

WAVE.BAND Terms and Conditions

ARTICLE 1: TERMS AND CONDITIONS

1.1 Services. The Customer Service Agreement and other attachments incorporated into this Agreement detail the price, location and other information about the service(s) to be provided by WAVE.BAND, LLC. ("WAVE.BAND") to Customer ("Customer"). An initial Customer Service Agreement ("CSA") is attached. To order additional Services during the term of this Agreement, Customer shall complete a CSA for each additional Service or location requested.

1.2 Submission and Acceptance of Customer Order(s). Customer may issue one or more customer service orders describing Bandwidth Speed, Access Ports, IP Allocation, and/or other services in a form designated by WAVE.BAND known as a "Customer Service Agreement". The Customer Service Agreement shall contain the duration for which Service is ordered, known as "Service Term". WAVE.BAND will notify Customer of acceptance (in writing or electronically) of the Customer's Service Order upon the successful installation of a WAVE.BAND Customer Premises Equipment ("CPE") and/or other WAVE.BAND Equipment and lock down of such CPE to WAVE.BAND Network. If Customer submits Customer Service Agreement electronically, Customer shall assure that any passwords or access devices are available only to those having authority to submit Customer Service Agreements.

1.3 Customer Premises. If access to non-WAVE.BAND facilities is required for the installation, maintenance or removal of WAVE.BAND equipment, Customer shall, at its expense, secure such right of access, and shall arrange for the provision and maintenance of Electrical Power, Electrical Battery Backup System(s) and/or Electrical Surge Suppression as needed for the proper operation of such equipment.

1.4 Scheduled Maintenance and Local Access. Scheduled maintenance will not normally result in Service interruption. If scheduled maintenance requires Service interruption, WAVE.BAND will (i) provide Customer 48-hours written notice via email, (ii) work with Customer to try to minimize Service interruptions, and (iii) use commercially reasonable efforts to perform such maintenance between midnight and 6:00 a.m. local time.

1.5 Installation Information. In order to install Customer's Service, WAVE.BAND may need Customer to provide WAVE.BAND with certain information to enable the Services to be provisioned. Customer will be required to provide the requested information in a timely fashion. Time is of the essence. If WAVE.BAND does not receive the requested information in a commercially reasonable time frame, and Customer terminates the Agreement, Customer will be responsible for all Non-Recurring and Early Termination Charges as applicable.

1.6 WAVE.BAND Equipment. WAVE.BAND Equipment shall be defined as that equipment provided by WAVE.BAND, including but not limited to, Customer Premise Equipment (CPE),

switches, routers and Power over Ethernet (POE) devices. WAVE.BAND is not responsible for any Customer Equipment or WAVE.BAND Equipment when the Customer changes, adds, modifies or deletes either the WAVE.BAND Equipment or the configurations related thereto.

ARTICLE 2: BILLING AND PAYMENT

2.1 Commencement of Billing. WAVE.BAND will deliver written or electronic notice to Customer upon installation of Service, at which time the first month's billing will commence and be charged in advance ("Service Commencement Date") and will be charged each month based on the day of the month Service was first established, the Customer Anniversary Date ("CAD"), hereinafter also referred to as the Due Date. The signing of the Customer Service Agreement and related Terms and Conditions represents acceptance by the Customer of WAVE.BAND Services upon the successful installation of WAVE.BAND Equipment. If Customer notifies WAVE.BAND within 3 days after delivery of the Connection Notice that Service is not functioning properly (and such Service is confirmed to be functioning improperly as confirmed by WAVE.BAND for reasons that are WAVE.BAND related only), WAVE.BAND will correct any deficiencies and, upon Customer's request, credit Customer's account for the first months billing in the amount of 1/30 of the applicable Monthly Recurring Charges hereby known as "MRC" for each day the Service did not function properly immediately after installation has been completed.

2.2 Payment of Invoices and Disputes. Invoices are delivered monthly in advance and are due in accordance with the terms set in the Customer Service Agreement under Cost of Services and Terms. MRC are billed in advance and overage charges, if applicable, are billed in arrears. Past due amounts may result in an Administrative fee equal to 1.5% for the delinquent payment. Customer is responsible for all charges as a result of utilizing the Service, even if incurred as the result of unauthorized use. If Customer reasonably disputes an invoice, Customer must pay the undisputed amount and submit written notice of the disputed amount (with details of the nature of the dispute and the Services and invoice(s) disputed). Disputes must be submitted in writing within thirty (30) days from the date of the invoice. If the dispute is resolved against Customer, Customer shall pay such amounts from the date originally due. If Customer's check is returned to WAVE.BAND unpaid, Customer is subject to a returned check charge of \$45.00 from WAVE.BAND. Wire transfer fees are subject to a \$25 incoming wire transfer processing fee. All payments must be in USD.

2.3 Taxes and Fees. Charges for Internet Service are currently exclusive of taxes as mandated by federal jurisdiction. In the event Internet usage becomes a taxable transaction as mandated by a Federal or State jurisdiction, such taxes will be passed along to Customer.

2.4 If Service is terminated after Billing Commencement and/or Service Commencement Date prior to the end of the initial service term, then, commencing on the effective date of such termination, Customer will be subject to early termination charges equal to one hundred

percent (100%) of the monthly recurring charges times the number of months remaining in the initial service term, if any; plus one hundred percent (100%) of any and all waived installation fees and/or third-party provisioning and/or construction costs ("Early Termination Charges"). Customer agrees to pay all such Early Termination Charges within thirty days of Customer's notice of termination or immediately upon receipt of WAVE.BAND's last invoice to Customer ("Final Invoice"). All requests to terminate Services must be submitted in writing to WAVE.BAND 30 days prior to the termination effective date. Customer hereby agrees that the charges in this Section are a genuine estimate of WAVE.BAND's actual damages and do not represent a penalty.

2.4.1 Termination of service by the Customer. Service may be terminated by Customer anytime after Billing Commencement and/or Service Commencement Date, prior to the end of the initial service term, without incurring Early Termination Charges when Customer incurs service interruption for a period of five (5) consecutive days without WAVE.BAND curing such service interruption after receiving written notice from the Customer. Service Interruption shall be defined as:

- a. only applying to WAVE.BAND Equipment that is found to be causing such Service Interruption, and
- b. applying to WAVE.BAND Equipment only in the event Customer has not changed any configurations as set by WAVE.BAND and does not apply when Customer changes, adds, modifies or deletes such WAVE.BAND Equipment in any way
- c. bandwidth throughput as tested from WAVE.BAND point of demarcation (defined as the Access Point) to Customer CPE when such throughput is less than eighty percent (80%) of the subscribed Service as designated on the related Customer CSA, and
- d. mutually agreed upon that such Service Interruption was in fact the result of WAVE.BAND Equipment or bandwidth throughput degradation as referred to in 2.4.1.c above.
- e. shall apply to latency and packet loss as explained in the WAVE.BAND Service Level Agreement which persists for five (5) consecutive days and for which WAVE.BAND was not able to cure within the five (5) day time period.

2.5 Collection Costs: If WAVE.BAND is required to use a collection agency or attorney to collect money owed by Customer, Customer agrees to pay the reasonable costs of collection. These costs include but are not limited to any collection agency's fees, reasonable attorneys' fees, and arbitration or court costs.

2.7 Reconnection Fees and Related Charges. Should Customer wish to resume a Service after any suspension, WAVE.BAND will require Customer to pay a \$45 reconnection fee. Should Customer wish to reinstate any or all Services after disconnection and removal of WAVE.BAND

equipment at the Customer locations, WAVE.BAND will require Customer to pay any installation fee or service activation fee necessary to reconnect Services. These fees are in addition to all past due charges and other fees.

2.8 Suspension/Disconnect/Termination: If Customer fails to pay the full amount due for any or all of the Services within ten (10) days from the CAD, WAVE.BAND, at its sole discretion, in accordance with applicable law, may suspend or disconnect any or all the Services Customer receives. WAVE.BAND will notify Customer of a declined debit or credit card or the return of a Customer check or e-check immediately after processing the payment on the Due Date or if check is not received by such Due Date at which time WAVE.BAND will have the right, after providing written or electronic notice and allowing the three (3) day cure period to expire, to immediately throttle down the Customer Service broadband by half the capacity then being utilized by Customer. In no event will Customer be throttled down or disconnected without prior written or electronic notification to the Customer and three (3) days to cure such deficiency. Service with Customer will be disconnected if payment has not been sufficiently paid to WAVE.BAND by the twentieth (20th) day after CAD and only after providing Customer in writing (including electronic communications) of a notice of deficiency in payment. WAVE.BAND equipment will be removed from the premises of the Customer by WAVE.BAND upon the thirtieth (30th) day after the first of the month for which Customer has not paid with cleared funds to WAVE.BAND. WAVE.BAND reserves the right to terminate this Agreement if it determines in its reasonable business judgment that it will not continue to provide such Services under this Agreement. In that event, WAVE.BAND will provide no less than thirty (30) days prior notice of such termination.

2.9 Fees Not Considered Interest or Penalties: WAVE.BAND does not anticipate that Customer will fail to pay for the Services on a timely basis. Any fees, charges, and assessments due to late payment or nonpayment are not interest, credit service charges, or finance charges or penalties. Rather, they are liquidated damages intended to be a reasonable estimate of our costs resulting from late payments and non-payments. These costs will be difficult to calculate or to predict when WAVE.BAND sets such fees, charges, and assessments, because WAVE.BAND cannot know in advance: (a) whether Customer will pay for the Services on a timely basis, if ever; (b) if Customer does pay late, when Customer will actually pay; and (c) what costs WAVE.BAND will incur because of Customer late payment or non-payment.

2.9.1 Preferred Method of Payment: WAVE.BAND accepts ACH, debit card, credit card, e-checks, wires and checks. ACH and wires (including associated incoming wire fees) are the preferred methods of payment.

2.10.1 Debit card and credit card payments: WAVE.BAND will accept Debit and Credit Card payments made by a Customer until such time that the method is declined by WAVE.BAND's banking institutions. If a debit card or credit card is declined, WAVE.BAND will have the right to require Customer to submit future payments by ACH.

2.10.2 Checks and e-checks: WAVE.BAND will accept such method of payment but requires the Customer to deliver such check or e-check to WAVE.BAND seven (7) days prior to the Customer's CAD; and (a) submit a late fee of \$45 to WAVE.BAND in the event Customer check has not cleared WAVE.BAND's banking institutions by the CAD; (b) submit a \$45 NSF fee in the event a check or e-check does not clear WAVE.BAND banks; and, (d) agree to transfer the method of payment of the MRC to WAVE.BAND from check or e-check to ACH for all future MRC payments.

ARTICLE 3: DEFAULT; REMEDIES

3.1 It shall be a default hereunder if (i) Customer fails to pay any monies due in accordance with the Customer Service Agreement, additional rent or other sum of money within three (3) days after receiving written or electronic notice from WAVE.BAND; (ii) Customer fails to comply with any other provision of this agreement or any other agreement between WAVE.BAND and Customer within three (3) days after receipt (as defined as the date the electronic notification was sent and such electronic transmission did not fail to be delivered to the respective Customer email address as originally provided to WAVE.BAND upon execution of the CSA) of written notice from WAVE.BAND; (iii) this Agreement hereunder shall be taken on execution or other process of law in any action against Customer; (iv) Customer fails to promptly take possession of, open for, and continuously operate its business in the Premises when the Premises are delivered to it and thereafter during the term hereof (it being intended that a vacating by Customer shall be a default hereunder); (v) Customer becomes insolvent or unable to pay its debts as they become due, or Customer notifies WAVE.BAND that it anticipates either condition; (vi) Customer files, or takes any action to, or notifies WAVE.BAND that Customer intends to, file a petition or proceeding under any section or chapter of the Federal Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State or territory thereof; or a petition or proceeding is filed against Customer under any such Federal or State law or statute or Customer or any creditor of Customer notifies WAVE.BAND that it knows such a petition or proceeding will be filed or Customer notifies WAVE.BAND that it expects such a petition or proceeding to be filed; (vii) a receiver or trustee is appointed for Customer's agreement to hold interest in the Premises or for all or a substantial part of the assets of Customer; (viii) Customer or any guarantor of Customer's obligations under this agreement makes materially false or misleading statements to WAVE.BAND verbally or in writing regarding Customer and/or any such guarantor, or (ix) there is a default in any other contract, license, occupancy or other agreement with Customer or any entity related to any of them or related to the Building. No action taken by WAVE.BAND in response to a Customer default, such as making payments owed by Customer or making repairs or taking other actions to ameliorate the consequences of a Customer default or otherwise, shall operate to, or be deemed to cure or waive, any Customer default or impair any remedy of WAVE.BAND on account of such Customer default.

3.2 Upon the occurrence of any of the events set forth in sub-section (3.1) above of this Article 3, WAVE.BAND may (i) cancel and terminate service(s) on Customer Order and dispossess Customer; (ii) without terminating service(s) on Customer Order, terminate the possession of Customer hereunder and declare all amounts due under Article 2 section 5 of this agreement; (iii) enter upon the Premises and do whatever Customer is obligated to do under the terms of the Customer Order, and Customer agrees to reimburse WAVE.BAND on demand for all expenses which WAVE.BAND incurs in effecting compliance with Customer's obligations under this Agreement and Customer further agrees that WAVE.BAND shall not be liable for any damages resulting to the Customer from such action; (iv) Restrict Customer's employees, agents, subcontractors, and other affiliates of Customer's to escorted access to the facility by one of WAVE.BAND's personnel.

3.3 Customer grants WAVE.BAND a lien pursuant to California Statute 713.58 against WAVE.BAND provided Equipment and for labor or services rendered by WAVE.BAND.

3.4 All such remedies of WAVE.BAND are cumulative and not exclusive, and in addition, WAVE.BAND may pursue any and all other remedies permitted by law and available in equity. Forbearance by WAVE.BAND to enforce one or more of the remedies herein provided upon a Customer default shall not be deemed or construed to constitute a waiver of such default or any other or future default.

ARTICLE 4: OTHER TERMS AND CONDITIONS

4.1 Applicability: This Service Schedule is applicable only where the Customer orders Internet Access (Broadband Service), Point to Point Services (PTP) or other associated services from WAVE.BAND.

4.2 Unauthorized Devices or Tampering: Customer agrees not to attach any unauthorized device to WAVE.BAND Equipment or WAVE.BAND Services. If Customer makes any unauthorized connection or modification to WAVE.BAND Equipment or Services or any other part of WAVE.BAND's wireless network, WAVE.BAND may terminate Customer Service and recover such damages as may result from Customers actions. Unless expressly authorized by WAVE.BAND, Customer agrees not to install anything to intercept or receive any of the Services offered over WAVE.BAND's wireless network or to assist any person in intercepting or receiving any of the Services offered over WAVE.BAND's wireless network. Customer also agrees that Customer will not attach anything to the Inside Wiring, WAVE.BAND Equipment or Customer Equipment, whether installed by Customer or WAVE.BAND, which individually or combined impairs the integrity of WAVE.BAND's wireless network or degrades WAVE.BAND's wireless network's signal quality or strength or creates signal or data leakage.

4.3 Customer hereby agrees that WAVE.BAND may recover damages from Customer for tampering with any WAVE.BAND Equipment or any other part of WAVE.BAND's wireless

network or for receiving unauthorized Service(s). Customer agrees that it would be difficult if not impossible to calculate precisely the lost revenue resulting from Customer receipt of unauthorized Service(s) or the alteration or improper use of WAVE.BAND Equipment. Customer therefore agrees to pay WAVE.BAND as liquidated damages, the sum of \$500.00 per device used to receive the unauthorized Services in addition to WAVE.BAND's cost to replace any altered, damaged or unreturned WAVE.BAND Equipment or other equipment owned by WAVE.BAND, including any incidental costs. The unauthorized reception of the Services may also result in criminal fines and/or imprisonment.

4.4 Access To Customer Premises: Customer agrees to allow WAVE.BAND and its agents the right, to enter at reasonable times Customer property upon which the Services and/or WAVE.BAND Equipment will be provided (the "Premises"), for purposes of installing, configuring, maintaining, inspecting, upgrading, replacing and removing the Services and/or WAVE.BAND Equipment used to receive any of the Services. Customer warrants that Customer is either the owner of the Premises or that Customer has the authority to give WAVE.BAND access to the Premises. If Customer is not the owner of the Premises, Customer is responsible for obtaining any necessary approval from the owner to allow WAVE.BAND and its agent's access into the Premises to perform the activities specified above. In addition, Customer agrees to supply WAVE.BAND or its agent, upon request, the owner's name, address and phone number and/or evidence that the owner has authorized Customer to grant access to WAVE.BAND and its agents to the Premises.

4.5 Maintenance And Ownership Of WAVE.BAND Equipment: Customer agrees that except for the wiring installed inside the Premises ("Inside Wiring"), all WAVE.BAND equipment belongs to WAVE.BAND or other third parties and will not be deemed fixtures or in any way part of the Premises. Customer may not sell, lease, abandon or give away the WAVE.BAND Equipment, or permit any other provider of video, high speed data or telephone services to use the WAVE.BAND Equipment. The WAVE.BAND Equipment may only be used in the Premises. At Customer request, WAVE.BAND may relocate the WAVE.BAND Equipment in the Premises for an additional charge, at a time agreeable to Customer and WAVE.BAND. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT IF CUSTOMER ATTEMPTS TO INSTALL OR USE THE WAVE.BAND EQUIPMENT OR SERVICES AT A LOCATION OTHER THAN THE PREMISES, THE SERVICES MAY FAIL TO FUNCTION OR MAY FUNCTION IMPROPERLY. Customer agrees that Customer will not allow anyone other than WAVE.BAND employees or agents to service the WAVE.BAND Equipment. WAVE.BAND recommends the WAVE.BAND Equipment in Customer possession be covered by the Customers homeowners, renters, or other business insurance. Customer will be directly responsible for loss, repair, replacement and other costs, damages, fees and charges if Customer does not return the WAVE.BAND Equipment in proper working condition.

4.6 Customer Equipment Responsibility: WAVE.BAND has no responsibility for the operation or support, maintenance or repair of any non WAVE.BAND equipment or non WAVE.BAND

services defined as the Customer Equipment Customer elects to use in connection with the Services or WAVE.BAND Equipment.

4.7 Non-Recommended Configurations: Customer Equipment that does not meet WAVE.BAND's minimum technical or other specifications constitutes a "Non-Recommended Configuration." NEITHER WAVE.BAND NOR ANY OF ITS AFFILIATES, SUPPLIERS OR AGENTS WARRANTS THAT A NON-RECOMMENDED CONFIGURATION WILL ENABLE CUSTOMER TO SUCCESSFULLY INSTALL, ACCESS, OPERATE OR USE THE SERVICES. CUSTOMER ACKNOWLEDGES THAT ANY SUCH INSTALLATION, ACCESS, OPERATION, OR USE COULD CAUSE CUSTOMER EQUIPMENT TO FAIL TO OPERATE OR CAUSE DAMAGE TO CUSTOMER EQUIPMENT, CUSTOMER, CUSTOMER PREMISES OR WAVE.BAND EQUIPMENT. NEITHER WAVE.BAND NOR ANY OF ITS AFFILIATES, SUPPLIERS OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH FAILURE OR DAMAGE. WAVE.BAND reserves the right to deny Customer Support for the Services and/or terminate Service(s) if Customer uses a Non-Recommended Configuration.

4.8 Inside Wiring. Customer may install Inside Wiring, such as additional cable wiring and outlets, provided it does not interfere with the normal operations of WAVE.BAND's cable or network. If Customer has WAVE.BAND to install Inside Wiring, WAVE.BAND will charge Customer for that service. Regardless of who installed it, WAVE.BAND considers the Inside Wiring Customer property of whoever owns the Premises. Accordingly, Customer is responsible for the repair and maintenance of the Inside Wiring, unless Customer and WAVE.BAND have agreed otherwise in writing. If Customer has WAVE.BAND repair or maintain the Inside Wiring, WAVE.BAND will charge Customer for that service.

4.9 Customer acknowledges that Customer is accepting this Agreement on behalf of all persons who use the WAVE.BAND Equipment and/or Services and that Customer shall have sole responsibility for ensuring that all other users understand and comply with the terms and conditions of this Agreement and any applicable WAVE.BAND policies including, but not limited to, acceptable use and privacy policies. Customer further acknowledges and agrees that Customer shall be solely responsible for any transactions, including, without limitation, purchases made through or in connection with the Services. Customer agrees to indemnify, defend and hold harmless WAVE.BAND and its affiliates, suppliers, and agents against any and all claims and expenses (including reasonable attorney fees) arising out of the improper use of the Services, the WAVE.BAND Equipment and/or the Customer Equipment or the breach of this Agreement or any of the applicable WAVE.BAND policies by Customer or any other user.

4.10 Prohibited Uses of WAVE.BAND Services. Customer agrees not to use WAVE.BAND's Internet Access Services for operation as an Internet service provider, a server site for ftp, telnet, rlogin, e-mail hosting, "Web hosting" or other similar applications, for any business enterprise, or as an end-point on a non-WAVE.BAND local area network (LAN) or wide area network (WAN), except when such LAN or WAN is required under a PTP Service offering provided by WAVE.BAND. Customer agrees to indemnify, defend and hold harmless WAVE.BAND and its affiliates, suppliers, and agents against any and all claims and expenses

(including reasonable attorney fees) arising out of any breach of this Section including, but not limited to, any claims based on or arising out of any material violation of any applicable law.

4.11 WAVE.BAND has the right to access, maintain, remove, replace, or take any other action in connection with the WAVE.BAND Equipment at any time for any reason. At all times Customer shall: (1) refrain from physically tampering with or modifying WAVE.BAND Equipment, or authorizing others to do the same; and (2) provide WAVE.BAND with reasonable, sufficient, and necessary access to Customer's facilities in order for WAVE.BAND to fulfill its obligations under this Agreement. Customer shall provide WAVE.BAND reasonable and necessary access to WAVE.BAND's WAVE.BAND Equipment at all reasonable times in the event WAVE.BAND needs to retrieve its WAVE.BAND Equipment during, or upon the expiration of this Agreement. Customer also agrees to cooperate with WAVE.BAND in any communications with the landlord at the Premises if requested by WAVE.BAND, even after the termination of this Agreement, so that WAVE.BAND may retrieve physical possession of the WAVE.BAND Equipment. Customer shall be responsible for any and all damage to the WAVE.BAND Equipment caused by Customer or its end users. Furthermore, WAVE.BAND will not be responsible for any interference or interruption in Services that are related to or caused by customer-provided equipment. Customer is responsible for the initial and ongoing configuration of any equipment provided by Customer. If this equipment is not compatible or may not be used with the Services Customer has selected, and Customer terminates this Agreement or the Service, Customer will be responsible for all Non-Recurring Charges for the Services that are noted on Customer's Customer Service Agreement, as well as any 3rd party costs WAVE.BAND may have incurred.

ARTICLE 5: GENERAL TERMS

5.1 Force Majeure. Neither party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to force majeure event(s). In the event WAVE.BAND is unable to deliver Service as a result of a force majeure event, Customer shall not be obligated to pay WAVE.BAND for the affected Service for as long as WAVE.BAND is unable to deliver the affected Service. Force majeure events along with scheduled maintenance under section 1.4 shall be considered "Excused Outages."

5.2 Affiliates. Service may be provided to Customer pursuant to this Agreement by an affiliate of WAVE.BAND, but WAVE.BAND shall remain responsible to Customer for the delivery and performance of the Service. Customer's affiliates may purchase Service pursuant to this Agreement. Customer shall be liable for all claims and liabilities related to Service ordered by any Customer affiliate, and any default under this Agreement by any Customer affiliate shall also be a default by Customer.

5.3 Notices. All notices between the parties regarding this agreement shall be in writing, and shall be deemed given upon receipt or refusal of delivery, if sent (a) by overnight courier, addressed to the party to be notified at the address stated in this section, or (b) if tendered by

personal delivery to such party, or (c) if sent certified, postage prepaid, return receipt requested. Notice to Customer may also be effectuated by delivery to the Premises. Either party may change its address for notice by notice given in the manner provided in this Section 8.6.

IF TO WAVE.BAND:

WAVE.BAND,LLC.
2245 Enterprise St
Suite 140
Escondido CA 92029

5.4 Acceptable Use Policy; Data Protection. WAVE.BAND exercises no control over, and accepts no responsibility for, the content of the information passing through WAVE.BAND's host computers, network hubs and points of presence (the "WAVE.BAND Network"). Customer's use of Service shall comply with WAVE.BAND's Acceptable Use Policy and Privacy Policy, as communicated in writing to Customer from time to time and which are also available through WAVE.BAND's web site at www.WAVE.BANDcommunications.com. WAVE.BAND may transfer, process, and store billing and utilization data and other data necessary for WAVE.BAND's operation of its network and for the performance of its obligations under this Agreement to or from the United States. Customer consents that WAVE.BAND may (i) transfer, store, and process such data in the United States; and (ii) use such data for its own internal purposes and as allowed by law. This data will not be disclosed to third parties.

5.5 Governing Law; Amendment. This Agreement shall be governed and construed in accordance with the laws of the State of California, without regard to its choice of law rules. This Agreement, including any Service Schedule(s) and Customer Service Agreement(s) executed hereunder, constitutes the entire and final agreement and understanding between the parties with respect to the Service and supersedes all prior agreements relating to the Service. This Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each party. No failure by either party to enforce any right(s) hereunder shall constitute a waiver of such right(s).

5.6 This Agreement automatically renews for successive service term equal to that of initial service term at the then standard rate unless terminated by customer upon at least 30 days written notice prior to the end of the term. Upon expiration or termination of this Agreement, Services not previously terminated by Customer will remain in effect for the term specified in the applicable Customer Service Agreement for each affected Service, and the terms and conditions of this Agreement will continue to apply to such Services. Upon expiration or termination of this Agreement, WAVE.BAND shall have no obligation to furnish new Services to Customer, and all rights of Customer to order new Services under this Agreement cease.

5.7 Guaranty. In consideration of the execution of this Agreement and in order to induce WAVE.BAND to enter into this Agreement, the undersigned do hereby guaranty, absolutely and unconditionally, payment of all liabilities of Customer to WAVE.BAND arising hereunder of whatever nature, whether now existing or hereinafter incurred, whether absolute or contingent, and the full and prompt performance of all the terms, conditions, and obligations of this Agreement or any other agreement existing between WAVE.BAND and Customer. This is a Guaranty of payment and not of collection, and the undersigned waive any right to require that any action be brought against Customer or any other person, or to require that resort be had to any security before proceeding against the undersigned. This Guaranty shall not be limited to any specific time or period, nor shall termination be effected by the death of any or all of the undersigned. This Guaranty shall remain in effect until all of the terms, conditions, and obligations of the Agreement and supplements or amendments (if any) have been fully performed by Customer. The undersigned waive any and all defenses (except for full payment of all indebtedness owing from Customer to WAVE.BAND), including set-offs and counterclaims, and WAVE.BAND may in connection with this Agreement, without notice to the undersigned, renew, extend, or modify any of Customer's obligations without affecting the undersigned's liability, which shall be total and absolute. WAVE.BAND may accept partial payment, settlement, or release, without affecting or impairing the obligations of the undersigned. Any and all requirements for presentation, demand, protest or other notice of dishonor, are hereby waived by the undersigned, as is the right to trial by jury as to any question or dispute arising pursuant to the Agreement.

5.8 Non-Solicitation of Employees. Each party acknowledges that their respective employees constitute valuable assets of each other. Accordingly, neither party shall, during the Term of this Agreement and for a period of one year thereafter, directly or indirectly, solicit, employ or offer to employ, or engage as a consultant or employee, any employee of the other. The parties agree that the remedy at law for any breach of this provision would be inadequate and that, in addition to any other remedy it might have, the aggrieved party shall be entitled to injunctive relief without proof of irreparable injury and without posting bond.

5.9 Relationship of the Parties. The relationship between Customer and WAVE.BAND shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes.

5.10 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Facsimile signatures shall be sufficient to bind the parties to this Agreement.

5.11 Survival of Terms. The obligations of the parties under this Agreement that by their nature would continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

5.12 Additions/Modifications to Agreement. This Agreement can only be modified by a written document executed by authorized representatives of each Party.

5.13 Severability. In the event that any of the terms of this Agreement or the application of any such term shall be found to be invalid by any court of any competent jurisdiction, the remaining terms of this Agreement or their application shall not be affected thereby, and shall remain in full force and effect.

5.14 Waiver. Either party's failure to enforce any provision or term of this Agreement shall not be construed as a future or continuing waiver of such provision or term of this Agreement.