to Sections 13.2 and 13.3 below are confidential and inadmissible for any purpose in any legal proceeding involving the Parties; provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation or mediation process.

13.2 Negotiations. Should any Dispute arise, either Party may give the other Party written notice of the Dispute (each, a “**Dispute Notice**”). The Parties shall use good faith efforts to resolve the Dispute through negotiation within thirty (30) days of the date on which the Dispute Notice is delivered. With respect to Fee disputes arising under Article 5, compliance with the negotiation procedures described in Section 5.2 shall be in lieu of the provisions of this Section 13.2. If the Parties do not resolve the Dispute within such thirty (30) day period, either of the Parties may submit the matter to non-binding mediation through a professional mediation service. Any Dispute that is not resolved by negotiation and is not submitted to mediation shall be resolved by binding



arbitration pursuant to Section 13.4 below.

13.3 **Mediation.** If a Dispute is submitted to mediation, the Parties will cooperate in selecting a qualified mediator from a panel of neutral mediators having experience in the telecommunications and broadband internet industry. The Parties shall share equally in the costs of mediation. Any Dispute submitted to mediation that is not resolved within sixty (60) days of submitting the Dispute to mediation shall be resolved by binding arbitration as provided in Section 13.4 below.

13.4 **Binding Arbitration.** Any arbitration hearing shall be before a single neutral arbitrator and shall be held in the New York, New York offices of Judicial Arbitration & Mediation Services, Inc., or a similar professional dispute resolution organization. The arbitration shall be administered pursuant to the rules and procedures of the American Arbitration Association. The Parties shall equally share the fees of the arbitrator. The Federal Arbitration Act, 9 U.S.C. §§ 1-15, not state law, shall govern the arbitrability of all disputes.

13.5 **Governing Law.** The Agreement and all matters arising out of the Agreement shall be governed by the laws of the State of Delaware. Any judicial action arising in connection with the Agreement shall be in the Superior Court of the State of Delaware in and for New Castle County, or in the Federal District Court for the District of Delaware, as applicable. Customer waives all defenses of lack of personal jurisdiction and forum non conveniens. ***Each party irrevocably waives, to the fullest extent permitted by law, trial by jury of any disputes, claims or issues arising under the Agreement.***

**ARTICLE 14 – ASSIGNMENT AND ASSUMPTION**

Except as otherwise provided in this Article 14, neither Party shall assign, delegate or otherwise transfer the Agreement or its obligations under the Agreement, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, without the necessity of obtaining the other Party’s consent, assign its interest in and to the Agreement to: (i) any entity acquiring such Party, whether by merger or through purchase of substantially all the assets of such Party; (ii) a lender as an asset securing indebtedness; or (iii) an Affiliate of such party; provided, that in the event of a transfer to an Affiliate, the transferring Party shall continue to remain liable for the obligations under the Agreement.

**ARTICLE 15 – NOTICES**

Unless otherwise provided elsewhere in the Agreement, any notice to be given to either Party under the Agreement will be in writing. Notices to Provider shall be directed to Provider’s address set forth below. Notices to Customer shall be directed to Customer’s addresses set forth in the applicable Service Order. Notices will be deemed received (i) the next business day, when sent by reliable, commercial overnight courier; (ii) three (3) business days after being sent by certified mail, postage prepaid and return receipt requested; (iii) when actually received, if sent by email during the business hours of 9:00 a.m. to 5:00 p.m. (recipient’s time). Notices received after 5:00 p.m. (recipient’s time) will be effective the next business day.

**Provider’s Address for Notices:**

Wave Business Solutions, LLC  
3700 Monte Villa Parkway  
Bothell, WA 98021  
ATTN: Business Solutions

**With a Copy to:**

Wave Business Solutions, LLC  
650 College Road East, Suite 3100  
Princeton, NJ 08540  
ATTN: Legal Department

Either Party may change its notice address by giving notice to the other Party in accordance with this Article.

**ARTICLE 16 – REPRESENTATIONS AND COVENANTS**

By executing a Service Order, each Party represents and covenants to the other as follows: (i) the execution and delivery of the Agreement and the performance of its obligations hereunder have been duly authorized; (ii) the Agreement is a valid and legal agreement binding on such parties and enforceable in accordance with its terms; (iii) to the best of its knowledge and belief, it is in material compliance with all laws, rules and regulations and court and governmental orders related to the operation of its business; and (iv) it shall comply with all applicable laws and regulations when exercising its rights and performing its obligations under the Agreement.

**ARTICLE 17 – MISCELLANEOUS**

17.1 Entire Agreement; Interpretation. The Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the Parties regarding the subject matter contained herein. The Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each Party. The Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the Parties, and the language in all parts of the Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the Parties. If any provision of the Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of the Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect.

17.2 No Waiver. No failure by either Party to enforce any rights hereunder will constitute a waiver of such rights. Nor shall a waiver by either Party of any particular breach or default constitute a waiver of any other breach or default or any similar future breach or default. Provider's acceptance of any payment under the Agreement will not constitute an accord or any other form of acknowledgement or satisfaction that the amount paid is in fact the correct amount, and acceptance of a payment will not release any claim by Provider for additional amounts due from Customer.

17.3 Attorneys' Fees. If any proceeding is brought by a Party to enforce or interpret any term or provision of the Agreement, the substantially prevailing Party in such proceeding will be entitled to recover, in addition to all other relief as set forth in the Agreement, that Party's reasonable attorneys' and experts' fees and expenses.

17.4 Relationship; No Third Party Beneficiaries. The Agreement is a commercial contract between Provider and Customer and the relationship between the Parties is that of independent contractors. Nothing in the Agreement creates any partnership, principal- agent, employer-employee or joint venture relationship between the Parties or any of their Affiliates, agents or employees for any purpose. The Agreement is for the sole benefit of Provider and Customer and is not intended to confer any rights on any other person; there are no third party beneficiaries of the Agreement.

17.5 Computation of Time. Except where expressly provided to the contrary, as used in the Agreement, the word "day" shall mean "calendar day," and the computation of time shall include all Saturdays, Sundays and holidays for purposes of determining time periods specified in the Agreement. If the final date of any period of time set out in any provision of the Agreement falls upon a Saturday or a Sunday or a legal holiday, then in such event, the time of such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday. As used in the Agreement, the term "business day" shall mean a day that is not a Saturday, Sunday or a legal holiday.

17.6 Counterparts; Electronic Signatures. Any Service Order entered into by the Parties pursuant to these Bulk Video T&Cs may be executed in multiple counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument. Any executed documents sent to the other Party in portable document format (pdf) images via email will be considered the same as an original document. The Parties consent to the use of electronic signatures.

*[The remainder of this page is intentionally left blank.]*