

## MASTER SERVICES AGREEMENT

This Master Services Agreement sets forth the terms and conditions governing our Services. Additional terms and conditions specific to an applicable Service may also apply (“Additional Terms”) and are available at [www.workwave.com/general-terms-and-conditions](http://www.workwave.com/general-terms-and-conditions). You agree to review such Additional Terms, and that such Additional Terms are binding and incorporated herein by reference. As used herein, the term “Agreement” means this Master Services Agreement and all applicable Additional Terms.

By executing a Purchase Order that incorporates by reference this Agreement you agree to be bound by the terms of this Agreement. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to this Agreement, in which case the terms "you" or "your" shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree with the terms and conditions of this Agreement, you must not accept this Agreement or purchase the Services. In addition, you may not use the Services if you are our competitor, except with our prior written consent.

You acknowledge and agree that we have the right to establish terms for the continued use of our Services. Accordingly, we reserve the right to modify the terms of this Agreement from time to time with or without notice to you. You agree that your use of the Services constitutes your agreement to any such modification.

### 1. Definitions.

- 1.1. **“Australian Data Privacy Legislation”** shall mean the Privacy Act No. 119 1988 (as amended or replaced from time to time), the Privacy Regulation 2013 (as amended or replaced from time to time) and all other data protection, data security and privacy laws.
- 1.2 **“Creative Services”** means the graphic design or other marketing-related professional services that may be provided by us pursuant to an applicable Purchase Order. For avoidance of doubt, the term Creative Services as used herein shall not include website design services, which are the subject of specific Additional Terms.
- 1.3. **“ European Data Protection Legislation ”** shall mean (i) the EU General Data Protection Regulation ((EU) 2016/679) (including the UK enactment of this Regulation) and any national implementing or supplementing laws, regulations and secondary legislation, as amended or replaced from time to time, implemented in any European Economic Area country or the UK and (ii) any other data protection, data security and privacy laws implemented in any European Economic Area country or the UK.
- 1.4. **“Our Marks”** means WorkWave® and other trade names, trademarks, trade symbols, service marks, logos, and proprietary marks owned by us.
- 1.5. **“Purchase Order”** means the applicable purchase order agreement entered into with respect to the Service to be provided by us to you.
- 1.6. **“New Zealand Data Privacy Legislation”** shall mean the Privacy Act 2020 (as amended or replaced from time to time) and all other data protection, data security and privacy laws.
- 1.7 **“Service”** means the service to be provided by us to you pursuant to an applicable Purchase Order, including, without limitation, search engine marketing, pay-per-click, display, tracking services, live chat services, website development and hosting, search engine optimization, reviews services, any Creative Services, and such other marketing-related services as may be specified in an applicable Purchase Order from time to time. In addition, Services may include access to our software products and related consulting services if set forth in an applicable Purchase Order.

- 1.8. “Work Product”** means any works (copyrightable or not, patentable or not), products, discoveries, developments, designs, work product, deliverables, improvements, inventions, processes, techniques, modifications and know-how made, conceived, reduced to practice or learned by us (either alone or jointly with you or others) that result from or arise out of any Creative Services performed by us, or our designee, and provided to you pursuant to any applicable Purchase Order.
- 1.9. “Your Applications”** means all software programs, including any source code for such programs, that you or your Users provide and load onto, or create using, any Service.
- 1.10. “Your Content”** means all text, files, images, graphics, illustrations, information, data, audio, video, photographs, Your Marks, and other content and material (other than Your Applications), in any format, provided by you that resides in, or runs on or through, the Services.
- 1.11. “Your Marks”** means your trade names, trademarks, trade symbols, service marks, logos, and other proprietary marks.
- 1.12. “CCPA”** means the California Consumer Privacy Act, Cal. Civ. Code § 1798.100, et seq.

## **2. Intellectual Property Matters.**

- 2.1. Your Content.** Except as specified in this Agreement or an applicable Purchase Order, we acknowledge and agree you own all right, title and interest in, to and under Your Content. You grant to us a non-exclusive, royalty free, worldwide, limited right to access, copy, store, process, transmit, display, broadcast, view, print and otherwise use Your Content only to the extent necessary to provide the Services to you. You have sole responsibility for the accuracy, quality, integrity, reliability, legality, and ownership of Your Content. Notwithstanding any other provision in this Agreement, you agree that we may collect statistical data for benchmarking, transactional, usage, or performance information purposes, such as user traffic, usage patterns, page impressions, activity levels, and other analytics for internal use or to be shared with third parties, provided that such information shall be in aggregate form, will not include personally identifiable information, or otherwise individually identify you. You agree that all such aggregate, anonymized, analytical data is owned by us. We will retain Your Content only for as long as needed to provide the Services and satisfy other reasonable business purposes, such as complying with legal obligations, resolving disputes, or enforcing our agreements. You acknowledge and agree that we are not responsible for the loss of Your Content. If you request the removal of any part of Your Content, we will assist you within a reasonable timeframe.
- 2.2. Your Marks.** We acknowledge and agree that Your Marks are owned by you. During the Term, you agree that we may refer to you as our customer and you hereby grant us the right to use Your Marks in connection with the marketing and promotion of the Services, or part thereof, on our website or otherwise. We will use Your Marks consistent with any published guidelines with respect to such use that you provide to us. Any and all goodwill associated with our right to use Your Marks hereunder automatically vests in you.
- 2.3. Our Marks.** You acknowledge and agree that Our Marks are owned by us. Names, logos, and marks related to third-party products incorporated in or made available through the Services are owned by their respective owners. You have a non-exclusive, non-assignable, royalty free, worldwide limited right to use Our Marks and any such third-party marks solely to the extent such marks are incorporated into the Service, and solely as part of your use of the Service, and, in the case of third-party marks, further subject to the terms of any third-party license you may enter into in connection with your use of such third-party products. Any and all goodwill associated with your right to use Our Marks hereunder automatically vests in us.

**2.4. Creative Services.** Creative Services may be provided in accordance with an applicable Purchase Order. If you request that we provide any Creative Services, you will remain fully responsible for Your Content. With respect to any content created by us, as between you and us, we shall retain ownership of the design elements of such content, excluding any of Your Marks or any proprietary elements or designs provided by you that may be included within such content.

**2.5. Feedback.** In the course of using the Services, you acknowledge that you may provide comments, suggestions, recommendations, or other feedback communicated to us in any manner concerning current or proposed functionality, features, operations, performance, or other attributes of the Service. You hereby grant to us a nonexclusive, worldwide, perpetual, irrevocable, royalty-free, assignable and sublicensable right and license to use, incorporate, disclose, prepare derivative works from and otherwise exploit all such feedback for any purpose without restriction.

**2.6. Reviews.** If you subscribe for a Service that enables the collection of reviews, you acknowledge that the reviewer retains ownership of the review, and has granted us a license to use and display such review through the applicable Service with right to sublicense to you. For the Term of an applicable Service for reviews, we hereby grant you a limited, non-exclusive, non-transferrable, and non-sublicenseable, worldwide license to access and publicly display such review (a) on your website through our Service, (b) on other social media sites or print advertising material provided that you identify us as the collecting service. You acknowledge that your license to use and display such reviews terminates upon termination of the applicable reviews Service, therefore, you agree to immediately cease using or displaying such reviews upon termination of the applicable Service. You also acknowledge and agree that we may remove a review upon request of a reviewer at any time, and that we have the right, but not the obligation, to remove any review if we believe it violates our reviewer terms of use. We may also remove your response to any review if we believe that it is in violation of the usage restrictions set forth in this Agreement.

### **3. Use of Services.**

**3.1. Third-Party Technology and Third-Party Content.** The Services may contain separate third-party technology and content. You agree that you will use such third-party technology and content only in connection with the Services. If when using the Service, you are not required to enter into a separate license for such third-party technology and content, then we have obtained the right to provide you with such third-party technology and content. If you are required to enter into a separate license for such third-party technology or content, then you are responsible for complying with such license. The third-party owner, author or provider of such third-party technology or content retains all ownership and intellectual property rights in, to and under such third-party technology or content. If you choose to use a third-party application with a Service, you grant us permission to allow the third-party application and its provider to access Your Content to the extent required for the interoperation of that third-party application with the Service. We are not responsible for any disclosure, modification, or deletion of Your Content resulting from such access. We cannot guarantee the continued availability of third-party application features and may cease providing them without any liability to you. The Services may enable you to add links to websites and access to content, products and services of third parties, including users, advertisers, affiliates and sponsors of such third parties. If we are notified that any third-party content provided to you may violate applicable law or third-party rights, you agree to promptly remove such content upon notice from us, and you agree that we may remove such content if you fail to do so. We are not responsible for any third-party websites or third party content provided on or through the Services and you bear all risks associated with the access and use of such websites and third-party content, products and services.

### **3.2. Usage Restrictions.**

3.2.1. You will not (a) use a Service to store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses, or other malicious code, (b) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (c) modify, make derivative works of, disassemble, decompile, reverse engineer, or otherwise attempt to discover source code of any part of the Services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), or access or use the Services in order to build or support, and/or assist a third party in building or supporting, products or services that are competitive with the Services; (d) remove or modify any program markings or any notice of our or any third-party's proprietary rights, or (e) without our prior written consent, perform or disclose any benchmark or performance tests of the Services, or perform or disclose any of the following security testing of the Services: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing. Any use of the Services in breach of this Agreement by you or your users that in our reasonable judgment threatens the security, integrity or availability of the Services, may result in our immediate suspension of the Services.

3.2.2. You agree not to use the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, for any purpose that (a) involves the publication of any material that is false, defamatory, harassing or obscene, or that promotes bigotry, racism, hatred or harm, (b) violates privacy rights, (c) constitutes unsolicited bulk e-mail, "junk mail", "spam", chain letters, or other form of prohibited solicitation or advertising; (d) constitutes an infringement of intellectual property or other proprietary rights, or (e) otherwise violate applicable laws, ordinances or regulations. You represent and warrant that the product or service that is being promoted through a Service is lawful and, to your knowledge, not the subject of any ongoing investigation of any regulatory authorities. We reserve the right, but have no obligation, to remove or take other remedial action if any material violates the foregoing restrictions, and we have no liability to you in the event that we take such action.

3.2.3. We may provide certain Services through our proprietary software and we hereby grant you the non-exclusive, non-assignable, royalty free, worldwide limited right to access and use such Services solely for your internal business operations during the applicable term of such Service. Except for the limited rights expressly granted to you hereunder, we reserve all right, title and interest in, to and under such proprietary software and all related intellectual property rights inherent therein, including, but not limited to, United States and international patent, copyright, trademark, trade secret, and trade dress rights and any other intellectual property rights, and we own and retain all right, title, and interest in, to and under any and all improvements, modifications releases, updates, upgrades and derivative works related thereto.

**3.3. End of Life Policies.** We maintain end of life policies with respect to the Services as published on our websites from time to time. We may amend or modify such policies with or without notice to you, and you are responsible for reviewing such policies as in effect from time to time. Our end of life policies are incorporated by reference and are binding upon you to the same extent as if set forth herein.

**3.4. Sensitive or Special Categories of Personally Identifiable Information .** You understand that the Services are not designed or intended to store any regulated sensitive or special categories of personally identifiable information, such as credit card numbers, bank account information, social security or other personal tax identification numbers, medical or health related information, or personal information which reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, sex life or sexual orientation, genetic information or biometric data for the purpose of uniquely identifying a natural

person. You agree not to enter any such sensitive or special categories of personally identifiable information into the Services, unless permitted to do so by applicable law. You further agree to remove any such sensitive or special categories of personally identifiable information if requested to do so by us, and we reserve the right to remove such sensitive or special categories of personally identifiable information if we become aware it is being stored with or without notice to you.

**3.5. Privacy Policy.** In performing the Services, we will comply with, and you agree to the terms of, our Privacy Policy. Our Privacy Policy is available at <https://www.workwave.com/privacy-policy> and is incorporated herein by reference. Our Privacy Policy is subject to change at our discretion, however, any such changes will not result in a material reduction in the level of protection provided for Your Content during the period for which fees for the Services have been paid. If we make any material changes to our Privacy Policy, we will notify you by email, via the Services, or by means of a notice on our website prior to the change becoming effective.

#### **4. Data Processing under the European Data Protection Legislation, Australian Data Privacy Legislation or New Zealand Data Privacy Legislation.**

To the extent that you are subject to the European Data Protection Legislation, the Australian Privacy Legislation and/or the New Zealand Privacy Legislation (“**International Privacy Laws**”), you acknowledge and agree to the following:

**4.1.** Both parties will comply with all applicable requirements of the relevant International Privacy Laws. You acknowledge that Your Content may constitute “personal data” (under the European Data Protection Legislation) or “personal information” (under the Australian Privacy Legislation or New Zealand Privacy Legislation).

**4.2.** The parties acknowledge that for the purposes of the European Data Protection Legislation, you are the data controller and we are the data processor (as defined in the European Data Protection Legislation).

**4.3.** Without prejudice to the generality of Section 4.1, you will ensure that you have obtained all necessary appropriate consents from and/or provided all necessary information to individuals whose personal data or personal information may be contained in your content and you will maintain notices or other required transfer mechanisms in place to enable the lawful transfer of Your Content to the United States for the duration and purposes of the Services. You also represent and warrant that you have all necessary rights and consents and/or have provided all necessary information for the collection of all information that you provide through your use of the Services, and that you will use any such information collected only in strict compliance with the International Privacy Laws.

**4.4.** Without prejudice to the generality of Section 4.1, we shall, in relation to any of Your Content processed in connection with the performance by us of the Service:

4.4.1. process Your Content only as required to provide you with the Services, and you agree that such processing is being done at your express and lawful request and with your express consent; the subject matter, duration, nature and purpose of processing your personal data or personal information is set-out in this Agreement and/or the Purchase Order; we shall delete or return your personal data or personal information at the end of the Services;

4.4.2. implement appropriate technical and organizational measures to protect against unauthorized or unlawful processing of Your Content and against accidental loss or destruction of, or damage to, Your Content, appropriate to the harm that might result from the unauthorized or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Your Content, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Your Content can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organizational measures adopted by it);

4.4.3. ensure that all personnel engaged by us who have access to and/or process Your Content are obliged to keep Your Content confidential;

4.4.4. except for the transfer of Your Content to the United States or to one or more of our affiliates, under common control with us, whom we may utilize as a subprocessor, and with respect to certain applications, backup servers in the United Kingdom, we shall not transfer Your Content outside of the European Economic Area unless we notify you in writing of such transfer and, in this event, the following conditions shall be fulfilled:

4.4.4.1. we have provided appropriate safeguards in relation to the transfer;

4.4.4.2. the data subject has enforceable rights and effective legal remedies;

4.4.4.3. we comply with our obligations under the European Data Protection Legislation by providing an adequate level of protection to any of Your Content that is transferred; and

4.4.4.4. we comply with reasonable instructions notified to us in advance by you with respect to the processing of Your Content;

4.4.5. assist you, at your cost, in responding to any request from a data subject and in ensuring compliance with your obligations under the European Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators, and you agree to promptly (and in any case, within any time period prescribed by law or regulation) notify us if any data subject requests removal of any personal information relating to such data subject;

4.4.6. notify you without undue delay on becoming aware of a personal data breach relating to Your Content;

4.4.7. at your written direction, delete or return Your Content and copies thereof to you on termination of the Services unless required by applicable law to store Your Content; and

4.4.8. maintain comprehensive records and information to demonstrate our compliance with this clause 4.4 or, at your request and cost, participate in an audit by you or a third-party nominated by you with respect to our data protection compliance processes (provided confidentiality provisions are in place to protect our and our other customers' confidential information).

**4.5.** You acknowledge that we may utilize third-party integration partners to process Your Content, and you hereby consent to such third-party processing. We shall notify you about, and give you a reasonable opportunity to object to, any new third-party processor following the date of the Agreement. We shall require such third-party processors to protect your personal data or personal information to the same extent as set-out in this clause 4. We remain fully liable to you for all acts or omissions of any third-party processor appointed by us pursuant to this clause 4.5.

**4.6.** You agree that in lieu of the obligations set forth in this Section 4, we may adopt any applicable controller-to-processor standard clauses or similar terms forming part of an applicable certification scheme for data protection compliance.

## **5. Fees and Invoicing.**

**5.1. Fees.** You agree to pay all fees specified in your Purchase Order(s). Except as otherwise specified herein or an applicable Purchase Order, (a) fees are based on Services purchased and not actual usage, (b) payment obligations are non-cancellable and fees paid are non-refundable regardless of whether you have prepaid for any portion of the Service, and (c) quantities purchased cannot be decreased during the relevant Term.

**5.2. Invoicing and Payment.** You will provide us with valid and updated credit card information (or other payment arrangements acceptable to us). If you provide credit card information to us, you authorize us to charge such credit card for all Services listed in the Purchase Order for the applicable Term. Unless otherwise stated in the Purchase Order, such charges shall be made in advance in accordance with the billing frequency stated in the Purchase Order. If we have accepted payment by a method other than a credit card, we will invoice you in advance or otherwise in accordance with the relevant Purchase Order. If we have accepted payment by a method other than credit card or other automatic payment method, we reserve the right to invoice you, and you agree to pay, a handling fee of \$5.00 per transaction. Unless otherwise stated in the Purchase Order, invoiced charges are due upon receipt. You are responsible for providing complete and accurate billing and contact information to us and notifying us of any changes to such information. If you purchase two or more Services that comprise a bundle and that bundle is priced as a bundle and not as individual Services, should you decide not to use any one or more of such Services in the bundle, or if you fail to provide content or anything else necessary to permit one or more Services in the bundle to be activated or performed as described, we may either charge for the payment of the full bundle price or charge for the individual Services on a non-discounted individual basis. You authorize us to review your credit history and to obtain your credit report, and you agree that we may report to credit reporting agencies your failure to make payments as required by this Agreement. All fees or other amounts payable to us shall be paid in United States dollars, unless otherwise agreed to in writing or set forth in an applicable Purchase Order.

### **5.3. Overdue Payments.**

5.3.1. If any invoiced amount is not received within thirty (30) days following the due date, then, without limiting our rights or remedies, we may (a) charge interest at the rate of one and a half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, (b) suspend the Services to you until such amounts are paid in full, and charge a one-hundred dollar (\$100.00) reactivation fee, (c) accelerate your unpaid fee obligations under the remainder of the Term for the applicable Service so that all such obligations become immediately due and payable, and/or (d) condition future subscription renewals, increases in service levels or quantities, or Purchase Orders on receipt of all outstanding amounts. You agree that we may collect any amounts due pursuant to this paragraph by charging your credit card or by separate invoice without further authorization required from you.

5.3.2. You agree to bear any and all costs of collection incurred by us as a result of your late payment or nonpayment, including, without limitation, all reasonable attorneys' fees and expenses, insufficient funds charges, and any collection agency fees which we may incur, unless prohibited by law. In addition, if you dispute a credit card charge with your bank or credit card company and we receive a "chargeback" or other penalty fee, you agree to reimburse us for such chargeback or fee. You agree that we may collect any such costs of collection, chargeback, or other penalty fees by charging your credit card during the next payment cycle or by separate invoice without further authorization required from you. You will not be required to reimburse such chargeback or penalty fee if we have materially breached the terms of the Purchase Order to which the disputed payment relates or the terms of this Agreement, or if we have made an error in invoicing with respect to such disputed payment; provided, however, if you assert that we have materially breached such Purchase Order or this Agreement, you must have provided us with written notice of such alleged breach at least ten days prior to the applicable charge date, stating the basis for such breach in reasonable detail to provide us the opportunity to cure such breach prior to such charge date.

**5.4. Taxes.** Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with your purchases hereunder. If we have the legal obligation to pay or collect Taxes for which you are responsible under this Section 5.4, we will invoice you and you will pay that amount unless you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, we are solely responsible for taxes assessable against us based on our income, property and employees.

## **6. Term and Termination.**

**6.1. Term of Agreement.** This Agreement commences on the date you first accept it and continues until all Services under all Purchase Orders under this Agreement have expired or terminated.

**6.2. Term and Renewals of Services.** The term of any Service shall be as specified in the applicable Purchase Order. Except as otherwise specified in a Purchase Order, subscriptions will automatically renew for additional periods equal to the expiring Term or one (1) year (whichever is shorter), unless either party gives the other written notice of non-renewal at least forty-five (45) days before the end of the relevant Term. Pricing during any renewal term is subject to increase at our discretion in an amount of up to five percent (5%) above the applicable pricing in the prior term, unless we provide you notice of different pricing at least sixty (60) days prior to the applicable renewal term. With respect to month-to-month terms, such increase will go into effect only on an annual basis. Except as expressly provided in the applicable Purchase Order, renewal of promotional or one-time priced subscriptions will be at our applicable list price in effect at the time of the applicable renewal. You hereby authorize us to charge your credit card or bank account, as applicable, the contract amount reflecting any such increase during each such renewal term.

**6.3. Termination.** We may suspend or terminate the use of a Service and/or terminate this Agreement upon written notice if: (a) you become the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, or (b) you breach any of your obligations under this Agreement or a Purchase Order related to such Service and fail to cure such breach (if curable) within ten days following our written notice of such breach to you, or (c) you fail to pay any amounts due to us with respect to a Service within thirty (30) days of due date. Upon any termination or expiration of this Agreement, you shall immediately pay all amounts due and payable to us through the effective date of termination or expiration.

**6.4. Early Termination Fee.** As specified in the applicable Purchase Order, the Services are provided for a specified Term on noncancelable basis for the duration of the Term. You understand and acknowledge that in the event (i) we terminate the use of any Service or this Agreement pursuant to section 6.3 above or (ii) you decrease or cancel Services during the relevant Subscription Term, early termination fees shall apply. Early termination fees are in addition to any other fees or amounts owed by you for any other Services. Early termination fees shall be computed based on the monthly fees due multiplied by the number of months remaining in the then current Term. Such early termination fees will be invoiced to you in one lump sum and will be due within thirty days from the date of invoice. Early termination fees shall be deemed to be liquidated damages and not a penalty.

**6.5. Survival.** Provisions which by their terms are to survive expiration or termination of this Agreement, as well as the following sections, will survive the expiration or termination of this Agreement: Section 1 (Definitions), Section 2 (Intellectual Property Matters), Section 5 (Fees and Invoicing), Section 6 (Term and Termination), Section 7 (Confidentiality), Section 8.1 (Disclaimer of Warranties), Section 8.3 (Limitation of Liability), and Section 9 (General Contract Provisions).



**7. Confidentiality.** Except as may be required by applicable law, you shall not disclose the contents of this Agreement to any third party (other than your employees and representatives who are made aware of and agree to this restriction) without our prior written consent. In addition, except as may be required by applicable law, you may not disclose any Confidential Information regarding us. "Confidential Information" means information about our (or our suppliers') business, products, technologies, strategies, financial information, operations or activities that is proprietary and confidential, including without limitation all business, financial, technical and other information disclosed by us. Confidential Information will not include information that you can establish is in or enters the public domain without breach of these confidentiality obligations.

**8. Disclaimer of Warranties; Indemnification; Limitations of Liability.**

**8.1. Disclaimer of Warranties.** WE PROVIDE ALL SERVICES PERFORMED HEREUNDER ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTY OF ANY KIND AND WITHOUT ANY GUARANTEE OF CONTINUOUS OR UNINTERRUPTED AVAILABILITY. WE DO NOT GUARANTEE THAT (A) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT WE WILL CORRECT ALL SERVICE ERRORS, (B) THE SERVICE WILL OPERATE IN COMBINATION WITH YOUR CONTENT OR YOUR APPLICATIONS, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY US, AND (C) THE SERVICE WILL MEET YOUR REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS. YOU ACKNOWLEDGE THAT WE DO NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. WE ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. ANY BENCHMARK DATA OR BENCHMARK REPORTS ARE PROVIDED "AS IS" AND WE SHALL HAVE NO LIABILITY WITH REGARD TO THEIR ACCURACY, CURRENTNESS, OR COMPLETENESS. WE ARE NOT RESPONSIBLE FOR ANY ERRORS OR ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM YOUR CONTENT, YOUR APPLICATIONS, THIRD-PARTY APPLICATIONS, OR THIRD-PARTY CONTENT. WE DO NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE RELIABILITY, ACCURACY, COMPLETENESS, CORRECTNESS, OR USEFULNESS OF THIRD PARTY CONTENT, AND WE DISCLAIM ALL LIABILITIES ARISING FROM OR RELATED TO THIRD PARTY CONTENT. YOU ACKNOWLEDGE THAT WE MAY MAKE CHANGES OR UPDATES TO THE SERVICES OVER THE COURSE OF AN APPLICABLE TERM. WE DO NOT WARRANT, ENDORSE, GUARANTEE OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED ON OR THROUGH THE SERVICES OR ANY LINKED WEBSITE, AND WE MAKE NO GUARANTEE WITH RESPECT TO THE PERFORMANCE OR PLACEMENT OF ANY ADS OR CAMPAIGNS PLACED OR RUN AS PART OF THE SERVICES. YOU ACKNOWLEDGE AND AGREE THAT WE MAKE NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING FOR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**8.2. Indemnification.** You will indemnify, defend (with counsel reasonably acceptable to us) and hold harmless us and publishers, together with our respective subsidiaries, affiliates, parent companies, and each of their respective directors, officers, agents and employees and each of their successors and assigns, from and against any and all claims, liabilities, damages, losses, costs, expenses, fees of any kind (including without limitation reasonable attorneys' fees and expenses) incurred in connection with any claim, action or proceeding, whether brought by you or any of your licensees, licensors, franchisees, franchisors, or other representatives, or any governmental or other third party, arising from or relating to: (i) any breach by you of any representation, warranty, covenant or other obligation contained in this Agreement or Purchase Order; (ii) the violation of any rights of any third party,

including intellectual property, privacy, publicity or other proprietary rights by you or anyone using your account; (iii) our use of any information, content or materials supplied by you or at your request, (iv) the sale, license, supply or provision of your goods or services; or (v) any other claim against us as a result of or relating to any act, omission or misrepresentation by you. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter subject to indemnification by you. If we do assume the defense of such a matter, you will reasonably cooperate with us in such defense. You will not enter into any settlement or compromise of any such claim, which settlement or compromise would result in any liability to, or any admission of wrongdoing by, any indemnified person or entity, without our prior written consent.

**8.3. Limitation of Liability.** IN NO EVENT SHALL WE, OUR AGENTS, LICENSORS, OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST SAVINGS, BUSINESS INTERRUPTION, LOSS OF DATA OR INFORMATION, COSTS RELATED TO DELAYS, INTERRUPTIONS, NON-DELIVERY, OR DEFECTS IN THE TRANSMISSION OF DATA, COST OF PROCUREMENT OF SUBSTITUTE TECHNOLOGY OR SERVICES, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY ARISING OUT OF THE USE, OPERATION, OR ACCESS TO THE SERVICES EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OR PRIOR OCCURRENCE OF SUCH DAMAGES OR IF SUCH DAMAGES WERE OTHERWISE REASONABLY FORESEEABLE. THE LIMITATIONS SET FORTH HEREIN SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE. OUR MAXIMUM CUMULATIVE LIABILITY FOR DIRECT, ACTUAL AND PROVABLE DAMAGES RELATING TO OR ARISING OUT OF YOUR USE OF ANY SERVICE (REGARDLESS OF THE FORM OF ACTION) SHALL NOT EXCEED THE AMOUNT OF FEES PAID UNDER THE APPLICABLE PURCHASE ORDER FOR SUCH SERVICE DURING THE PRIOR THREE (3) MONTHS PRECEDING THE CLAIM. THE PROVISION OF THIS SECTION 8.3 SHALL NOT APPLY TO THE BREACH OF SECTION 7 (CONFIDENTIALITY) OR SECTION 8.2 (INDEMNIFICATION). THE PROVISIONS OF THIS SECTION 8.3 SHALL BE APPLICABLE TO THE MAXIMUM EXTENT PERMITTED BY LAW.

## **9. General Contract Provisions.**

**9.1. Third-Party Beneficiaries.** You understand and agree that publishers are intended third-party beneficiaries of section 2 (Intellectual Property Matters), section 8.1 (Disclaimer), section 8.2 (Indemnification), section 8.3 (Limitation of Liability) and your representations, warranties, and covenants set forth herein.

**9.2. Agency .** In the event you are purchasing advertising on behalf of another company, you represent and warrant that you have been authorized by each such company to act as its agent in all respects relating to this Agreement, including, without limitation, the making of any elections or giving of any consents. Without limiting the generality of the foregoing, you agree on behalf of each such company that such company has been made aware of, and agrees to be bound by, these Terms. You and each such company shall be jointly and severally liable for fulfillment of obligations under this Agreement, including all payment obligations.

**9.3. Export Compliance.** Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Services. You agree that such export laws govern your use of the Services (including technical data) and any Services deliverables provided under this Agreement, and you agree to comply with all such export laws and regulations (including “deemed export” and “deemed re-export” regulations). You agree that no data, information, software programs and/or

materials constituting or resulting from Services (or direct product thereof) will be exported or made available to, directly or indirectly, any U.S. government denied-party or U.S. government embargoed country or otherwise in violation of these laws.

- 9.4. Anti-Corruption.** You agree that you have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of our employees or agents in connection with this Agreement or any Purchase Order. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If you learn of any violation of the above restriction, you will use reasonable efforts to promptly notify us at [generalcounsel@workwave.com](mailto:generalcounsel@workwave.com).
- 9.5. Entire Agreement and Order of Precedence.** This Agreement and all related Purchase Orders represent the entire agreement between you and us regarding your use of the Services, and supersede all prior and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter thereof. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (a) the applicable Purchase Order (including any supplemental amendments, addendums, schedules, exhibits, or appendices attached thereto or executed in connection therewith), (b) any product-specific additional terms and conditions (with any more product-specific additional terms and conditions superseding any more general additional terms and conditions), (c) this Agreement, and (d) any published documentation or service descriptions.
- 9.6. Severability and Waivers.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect. No failure or delay by either party in exercising any right under any provision of this Agreement or any Purchase Order will constitute a waiver of that right.
- 9.7. Amendments.** You acknowledge that internet-related industries are continually evolving and changing, and you agree that we have the right to establish terms for the continued use of the Services. Accordingly, we reserve the right to modify the terms of this Agreement from time to time with or without notice to you. Your use of the Services constitutes agreement to any such modification. You may not modify or amend this Agreement without our prior written consent.
- 9.8. Assignment.** You may not assign this Agreement, by operation of law or otherwise, without our prior express written consent. This Agreement inures to the benefit of and is binding upon the parties, and their permitted successors, assigns, and legal representatives.
- 9.9. Relationship of the Parties.** The parties are independent contractors, and this Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 9.10. Governing Law and Venue.** The Agreement shall be construed and interpreted in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles. The parties agree that the sole venue and jurisdiction for disputes arising from the Agreement shall be the appropriate state or federal court located in New York, New York, and each party agrees not to object to venue based on forum non conveniens or any other basis. Each party waives any right they may have to participate in any class, group, or representative proceeding, and waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.
- 9.11. Force Majeure.** Neither of us shall be responsible for failure or delay of performance if caused by an act of war, act of terrorism, sabotage, act of God, electrical, internet, or telecommunication outage, government restrictions (including the denial or cancellation of any export, import or other license), or

other event outside the reasonable control of the obligated party, provided that such failure or delay shall be excused only for so long as the affected party is using reasonable efforts to cure, correct, and/or mitigate the effect of a force majeure event.

**9.12. Notice.** Except as otherwise specifically authorized herein, all notices required to be sent hereunder shall be in writing and may be delivered by email, overnight courier, or certified mail, and shall be deemed to have been given (a) on the date sent by email, (b) on the date it was delivered by courier, or (c) five (5) business days following posting in the case of delivery by certified mail return receipt requested. Notices to you shall be sent to the attention of those persons you have designated in an applicable Purchase Order, through the Service, or otherwise. Notices to us shall be sent to the attention of the General Counsel at our address as listed from time to time on our website or to [generalcounsel@workwave.com](mailto:generalcounsel@workwave.com). For notices that are directed to you as part of our general customer base, we may give notice by means of a general notice on the Service or by email to your e-mail address on record in our account information.

## **10. California Privacy Law**

The parties acknowledge that for the purposes of the CCPA, we will not (a) retain, use or disclose Your Content for any purpose other than for the specific purpose of performing the Services specified in the Agreement or (b) sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally, in writing, or by electronic or other means, Your Content to another business or third party for monetary or other valuable consideration. Without in any way limiting the foregoing, the parties agree that we are a “Service Provider” under the California Consumer Privacy Act, Cal. Civ. Code § 1798.100, et seq. & § 1798.140(v) and that nothing about the Agreement or the Services involves a “selling” or a “sale” of Your Content under Cal. Civ. Code §1798.140(t)(1).

The parties further agree that, you are responsible for responding to any requests from California residents pursuant to the CCPA, and that if we receive any such requests, we shall direct the requester to contact you directly.

[Rev Date: 11/26/19]