

Terms and Conditions

1. **Services.** “Service” or “Services” shall mean the services provided by Wavetech to Customer, as more fully described in the Service Request (“SR”) executed by Customer and Wavetech. The parties may enter into subsequent SRs, which may modify or add to the Services and any modified or added Services shall be billed at the rates in effect as of the Effective Date set forth in the modified or additional SR.

2. **Service Activation.** Wavetech will contact Customer to schedule a date for the installation of Equipment identified in the SR and Services at the Customer’s location (“Installation Date”). Customer shall agree to a firm date for installation and agrees (1) to have the location or facility ready for installation; (2) Provide all equipment as required by Wavetech; and (3) provide personnel required by Wavetech for the installation. Wavetech will begin setup of Services after it receives and accepts the completed and signed SR the Initial Payment due upon execution of the SR. If Customer fails to meet its obligations hereunder prior to the Installation Date and/or requests a change of the Installation Date, Customer shall be shall pay Wavetech (1) all costs incurred by Wavetech as a result of such delay, (2) all applicable fees, service charges, administrative fees and cancellation fees at Wavetech’s then current rates; and (3) all Service Fees from the original agreed-upon Installation Date, regardless of whether Services or Equipment were actually provided.

3. **Service Fees, Billing and Payment.** All Services Fees and Equipment Fees (collectively referred to herein, together with all other applicable charges as the “Service Fees”) shall be due and payable monthly, unless otherwise indicated on the SR. Service Fees shall be due and payable in advance on the first day of the month for monthly Billing Cycles, the first day of each calendar quarter for quarterly Billing Cycles or on the first day of the year for annual Billing Cycles; provided Initial Payment shall be due upon execution of the SR. If Customer is unable to use the Services or Equipment commencing on the Installation Date solely as a result of delays caused by Wavetech, then Customer’s obligation to pay any Service fees shall be delayed until such time as Wavetech is able to provide such Services or Equipment; *provided, however*, Wavetech shall not be liable to Customer for any such delay or failure other than the abatement of Service Fees. Customer shall pay all amounts when due, without demand, to the offices of Wavetech and without any deduction, revision or set-off whatsoever. A \$35.00 fee will be charged for checks returned and/or non-sufficient funds checks. Such charge shall not limit those remedies available to Wavetech for said returned or NSF checks under the law.

3.1. **Taxes.** Amounts due hereunder are exclusive of all applicable federal, state and local sales, use, excise, communication service and any other taxes and regulatory fees and surcharges which may be levied or assessed upon any Equipment or Services. Customer shall be solely responsible for payment of any and all such taxes and regulatory fees. Any calculation errors in assessment and/or tax rate changes requiring adjusted tax computations by Wavetech to accurately and properly collect taxes does not relieve Customer of its responsibility to remit tax payments fully when billed.

3.2 **Billing Disputes.** Customer may reasonably dispute any of the charges contained in an invoice for a period of thirty (30) days after the date of the invoice (the “Reconciliation Date”), provided that: (i) Wavetech receives payment in full for all charges (both disputed and undisputed) on or before the date such payment is due and payable, (ii) Customer presents a written statement of the purported billing discrepancies to Wavetech in detail on or before the Reconciliation Date, and (iii) Customer negotiates in good faith with Wavetech for the purpose of resolving such dispute. In the event such dispute is resolved in favor of Customer, Customer will receive a credit for the disputed charges. Wavetech shall not be obligated to consider any Customer notice of any billing discrepancies which are received by Wavetech after the Reconciliation Date.

4. **Default.** In the event of a Default (as such term is defined below) Wavetech shall be entitled to any one or all of the following remedies: (i) Wavetech may immediately suspend all Services and remove any Equipment; (ii) all amounts due hereunder shall be accelerated and become immediately due and payable (regardless of whether Services or Equipment were actually provided); and/or (iii) Wavetech may terminate this Agreement. In addition to all other remedies available to Wavetech for a failure to make any payment due hereunder, all amounts that remain unpaid five (5) days after becoming due and payable shall be subject to a late fee charge of five percent (5%) of the unpaid amount but not to exceed \$35.00. Late fee will be added to your next invoice. Customer shall be considered to be in Default of this Agreement, in the event that:

1. Customer fails to pay any amount due hereunder when due and payable and for five (5) days thereafter.
2. Customer becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or an assignment for the benefit of creditors or becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing.

3. Except with respect to any payments due hereunder, Customer violates any term or condition of this Agreement and fails to cure such breach within thirty (30) days after written notice of the same.

4. If Wavetech is informed by any third party, including, without limitation, any government authorities, of Customers' inappropriate or illegal use of Wavetech's facilities, Services, Equipment or Network or other networks accessed through Wavetech, or Wavetech otherwise learns of such use or has reason to believe such use may be occurring, and Customer fails, in the sole discretion of Wavetech, to cooperate with any such investigation or fails to immediately rectify any illegal use.

In the event of a Default described in 2 above, or in the event that there is a sale of the Customer's assets, or a change in control of the company, Customer assigns Wavetech a security interest in its accounts receivables and grants Wavetech the right to file a UCC Financing Statement, or any other document necessary, to secure its interest in the Customer's accounts receivables. For purposes of this provision a change in control shall occur if 50% or more of the ownership interests in the Customer are sold, transferred, or conveyed, whether voluntarily or involuntarily.

To re-enable Service, Wavetech may require a reconnection fee.

5. Effective Date and Initial Term. The term of this Agreement shall commence on the Effective Date and shall continue in force and effect for the Initial Term Commitment indicated on the SR ("Initial Term"). At the conclusion of the Initial Term, this Agreement shall automatically renew for the Renewal Term Commitment unless either party gives the other party a sixty (60) day advance written notice to terminate this Agreement. Upon the expiration or termination of this Agreement: (a) Wavetech will immediately cease providing Services; (b) any and all payment obligations of Customer hereunder will become due immediately; (c) within ten (10) days after such expiration or termination, each party will return all Confidential Information of the other party in its possession and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement; and (d) Wavetech will remove the Equipment from Customer's Site.

6. Equipment. The terms herein apply to any equipment and/or software identified in the SR together with any components or additional items added during the term of this Agreement ("Equipment"). Customer acknowledges that the Equipment is the sole and exclusive property of Wavetech; that Customer has not been granted any ownership rights to the Equipment; and that upon termination of this Agreement the Equipment shall return to Wavetech. Customer shall have the non-exclusive right to use the Equipment pursuant to the terms hereunder. Customer may only use the Equipment at the Site(s) identified in the SR and only in connection with the Services. Customer may not sell, lease, rent, or otherwise distribute the Equipment or its' rights to use the Equipment to any other person or entity. The Site shall be (i) secured with limited access by only authorized personnel of Customer and Wavetech, (ii) maintained clean at all times, (iii) have adequate ventilation, and (iv) maintain the room temperature required by Wavetech for Equipment at all times. Customer may not modify, adapt or alter the Equipment without written consent from Wavetech. Customer shall require each of its employees to comply with the security, use and care guidelines set forth herein and any other additional or modified guidelines that Wavetech may adopt from time to time.

6.1. *Equipment Replacement Cost.* In the event that Customer should directly or indirectly, damage, lose or otherwise relinquish control of the Equipment, through its or its agent's or representative's action or omission, then Wavetech will provide a replacement to Customer at a cost equal to the total value set forth in the Equipment Replacement Cost or at then current market prices, whichever is greater. Notwithstanding, in the event the need to replace the Equipment arises out of Equipment failure or damage due to weather conditions or normal wear and tear, then the cost shall be borne solely by Wavetech.

6.2. *Site Requirements.* If Customer's network, equipment or systems does not meet Wavetech's requirements for the installation of Equipment and establishment of Service, as determined in the sole discretion of Wavetech, Customer may need to repair, modify or replace Customer's network, equipment or systems in order to be compatible with the Equipment and the Services to be rendered. Customer shall be responsible for all costs, fees and expenses to bring such items in compliance with Wavetech's requirements. Customer agrees Wavetech shall not be responsible for any costs Customer may incur as a result of any repairs, modifications, or replacements made to bring Customer's network, equipment or systems in compliance with Wavetech's requirements.

6.3. *Access.* Customer will provide Wavetech's personnel unlimited access to the Site and the Equipment therein for purposes of maintenance and monitoring. Any refusal to grant access to Wavetech's personnel during normal business hours, and after business hours in cases of emergency, shall be construed as a default under this Agreement, and any damage to the Equipment suffered as a consequence of the denied access will be directly attributable to Customer.

6.4. *Removal of Equipment.* Upon expiration or termination of this Agreement, Wavetech will remove, at its own cost, Equipment from the Site. Customer shall provide support and personnel necessary for the removal of the Equipment. Wavetech shall not be liable for any damages to the Site caused by the removal of the Equipment.

7. **Dedicated Internet Access, Voice and Managed Services.** Wavetech exercises no control over and specifically disclaims any responsibility for the content, accuracy or quality of information passing or obtained through Wavetech's Network. Use of any information obtained via the Wavetech Network is strictly at Customer's own risk. **Unless otherwise provided in the SR,** underlying services for including, but not limited to, internet access, connectivity, WIFI, hosting, cyber security, data backup and VoIP are not being provided by Wavetech. Customer acknowledges and agrees that Wavetech is acquiring each of those services from a third party for resale and is not the originator of those services. Under no circumstances shall Wavetech be liable to Customer or any other person or entity for any loss, injury or damage of whatever kind or nature, resulting from or arising out of any mistakes, errors, omissions, delays or interruptions in the receipt, transmission or storage of any messages, signals or information arising out of or in connection with the Services, etc.

7.1. *Monitoring.* Wavetech reserves the right to monitor Customer's bandwidth usage, the propriety of other usage of services and to utilize technology to ensure compliance with Customer's permitted usage as indicated in the SR.

7.2. *Internet Protocol.* Any Internet Protocol Numbers ("IP") assigned to Customer by Wavetech in connection with the Services shall be used only in connection with the Services. In the event Customer discontinues use of the Services for any reason, or this Agreement terminates for any reason, Customer's right to use the IP shall terminate. Wavetech reserves the right to change the IP upon notice to Customer. Customer acknowledges and agrees that all IP addresses shall remain the sole and exclusive property of Wavetech.

7.3. *Other Networks Approval and Usage.* Services include the ability to transmit data beyond Wavetech's Network, through other networks, public and private. Customer's use of or presence on other networks may require approval of the respective network authorities and may be subject to usage policies established by those network operators. Customer will not hold Wavetech responsible for, and Wavetech expressly disclaims all liability for, Customer's violation of such policies. Customer understands that Wavetech does not own or control other networks outside of its Network, and Wavetech is not responsible or liable for performance (or non-performance) of those networks or the interconnection points between the Service and other networks that are operated by third parties.

8. **Insurance.** If Equipment is leased by Customer, Customer will keep in full force and effect during the term of this Agreement: (i) comprehensive general liability insurance in an amount not less than one million dollars (\$1,000,000.00) per occurrence and not less than two million dollars (\$2,000,000.00) in the aggregate for bodily injury and property damage; (ii) workers' compensation insurance in an amount not less than that required by applicable law and (iii) coverage for the contractual liability of Customer to indemnify Wavetech. Customer shall place the Policies required herein with a carrier having an AM Best rating of A- or better. Customer will be solely responsible for ensuring that its agents (including contractors and subcontractors) maintain additional insurance at levels no less than those required by applicable law and customary in Customer's and its agents' industries. Prior to installation of any Equipment, Customer will furnish Wavetech with certificates of insurance which evidence the requirements set forth above, name Wavetech as additional insured, require notification of Wavetech in writing of any changes in such coverage and provide that all insurance policies provide Wavetech with thirty (60) days advanced written notice of cancellation or termination.

Customer agrees that Customer, its agents and representatives shall not pursue any claims against Wavetech for any liability Wavetech may have under or relating to this Agreement unless and until Customer, its agent or representative, as applicable, first makes claims against Customer's insurance provider and such insurance provider finally resolves such claims. Any inability by Customer to furnish the proof of the insurance required hereunder or failure to obtain such insurance shall constitute a material breach of this Agreement. Customer and all parties claiming under, by and through Customer hereby waive any and all rights to recover against Wavetech or its officers, directors, shareholders, partners, members, employees and agents, for any loss or damage to such party from any cause covered by any insurance required to be carried by any such party hereunder.

9. **Indemnity.** Customer agrees to indemnify Wavetech, its directors, officers, employees, affiliates and customers (collectively, the "Covered Entities") from and against any and all claims, actions, demands, costs and expenses, including, without limitation, attorneys' fees, brought against or threatened against Wavetech and/or any of the Covered Entities in connection with the conduct of Customer's affairs, including but not limited to any affairs relating to the Services and Equipment. Customer will provide Wavetech with prompt written notice of any Covered Claim which Customer becomes

aware of, and, at Wavetech's sole option, Wavetech may elect to participate in the defense and settlement of any Covered Claim, provided that such participation shall not relieve Customer of any of its obligations hereunder.

10. **Limitation of Warranties and Liability.** Wavetech PROVIDES THE SERVICES AND EQUIPMENT "AS IS"; MAKES NO EXPRESS WARRANTIES OF ANY KIND WITH RESPECT TO THE SERVICES OR EQUIPMENT; AND DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE SERVICES AND EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. Wavetech shall not be liable for any failure or delay in performance due to circumstances beyond its reasonable control, which shall include, without limitation, acts of God, labor disputes, changes in law, regulation or government policy, riots, war, fire, epidemics, acts or omissions of vendors or suppliers, equipment failures, transportation difficulties. Customer may terminate this Agreement if any such event continues for a continuous period of 20 days. During this time, the price for the Services and Equipment shall abate.

EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, WAVETECH SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT ARISE OUT OF OR RELATE TO THIS AGREEMENT OR THE SERVICES OR EQUIPMENT PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY DAMAGES FOR LOSS OF DATA RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES OR SERVICE INTERRUPTIONS. Without limiting the foregoing and notwithstanding anything to the contrary herein, Wavetech's maximum aggregate liability to Customer will be limited to the total amount paid by Customer to Wavetech hereunder for the twelve (12) month period prior to the event or events giving rise to such liability.

In no event will Wavetech be liable to Customer, any of its representatives, or any third party for any claims arising out of or related to Customer's affairs, including the Services and Equipment, or for any lost revenue, lost profits, replacement goods, loss of technology, rights or services, incidental, punitive, indirect or consequential damages, loss of data, or interruption or loss of use of Services or Equipment or of any Customer's business, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

Wavetech assumes no liability for any damage to, or loss of, Customer's equipment resulting from any cause other than Wavetech's gross negligence or wilful misconduct. To the extent Wavetech is liable for any damage to, or loss of, the Customer's equipment for any reason, such liability will be limited solely to the then-current value of the Customer's equipment and further subject to the limitations set forth herein.

11. **Confidential Information.** Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products, including the terms and conditions of this Agreement ("Confidential Information"). Confidential Information will include, but not be limited to, each party's proprietary software and customer information. Each party agrees that it will not use in any way, for its own account or the account of any third party, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information and will take reasonable precautions to protect the confidentiality of such information. Information will not be deemed Confidential Information hereunder if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; (iv) is independently developed by the receiving party; or (v) is required to be released by law or regulation, provided that the receiving party provide prompt written notice to the disclosing party of such impending release, and the releasing party cooperate fully with the disclosing party to minimize such release.

12. **Survival.** The following provisions will survive any expiration or termination of the Agreement: Sections 3,4,6,8,9,10, and 11. The expiration or termination of this Agreement will not (i) extinguish claims or liability arising prior to such expiration or termination, or (ii) extinguish claims or liabilities arising after such expiration or termination if such claims or liabilities specifically survive any expiration or termination as set forth herein.

13. **Miscellaneous Provisions.**

13.1. *Notices.* Any notice or communication required or permitted to be given hereunder may be delivered personally, deposited with an overnight courier, sent by confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party as indicated on the SR, or at such other address as either party may provide to the other by written notice. Such notice will be deemed to have been given as of the date it is delivered, or five (5) days after mailed or sent, whichever is earlier.

13.2 *Resale.* Customer may resell the Service only with written consent of Wavetech. If Customer resells any portion of the Services to any other party, Customer assumes all liabilities arising out of or related or connected to the resell of such Services and will indemnify and hold Wavetech harmless from such liabilities. Customer shall enter into written agreements with all parties to which it resells any portion of the Services with terms and conditions at least as restrictive and protective of Wavetech's rights as the terms and conditions of this Agreement.

13.3 *Assignment.* Wavetech may assign its rights and responsibilities of this Agreement to a third party at any time for any reason. Customer may not assign its rights or delegate its duties under this Agreement without the prior written consent of Wavetech. Any attempted assignment or delegation without such consent will be void. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

13.4 *Choice of Law and Attorney's Fees.* This Agreement will be governed by and construed pursuant to the laws of the State of Florida. Exclusive jurisdiction and venue for any litigation in connection herewith shall be Miami Dade County, Florida. If any legal action is brought by either party to enforce its rights hereunder, the non-prevailing party shall reimburse the prevailing party for all costs and expenses including reasonable attorneys' fees incurred in connection with such action.

13.5 *Waiver.* The waiver by Wavetech of any term, condition, or provision herein will not be deemed to be a waiver of any subsequent breach of the same or any other term, condition, or provision herein, nor will any custom or practice that may develop between the parties during the time that Services are provided be construed to waive or lessen the right of Wavetech to insist upon the performance by the Customer in strict accordance with the terms and conditions herein.

13.6 *Severability.* Should any terms of this Agreement be declared void or unenforceable by an arbitrator or court of competent jurisdiction, such terms will be amended to achieve as near as possible the same economic effect as the original terms hereunder.

13.7 *Garnishment Exemption Waiver.* If Customer or guarantor contributes more than one-half of the support for a child or other dependent, all or part of Customer's and/or guarantor's income is normally exempt from garnishment under Florida law. Customer and/or guarantor can waive this protection only by signing the SR. By signing the SR, Customer and/or guarantor agree to waive the protection from garnishment.

14. **Entire Agreement.** The SR, together with these Terms and Conditions and policies of Wavetech, represent the complete agreement and understanding of the parties with respect to the subject matter herein, and supersede all previous and contemporaneous agreements, representations or understanding, written or oral related to the subject matter herein. This agreement may be modified only through a new SR signed by both parties. Both parties represent and warrant that they have full power and authority to execute and deliver this Agreement and to perform their obligations under this Agreement and that the person whose signature appears below is duly authorized to enter into this Agreement on behalf of the respective party.