

## 1. Introduction.

Waiv Cloud, Inc. ("Waiv") is delighted to provide you the Waiv Services ("Waiv Service(s)" or "Service(s)") and enhancements ordered on the Service Order Form ("SOF"). The word "Agreement" includes and incorporates the SOF, the Standard Terms and Conditions, and any Waiv Service Order Addenda that you may sign at any time. As used in this Agreement, the words "we", "our" and "us" refer to Waiv and the words "you," and "your" refer to the entity that has signed this Agreement with us. The word "Services" includes Waiv communications packages, enhancements, and other business services ordered on the SOF and any additional services you may order or obtain from Waiv at any time that are not expressly governed by another agreement you sign with us. These Terms and Conditions govern all aspects of your purchase, including use and termination of all Services. Please review carefully the SOF and confirm the Services ordered on the SOF. These Terms and Conditions include Early Termination Charges and other fees.

## 2. Installation Commitment.

We will provide to you the Services identified on the SOF for the "Service Period" and "Monthly Fee" at the "Service Address" defined in the SOF. We will use commercially reasonable efforts to make the Waiv Services available to you at the Service Address within 40 business days from the date you sign this Agreement so long as we have not been delayed as described below. If Waiv is solely responsible for any delays in Service availability beyond that 40-business-day period, we will credit any Install Fee or Setup Fee previously paid for that Service. To receive installation credit, you must request the credit in writing through email to [clientservices@Waivcloud.com](mailto:clientservices@Waivcloud.com) within 30 days of the date of your first invoice. No credit will be issued for delays that are outside our control.

## 3. Equipment.

i. To provide Waiv Services, we may install equipment at your Service Address. Examples of such equipment include routers, switches, firewalls, and rental phones. Such equipment remains our sole property at all times and shall not be considered customer-premises equipment. You agree to comply with all instructions and requirements regarding the use and/or care of our equipment, and to take reasonable measures to protect our equipment at all times. You will provide a secure, air-conditioned space to house the equipment and sufficient electricity (with certified earth ground) to operate the equipment. You agree to pay us the replacement value of any lost, stolen, damaged or unreturned equipment. We will replace any

of our equipment that does not perform as specified, at no charge to you, unless we determine, in our reasonable discretion, that you are responsible for the Waiv equipment failure.

ii. We are responsible only for our equipment used to provide the Waiv Services (the "Services-Related Products"). You are responsible for your equipment.

#### 4. Return of Equipment.

Within 30 days of termination of Services, you must return equipment to Waiv at your expense. Waiv will provide you with return instructions. You must deliver equipment to Waiv in the same condition as it was when first delivered to you, normal wear and tear excepted, and give Waiv written notice of such return. If equipment is not returned as such, or not returned, you will be responsible for the then-current market value of the unreturned equipment.

#### 5. Network Availability Commitment.

i. We will use commercially reasonable efforts to make our Services available to you at all times, subject to certain limitations described in this Agreement ("Network Availability Commitment"). For purposes of this Network Availability Commitment, the Waiv IP Network ("Network") means the integrated access device, local access loop, aggregation router, connectivity to the core network, and core network components up to the handoff to either the Internet peering point (for Internet packets) or the handoff to local, long distance or other voice Services provider for phone service traffic.

ii. A Network outage occurs when there is total "Loss of Service" (defined below) for more than 60 consecutive minutes per occurrence. "Loss of Service" means that Waiv is unable to transmit IP packets on your behalf, such that you are unable to communicate with or access any other Internet Service Providers via the IP transmission protocol or unable to communicate with or access any other telecommunications providers via the Public Switched Telephone Network, as a result of the failure of Waiv facilities, equipment, or personnel used to provide the Waiv Services.

iii. The Network Availability Commitment in this Section 5 does not cover or apply to (a) Services activation or any Loss of Service caused by our planned maintenance of the system or Network; or (b) problems or issues relating to your equipment at the Service Address, including, but not limited to your Local Area Network, your phone equipment (including cables, PBX and associated cards), routine maintenance events, outages or disruptions caused by you either directly or indirectly, interconnections to or from and connectivity within other Local Exchange Carriers' networks (for example, calls to certain numbers or area codes), subsequent voice

carriers' networks, interconnections to or from and connectivity within other Internet Service Provider networks, degraded or slow Services, and Events of Force Majeure.

iv. You are eligible for a full day's credit of 1/30th of the Waiv recurring Monthly Fee (excluding any fees for additional Services) (the "Daily Credit") for each full 60 minutes that you experience a covered Network outage for that Service after you have reported it to our technical support (support@Waivcloud.com or 1-858-836-0700) ("Technical Support"); however, you may receive: (a) a maximum of 5 Daily Credits for covered Network outages in any 24-hour period starting from when you reported it to us; and (b) no more than 30 Daily Credits for covered Network outages in any 30-day period. You are eligible to receive daily credit only as to the Waiv Service for which you experienced a covered Network outage.

v. To be eligible for the Network Availability Commitment, you must notify our Technical Support when you experience a Network outage or Loss of Service. Our Technical Support staff will investigate the reported outage and assign a trouble ticket number.

vi. For purposes of determining the duration of a Network outage, a Network outage begins at the start of the outage and ends when Waiv's Technical Support confirms that Services have been re-established. You must request a credit by email to clientservices@Waivcloud.com within 15 days of the end of the calendar month in which the Network outage occurred. Credits do not include any applicable taxes or other governmental charges.

## 6. Limitation of Liability for Outages.

Your exclusive remedy or recovery for any Loss of Service or Network outage under the Network Availability Commitment or this Agreement, or other damages arising out of or related to the unavailability of the Services, shall not exceed the amount of the credit described in Section 5.iv and this Section 6, or, if applicable, your right to terminate the Waiv Service for which you experienced a covered Network outage as described in Section 9.iii below. All Network Availability Commitment credit requests are subject to Waiv's review and verification. You must be current on all payments (i.e., no balance older than 30 days) in order to receive credit under the Network Availability Commitment. Credits will appear within two (2) billing cycles after credit approval.

## 7. Payment.

i. Your Monthly Fee and other charges begin on the date when the Services are first available for your use ("Service Start Date"). The Service Start Date marks the beginning of your Service Period.

ii. Each

month, we will send an electronic invoice that will include all recurring, fixed Monthly Fees and charges billed one month in advance. YOU AGREE TO PAY THE TOTAL AMOUNT OF EACH INVOICE BY THE INVOICE DUE DATE SHOWN ON THAT INVOICE. Payment terms are net 15 from invoice date. To dispute the amount or accuracy of any invoice, you must notify Waiv in writing no later than 15 days after the invoice due date detailing the disputed charges. You must pay any charge or amount that you do not properly dispute by the due date of the first invoice for those charges, without exception. If, after investigation, Waiv determines that a refund is due, such Credits will appear within two (2) billing cycles after credit approval. Upon receipt of notice from Waiv that the disputed charges are correct, all past due amounts must be paid, in addition to any late payment charges described in Section 7.iii.

iii. All payments must be in U.S. dollars. You can choose to make a secure payment via ACH bank transfer by providing your bank account information or use a major credit or debit card. Waiv does not accept payment by check. ACH and debit card payments are not subject to surcharges. To cover processing fees, a surcharge of 3.5 percent (3.5%) will be applied to all credit card payments. If you do not pay all charges when due under this Agreement, a late payment fee will be assessed on the unpaid amounts until paid at the greater of: (a) 1½ % (one and one half percent) interest per month on the unpaid amounts until paid; or (b) \$25. You are also responsible for all reasonable costs and legal fees incurred in collecting unpaid amounts, unless otherwise ordered by the court in any action to collect those unpaid amounts. Waiv reserves the right to assess a \$35 fee for any ACH payment rejected or returned for insufficient funds.

iv. Waiv takes into consideration your satisfactory credit standing, timely payment of all charges under this Agreement, and general payment record when providing the Services. You agree that we may obtain credit reports and other information about you from credit reporting agencies and other sources at any time during, or in anticipation of, this Agreement. You may be required to provide a deposit as a guarantee of payments under this Agreement. If required, the amount of the deposit will be equal to your Waiv recurring Monthly Fee. Waiv reserves the right to apply a deposit amount to any past due charges under this Agreement, with written notice to you. You also agree to re-deposit the amount so applied, promptly at our request. Additionally, Waiv reserves the right to require you to subscribe to an automated payment plan (credit card or automatic bank withdrawal) if you have a balance that is more than 60 days past due. We may terminate your Services immediately upon notice to you as described in Section 9.iv below.

v. In addition to the charges for your Waiv Services, you are responsible for all federal, state and local sales, use and excise taxes and any applicable government fees, assessments, taxes or

other charges for the Services, including any universal service fund charges, collect call charges, and any other charges that may be billed to you after your Service end date.

#### 8. Responsibilities.

In addition to your other responsibilities under this Agreement, you agree that you and anyone using the Services will: (i) upon request, take all reasonable actions necessary in order to install and activate the Services; (ii) provide adequate facilities, including all required cabling, inside wiring, conduit, power, and any such related materials for demarcation extensions from the MPOE to your chosen circuit termination location, to house and operate Waiv's equipment; (iii) not resell the Services to any third party without prior written approval; (iv) comply with Waiv's Acceptable Use Policy described in Section 23 below; (v) comply with all federal, state, and local laws, rules, regulations and tariffs that apply to the Services or this Agreement; (vi) be solely responsible for establishing and maintaining security measures necessary to restrict access to your computers, servers or other equipment accessible through the Services; (vii) be solely responsible for all fraudulent, unauthorized, illegal, or improper use of the Services by persons accessing those Services through your facilities, equipment or Service Address; and (viii) authorize and identify to us in writing at least one individual who is authorized to represent you on any aspect of the Services and your account (including all requests for moves, additions, deletions or changes to the Services).

#### 9. Term and Termination.

i. This Agreement is effective upon signing by both parties and will continue in effect for the Service Period ("Initial Term") specified on the SOF. The Initial Term for each Waiv Service you purchase begins on the Service Start Date (as defined above in Section 7.i) for that particular Service. At the end of the Initial Term, this Agreement will renew automatically for additional periods ("Renewal Term(s)") of one year each until either party gives written notice to terminate this Agreement not less than 45 days and no more than 90 days before the end of the Initial Term or any Renewal Term. Disconnection requests must come from an authorized contact and must be sent to Waiv via email to [clientservices@Waivcloud.com](mailto:clientservices@Waivcloud.com). Furthermore, any email request for disconnection of Services must be acknowledged by an employee of Waiv, which acknowledgment will not be unreasonably delayed. Agents of Waiv or independent consultants are not considered Waiv employees.

ii. Any requested change to your Services at any time may require you to extend the term of the Agreement, which extension shall be in writing signed by you and Waiv.

iii. You may terminate Services (without liability for Early Termination Charges) if you experience a Loss of Service (as defined in Section 5.ii above) for that particular Service of more than 8 consecutive hours on two occasions or more in any 30-day period and you notify us of each Loss of Service (of any duration) or any other problem with that Service immediately after that Loss of Service or problem first occurs (in each instance). You must pay all charges due for each Service received until that Service is disconnected, which disconnection shall not be unreasonably delayed, and for all charges that you incurred prior to the Service end date.

iv. Waiv may terminate this Agreement or suspend all or any Services if: (a) you fail to take any reasonable action that we have requested in order for Waiv to install or activate the Services; (b) you fail to pay all undisputed past due amounts within 15 days after invoice date; (c) you fail to comply with our Acceptable Use Policy described in Section 23 below; (d) you fail to perform or comply with any other obligation under this Agreement, and do not perform or comply with that obligation within 10 days after notice from us; (e) you, or anyone using any of the Services, use or operate any Services in a manner that could, in our reasonable determination, result in harm to us, our Network, our reputation, or other customers; or (f) you, or anyone using any of the Services, use or operate any Services in a manner that, in our reasonable determination, is in violation of or could violate our Acceptable Use Policy described in Section 23 below or applicable law or the intended business use of that Service. If we elect to terminate this Agreement or any Services based on your breach, you must pay Early Termination Charges as described in Section 11 below.

v. If we elect to suspend Services pursuant to this Agreement, then to resume those Services, you may be required to pay all past due and other applicable charges, including the late payment fees and costs described in Section 7.iii above.

vi. Waiv reserves the right to apply any deposit to any amounts owing under this Agreement and will return the remainder of any deposit to you at the end of the term of this Agreement. You must make all Waiv equipment and property available to us in accordance with Section 4 above. You must also pay all reasonable costs that we incur in retrieving or attempting to retrieve our equipment and property, promptly upon receipt of invoice. Upon our termination of this Agreement for any reason, you will forfeit any right to obtain a refund or credit of any previously undisputed amount paid or owing to us under this Agreement, except for any credit owing to you under the Network Availability Commitment. Sections 1, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 25, 26, 27, 28, and 29 will survive the termination of this Agreement.

vii. The Volume Commitment, as defined herein, is the greater of either the amount contained on the original contracts, plus any added billable features, or the current three-month average of services being provided and billed by Waiv.

viii. You may downgrade Waiv Services by a maximum of 10% of the Volume Commitments. Services removed beyond the 10% allowable amount will be subject to Early Termination Charges as defined in Section 11.

ix. The Cancellation Fee will be equivalent to the then-current Install Fee of the Services. A Cancellation Fee will only apply if you did not originally pay an Install Fee for the Services.

#### 10. Price Changes.

Waiv reserves the right to change its prices by giving 30 days' prior notice. You may elect not to accept any increase in price and may instead cancel this Agreement and terminate Services without being subject to Early Termination Charges.

#### 11. Early Termination Charges.

i. Except for your proper termination of this Agreement under Section 9.iii above, in every other instance in which this Agreement terminates before the end of the applicable Initial Term or Renewal Term, you are responsible for an early termination charge ("Early Termination Charge") as liquidated damages and a reasonable approximation of our loss related to early termination. The amount of the Early Termination Charge will be calculated as follows:

ii. If termination occurs during the applicable Term of this Agreement, Waiv shall be entitled to keep any remaining deposit and, in addition, you shall be liable to pay to Waiv: (a) all outstanding nonrecurring fees plus (b) 100% of the Monthly Fee for each month, if any, remaining in the Initial Term.

#### 12. Disclaimer of Warranties.

WAIV PROVIDES THE SERVICES, EQUIPMENT, AND SERVICES-RELATED PRODUCTS ON AN "AS IS" BASIS WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED. WAIV DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY FROM USAGE OF TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE, AMONG OTHERS. YOU ARE SOLELY RESPONSIBLE TO SELECT, USE AND DETERMINE THE SUITABILITY OF WAIV SERVICES AND SERVICES-RELATED PRODUCTS, AND WAIV WILL HAVE NO LIABILITY FOR THAT SELECTION, USE OR SUITABILITY. WAIV DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. WAIV DOES NOT REPRESENT

THAT THE SERVICES OR SERVICES-RELATED PRODUCTS WILL MEET YOUR REQUIREMENTS OR PREVENT UNAUTHORIZED ACCESS TO YOUR COMPUTERS, NETWORK, SERVERS AND OTHER EQUIPMENT OR TO ANY DATA, INFORMATION OR FILES ON ANY OF THEM.

13. Disclaimer of Emergency 9-1-1 Services.

i. IF YOUR WAIV SERVICES INCLUDE VOIP (VOICE OVER INTERNET PROTOCOL) SERVICE, YOU ARE ADVISED THAT EMERGENCY 9-1-1 SERVICE WILL NOT FUNCTION OR BE AVAILABLE TO YOU UNDER CERTAIN CIRCUMSTANCES. YOUR SIGNATURE ON THIS AGREEMENT IS YOUR ACKNOWLEDGMENT THAT WAIV HAS ADVISED YOU OF THESE LIMITATIONS AND THAT YOU ACCEPT THE SERVICES WITH THESE LIMITATIONS. THE FEDERAL COMMUNICATIONS COMMISSION RECOMMENDS THAT YOU PLACE LABELS THAT ALERT USERS TO THESE LIMITATIONS ON OR NEAR THE TELEPHONES AND OTHER EQUIPMENT ASSOCIATED WITH YOUR WAIV VOIP SERVICE.

ii. VOIP SERVICE DOES NOT PROVIDE ACCESS TO EMERGENCY SERVICES VIA “911” IN THE SAME MANNER AS TRADITIONAL LANDLINE TELEPHONE SERVICE. THE SERVICE WILL ATTEMPT TO ROUTE 911 CALLS TO AN EMERGENCY SERVICES AGENCY SERVING THE ADDRESS ASSOCIATED WITH YOUR ACCOUNT IN OUR RECORDS, BUT WE DO NOT REPRESENT, WARRANT, OR GUARANTEE IN ANY MANNER THAT ANY CALL TO 911 OR OTHER EMERGENCY SERVICES WILL BE COMPLETED; THAT ANY SUCH CALL WILL BE DELIVERED IN A MANNER THAT INCLUDES INFORMATION CORRECTLY IDENTIFYING THE NUMBER OR ADDRESS FROM WHICH THE CALL WAS PLACED (OFTEN KNOWN AS “ENHANCED 911” OR “E911”); OR THAT ANY SUCH CALL WILL BE DELIVERED TO THE CORRECT RECIPIENT.

iii. You cannot use the service to call 911 in the event of a power interruption at your service location or on any portion of the electrical network used to deliver the service to your service location.

iv. If the broadband service or modem or other equipment that your voice service uses is malfunctioning for any reason or is installed incorrectly, you will not be able to place or receive 911 calls.

v. Following a power outage, you may have to reset your Integrated Access Device (IAD) by disconnecting and then reconnecting the device’s power cord in order to restore the VOIP Service.

vi. We will attempt to deliver information to the agency receiving a 911 call that will identify the telephone number and address assigned to the IAD from which the call was placed. However, we do not represent, warrant, or guarantee in any manner that the service will be able to



correctly deliver such information. If you place a call to 911 using the VOIP service and such call is disconnected or you are unable to speak or otherwise communicate your location to the agency receiving the 911 call, the agency receiving that call may not be able to determine your location or call you back. You will ensure that anyone using the VOIP service to call 911 will immediately tell the dispatcher their location (or the location of the emergency, if different).

vii. If you have activated features such as Call Forwarding, Call Blocking, or Do Not Disturb at the time a call is placed to 911 through the VOIP service and the call is interrupted, the agency receiving the 911 call may not be able to call back to the number from which the 911 call was placed.

viii. You agree to not attempt to use the IAD from any location other than the service address associated with your service account in our records. If your IAD is moved to a location other than the address associated with your account in our records, a 911 call placed from your IAD will be directed to the 911 response center associated with your service address, not the location of your IAD. In addition, the VOIP service will attempt to transmit information to the 911 responder that a call is originating from the address in our records, not you're your IAD's new location. If you use the VOIP service to call 911, you should immediately tell the responder your location (or the location of the emergency, if different). It is your sole responsibility to ensure that we have the correct service address for your VOIP service. Calls placed from an incorrectly provisioned E911 service, due to sending calls from an un-provisioned number or due to Waiv receiving incorrect information from you will result in a \$350.00 service charge.

ix. For technical reasons, there is a greater possibility that a 911 call placed using the VOIP service will result in a busy signal or take longer to answer, as compared to traditional 911 calls.

x. A 911 call placed using the VOIP service may not be compatible with all types of TDD, TTY, or similar devices for the hearing impaired. Waiv does not represent, warrant, or guarantee in any manner that any such device will be able to successfully communicate with the agency responding to a 911 call placed using the VOIP service.

xi. You agree to inform all individuals present at your service location, and others who may use the VOIP service, about the above limitations on the VOIP service's ability to support 911 or E911 capability.

xii. You agrees to maintain an alternative means of reaching 911 from your service location(s), such as a wireless phone, in addition to the VOIP service.

xiii. **DISCLAIMER OF LIABILITY, INCLUDING 911 SERVICE LIABILITIES: WAIV DISCLAIMS ALL RESPONSIBILITY FOR 911 SERVICE, INCLUDING BUT NOT LIMITED TO THE CONDUCT OF LOCAL EMERGENCY RESPONSE CENTERS. WAIV DOES NOT HAVE ANY CONTROL OVER ANY LOCAL EMERGENCY RESPONSE CENTER. THEREFORE, WAIV IS NOT RESPONSIBLE FOR WHETHER THEY**

ANSWER CALLS USING THE VOIP SERVICE, HOW THEY ANSWER CALLS USING THE VOIP SERVICE, OR HOW THEY HANDLE VOIP SERVICE CALLS. NEITHER WAIV NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, OR AGENTS, INDEPENDENT CONTRACTORS, OR ANY OTHER SERVICE PROVIDER THAT FURNISHES ANY SERVICES OR CUSTOMER PREMISES EQUIPMENT TO YOU IN CONNECTION WITH WAIV'S VOICE SERVICE MAY BE HELD LIABLE FOR ANY CLAIM, DAMAGE, OR LOSS, FINE, PENALTY, COST, AND EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY OR USER OF VOICE SERVICES, RELATING TO WAIV'S VOIP SERVICE, INCLUDING, WITHOUT LIMITATION, 911 DIALING, OR ANY CUSTOMER PREMISES EQUIPMENT.

xiv. SECTION 13 OF THIS AGREEMENT SHALL APPLY EVEN IF THERE IS A BREACH OF A CONDITION, A BREACH OF AN ESSENTIAL OR FUNDAMENTAL TERM, OR A FUNDAMENTAL BREACH OF THE AGREEMENT.

xv. YOU AGREE THAT THE LIMITATIONS OF LIABILITY SET OUT IN THIS SECTION 13 ARE FAIR AND REASONABLE IN THE CIRCUMSTANCES OF THIS AGREEMENT AND THAT WAIV WOULD NOT HAVE ENTERED INTO THE AGREEMENT BUT FOR YOUR AGREEMENT TO LIMIT WAIV'S LIABILITY IN THE MANNER AND TO THE EXTENT PROVIDED FOR IN THIS SECTION 13.

#### 14. Limitation of Liability.

i. You agree that your sole remedy against Waiv for our failure to comply with this Agreement will be to obtain the credit(s) provided in Sections 2 and 5 above, or, if applicable, to terminate the affected Waiv Service as described in Section 9.iii. In order to terminate this Agreement or affected Service, you must first give proper written notice to Waiv, be current on all payments (i.e., no balance older than 30 days), and pay for all Services through the date we discontinue them.

ii. Waiv is not liable for any damages, including indirect, incidental, consequential, punitive or special damages, relating to loss of data, profit, revenue or business, or loss, damage or destruction of any property, whether you, your assignee or any other transferee suffer that loss or damage and whether or not Waiv is informed in advance of the possibility of such loss or damage. Waiv is not liable for the content, accuracy or quality of information transmitted through its equipment, facilities or Services, or through the Services-Related Products, and you agree to assume all risk of transmitting, receiving or using any such content or information.

iii. Waiv is not liable for any injuries, death, or loss to any person or for damage, loss or destruction of any property of any person as a result of Waiv's act or omission in developing, adopting, implementing, maintaining, or operating any Emergency 9-1-1 or similar system or in identifying the telephone number, name, address, location or any other information on anyone

accessing or trying to use or access the Emergency 9-1-1 or similar system. Waiv is not liable for errors or omissions in any information about you in any published directory. You agree to be solely responsible for ensuring the accuracy of any information about you in any published directory.

iv. Waiv's sole liability to you for any claims, losses or damages caused by the Services or equipment or otherwise under this Agreement is limited as described in this Section 14. You agree that those limitations are reasonable. You also acknowledge that without those limitations of liability, your Monthly Fee and other charges under this Agreement would be substantially higher. You further agree that the limitations on Waiv's liability in this Section 14 will apply in any action or proceeding against Waiv, whether based in contract, tort (including negligence or strict liability) or under any statute, law, rule or otherwise.

v. If your Services include use of a Waiv co-location facility, you agree to name "Waiv Cloud, Inc." as an additional insured on both your general and your professional liability policies. You further agree to have minimum coverages of \$1,000,000 for general liability and \$2,000,000 for professional liability.

#### 15. Voice Service Bandwidth Requirements.

If you decide to use an Internet provider other than Waiv for the transmission of your voice services, the internet connection will be considered unmanaged third-party bandwidth. If voice call quality issues arise as a result of utilizing unmanaged third-party bandwidth, you may be requested to purchase SD-WAN or other voice QoS equipment, or to purchase additional bandwidth. If you elect not to follow Waiv's recommendations for remediation of voice call quality issues, Waiv will not be liable for problems with voice call quality.

#### 16. Loss and Damage.

To the extent you are the cause of any loss, damages or liabilities to Waiv, you agree to reimburse, compensate and pay Waiv for any losses, claims, damages, liabilities or penalties that Waiv or any of our officers, directors, agents, successors or assigns may incur from your purchase or use of the Services and our equipment, except to the extent that any loss, damages or liabilities are caused by Waiv's gross negligence or willful misconduct.

#### 17. Force Majeure.

We will not be in violation of this Agreement or otherwise liable for any delay, failure to perform or equipment or property damage, loss, destruction or malfunction, or any consequence thereof, caused by anything beyond our reasonable control, including, without limitation, fire; earthquake; flood; weather; acts of God; labor disputes; utility curtailments; power failures; cable cuts; failure caused by telecommunications or other Internet provider(s); Services-Related Products; worms, Trojan horses, viruses or other destructive code or software; explosions; civil disturbances; terrorism; vandalism; governmental actions; or shortages of equipment or supplies (collectively, "Events of Force Majeure").

#### 18. Confidentiality.

"Confidential Information" is valuable, confidential or proprietary information, in any form, of or about us or our Services, customers or contractors that is not generally known by, or readily available to, the public. You may use Confidential Information solely for your internal purposes and will only disclose such information internally on a need-to-know basis. You will use reasonable best efforts to protect Confidential Information from unauthorized use or disclosure. We may seek equitable relief (and any other remedies) to enforce this Section 18. For Confidential Information that is a "trade secret" (as defined by applicable law), your obligations under this Section 18 will continue for the longer of: (i) 3 years after termination of this Agreement; or (ii) until such information is no longer a trade secret under applicable law. For all other Confidential Information, your obligations under this Section 18 will continue during the term of this Agreement and for 3 years after termination of this Agreement. Our use of your information is governed by applicable law and our privacy policy posted on the Internet at [www.Waivcloud.com](http://www.Waivcloud.com).

#### 19. Publicity.

Neither party will use the other's name, logo, product names or trade or service marks, or refer to the other directly or indirectly in any advertising, sales presentation, news release, release to any professional or trade publication or for any other purpose without the other's prior written approval.

#### 20. Authorized Contacts.

Your authorized contacts must be kept up-to-date at all times. A change requires the authorization of a currently-approved contact for your account. Updates and authorizations should be directed to [support@Waivcloud.com](mailto:support@Waivcloud.com).

## 21. Maintenance.

We may perform maintenance that may affect the availability or functionality of all or part of the Services at any time. Any impact on the Services as a result of maintenance will not be deemed a breach of this Agreement or the Network Availability Commitment and will not entitle you to any credit, refund, or right to terminate this Agreement or any affected Service.

## 22. Relocation of Services.

Services cannot be moved unless pre-negotiated and documented on the most recent SOF for the Services. If there is no documented move option, you will need to work with Waiv on a new SOF.

## 23. Acceptable Use Policy.

You agree to comply at all times with our Acceptable Use Policy ("AUP") which is posted on the Internet at [www.Waivcloud.com](http://www.Waivcloud.com) and is incorporated in this Agreement by this reference. We may change the AUP at any time without prior notice to you and any AUP amendments will be effective upon posting on our website.

## 24. Special Construction.

Service delivery is subject to availability and operational limitations of systems, facilities, and equipment. If facilities and equipment, including, but not limited to, outside plant, cable, conduit, structures and/or electronics (including, but not limited to, customer premise equipment, central office equipment, or remote terminals) are not available, special construction charges may apply and Waiv will quote a one-time cost recovery charge to recover all costs associated with service delivery. Upon documentation and notification of the special construction charges or the cost recovery charge, you may cancel the request for service within twenty (20) days after the notification date. If you do not agree to the construction charge or cost recovery charge within those twenty (20) days, Waiv will cancel your request for service. If you accept the construction charge or cost recovery charge, Waiv will require payment for charges prior to accepting the service order. If you cancel the service order after acceptance but prior to installation, you will be liable for the cost recovery charge.

## 25. Unlimited Minute Plans.

The “unlimited usage” included in any Waiv voice services or fax service apply to local, domestic long distance, or outbound toll-free calls. International and inbound toll-free calls are not included. These unlimited usage plans are for reasonable business use only. Such use shall not include certain activities including, but not limited to, the following: autodialing; continuous or extensive call forwarding; use of virtual extensions for regular business use; continuous connectivity; fax broadcast; fax blasting; junk faxing; fax spamming; calling/faxing any person (through the use of distribution lists or otherwise) who has not given specific permission to be included in such a process; or any other activity that would be inconsistent with reasonable business usage. If Waiv determines that you are not using the unlimited usage for reasonable business use, Waiv reserves the right to immediately: (a) charge you the then-current retail average per-minute rate for any usage determined to be outside of reasonable business use; or (b) terminate or modify the terms of this Agreement.

## 26. Domain Names.

Waiv will obtain and maintain domain name(s) to use in connection with the delivery of voice Services. You acknowledge and agree that the domain name(s) are the property of Waiv and subject to the policies and procedures of the Internet Assigned Numbers Authority (“IANA”), the Internet Ad Hoc Committee (“IAHC”), and the registrar issuing the domain name(s). You acknowledge that Waiv is not responsible for the actions taken by IANA, IAHC, or the issuing registrar, and thus, Waiv makes no representations or warranties regarding the ability to obtain or continue to use any particular domain name.

## 27. IP Addresses.

Waiv may allocate IP addresses from our Classless Inter-Domain Routing (“CIDR”) address blocks for your use solely in connection with the Services, and only for the Initial Term of the Agreement and any renewal periods. You acknowledge and agree that the IP addresses are subject to the policies and procedures of the Internet Assigned Numbers Authority (“IANA”) and the specific Regional Internet Registry (RIR) authorizing the use of the IP addresses by Waiv. Allocation of IP addresses shall be made in a manner consistent with the policies of IANA, the

Internet Engineering Task Force ("IETF"), and the issuing RIR. You acknowledge that Waiv is not responsible for the actions taken by IANA, IETF, and the RIR, or any other network operators, and therefore, Waiv makes no representations or warranties regarding: (i) the ability to obtain or to continue to use any particular IP addresses; or (ii) the routability of any IP addresses. Your use of IP addresses allocated by Waiv shall cease within 30 days of the termination of this Agreement.

## 28. Additional Services.

You may order additional or different Waiv Services after the date of this Agreement through our website or by email, facsimile, or telephone call to us. Except to the extent expressly governed by another agreement you sign with us, additional Services that you order through whatever means will be governed by these Terms and Conditions, as modified by explicit terms for such additional Services posted on the Internet at [www.Waivcloud.com](http://www.Waivcloud.com) and incorporated herein by reference. Your use of any additional Services will be deemed to be your consent to comply with any additional terms and conditions.

## 29. General.

- i. This Agreement may only be amended by a written document signed by you and a Waiv officer at a level of Vice President or above. Handwritten alterations/additions to this Agreement will not be considered binding. This Agreement contains our entire agreement for the Services and supersedes any prior agreements, understandings or arrangements, both written and oral.
- ii. Neither party may assign this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld or conditioned, withheld or delayed, except: (i) Waiv may assign its rights and/or obligations hereunder (a) to its parent, affiliates or subsidiaries, (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, or (c) for purposes of financing; and (ii) you may assign your rights and/or obligations hereunder (a) to your parent, affiliates or subsidiaries, or (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all your assets, provided that any assignment by you pursuant to this exception is subject to the following conditions: (1) the proposed assignee satisfies Waiv's credit and deposit standards; (2) you have fully paid for all Services through the date of assignment; and (3) the proposed assignee agrees in writing to be bound by all provisions of this Agreement.

iii. Any party to this Agreement will be considered to have waived its right to require strict performance and compliance by the other party only when it has signed a written agreement or acknowledgement waiving that strict performance and compliance in any instance. Any written waiver in any one instance will not apply to any other or later non-performance or non-compliance by the other party.

iv. Any controversy or claim arising out of or relating to this Agreement will be settled only by arbitration to be held and administered in the county of San Diego, California by the American Arbitration Association under its Commercial Arbitration Rules. A single arbitrator will conduct the arbitration. Within 30 days of the filing of a claim, both parties must select an arbitrator, who must be a licensed attorney with telecommunications experience. If the parties cannot agree on an arbitrator, then the parties will each select an arbitrator, and those two arbitrators will, in turn, select a third arbitrator, who shall be a licensed attorney with telecommunications experience, and only such third arbitrator shall conduct the arbitration. The arbitrator will conduct the arbitration so as to reach a final decision within 120 days of the filing of the claim. Each party will petition the arbitrator, and request an arbitration schedule, so that they can complete the arbitration within 120 days of the filing of a claim, and each party will otherwise diligently pursue completion of the arbitration within that time or as soon as possible thereafter. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction in the county of San Diego, California. Each party will bear its own expenses for the arbitration, unless otherwise ordered by the arbitrator. No claim or action shall be submitted to arbitration if that claim, action or dispute involves any action for injunctive relief or to collect any debt. Any claim or cause of action for injunctive relief or to collect any debt will be severed from any arbitration claims arising from this Agreement and will be adjudicated in any court of competent jurisdiction.

v. In any action for injunctive relief or to collect any debt, each party consents to the exclusive jurisdiction of the state and federal courts having jurisdiction in the county of San Diego, California. This Agreement will be governed by and interpreted in accordance with the laws of the State of California, without regard to conflict of laws principles, and is subject to any federal, state or local tariffs that may apply. If any conflict should arise between the terms of this Agreement and an applicable tariff or addendum, you agree that the terms of the applicable tariff or addendum shall control.

vi. You acknowledge that future rules, tariffs, regulations, orders, treaties or other laws promulgated, enacted, or entered into by international, federal, state or local legislatures, agencies, governments or other regulatory bodies may affect your or our respective rights or obligations under this Agreement. If any such future action adversely affects Waiv's rights or obligations under this Agreement, then we may require, upon 30 days' written notice to you,



that the parties renegotiate this Agreement in good faith to address the effect of such changes. Your failure to do so will be deemed to be your termination of this Agreement, subjecting you to Early Termination Charges described in Section 11 above.

vii. If an arbitrator or court should declare any one provision of this Agreement to be invalid, then the other provisions will remain in effect and the parties will work in good faith to agree to a replacement provision that has the same or similar intent as the original provision. This Agreement is for the sole benefit of you and Waiv, and no other person.

viii. Except as otherwise noted herein, all notices required under this Agreement must be in writing and may be mailed to Waiv Cloud, Inc., Attn: Client Services, 10967 Via Frontera, San Diego, CA 92127 or to any other address that we notify you of or post on our website or emailed to us at [clientservices@Waivcloud.com](mailto:clientservices@Waivcloud.com).

ix. The Section headings used herein are for reference only.