



## Small Business Services Subscriber Agreement

### 1. Introduction.

This Small Business Services Subscriber Agreement (“SBSSA”) applies to Wave’s small and mid-sized business customers. Wave offers business class Internet access services, phone services and video services (each, a “Service,” and, collectively, the “Services”) to its small and mid-sized business customers. This SBSSA applies to your use of those Services in addition to and in conjunction with the terms and conditions of the Service Order Agreement(s) you signed when ordering your Services from Wave. Together, this SBSSA and your Service Order Agreement(s) constitute your “Contract” with Wave. Your use of Wave’s Services constitutes your acceptance of and agreement to comply with the provisions of your Contract. You are responsible for ensuring that your employees, contractors, agents and all other end users of your Services comply with your Contract.

You expressly acknowledge and agree that the Services you receive from Wave pursuant to your Contract are for your sole use and benefit. Your employees, contractors, agents and other persons working for you at your service site are permitted end users of your Services. No other persons are permitted to use your Services. You agree that you will not allow any third party to use your Services. You agree that you will not use the Services for commercial purposes that are competitive with Wave’s business (e.g., use the Services to sell Internet access services, point-to-point data transport services, VoIP services, etc., to third parties within Wave’s service area). You agree that you will use your Services only for lawful purposes, and your use of the Services will at all times comply with applicable law.

### 2. Other Governing Documents.

In addition to the terms of your Contract, your use of the Services is also subject to and governed by Wave’s Acceptable Use Policy for Commercial Services and Wave’s Privacy Policy, both of which are available on the Wave Business website at <https://wavebusiness.com/PrivacyPolicy> and <http://wavebusiness.com/commercial-AUP>, respectively.

### 3. Installation and Equipment.

(a) Access to Service Site. In order to install, remove, test, maintain, operate, troubleshoot and otherwise provide your Services, Wave will need to access your service site. If your service site is part of a larger complex, Wave may also need to access portions of the larger complex (such as the telco closet or MPOE room) in order to install and provide your Services. Wave will need to install and leave in place within your service site and/or within portions of the larger complex of which your service site is a part certain networking equipment, cabling and related facilities belonging to Wave (collectively, the “Wave Equipment”). You grant Wave the right to enter onto and access your service site as and to the extent reasonably necessary for Wave to install, remove, test, maintain, operate, troubleshoot, repair and upgrade the Wave Equipment and provide your Services. You understand and agree that Wave may need to drill holes in walls or other similar activities in connection with installing the Wave Equipment.

(b) Permission of Landlord or Property Manager. If you do not own your service site, or if your service site is part of a larger complex that you do not own, you expressly understand and agree that it is your responsibility

(not Wave's responsibility) to arrange for your landlord or your landlord's property manager to provide Wave with access to your service site and to any portion of the larger complex (such as the telco closet or MPOE room) that Wave needs to access in order to install, remove, test, maintain, operate, troubleshoot, repair and upgrade the Wave Equipment and otherwise provide your Services. Wave agrees to reasonably cooperate with you and with your landlord and/or your landlord's property manager regarding access to your service site and the larger complex of which your service site is a part. You agree to indemnify and hold Wave harmless from and against any claims or damages asserted by your landlord against Wave (including costs and reasonable attorneys' fees) with respect to Wave's entry onto your service site and/or the larger complex of which your service site is a part in connection with Wave's provision of Services to you. Wave shall not be liable for any effects of normal Services installation and workmanship, such as holes in walls, etc., which may remain after installation or removal of the Wave Equipment, except for damage caused by gross negligence or willful misconduct on the part of Wave.

(c) Wave Equipment. The Wave Equipment is and shall at all times remain the property of Wave. You agree that you will only use the Wave Equipment to receive and use the Services and for no other use or purpose whatsoever. Wave will perform all maintenance and repair of the Wave Equipment during the term of your Contract. You agree that you will not attempt to repair, relocate, remove, uninstall, re-arrange or otherwise alter the Wave Equipment, nor will you permit any other person to do so. If you believe there is a problem with any of the Wave Equipment, you must immediately contact Wave's customer service department so that Wave can attempt to resolve the problem remotely or send a technician to address the problem. To the extent that you need to handle the Wave Equipment in order to receive your Services (e.g., cycling the power on the router or modem), you agree to use reasonable care in handling, operating and otherwise using the Wave Equipment. If and when your Contract expires or your Services are otherwise terminated, you will promptly arrange for Wave to disconnect and retrieve the Wave Equipment. The Wave Equipment must be returned in substantially the same condition as when it was installed at your service site (ordinary wear and tear excepted). After removal of the Wave Equipment, Wave shall have no obligation to repair or remediate any holes in walls or other similar impacts associated with having had the Wave Equipment installed.

(d) Liability for Damage or Loss. You expressly understand and agree that if any of the Wave Equipment becomes damaged, or is destroyed, lost or stolen while installed at your service site, you will be liable to Wave for the full replacement cost (without any deduction for depreciation or wear and tear) of that Wave Equipment, regardless of whether or not the damage, destruction, loss or theft was beyond your reasonable control. The preceding sentence does not apply to equipment malfunction in the ordinary course of reasonable usage.

(e) Your Equipment. All equipment and facilities provided by you for use with your Services is "Customer Equipment." You are solely responsible for installing, maintaining, configuring, repairing, replacing, upgrading and using your Customer Equipment. Wave has no responsibility whatsoever with respect to your Customer Equipment. If your Customer Equipment impairs the Services, you will remain liable for payment of the applicable Fees for your Services. If, at your request, Wave should attempt to resolve difficulties caused by your Customer Equipment, such efforts will be performed at Wave's discretion and at Wave's then-current standard hourly rates for such work. Any Customer Equipment you use in connection with the Services must meet Wave's current minimum technical and other requirements, which are posted on the wavebusiness.com website.

(f) Hosted Voice Equipment. If you receive hosted voice Services from Wave, please refer to Section 8 for special provisions governing hosted voice equipment.

#### 4. Service Term.

(a) Initial Service Term. The Service Order Agreement(s) you signed when ordering your Service(s) specify the initial service term for which you have agreed to receive and pay for your Service(s) (e.g., 12 months, 24 months, 36 months, etc.) (the “Initial Service Term”).

(b) Promotional Pricing. If the pricing (i.e., monthly recurring charges) at which you receive your Service(s) during your Initial Service Term is a promotional rate or is otherwise discounted from Wave’s standard retail rates for the Service(s), the promotional or discounted rate will end at the expiration of your Initial Service Term. In such event, the pricing (i.e., monthly recurring charges) for your Service(s) is subject to change upon the start of the first Renewal Term described in Section 4(c) below, with the new rate not to exceed Wave’s then-current standard retail rates for the Service(s).

(c) Automatic Renewal. Upon expiration of the Initial Service Term for a specific Service Order Agreement, unless either you or Wave delivers written notice of termination to the other party no less than thirty (30) days prior to the expiration of the Initial Service Term, the Service Order Agreement at issue will automatically renew for successive periods of one (1) year each (each, a “Renewal Term”). During any Renewal Term, either party may terminate the Service Order Agreement at the end of the then-current Renewal Term by delivering written notice of termination to the other party no less than thirty (30) days prior to the expiration of the then-current Renewal Term. Pricing is subject to change at the start of each Renewal Term, with the new rate not to exceed Wave’s then-current standard retail rates for the Service(s), which can be found on Wave’s website at the following address: <http://wavebusiness.com/standard-business-retail-rates>.

(d) Early Termination for Customer Convenience. At any time during the Initial Service Term or any Renewal Term for a Service, you may discontinue one or more of your Services and/or terminate the corresponding Service Order Agreement(s) by delivering no less than thirty (30) days’ advance written notice of termination to Wave. Any early termination by you pursuant to this Section is a termination for Customer convenience (i.e., without cause). If you terminate one or more of your Services and/or Service Order Agreement(s) for Customer convenience (i.e., without cause), you agree to pay Wave the Termination Charge described in Section 5(g) below.

(e) Early Termination for Cause. As stated in Section 11 below, either you or Wave may terminate a Service and/or the corresponding Service Order Agreement prior to its scheduled expiration date if the other party breaches a material provision of the Contract and does not cure the breach within the time frames specified in Section 11. Any such termination is a termination for cause. If Wave terminates one or more of your Services and/or the corresponding Service Order Agreement(s) for cause, you agree to pay Wave the Termination Charge described in Section 5(g) below.

#### 5. Payment and Billing.

(a) Fees. All amounts owed by you to Wave under your Contract shall be called “Fees.” You agree to pay Wave the following types of Fees: (i) the monthly recurring charges for your Services; (ii) the monthly recurring charges for rental of Wave Equipment (if any); (iii) any one-time installation charges; (iv) any one-time service charges for work you authorize Wave to perform; (v) all applicable local, state and federal taxes and fees, as more fully described below; and (vi) all other amounts Wave is authorized to charge you pursuant to your Contract (e.g., reimbursement for lost or damaged Wave Equipment, charges associated with overdue accounts, early Termination Charges, etc.). Wave will begin charging Fees for your Service(s) when the Service(s) have been installed, tested and are available for your use. 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.

(b) Invoices. Wave shall deliver invoices on a monthly basis. You agree to promptly inform Wave of any changes to your billing address. You agree to pay all undisputed invoices within thirty (30) days of receipt. If you believe there is an error in your invoice, you must immediately contact Wave to report same. If you do not report an alleged billing error to Wave within sixty (60) days of receiving the invoice at issue, you agree that you have waived your right to object to the invoice and the Fees shown on the invoice shall be deemed valid and accurate.

(c) Applicable Taxes. The Fees listed in your Service Order Agreement(s) do not include Applicable Taxes (as defined below). Applicable Taxes are additional. Except for taxes based on Wave's net income or taxes for which you possess a valid exemption certificate, you 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 you are entitled to an exemption from any Applicable Taxes, you must provide Wave with a valid exemption certificate (in a form reasonably acceptable to Wave). Wave will give prospective effect to any valid exemption certificate you submit.

(d) Past-Due Amounts; Disconnection of Services. You expressly understand and agree that failure to timely pay Fees to Wave constitutes a breach of your Contract. Past-due Fees shall bear interest in the amount of 1.5% per month, or the highest amount allowed by law, whichever is lower. You understand and agree that if your account is past-due, Wave may impose reasonable late fees, may disconnect your Service(s) and/or terminate your Contract. To re-connect any disconnected Service(s), you may be required, in addition to paying your full outstanding balance, to pay reconnection charges, to provide Wave with a security deposit, and/or to authorize automatic payment of future invoices from your bank account or credit card. If Wave has terminated your Contract due to your breach for non-payment, Wave reserves the right to refuse to reconnect your Services. Wave may send your past-due account to a collections agency or to an attorney. You will be responsible for all costs and expenses (including collection agency costs and reasonable attorneys' fees) incurred by Wave in collecting past-due Fees from you. Wave may charge you fees for returned checks and/or for debit or credit card chargebacks.

(e) Credit Check; Automatic Payment. You agree that Wave may, as a condition of providing or continuing to provide Services to you, verify your credit standing with one or more credit reporting agencies. Based on your credit rating and other applicable criteria, as a condition of providing or continuing to provide Services to you, Wave may require a security deposit and/or that you arrange for automatic monthly payments to be made from your bank account or credit card. If you have elected to be automatically billed by credit card, debit card or ACH transfer, you expressly authorize Wave to automatically collect payment of your balance owed on a monthly basis.

(f) Responsibility for Unauthorized Charges. You expressly understand and agree that you are legally responsible for payment of all charges incurred through use of your Service(s), regardless of whether or not such charges were actually authorized by you (e.g., international long distance charges, pay-per-view video, VOD, etc.). You are responsible for securing your internal network and your Services so that unauthorized use of your Services does not occur. Wave is entitled to assume that any communication made through your Service(s) is authorized by you until you alert Wave that your Services have been compromised.

(g) Early Termination Charge. You agree to pay Wave the early termination charge (the "Termination Charge") described in this paragraph if either of the following occur: (i) you terminate one or more of your Service(s) prior to the expiration of the Initial Service Term or the then-current Renewal Term for Customer

convenience (i.e., without cause); or (ii) Wave terminates one or more of your Service(s) prior to the expiration of the Initial Service Term or the then-current Renewal Term for cause.

(i) Calculation of Termination Charge Incurred During the Initial Service Term. If you incur a Termination Charge during your Initial Service Term, the Termination Charge shall equal the sum of the following: (1) all unpaid amounts for Services actually provided prior to the early termination date; (2) any non-recurring charges associated with the terminated Service(s) that have not yet been paid to Wave; (3) any disconnection or other early termination charges Wave reasonably incurs on your behalf in connection with the early termination; and (4) the greater of (A) any buy-out payment Wave made to you in connection with the Service(s) being terminated, or (B) the monthly recurring charges for the Service(s) that are being terminated multiplied by the number of months then-remaining in the Initial Service Term (partial months to be pro-rated). You expressly acknowledge and agree that the calculation of the Termination Charge set forth above is a genuine estimate of Wave's actual damages in the event of the early termination of your Service(s) during the Initial Service Term and is not a penalty.

(ii) Calculation of Termination Charge Incurred During a Renewal Term. If you incur a Termination Charge during a Renewal Term, the Termination Charge shall equal the sum of the following: (1) all unpaid amounts for Services actually provided prior to the early termination date; (2) any non-recurring charges associated with the terminated Service(s) that have not yet been paid to Wave; (3) any disconnection or other early termination charges Wave reasonably incurs on your behalf in connection with the early termination; and (4) fifty-percent (50%) of the monthly recurring charges for the Service(s) that are being terminated multiplied by the number of months then-remaining in the Renewal Term (partial months to be pro-rated). You expressly acknowledge and agree that the calculation of the Termination Charge set forth above is a genuine estimate of Wave's actual damages in the event of the early termination of your Service(s) during a Renewal Term and is not a penalty.

## **6. Wave's Internet Access Services.**

If you receive Internet access Services from Wave, the provisions of this Section apply to your use of Wave's Internet access Services.

(a) Acceptance of Risk. You expressly acknowledge and agree that the Internet is a shared network that is not secure and is not controlled by Wave. Any content you access through the Internet access Services is provided by independent third-party content providers over which Wave does not exercise control. Wave does not preview, exercise editorial control over, or endorse any opinions or information accessed through the Services. You expressly understand and agree that it is possible data or files you send or receive over the Internet will be monitored by third-parties and/or subject to unauthorized access by third-parties. Third-parties may gain access to your data, including confidential information. Data or files transmitted over the Internet may contain computer viruses or other harmful components. Wave has no responsibility and assumes no liability for any such acts or occurrences. You expressly assume the risks inherent in connecting your internal network and your Customer Equipment to the Internet and in accessing and using the Internet through the Services.

(b) Bandwidth Limitations; Data Allotment. Wave offers multiple tiers of Internet access Service to meet the differing needs of its customers. When you signed your Service Order Agreement, you selected a maximum bandwidth for your Internet access Service. You expressly understand and agree that the actual bandwidth you experience at any time will vary based on numerous factors, such as the type and configuration of your internal network equipment, the number of devices simultaneously using your Internet access Service, the amount of traffic Wave's network is then-experiencing, and other similar factors. Each tier of Internet access Service may

include an allotment of data consumption that you may use during each calendar month at no additional charge. Downloading and uploading are aggregated for purposes of determining your data consumption. If your tier of Internet access Service includes a data allotment, you understand and agree that you will be charged additional fees for data usage in excess of your allotted amount. Unused data from your monthly usage allotment expires at the end of your billing cycle and does not carry over to subsequent months.

(c) IP Addresses. Any IP addresses provided to you by Wave in connection with the Services are and will remain the property of Wave. You will not alter, modify, sell, lease, assign, encumber or otherwise tamper with the IP addresses. Wave reserves the right to change addressing schemes at any time.

## **7. Wave's Phone Services.**

If you receive phone Services (including hosted voice Services) from Wave, the provisions of this Section apply to your use of Wave's phone Services.

(a) VoIP Services. Wave's phone Services are provided via Internet Protocol voice network (aka "VoIP"). VoIP services operate using the standard commercial electrical power provided to your service site. Wave does not provide a back-up generator, UPS or other alternate power source for the Services; accordingly, in the event of a power outage at your service site, unless you have arranged for back-up power, the VoIP Services will be unavailable until electrical service is restored. You acknowledge and accept that the Service is not represented as fail-safe and is not designed for use in situations where error-free or uninterrupted service is essential. Wave will not be responsible for, and you expressly assume all risk of, any losses or damages arising as a result of the unavailability of the Service, including the inability to reach 911 or other emergency services, or the inability to contact your security system, your fire alarm system or any remote medical monitoring service provider.

(b) Battery Back-Up. Wave may offer a battery back-up for purchase with the phone Services. If you have purchased a battery back-up from Wave, you understand and agree that the performance of the battery back-up is not guaranteed. If the battery back-up power supply is not correctly installed, fails or malfunctions, or is exhausted during the course of a sustained power outage, your phone Services will not function until electrical service is restored.

(c) Important Notice Regarding E911 Service. Federal Communications Commission rules require providers of VoIP phone services to remind customers of these important E911 facts: (i) Wave needs a complete and correct service site address in order to deliver accurate location information to E911; (ii) If you move your VoIP phone equipment to a different physical address, you must call Wave immediately to update the location information, otherwise E911 will not have your correct location information on file; (iii) VoIP services operate using the standard electrical power provided to the service site, so unless you have arranged for a back-up power supply, the Services will be unavailable during a power outage; (iv) You may not be able to make E911 calls if there is a power outage, network outage or other technical problems, or if your phone service is terminated or suspended.

(d) Disclosure of Your Information. Unless you expressly inform Wave otherwise as described below, you agree that Wave may disclose your name, address and/or telephone number(s) to the general public in connection with Caller ID functions, telephone directories, 411 and E911 services. You agree that Wave may disclose your personally identifiable information to the communications providers serving persons to whom you make phone calls so that your calls can be completed. If you wish to have Wave remove any of the information from any of the services described above, you must inform Wave's customer service department of your wishes.

(e) Limitation of Liability Regarding Directory Listings. Should any of the following types of errors occur with respect to the listing or non-listing of one or more of your phone number(s), the total liability of Wave in connection with such error will not in the aggregate exceed the monthly charges, if any, which you have actually paid to Wave to list or not to list or to publish or not to publish the number(s) at issue for the affected period: (i) any phone number for which you have requested unlisted or nonpublished status is published or included in any directory, directory assistance database, or is otherwise disclosed to any unauthorized person; (ii) any phone number which you requested be published or listed in any directory or directory assistance database is not so published or listed; and/or (iii) any published or listed phone number contains material errors or omissions. You agree to hold Wave, its officers, directors, employees, agents and affiliates harmless from and against any and all claims for damages in excess of the foregoing that are caused or claimed to have been caused, directly or indirectly, by the types of errors described in this paragraph.

(f) Transfer/Porting of Phone Numbers.

(i) Transfer/Porting of Phone Numbers to Wave Phone Service. If you are switching to Wave's phone Service from another phone service provider, you may transfer (aka "port") your existing phone number(s) to Wave's phone Service, provided that: (1) you request the phone number transfer when you place your order for Wave's phone Service; (2) your current/previous phone service provider releases your phone number(s) at Wave's request, without delay or charge; (3) the transfer of your phone number(s) to Wave's Service would not, in Wave's view, violate applicable law or Wave's standard phone number porting processes and procedures; (4) where applicable, you acknowledge and agree that if your Wave phone Service is set up before the number transfer becomes effective, you may only be able to make limited outgoing calls until the transfer takes effect; and (5) you acknowledge and agree that, to avoid interruption in your phone service, you must have your Wave phone Service installed prior to the effective date of the number transfer. Your existing/previous phone service will be disconnected on the effective date of the number transfer. Thus, if you do not have Wave's phone Service installed prior to the effective date of the port, you will not have phone service for the ported phone number until your Wave phone Service is activated.

(ii) Transfer/Porting of Phone Numbers from Wave to Another Provider. If you are switching to another phone service provider from Wave's phone Service, you may transfer (aka "port") your existing phone numbers from Wave to your new provider by terminating your phone Service with Wave and placing the number transfer order with your new phone service provider. Wave will release your phone number(s) to your new service provider so long as: (1) your new service provider requests the number transfer from Wave upon termination of your Wave phone Service; (2) your new service provider is willing to accept transfer of the phone number(s) without delay or charge; and (iii) transfer of your phone number(s) would not, in Wave's view, violate applicable law or Wave's standard phone number porting processes and procedures.

(g) Long Distance Providers. Unless otherwise expressly agreed to in writing, Wave has no obligation or responsibility to arrange for termination or removal of telecommunications services provided by long distance providers. You remain responsible for terminating and removing any such unwanted services and circuits provided by other long distance providers. You understand that you may designate only one primary interexchange carrier for any one telephone number for state-to-state (interLATA), intrastate and international usage.

(h) Long Distance Charges. Any long distance rates listed in your Contract are the rates as of the effective date of that Contract and may not reflect the actual rates applicable at any given time during the term of the Contract. All long distance charges are exclusive of applicable taxes, and Wave may add or adjust rates and charges in order to recover amounts it is required or permitted by governmental or quasi-governmental authorities to collect from or pay to others in support of statutory or regulatory programs ("Governmental Charges"), plus amounts to recover reasonable administrative costs associated with such Governmental Charges.

(i) CPNI. Wave will have access to certain customer proprietary network information of yours (“CPNI”). Under federal law, you have a right to, and Wave has a duty to protect, the confidentiality of CPNI. CPNI may be useful to tailor services to you and to enhance Wave’s ability to meet your needs. You expressly authorize Wave, its affiliates, or its sales representatives to use CPNI to determine if you could benefit from other services offered by Wave and its affiliates, and market them to you. You may withdraw your authorization at any time by informing Wave in writing. Any such withdrawal will not affect the quality of Services provided to you.

## 8. Wave’s Hosted Voice Services.

If you receive hosted voice Services from Wave, the provisions of this Section apply to your use of Wave’s hosted voice Services.

(a) Leased Hosted Voice Equipment. If you are leasing hosted voice equipment (the “Leased Equipment”) from Wave, then the Leased Equipment shall at all times be and remain the personal property of Wave. Wave shall be responsible for the regular maintenance and repair of all Leased Equipment. Should you experience problems with any of the Leased Equipment, you must contact Wave and Wave will use commercially reasonable efforts to repair or replace the malfunctioning Leased Equipment as soon as reasonably possible after receiving your notification. For Leased Equipment, Wave shall have the right at any time, and from time to time, during the service term to substitute different hosted voice equipment for some or all of the Leased Equipment initially installed at your service site; provided that the substituted Leased Equipment has equivalent or better functionality than the previously installed Leased Equipment. Should any Leased Equipment require repair or replacement due to your negligent or willful conduct, including the misuse or abuse of same, you shall reimburse Wave for the costs of such repair or replacement.

(b) Purchased Hosted Voice Equipment. If you have purchased hosted voice equipment (the “Purchased Equipment”) through Wave, then upon your acceptance of the Purchased Equipment, the Purchased Equipment shall be and remain your personal property. As between Wave and you, you shall be solely responsible for the repair and maintenance of all Purchased Equipment and any and all obligations and liabilities associated therewith. **YOU ACKNOWLEDGE THAT THE PURCHASED EQUIPMENT IS NOT MANUFACTURED BY WAVE AND THAT WAVE DOES NOT SUPPORT AND SHALL HAVE NO MAINTENANCE OBLIGATIONS OR OTHER LIABILITY REGARDING SAME.** WAVE WILL EITHER DELIVER THE MANUFACTURER’S WARRANTY FOR THE PURCHASED EQUIPMENT DIRECTLY TO YOU OR PASS THROUGH THE MANUFACTURER’S WARRANTY TO YOU DEPENDING ON THE APPLICABLE MANUFACTURER’S POLICY. WAVE HEREBY ASSIGNS TO YOU ALL OF THE MANUFACTURERS’ WARRANTIES AND INDEMNITIES RELATING TO THE PURCHASED EQUIPMENT TO THE EXTENT WAVE IS PERMITTED BY THE MANUFACTURER TO MAKE SUCH ASSIGNMENT TO YOU. SUCH ASSIGNMENT IS SUBJECT TO ALL OF THE TERMS AND CONDITIONS IMPOSED BY THE MANUFACTURER WITH RESPECT THERETO. YOUR REMEDY FOR DEFECTIVE PURCHASED EQUIPMENT SHALL BE AS SET FORTH IN THE APPLICABLE MANUFACTURER’S WARRANTY WHICH IS YOUR SOLE AND EXCLUSIVE REMEDY FOR BREACH OF AN EQUIPMENT WARRANTY. WAVE DOES NOT EXTEND ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, EITHER TO YOU OR TO THIRD PARTIES, FOR ANY PURCHASED EQUIPMENT PURCHASED BY YOU PURSUANT TO A SERVICE ORDER AGREEMENT, NOR SHALL WAVE HAVE ANY LIABILITY FOR ANY LOSS, DAMAGE, OR EXPENSE DIRECTLY OR INDIRECTLY ARISING FROM YOUR USE OF (OR INABILITY TO USE) THE PURCHASED EQUIPMENT OR A THIRD PARTY’S UNAUTHORIZED USE OF THE PURCHASED EQUIPMENT. Any questions concerning or requests for maintenance or repair of the Purchased Equipment should be directed to the manufacturer of the Purchased Equipment at issue. If Purchased Equipment impairs the Services, you will remain liable for payment of the applicable monthly service fees. If, at your request, Wave attempts to resolve difficulties caused by

Purchased Equipment, you will be responsible for Wave's then-current commercial rates and terms for such consulting services on a time and materials basis.

(c) Installation of Hosted Voice Equipment. As a part of the hosted voice Service, Wave will install the hosted voice equipment for you (whether such equipment is Leased Equipment or Purchased Equipment) at the specified service site. If your service site contains existing inside wiring, Wave will use your existing wiring for the installation; provided, that Wave's use of any existing wiring shall not constitute any type of representation, warranty or guarantee to you that the existing wiring is in good condition and/or free from defects. If your service site does not contain the necessary inside wiring (as determined by Wave in Wave's commercially reasonable judgment), Wave will so notify you and you may elect to install wiring itself or to request that Wave install wiring for you. If Wave installs wiring for you, such work shall be performed on a time and materials basis, with the wiring to become your personal property upon your acceptance of the Service. If, during the installation process, Wave discovers or uncovers any hazardous materials or substances at your service site: (i) Wave shall have the option to cease work at the service site and terminate your hosted voice Service Order Agreement, without any liability for or obligation to remove or remediate the hazardous materials so discovered; and (ii) you shall indemnify, defend and hold Wave harmless from and against any and all claims, costs, damages and expenses incurred by Wave in connection with or as a result of the pre-existing hazardous materials, including attorneys' and experts' fees and costs as well as the costs of any environmental assessment or remediation work that may be performed at the service site.

(d) Bring-Your-Own-Phone Provisions. For certain models of phones, Wave has the ability to attempt to connect phones that you already own (the "Customer Phones") to Wave's hosted voice Service, which eliminates the need for you to lease or purchase phones from Wave. If you elect to use your existing Customer Phones with Wave's hosted voice Service, you expressly agree to the following provisions: (i) you must supply the passwords for the Customer Phones, otherwise the phones may not be usable with Wave's network; (ii) the process of connecting the Customer Phones to Wave's network involves re-setting the Customer Phones to their factory defaults, which will delete all information stored on the phones, including contact lists, speed dial numbers, as well as the configurations established for connectivity to your previous hosted voice solution; (iii) it is possible that attempting to connect the Customer Phones to Wave's network could render one or more of the Customer Phones unusable, requiring a firmware re-flash. In such event, Wave will have no responsibility or liability for repairing or replacing the Customer Phone(s) at issue. Instead, you expressly assume the risk inherent in attempting to attach the Customer Phones to Wave's hosted voice network; and (iv) Wave will be unable to provide support and troubleshooting for Customer Phones after implementation. Wave will be able to troubleshoot problems with Wave's network, but if the network is functioning properly and there are technical problems with any of the Customer Phones, you must seek equipment support from the manufacturer or original vendor of the equipment.

(e) Software Components. If your hosted voice Services include any software plug-ins or other software-as-a-service (aka SaaS) components, you agree that you will not, and you will not permit any of your employees, business associates or other end users of your Services to do any of the following: (i) modify, disassemble, decompile, prepare derivative works of, reverse engineer or otherwise attempt to gain access to the source code of the software components of your Services, (ii) use the software components of your Services for the development, production or marketing of a service or product substantially similar to your Services; (iii) build or benchmark a competitive product or service, or copy any features, functions or graphics of the software components of your Service, (iv) reproduce, resell, or distribute the software components of your Service for any purpose, (v) use the software components of your Services in violation of any Wave Business policy or in a manner that violates applicable law, including but not limited to export control, privacy, and anti-terrorism laws, rules and regulations.

## 9. Wave's Video Services.

If you receive video Services from Wave, the provisions of this Section apply to your use of Wave's video Services.

(a) Channel Line-Up. You expressly understand and agree that Wave may, at any time and from time to time, change the number and/or identity of the signals comprising your video Services and/or the placement of these signals. Wave, its authorized agents and equipment manufacturers may send code updates to the video equipment including, but not limited to, cable modems, digital interactive televisions with CableCARDS, and MTAs at any time it is determined necessary to do so as part of the video Services provided hereunder. Such code updates may change, add or remove features or functionality of any such equipment or the video Services.

(b) Additional Charges. Through the video Services, you (and your end users) may have the ability to purchase additional products such as video-on-demand and/or pay-per-view. You expressly agree that you shall pay for all such purchases made through your video Services, regardless of whether or not such purchases were actually authorized by you.

(c) Rate Increases. You expressly understand and agree that the pricing for video Services is subject to increase at any time. Should Wave elect to increase the price of some or all of your video Services, Wave shall provide you with at least thirty (30) days advance written notice specifying the amount of the price increase.

(d) Public Areas. Pursuant to the provisions of one or more of Wave's programming agreements with video content providers, you may be restricted from showing certain channels of the Services in public areas (e.g., meeting rooms, lobbies, exercise rooms, restaurants, and the like). You expressly agree that you will not display the video Services in public areas. You may be required by law to obtain separate music performance license(s) if you use the audio component of the video Services in public areas. You expressly understand and agree that you are 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). Wave shall not be liable to you or to any third party should you violate the provisions of this paragraph.

(e) Right to Audit. Wave may, at any time, upon reasonable advance notice to you, enter onto your service site to perform an audit verifying that your use of the video Services complies with the provisions of your Contract.

## 10. Performance; Force Majeure.

(a) General Standard. Wave shall use commercially reasonable efforts in keeping with normal industry standards to ensure that the Services are available to you twenty-four (24) hours per day, seven (7) days per week. It is possible, however, that there will be interruptions in the Services. You expressly understand and agree that the Services may be unavailable from time to time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond Wave's reasonable control. Temporary interruptions in the Services for such reasons, as well as all interruptions caused by you, or by force majeure events, will not constitute failures by Wave to perform its obligations under your Contract.

(b) Force Majeure. Wave shall not be liable to you for any delay in or failure of performance hereunder due to causes beyond Wave's reasonable control, including, but not limited to, acts of God, fire, flood, earthquake, ice storms, wind storms, or other severe weather events, explosion, vandalism, cable cut, power outage, 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.

## **11. Default and Remedies.**

(a) Default by Customer. Each of the following shall constitute a default by you under your Contract (each, a "Default"): (i) if you do not pay any undisputed Fees when due, and you do not cure your failure to pay within ten (10) days after receiving written notice from Wave regarding same; (ii) if you do not comply with any other material provision of your Contract, and you do not cure your non-compliance within thirty (30) days of receiving written notice from Wave regarding the breach; or (iii) if you file or initiate proceedings, or have proceedings initiated against you, 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.

(b) Remedies for Customer's Default. In the event of your Default under your Contract, Wave may, at its option: (i) suspend any applicable Services until such time as your Default has been corrected (provided, however, that any suspension shall not relieve your on-going obligation to pay Wave all Fees and other amounts due under the Contract as if such suspension of Services had not taken place); (ii) terminate the applicable Service(s) and/or the applicable Service Order Agreement(s) for cause; and/or (iii) pursue any other remedy available to Wave under the Contract or applicable law. In the event of early termination by Wave for your Default pursuant to this Section 11(b), you shall pay Wave the Termination Charge described in Section 5(g) above.

(c) Default by Wave. Each of the following shall constitute a Default by Wave under your Contract: (i) if Wave does not comply with any material provision of the Contract, and Wave does not cure its non-compliance within thirty (30) days of receiving written notice from you regarding the breach; or (ii) if Wave 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.

(d) Remedies for Wave's Default. In the event of Wave's Default under the Contract, you may, at your option: (i) terminate the applicable Service(s) and/or the applicable Service Order Agreement(s) for cause without incurring any Termination Charge or other early termination fee; and/or (ii) pursue any other remedy available to you under your Contract or applicable law. In the event of early termination by you for Wave's Default pursuant to this Section 11(d), Wave shall reimburse you for any pre-paid, unused monthly service Fees attributable to the terminated Service(s) and/or Service Order Agreement(s), and you shall have no further liability to Wave for the terminated Service(s) and/or Service Order Agreement(s). Early termination by you pursuant to this Section shall not relieve you of your obligation to pay all Fees incurred prior to the early termination date.

## **12. Limitation of Liability.**

(a) General Limitations. Wave shall not be liable for any loss or damage occasioned by a force majeure event. Wave shall not be liable to you for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or incurred in connection with Wave's performance or failure to perform under your Contract, 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 Wave had been advised, knew or should have known of the possibility of such special damages. Wave's total cumulative liability to you for any and all causes and claims arising under your Contract, whether based in contract, tort, warranty or otherwise shall be limited to the lesser of: (i) the actual direct damages sustained by you; or (ii) an amount equivalent to the total monthly recurring charges received by Wave from you for the Service(s) at issue during the three (3) month period immediately preceding the event giving rise to the liability. You irrevocably and permanently release Wave from all obligations, liability claims or demands in excess of the foregoing limitations.

(b) Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH ELSEWHERE IN YOUR CONTRACT, WAVE 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 SERVICE(S) OR ANY WAVE EQUIPMENT PROVIDED TO YOU PURSUANT TO YOUR CONTRACT.

(c) Assumption of Risk. Wave has no control over and expressly disclaims any liability or responsibility whatsoever for (i) the content of any information transmitted or received by you through your Service(s), or (ii) Service interruptions attributable to your network, to failures of the Customer Equipment, or to any other such causes. YOU UNDERSTAND AND AGREE THAT YOUR USE OF YOUR SERVICES IS AT YOUR OWN RISK. YOU SHALL BE SOLELY RESPONSIBLE FOR THE SECURITY, CONFIDENTIALITY AND INTEGRITY OF INFORMATION YOU TRANSMIT OR RECEIVE USING YOUR SERVICES.

### **13. Indemnification.**

You shall indemnify, defend and hold Wave and its members, managers, officers, agents and employees harmless from and against any and all claims, lawsuits or damages asserted against them by any third-party to the extent the same arise out of or are due to: (i) your negligence or willful misconduct in exercising your rights or performing your obligations under your Contract; (ii) your noncompliance with or default under your Contract; and/or (iii) your failure to comply with applicable law in connection with your performance under your Contract.

### **14. Binding Arbitration.**

All disputes, controversies or claims, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, arising out of or related to your Contract and the Service(s) provided to you by Wave pursuant to your Contract, that are not resolved between the parties through good faith negotiation shall be settled and determined by final and binding arbitration. The Federal Arbitration Act, 9 U.S.C. §§ 1-15, not state law, shall govern the arbitrability of all disputes. 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, or such other location as may be agreed upon by the parties. The arbitration shall be administered pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall not have the power to order any pre-hearing discovery of documents or the taking of depositions, but may compel attendance of witness and the production of documents at the hearing. Any award of the arbitrator shall be in writing and shall state the reasons for the award. The arbitrator shall not have the power to award any damages in excess of the liability limitations set forth in the Contract. Judgment upon an award may be entered in any court having competent jurisdiction. The parties, their representatives and participants and the arbitrator shall hold the existence, content and result of the arbitration in confidence, except to the limited extent necessary to enforce a final settlement agreement or to obtain or enforce a judgment on an arbitration decision and award. Each party shall bear its own expenses

and the parties shall share equally the filing and other administrative fees of the arbitration including the expenses of the arbitrator. **You irrevocably waive, to the fullest extent permitted by law, trial by jury of any disputes, claims or issues arising under the Contract.**

## 15. Miscellaneous.

(a) Entire Agreement. The Contract constitutes the entire agreement between you and Wave regarding the Service(s) provided to you by Wave pursuant to the Contract. The Contract supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the Service(s) or the parties' rights or obligations regarding the Service(s). Any prior representations, promises, inducements, or statements of intent regarding the Service(s) that are not expressly provided for in the Contract are of no effect.

(b) Governing Law; Interpretation. The Contract and all matters arising out of the Contract shall be governed by the laws of the State of Delaware. The Contract 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 Contract 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 Contract 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 Contract 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.

(c) No Assignment. You understand and agree that the Service Order Agreement(s) you signed with Wave are for your sole benefit. You may not assign or transfer your rights under any Service Order Agreement to any other person without the prior written consent of Wave, which may be granted or withheld in Wave's sole discretion. Any attempt by you to transfer your rights under a Service Order Agreement without Wave's prior written consent shall be void and shall constitute a material breach by you of your Contract.

(d) Disclaimer Regarding HIPAA Compliance. If and to the extent your business is a covered entity under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and needs its business associates to comply with HIPAA, Wave hereby notifies you that Wave's operations are not compliant with HIPAA. Wave's operations are generally exempt from HIPAA pursuant to the conduit exception. However, if and to the extent the Services provided to you would not qualify for the conduit exception, Wave's operations with respect to the Services are not HIPAA compliant. You understand and agree that Wave will not execute a business associate agreement under HIPAA.

(e) No Waiver. No failure by either party to enforce any rights under the Contract 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. Wave's acceptance of any payment under the Contract 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 Wave for additional amounts due from you.

(f) Relationship; No Third Party Beneficiaries. The Contract is a commercial contract between you and Wave and the relationship between the parties is that of independent contractors. Nothing in the Contract 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 Contract is for the sole benefit of you and Wave and is not intended to confer any rights on any other person; there are no third party beneficiaries of the Contract.

(f) Compliance with Laws. Each of the parties agrees to comply with all applicable local, state and federal laws, rules, regulations and ordinances in performing under the Contract.

(g) Survival. Those provisions of the Contract that by their nature, in order to be given full force and effect, must survive the expiration or earlier termination of the Contract or any Service Order Agreement shall so survive.

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