

## MASTER SERVICES AGREEMENT

This Master Services Agreement sets forth the terms and conditions governing the use of our Services. Additional terms and conditions specific to an applicable Service you have purchased may also apply 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 Service specific terms and conditions, and that such additional terms and conditions are binding and incorporated herein by reference. As used herein, the term “Agreement” means this Master Services Agreement and such additional Service specific terms and conditions.

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 and you may not use the Services. In addition, you may not access the Services if you or your users are our competitor, except with our prior written consent.

You acknowledge that the software-as-a-service and internet-related industries are continually evolving and changing, and you 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 “Consulting Services”** shall mean the consulting services that may be provided by us pursuant to an applicable Purchase Order, including, without limitation, data conversions, customizations, program modifications, training, or other related consulting services.

**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 “Marketing Services”** shall mean the marketing services that may be provided by us pursuant to an applicable Purchase Order, including, without limitation, website development and hosting, search engine marketing and search engine optimization, and other non-software product marketing services.

**1.5. “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.

**1.6 “Purchase Order”** shall mean the applicable purchase order agreement entered into with respect to the Service to be provided by us to you.

**1.7. “Service”** shall mean the service to be provided by us to you pursuant to an applicable Purchase Order, including, without limitation, the service of providing you with access to and the ability to use our Software Products, Marketing Services, and any Consulting Services to be provided by us to you.

**1.8.** “**Software Products**” shall mean the software products and applications that we make available for your use as part of the Service pursuant to a Purchase Order, including, without limitation, all software code, designs, features, user interfaces, and content contained therein.

**1.9.** “**Subscription Term**” shall mean the term of Service set forth in the applicable Purchase Order.

**1.10.** “**Users**” shall mean those employees, contractors, and end users, as applicable, authorized by you or on your behalf to use the Services in accordance with this Agreement and your Purchase Order. Competitors shall not be permitted users without our prior written consent.

**1.11.** “**Work Product**” shall mean 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 Consulting Services performed by us, or our designee, and provided to you pursuant to any applicable Purchase Order.

**1.12.** “**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.

**1.13.** “**Your Content**” means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material (other than Your Applications), in any format, provided by you or your Users that reside in, or run on or through, the Services.

**1.14.** “**CCPA**” means the California Consumer Privacy Act, Cal. Civ. Code § 1798.100, et seq.

## **2. Use of Services.**

**2.1. Subscriptions.** Subject to performance of your obligations hereunder and the applicable Purchase Order, (a) we will provide the Services specified in the Purchase Order in accordance with the terms hereof for the applicable Subscription Term set forth in such Purchase Order, and (b) you have the non-exclusive, non-assignable, royalty free, worldwide limited right to access and use the Services solely for your internal business operations during such Subscription Term. You may allow your Users to use the Services for this purpose and you are responsible for your Users’ compliance with this Agreement and the Purchase Order. Your usage of Services is limited by the usage basis specified in the Purchase Order. The usage basis may vary by the applicable Service, and may include, but is not limited to, usage limited by number of concurrent Users, number of unique Users, unique office locations, office branches, technicians, unique hardware devices or other unique identifiers as described in the applicable Purchase Order. If the usage basis is limited by number of concurrent Users, only that number of concurrent subscriptions purchased in the applicable Purchase Order may be logged in to such Service at any one time. If the usage basis is limited by number of unique Users, such unique Users shall include only individual persons employed by you who possess a valid username and password with which to access the Services. User names and passwords assigned to each User shall only be used by one individual named User at any time and shall not be shared or used by other personnel. You acknowledge and agree that we have the right to modify access right credential requirements from time to time upon reasonable notice to you. Your Services may include training and/or support if set forth in the additional terms and conditions relating to the specific Service and/or in an applicable Purchase Order.

**2.2. Additional Subscriptions.** Unless otherwise provided in the applicable Purchase Order, (a) Services are purchased as subscriptions, (b) additional subscriptions (e.g. users) to a Service may be added during a Subscription Term at the same pricing as the underlying subscription pricing (subject to any applicable tiered pricing), prorated for the portion of the Subscription Term remaining at the time the subscriptions are added, and (c) any subscriptions added to a Service will terminate on the same date as the underlying subscriptions to

such Service. In addition, we reserve the option to require that any Services added pursuant to subsequent Purchase Orders under this Agreement shall end on the same date as the first Service acquired under this Agreement, and to prorate fees through such end date for any subsequent Service.

**2.3. License to Host Your Content and Your Applications.** To enable us to provide you and your Users with the Services, you grant us the right to use, process, store, and transmit, in accordance with this Agreement, Your Content and Your Applications for the duration of the Subscription Term plus any applicable post-termination period in accordance with Section 8.5. If Your Applications include third-party programs, you acknowledge that we may allow providers of those third-party programs to access the Services, including Your Content and Your Applications, as required for the interoperation of such third-party programs with the Services. We will not be responsible for any use, disclosure, modification or deletion of Your Content or Your Applications resulting from any such access by third-party program providers or for the interoperability of such third-party programs with the Services.

**2.4. Third-Party Technology and Third-Party Content.** The Services may contain separate third-party technology and content. You agree that your subscription allows you to 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. You acknowledge that we may make payments to or receive payments from such third-party providers. 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. You acknowledge that we may utilize third-party partners or our affiliates to process Your Content, and you hereby consent to such third-party processing. Our contracts with third parties outline the appropriate use and handling of Your Content and prohibit them from using any of Your Content for purposes unrelated to the service they are providing. These third parties are authorized to use Your Content only as necessary to provide the services. We require vendors to maintain the confidentiality of the information we provide to them.

2.4.1. If you purchase a product that uses Google Maps, you are further are bound by the [Google Maps/Google Earth Additional Terms of Service](#) (including the [Google Privacy Policy](#)).

2.4.2. IF YOU PURCHASE GPS DEVICES AND/OR SERVICES, YOU UNDERSTAND AND AGREE THAT: (1) YOU HAVE NO CONTRACTUAL RELATIONSHIP WITH THE DEVICE PROVIDER OR THE UNDERLYING WIRELESS SERVICE CARRIER, (2) YOU ARE NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT WE HAVE ENTERED OR MAY ENTER INTO WITH ANY DEVICE PROVIDER OR UNDERLYING CARRIER, (3) THAT THE DEVICE PROVIDER OR UNDERLYING CARRIER HAS NO LIABILITY OF ANY KIND TO YOU, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, (4) THAT DATA TRANSMISSIONS AND MESSAGES MAY BE DELAYED, DELETED OR NOT DELIVERED, AND 911 OR SIMILAR EMERGENCY CALLS MAY NOT BE COMPLETED, (5) THE DEVICE PROVIDER OR UNDERLYING CARRIER CANNOT GUARANTEE THE SECURITY OF WIRELESS TRANSMISSIONS AND WILL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING TO THE USE OF THE DEVICES OR

SERVICES; AND (6) THE DEVICE PROVIDER AND/OR UNDERLYING CARRIER MAY USE, AND RETAIN RIGHTS IN AND TO, DATA COLLECTED BY THEIR RESPECTIVE DEVICES AND SERVICES IN ACCORDANCE WITH THEIR POLICIES AND PRACTICES, NONE OF WHICH ARE CONTROLLED BY WORKWAVE, AND THAT, BY USING SUCH DEVICES AND SERVICES, YOU CONSENT TO THE SAME.

## **2.5. Your Responsibilities.**

2.5.1. You will (a) be responsible for your Users' compliance with this Agreement and applicable Purchase Orders, (b) provide your Users with computer equipment, telecommunications, data connections, and other equipment necessary to access the internet and use the Services, (c) maintain confidentiality of user names, passwords, and account information, and use commercially reasonable efforts to prevent unauthorized use of the Services through your equipment, (d) notify us promptly after becoming aware of any unauthorized use of the Services, (e) use the Services in accordance with this Agreement and applicable Purchase Orders, (f) comply with terms of service of any third-party applications you may use with the Services, (g) be responsible for the accuracy, quality and legality of Your Content and the means by which you acquired and use Your Content within the Service, and (h) timely provide any notices and obtain any consents required to be provided or obtained by you under applicable law, and otherwise comply with all laws applicable to you, related to your use of the Services, including, without limitation, to the collection, processing, and storage of Your Content.

2.5.2. You will not (a) make any Service available to, or use any Service for the benefit of, anyone other than you or your Users, (b) sell, resell, license, sublicense, distribute, rent or lease any Service, or include any Service in a service bureau or outsourcing offering, or otherwise attempt to market the Services for your own benefit or the benefit of any third-party, (c) 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, (d) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (e) attempt to gain unauthorized access to any Service or its related systems or networks, (f) permit direct or indirect access to or use of any Service in a way that circumvents a contractual usage limit, (g) copy a Service or any part, feature, function or user interface thereof, (h) 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; (i) remove or modify any program markings or any notice of our or any third-party's proprietary rights, or (j) 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.

2.5.3. 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) supports any person designated by the United States government as a foreign terrorist pursuant to section 219 of the Immigration and Nationality Act or otherwise in violation of any United States export control restrictions, or otherwise violate applicable laws, ordinances or regulations. 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.

## **2.6. Additional Usage Limits.** You acknowledge that we may establish certain practices and limits

concerning your use of the Services (or part thereof), including the maximum number of days that Your Content will be actively retained by or made available via the Services, the maximum number of uploads, posts, or transmissions that may be sent from or received by you via the Services, the maximum size of any data, individually or collectively, that may be sent from or received by you via the Services, the maximum storage space that will be allotted to you, the length of time before an inactive User is automatically logged off of the subscription, and the maximum number of times (and the maximum duration for which) you may access the Services in a given period of time. Such usage limits will be set forth in an applicable Purchase Order, in user, technical, or other Service documentation provided to you, or in notices provided by e-mail or through the Service. If additional usage charges apply with respect to exceeding any such limitation, you agree to pay such additional charges and you further agree that we may collect such amount by charging your credit card during the next payment cycle or by separate invoice without further authorization required from you.

**2.7. Service Availability.** You acknowledge that the Service may be interrupted from time to time for both scheduled and emergency updates and maintenance. Whenever possible, we will notify you in advance through the Service of the time, date and expected length of time when the Service will be unavailable. It is anticipated that the Service will be brought down once a week for a period of up to two (2) hours, for regular maintenance. Whenever possible, in the event that the Service becomes unavailable for an extended period of time due to technical difficulties, we will notify you by email or other available means of the status and expected time of resolution.

**2.8. Geocoding and Geolocation.** You understand and agree that if you purchase routing and route management related Services, such Services will require us to geocode your databases in order to properly function, and you hereby expressly give us your permission to geocode such databases once the applicable Purchase Order has been signed. In addition, to the extent that any of our Services collect geolocation data as part of the use of such Services, you hereby agree and consent to the collection and storage of such geolocation data.

**2.9. GPS Devices.** You understand and agree that if you purchase GPS related Services, your GPS devices will be shipped activated and need to be installed as soon as possible. You further understand and agree that delays in installing units will not stop or defer monthly subscription for airtime and no credit(s) will be issued for failure to install units in a timely manner. Unit price for GPS devices does not include tax, shipping, insurance or handling, unless otherwise specified in an applicable Purchase Order. Furthermore, if WorkWave elects, at any time, to provide you with a replacement GPS device, WorkWave will issue a return merchandise authorization number and e-mail a pre-paid return label for to you to send the original unit back to us. If the original GPS device has been lost, stolen, or damaged, or if for any reason the original GPS device is not returned to WorkWave within thirty (30) days of the replacement GPS device being issued, or if the originalGPS device was rendered obsolete by carrier network changes or other technological developments, you will be subject to a \$99.95 per-device replacement fee.

**2.10. Consulting Services.** Consulting Services may be provided in accordance with an applicable Purchase Order. Consulting Services may be delivered remotely or at your site. If Consulting Services are delivered at your site, in addition to the payment of applicable Consulting Services fees, you shall reimburse us for all reasonable travel and out-of-pocket expenses incurred in connection with the provision of such Consulting Services. We shall retain all ownership rights to any and all Work Product resulting from or arising out of Consulting Service excluding, any pre-existing technology or materials supplied by you for incorporation into such Work Product. We grant you a non-exclusive, non-transferable, non-assignable license to use such Work Product, solely to the extent necessary to permit you to use the Work Product in connection with the Services for the applicable Subscription Term. You acknowledge that nothing in this Agreement shall restrict or limit us from performing similar services for any third-party. You agree to cooperate and work in good faith with us to enable us to timely perform Consulting Services, including, without limitation, by timely responding to our inquiries, providing reasonably requested materials, and providing access to facilities, equipment, and personnel as shall be reasonably required.

**2.11. Marketing Services.** Marketing Services may be provided in accordance with an applicable Purchase Order. You acknowledge that nothing in this Agreement shall restrict or limit us from performing similar services for any third-party. You agree to cooperate and work in good faith with us to enable us to timely perform Marketing Services, including, without limitation, by timely responding to our inquiries, providing reasonably requested materials, and providing access to personnel as shall be reasonably required.

**2.12. 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.

**2.13. Competing Services.** You agree that during the period that we are providing you with access to our Software Products under any Purchase Order and for one (1) year thereafter, you shall not develop any commercially available product or service that competes with our Software Products, or assist any third-party in developing such competing product or service.

**2.14. Non-solicit.** You agree that during the period that we are providing you with access to our Software Products under any Purchase Order and for one (1) year thereafter, you shall not directly or indirectly employ or engage in any capacity, or solicit or attempt to employ or engage in any capacity, any employee of ours; provided, however, that hiring or engaging any employee of ours who has responded to a publicly available general advertisement without any other direct or indirect solicitation by you shall not be deemed a violation of this provision.

**2.15. Bundled Services.** You agree that in the event you are provided with any bundled services from WorkWave, unless otherwise specified in an applicable Purchase Order, the terms and limitations of this Agreement apply to all products or services included in the bundle, including any free products or services, if applicable.

**2.16. 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.

**2.17. Electronic Communications.** By executing a Purchase Order and entering into our product applications (or otherwise providing to us) your email address or mobile phone number, you agree that you consent to being contacted by email, text or other electronic means, for informational, transactional or any other purpose related to your purchase, whether via the product or otherwise. If you provide your express consent to receiving marketing communications from us, you may withdraw your consent at any time.

### **3. Content.**

**3.1. 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, record, process, transmit, display,

view, print or otherwise use Your Content only to the extent necessary to provide the Services to you. We may access your accounts, including Your Content, to provide the benefit of the Services, respond to service or technical problems, confirm or enforce compliance with or resolve disputes relating to the terms of this Agreement, or comply with applicable law. 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 certain user registration and other 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.

**3.2. Control of Your Content.** You control the inclusion and amount of Your Content that is stored in our Software Products through the use of the Services. You may access Your Content at any time through the use of the Services. You may correct, amend, add to or delete any part of Your Content by making any required changes directly through use of the Services. 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. In the event you request customer support which requires us to access your database, you acknowledge and agree that by making such request, you are authorizing us to access your login credentials and database in order to effectuate such customer support. In addition, you understand and acknowledge that we may disclose Your Content and your contact and account information, to courts or law enforcement authorities, if such disclosure is required to respond to a subpoena or court order, bring legal action or pursue other relief if you or a third party are or may be: (i) violating our terms and conditions of use; (ii) causing injury or other harm to, or otherwise violating our property or other legal rights, or those of other users or third parties; or (iii) violating federal, state, local, or other applicable law. Upon your request during any applicable Subscription Term and provided all fees due and payable have been paid, we will provide you with a backup of Your Content, at the then-current fee and in such medium or format as offered by us at that time.

**3.3. 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 our Software Products, 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.

**3.4. 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. We use cookie files on our websites that collect limited personal data from users. Our Privacy Policy (which is posted on our websites) explains the nature of the cookies we use in our websites, and is amended from time to time. Our software products also use cookies and/or locally stored data to improve your experience, which collect data about your settings, login information (including e-mail address), and your application preferences. In addition, some of our product applications also use Google Analytics and other third-party services that set a cookie in order to evaluate use of our product applications, compile analytics reports for

us. and assist in our ability to optimize the performance of our products. You consent to the use of those cookies and/or locally stored data files. You are required to notify your personnel who use our Services that we use cookies and direct them to our Privacy Policy for further information.

#### **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. Reservation of Rights.**

**5.1. Reservation of Rights.** Except for the limited rights expressly granted to you hereunder, we reserve all right, title and interest in, to and under the Software Products, any Work Product, and all related intellectual property rights inherent therein ("WorkWave IP"). You acknowledge and agree that (a) we are the exclusive owner (or authorized licensee) of all right, title and interest in, to and under the WorkWave IP, 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 (b) we own and hereby retain all right, title, and interest in, to and under any and all improvements, modifications releases, updates, upgrades and derivative works of such WorkWave IP.

**5.2. Feedback.** In the course of using the Services, 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.

## **6. Trademarks and Promotion.**

**6.1. Our Marks.** WorkWave® and the other trademarks, trade names, service marks, and logos associated with the Services or parts thereof (collectively, “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.

**6.2. Your Marks.** During the Subscription Term, you agree that we may refer to you as our customer and you hereby grant us the right to use your trademarks, tradenames, trade symbols, and logos (collectively, “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.

## **7. Fees and Invoicing.**

**7.1. 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-cancelable 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 Subscription Term.

### **7.2. Invoicing and Payment.**

#### 7.2.1

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 Subscription 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 \$25.00 per transaction. You are responsible for providing complete and accurate billing and contact information to us and notifying us of any changes to such information. 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.

#### 7.2.2

Unless otherwise stated in the Purchase Order, invoiced charges are due upon receipt. Unless otherwise stated in the Purchase Order, upfront billing consists of any one-time initial fees and/or the initial month of recurring billing for Services. Any one-time initial fees and/or the initial month of recurring billing will be invoiced and charged upon execution of an applicable Purchase Order. If the Purchase Order

affects pricing related to any orders under any agreements or orders between the parties entered into prior to the date of such Purchase Order, such adjustment will be taken into account upon execution of such Purchase Order.

7.2.3. If you are receiving a data conversion in connection with your Service, recurring billing (following the upfront billing) will start on the shorter of 30 days after the delivery date of the final data conversion or 60 days following the date of execution of the applicable Purchase Order. The start date of recurring billing will not be delayed by any post-conversion cleanup efforts.

7.2.4. 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.

7.2.5. 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.

### **7.3. Overdue Payments.**

7.3.1. 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 Subscription 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.

7.3.2. 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.

**7.4. 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 7.4, 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.

## **8. Term and Termination.**

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

**8.2. Subscription Term and Renewals.** The Subscription Term 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 Subscription 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 Subscription 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.

**8.3. 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.

**8.4. Early Termination Fee.** As specified in the applicable Purchase Order, the Services are provided for a specified Subscription Term on noncancelable basis for the duration of the Subscription Term. You understand and acknowledge that in the event (i) we terminate the use of any Service or this Agreement pursuant to section 8.3 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 Subscription 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.

**8.5. Your Content Portability and Deletion.** Upon request by you made within thirty (30) days after the effective date of termination or expiration of any Service or this Agreement, and provided all fees due and payable have been paid, we will provide you with a backup of Your Content, at the then-current fee, in such medium or format as we determine. You agree that after such 30-day period we have no obligation to maintain or provide any of Your Content. 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.

**8.6. 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 3 (Content), Section 5 (Reservation of Rights), Section 6 (Trademarks and Promotion), Section 7 (Fees and Invoicing), Section 8 (Term and Termination), Section 9 (Confidentiality), Section 10.2 (Disclaimer of Warranties), Section 10.3 (Exclusive Remedy), Section 10.5 (Limitation of Liability), and Section 11 (General Contract Provisions).

## **9. Confidentiality.**

**9.1. Definition of Confidential Information.** “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. For avoidance of doubt, your Confidential Information includes Your Content; our Confidential Information includes the Services; and Confidential Information of each party includes the terms and conditions of this Agreement and all Purchase Orders (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.

**9.2. Use of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (a) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (b) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Purchase Order to any third party other than its affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its affiliate, legal counsel or accountants will remain responsible for such affiliate’s, legal counsel’s or accountant’s compliance with this “Confidentiality” section. Notwithstanding the foregoing, we may disclose the terms of this Agreement and any applicable Purchase Order to a subcontractor or third-party to the extent necessary to perform our obligations to you under this Agreement, under terms of confidentiality materially as protective as set forth herein.

**9.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## **10. Warranty; Indemnification; Limitations of Liability.**

**10.1. Warranty.** We warrant that Services relating to use of our Software Products will perform in all material respects as described in our published documentation and service descriptions. If Services relating to use of our Software Products were not performed as warranted, you must promptly provide written notice to us that describes the deficiency in the Services. All Marketing Services and Consulting Services are provided on an "as is" and "as available" basis, without any warranty of any kind and without any guarantee of continuous or uninterrupted availability. Unless otherwise set forth in an applicable Purchase Order, GPS devices are sold without warranty.

**10.2. Disclaimer of Warranties.** 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. WE ARE NOT RESPONSIBLE FOR ANY ERRORS OR ISSUES IN ANY VERSION OR RELEASE OF A SOFTWARE PRODUCT THAT YOU ARE CONTINUING TO USE WHICH HAS BEEN SUPERSEDED BY A MORE RECENT VERSION OR RELEASE THAT HAS BEEN MADE AVAILABLE BY US, OR THAT RESULT FROM YOUR FAILURE TO TAKE ANY CORRECTIVE ACTION AS REASONABLY DIRECTED BY US, OR FROM ANY MODIFICATIONS MADE TO OUR SOFTWARE PRODUCTS BY YOU, ANY THIRD-PARTY, OR BY US TO YOUR SPECIFICATIONS. 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. IN ADDITION, YOU ASSUME ALL RISKS RELATING TO YOUR PURCHASE AND SALES TRANSACTIONS WHEN USING THE SERVICES. YOU ACKNOWLEDGE THAT WE OFFER THE SERVICES ON A SOFTWARE AS A SERVICE BASIS, AND ACCORDINGLY WE MAY MAKE CHANGES OR UPDATES TO THE SERVICES OVER THE COURSE OF AN APPLICABLE SUBSCRIPTION TERM AS A RESULT OF WHICH SPECIFIC FEATURES, FUNCTIONS, OR COMPONENTS MAY BE ADDED, ENHANCED, IMPROVED, SUBSTITUTED, DISCONTINUED, OR OTHERWISE MODIFIED. YOU AGREE THAT YOUR SUBSCRIPTION IS NOT CONTINGENT ON THE DELIVERY OF ANY FUTURE FUNCTIONALITY OR FEATURES, OR DEPENDENT ON ANY VERBAL OR WRITTEN PUBLIC COMMENTS MADE BY US REGARDING FUTURE FUNCTIONALITY OR FEATURES.

**10.3. Exclusive Remedy.** FOR ANY BREACH OF WARRANTY, YOUR EXCLUSIVE REMEDY AND OUR ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY. IF WE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, YOU OR WE MAY TERMINATE THE DEFICIENT SERVICES AND WE WILL REFUND TO YOU THE FEES FOR THE TERMINATED SERVICES THAT YOU PRE-PAID TO US FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION. TO THE EXTENT NOT PROHIBITED BY LAW, THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS, OR FOR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**10.4. Indemnification.**

10.4.1. **Indemnification.** You will defend us against any claim, demand, suit or proceeding made or brought against us by a third party alleging that any of Your Content infringes or misappropriates such third party’s intellectual property rights, or that your use of the Services or Your Content violates any third-party agreement or applicable law (each a “Claim Against Us”), and you will indemnify us from all costs, damages,

settlements, liabilities, obligations, penalties, fines and other expenses (including, without limitation, reasonable attorney's fees and expenses) incurred by or awarded against us, arising out of, relating to, or as a result of, a Claim Against Us, provided we (a) promptly give you written notice of the Claim Against Us (provided any delay shall not relieve your indemnification obligation hereunder except to the extent such delay materially prejudices your ability to defend such Claim Against Us), (b) give you sole control of the defense and settlement of the Claim Against Us (provided that you may not settle any Claim Against Us unless such settlement consists solely of the payment of money damages by you and unconditionally releases us of all liability, and provided further that we shall have the right to control the defense of such Claim Against Us if such Claim Against Us seeks injunctive action or other non-monetary damages), and (c) provide you with reasonable cooperation and assistance (with any out of pocket expenses to be borne by you). You agree that we may, at our sole expense, engage one outside counsel to participate in a consultative capacity in any Claim Against Us in which you control the defense.

10.4.2. **Exclusive Remedy.** This Section 10.4 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 10.4.

10.5. **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 SOFTWARE PRODUCTS 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. THIS SECTION 10.5 SHALL NOT APPLY TO THE BREACH OF SECTION 9 (CONFIDENTIALITY) OR SECTION 10.4 (INDEMNIFICATION).

## 11. General Contract Provisions.

11.1. **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.

11.2. **Anti-Corruption.** You represent and warrant that you have never been subject to any disciplinary action relating to fraud or corruption by any governmental authority, and that you have never been the subject of litigation alleging any violation of the Foreign Corrupt Practices Act of 1977 (the "FCPA"). You will not, in violation of the FCPA or similar U.S. or foreign anti-corruption laws, offer or give any gratuity to induce any person or entity to enter into or perform under this Agreement. You will not, in the conduct of your performance under this Agreement, and with regard to any funds, assets or records relating thereto, offer, pay, give or promise to pay or give, directly or indirectly, any payment or gift of any money or thing of value to (i) any non-U.S.

governmental official to influence any acts or decisions of such official or to induce such official to use his or her influence with the local government to effect or influence the decision of such governmental official in order to assist a party in its performance of its obligations under the Agreement or to otherwise benefit a party under this agreement; (ii) any political party or candidate for public office for such purpose; or (iii) any person, if you know or have reason to know that such money or thing of value shall be offered, promised, paid or given, directly or indirectly, to any official, political party or candidate for such purpose. 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).

**11.3. 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.

**11.4. 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.

**11.5. Amendments.** You acknowledge that the software-as-a-service and 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.

**11.6. Assignment and No Third-Party Beneficiaries.** 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. No other person has any right, interest, or claim or is entitled to any benefits under, this Agreement as a third-party beneficiary or otherwise.

**11.7. 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.

**11.8. 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.

**11.9. 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.

**11.10. 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.

## **12. 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, 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: 5/12/2021]