

nodewave - Agreement

Terms of Service Agreement

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY CLICKING “ACCEPTED AND AGREED,” EACH CUSTOMER AGREES TO THESE TERMS OF SERVICE.

These Terms of Service constitute an agreement (this “Agreement”) by and between Nodewave Corporation, an Online Service and Software provider (“Nodewave”) and each customer of Nodewave’s Online Service or Software (“Customer”).

This Agreement is between the Customer party accepting this agreement and Nodewave and consists of the below terms and conditions, the Acceptable Use Policy, the Services Terms, the SLAs, and the pricing and related terms listed on the Portal for your Subscription. It is effective on the date we provide you with confirmation of your first order. Key terms are defined in Section 1.

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1. Definitions

- a) **“Account”** refers to the Service plans and features selected by Customer through Nodewave’s customer portal at the time of enrollment and accepted by Nodewave, as such plans and features may change by mutual consent of the parties, as recorded by Nodewave through such portal.
- b) **“Affiliate”** means any legal entity that a party owns or that owns a party, with a 50% or greater interest.
- c) **“AUP”** refers to Nodewave’s acceptable use policy, lists prohibited uses of Services, and is published at <http://www.nodewave.com/legal/AUP> or at an alternate site that we identify, as such policy may change from time to time.
- d) **“Authorized Representative”** refers to legally authorized representative is any individual person, judicial body or other body of individuals who are authorized under state and federal laws and jurisdiction of this agreement to consent on behalf of a legally designated person such as the Nodewave or the Customer.
- e) **“Data Policy”** refers to Nodewave’s data management and security policy, and is published at <http://www.nodewave.com/legal/DataPolicy> or at an alternate site that we identify, as such policy may change from time to time.
- f) **“Effective Date”** refers to the date of commencement of the Service as listed in Customer’s Account.
- g) **“End User”** means any user of the Service, or any person permitted by the Customer to access Customer Data hosted in the Service or otherwise use the Services.
- h) **“Materials”** refers to written and graphical content provided by or through the Service, including, without limitation, text, photographs, illustrations, and designs, whether provided by Nodewave, another customer of the Service, or any other third party.
- i) **“Portal”** refers to Nodewave’s site that functions as a point of access to information, and is published at <http://www.nodewave.com> or at an alternate site that we identify.
- j) **“Preview”** refers to Products, Services or Functionalities which are stated to be unstable or under-test or still under development, these products, services or functionalities may specified as but not limited to: Early-Access, Unstable, Test, Testing, Development, Preview, Alpha, Beta, Gamma, Release-Candidate or having a version number below v1.0 (such as v0.9) or any other common term defining a product, service or functionality which is unstable, under-test or under-development.
- k) **“Privacy Statement”** refers to Nodewave’s privacy statement, and is published at <http://www.nodewave.com/legal/Privacy> or at an alternate site that we identify, as such policy may change from time to time.
- l) **“Customer Data”** refers to data in electronic form input or collected through the Service by or from Customer or End Users, including all text, software, or multi-media files, that are provided to us by, or on behalf of, you through your use of the Services or end users use of the Services.
- m) **“Service”** refers to Nodewave’s online service or Nodewave’s software. The Service includes such features as are set forth on Nodewave’s portal, as Nodewave may change such features from time to time, in its sole discretion.
- n) **“SLA”** refers to Nodewave’s service level agreement, means the commitments we make regarding delivery or performance of the Service, and is published at <http://www.nodewave.com/legal/SLA> or at an alternate site that we identify, as such service level agreement may change from time to time.
- o) **“Software”** means Nodewave software we provide to you as part of the Service for use with the Service.

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- p) **“Subscription”** means an enrollment for Services for a defined Term as specified on the Portal. You may purchase multiple Subscriptions, which may be administered separately.
- q) **“Term”** means the duration of a Subscription (for example, 30 days or 12 months).
- r) **“we”** and **“us”** means Nodewave Corporation and its affiliates, as appropriate.
- s) **“you”** and **“your”** means the entity signing this agreement to use the Service.

2. Use of Services

a) Right to Use

We grant you the right to access and use the Services and to install and use Software included with your Subscription, as further described in this agreement. You may create and maintain a Customer Solution, which you may permit third parties to access and use provided the Customer Solution adds material functionality to the Services and is not primarily a substitute for the Services. We reserve all other rights.

b) Manner of Use

You may use the Product only in accordance with this agreement. You may not reverse engineer, decompile, disassemble or work around technical limitations in the Product, except where applicable law permits it despite this limitation. You may not disable, tamper with or otherwise attempt to circumvent any billing mechanism that meters your use of the Product. You may not rent, lease, lend, resell, transfer, or sublicense any Product to or for third parties.

c) Acceptable Use Policy

You will comply with the AUP. In the event of Customer's material breach of the AUP, including without limitation any copyright infringement, we may suspend or terminate your access to the Service, in addition to such other remedies as we may have at law or pursuant to this Agreement. Neither this Agreement nor the AUP requires that we take any action against you or any other customer for violating the AUP, but we are free to take any such action we sees fit.

d) End Users

You control access by your End Users, and you are responsible for their use of the Product in accordance with this agreement. For example, you will ensure End Users comply with the Acceptable Use Policy.

e) Customer Data

You are solely responsible for the content of your Customer Data. You will secure rights in Customer Data necessary for us to provide you the Services without violating the rights of any third party, or otherwise obligating Nodewave to you or to any third party. We do not and will not accept any obligations set forth in any separate license or other agreement that may apply to Customer Data or your use of the Products.

f) Non-Nodewave Products

- i. We may make Non-Nodewave Products available to you through the Portal or other means. The use of a Non-Nodewave Product will be governed by separate terms between you and the third party providing that Non-Nodewave Product. For your convenience, We may include charges for the Non-Nodewave Product as part of your bill for the Services. We, however, assumes no responsibility or liability whatsoever for the Non-Nodewave Product.
- ii. You are solely responsible for any Non-Nodewave Product that you install or use with the Services. We are not a party to and are not bound by any terms governing your use of Non-Nodewave Product.
- iii. If you install or use any Non-Nodewave Product with the Services, then you, not Nodewave, direct and control the installation and use of it in the Services through your actions (for example, through your use of application programming interfaces and other technical means that are part of the Services). We will not run or make any copies of such Non-Nodewave Product outside of our relationship with you.

- iv. If you install or use any Non-Nodewave Product with the Services, you may not do so in any way that would subject our intellectual property or technology to obligations beyond those included in this agreement.

g) Responsibility for your accounts

You are also responsible for maintaining the confidentiality of any non-public authentication credentials associated with your use of the Services. You must promptly notify our customer support team about any possible misuse of your accounts or authentication credentials, or any security incident related to the Services.

h) Updates

We may make changes to the Services from time to time. We will provide you with one month prior notice before removing any material feature or functionality (excluding Previews), unless security, legal or system performance considerations require an expedited removal.

i) Preview releases

We may make available Previews. PREVIEWS ARE PROVIDED "AS-IS," "WITH ALL FAULTS," AND "AS AVAILABLE," AND ARE EXCLUDED FROM THE SLAS AND LIMITED WARRANTY. Previews may be subject to reduced or different security and privacy commitments, as further explained in the Privacy Statement and any additional notices provided with the Preview. We may change or discontinue Previews at any time without notice. We also may choose not to release a Preview into "General Availability."

j) Materials, Software, & IP

i. Materials

Customer recognizes and agrees that: (i) the Materials are the property of Nodewave or its licensors and are protected by copyright, trademark, and other intellectual property laws; and (ii) Customer does not acquire any right, title, or interest in or to the Materials except the limited and temporary right to use them as necessary for Customer's use of the Service.

ii. IP in General

We retains all right, title, and interest in and to the Service, including without limitation all software used to provide the Service and all logos and trademarks reproduced through the Service, and this Agreement does not grant Customer any intellectual property rights in or to the Service or any of its components.

3. Security, privacy, and Data protection

a) Security

We maintain appropriate technical and organizational measures, internal controls, and data security routines intended to protect Customer Data against accidental loss or change, unauthorized disclosure or access, or unlawful destruction. Current information on our security practices can be found at the Trust Center.

b) Privacy and Data location

We treat Customer Data in accordance with our Privacy Statement. Subject to any restrictions set forth in the Privacy Statement, we may transfer to, store, and process Customer Data in any country where we or our Affiliates or subcontractors have facilities used for Services. We are a data processor (or sub-processor) acting on your behalf, and you appoint us to do these things with Customer Data in order to provide the Services to you. You will obtain any necessary consent from End Users or others whose personal information or other data you will be hosting in Services.

The Privacy Statement applies only to the Service and does not apply to any third party site or service linked to the Service or recommended or referred to through the Service or by Nodewave's employees.

c) Ownership of Customer Data

Except for Software we license to you, as between the parties, you retain all right, title and interest in and to Customer Data. We acquire no rights in Customer Data, other than the right to host Customer Data on Nodewave systems, including the right to use and reproduce Customer Data within Nodewave systems solely for such hosting purposes.

d) Use of Customer Data

We will use Customer Data only to provide you the Services. This use may include troubleshooting to prevent, find and fix problems with the operation of the Services. It may also include improving features for finding and protecting against threats to users. We will not use Customer Data or derive information from it for any advertising or other commercial purposes without your consent.

e) Third party requests

We will not disclose Customer Data to a third party (including law enforcement, other government entity, or civil litigant; excluding our subcontractors) except as you direct or unless required by law. Should a third party contact us with a demand for Customer Data, we will ask the third party to contact you directly and may provide your basic contact information to the third party. If compelled to disclose Customer Data to a third party, we will use commercially reasonable efforts to notify you in advance of a disclosure unless legally prohibited. You are responsible for responding to requests by a third party regarding your use of Services, such as a request to take down content under the Digital Millennium Copyright Act.

f) Subcontractors

We may hire other companies to provide limited services on our behalf, such as customer support. Any such subcontractors will be permitted to obtain Customer Data only to deliver the services we have retained them to provide, and they are prohibited from using Customer Data for any other purpose. We remain responsible for our subcontractors' compliance with the obligations set forth in this agreement.

g) Compliance with law

We will comply with all laws applicable to our provision of the Services, including applicable security breach notification laws, but not including any laws applicable to you or your industry that are not generally applicable to information technology services providers. You will comply with all laws applicable to your Customer Solution, Customer Data, and use of the Services, including any laws applicable to you or your industry.

4. Purchasing Services

a) Available Offers

The Portal provides pricing and related terms for available Subscription offers, which generally can be categorized as one or a combination of the following:

- i. Commitment Offering. You commit in advance to purchase a specific quantity of Services for use during a Term and pay upfront or on a periodic basis during the Term in advance of use. Additional or other usage (for example, usage beyond your commitment quantity) may be billed like a Consumption Offering.
- ii. Consumption Offering (also known as Pay-As-You-Go). You pay based on actual usage in the preceding month with no upfront commitment. Payment is on a periodic basis in arrears.
- iii. Limited Offering. You receive a limited quantity of Services for a limited term without charge (for example, a free trial) or as part of another Nodewave offering. Provisions in this agreement with respect to pricing, cancellation fees, payment, and data retention may not apply.

b) Ordering

By placing an order, you agree to the pricing and related terms for that Subscription offer. Unless otherwise specified in those terms, Services are offered on an "as available" basis and we make no guarantee of available capacity. You may place orders for your Affiliates under this agreement and grant your Affiliates administrative rights to manage Products, but Affiliates may not place orders under this agreement. If you grant any rights to Affiliates, such Affiliates shall be bound by this agreement and you agree to be jointly and severally liable for any actions of such Affiliates related to their use of the Products.

c) Pricing and payment

Payments are due and must be made according to the pricing and related terms on the Portal for your Subscription, due on the day before the start of the calendar month of Service.

- i. For Commitment Offerings, the price level may be based on the quantity you ordered. Some offers may permit you to modify the quantity ordered during the Term and your price level may be adjusted accordingly, but price level changes are not retroactive. During the Term, we will not increase prices for the commitment portion of your Subscription from those posted at the time your order is first placed, except for Previews or where prices are identified as temporary. All prices are subject to change at the beginning of any Subscription renewal.
- ii. For Consumption Offerings, pricing is subject to change at any time upon notice.

d) Renewal

Renewal is subject to the renewal terms on the Portal for your Subscription.

- i. For Commitment Offerings, you may choose to have a Subscription automatically renew or terminate upon expiration of the Term. Automatic renewal is pre-selected. You can change your selection at any time during the Term. If the existing Term is longer than one calendar month, we will provide you with written notice of the automatic renewal before the expiration of the Term.
- ii. For Consumption Offerings, the Subscription renews automatically at the end of every month until you terminate the Subscription.
- iii. For Limited Offerings, renewal may not be permitted.

e) Taxes

Prices are exclusive of any taxes. You shall pay any applicable value added, goods and services, sales, or like taxes that are owed with respect to any order placed under this agreement and which we are permitted to collect from you under applicable law. You shall be responsible for any applicable stamp taxes and for all other taxes that you are legally obligated to pay including any taxes that arise on the provision of Product to your Affiliates. We shall be responsible for all taxes based upon our net income or on our property ownership. If any taxes are required to be withheld on payments you make to us, you may deduct such taxes from the amount owed to us and pay them to the appropriate taxing authority, provided however that you promptly secure and deliver an official receipt for those withholdings and other documents we reasonably request to claim a foreign tax credit or refund. You will make certain that any taxes withheld are minimized to the extent possible under applicable law.

5. Term, termination, and suspension

Termination for Cause. Either party may terminate this Agreement for material breach by written notice, effective in one month, unless the other party first cures such breach.

a) Agreement Term and termination

This agreement will remain in effect unless either party notifies the other of its intent to terminate it.

b) Subscription Term and termination

You may terminate a Subscription at any time during its Term, however, you must pay all amounts due and owing before the termination is effective and no refunds will be provided.

- i. One month Subscription. A Subscription with a one month Term may be terminated anytime without any cancellation fee.
- ii. Subscriptions of more than one month. If you terminate a Subscription within 30 days of the date on which the Subscription became effective or was renewed, you must pay for the initial 30 days of the Subscription but no payments will be due for the terminated portion of the Subscription. If you terminate a Subscription at any other time during the Term, you must pay for the terminated portion of the Subscription as set forth in the pricing and related terms on the Portal for your Subscription.

c) Customer Data return and deletion

You may extract and/or delete Customer Data at any time. When a Subscription expires or terminates, we will retain any Customer Data you have not deleted for at least 90 days so that you may extract it, except for free trials, where we may delete Customer Data immediately without any retention period. You remain responsible for all storage and other applicable charges during this retention period. Following the expiration of this retention period, we will delete all Customer Data, including any cached or back-up copies, within 30 days of the end of the retention period. You agree that we have no additional obligation to continue to hold, export or return Customer Data and that we have no liability whatsoever for deletion of Customer Data pursuant to these terms.

d) Regulatory

In any country where any current or future government regulation or requirement applies to us, but not generally to businesses operating there, presents a hardship to us operating the Services without change, and/or causes us to believe this agreement or the Services may be in conflict with any such regulation or requirement, we may change the Services or terminate the agreement. If we use this subsection 4(d) of the agreement to change the Services, then you may terminate this agreement.

e) Suspension

We may suspend your use of the Services if: (1) reasonably needed to prevent unauthorized access to Customer Data; (2) you fail to respond to a claim of alleged infringement under Section 6 within a reasonable time; (3) you do not pay amounts due under this agreement; or (4) you do not abide by the Acceptable Use Policy or violate other terms of this agreement. A suspension will apply to the minimum necessary part of the Services and will be in effect only while the condition or need exists. We will give notice before we suspend, except where we reasonably believe we need to suspend immediately. We will give at least 30 days' notice before suspending for non-payment. If you do not fully address the reasons for the suspension within 60 days after we suspend, we may terminate your Subscription and delete your Customer Data without any retention period.

6. Warranties

a) Customer's Identity

Customer warrants: (i) that it has accurately identified itself through its Account and will maintain the accuracy of such identification; and (ii) that it is a corporation or other business entity authorized to do business pursuant to applicable law or an individual 18 years or older.

b) Customer's Right to Do Business

Customer warrants that it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.

c) Limited warranty

We warrant that the Services will meet the terms of the SLAs during the Term. Your only remedies for breach of this warranty are those in the SLAs.

We do not warrant that the Services will perform without error or immaterial interruption.

In the event of any "Service Failure," as that term is defined in the SLA, we will issue Customer such credits as are required by the SLA. Credits issued pursuant to the SLA apply to outstanding or future payments only and are forfeited upon termination of this Agreement. We will not be required to issue refunds or to make payments against such credits under any circumstances, including without limitation termination of this Agreement. Credits issued pursuant to the SLA are Customer's sole remedy for the Service Failure in question. The SLA is hereby incorporated into this Agreement.

d) Limited warranty exclusions

This limited warranty is subject to the following limitations:

- i. any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;
- ii. this limited warranty does not cover problems caused by accident, abuse or use of the Products in a manner inconsistent with this agreement, or resulting from events beyond our reasonable control;
- iii. this limited warranty does not apply to problems caused by the failure to meet minimum system requirements; and
- iv. this limited warranty does not apply to Previews or free offerings.

e) DISCLAIMER

Except for the express warranties specified in this section 5, THE SERVICE IS PROVIDED "AS IS" AND AS AVAILABLE, AND NODEWAVE PROVIDE NO WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. THESE DISCLAIMERS WILL APPLY TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW.

7. Defense of claims

a) Defense

Without limiting the generality of the foregoing, NODEWAVE HAS NO OBLIGATION TO INDEMNIFY OR DEFEND CUSTOMER AGAINST CLAIMS MADE BY AN UNAFFILIATED THIRD PARTY THAT THE PRODUCT OR SERVICES INFRINGES ITS PATENT, COPYRIGHT, TRADEMARK OR INTELLECTUAL PROPERTY RIGHTS OR MAKES UNLAWFUL USE OF ITS TRADE SECRET.

You will defend us against any claims made by an unaffiliated third party that (1) any Customer Data you provide directly or indirectly in using the Product infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret or (2) arise from violation of the Acceptable Use Policy.

b) Limitations

Our obligations in subsection 6(a) will not apply to a claim or award based on: (1) Customer Solution, Customer Data, Non-Nodewave Product, modifications you make to the Product, or materials you provide or make available as part of using the Product; (2) your combination of the Product with, or damages based upon the value of, a Non-Nodewave Product, data or business process; (3) your use of a Nodewave trademark without our express written consent, or your use of the Product after we notify you to stop due to a third-party claim; or (4) your redistribution of the Product to, or use for the benefit of, any unaffiliated third party.

c) Remedies

If we reasonably believe that a claim under subsection 6(a) may bar your use of the Product, we will seek to: (1) obtain the right for you to keep using it; or (2) modify or replace it with a functional equivalent. If these options are not commercially reasonable, we may terminate your rights to use the Product and then refund any advance payments for unused Subscription rights.

d) Obligations

Each party must notify the other promptly of a claim under this Section 6. The party seeking protection must (1) give the other sole control over the defense and settlement of the claim; and (2) give reasonable help in defending the claim. The party providing the protection will (1) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help and (2) pay the amount of any resulting adverse final judgment (or settlement that the other consents to). The parties' respective rights to defense and payment of judgments or settlements under this Section are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law rights.

8. Limitation of liability

a) LIMITATION

NODEWAVE'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT IS LIMITED TO DIRECT DAMAGES UP TO THE AMOUNT PAID UNDER THIS AGREEMENT FOR SERVICES GIVING RISE TO THAT LIABILITY DURING THE MONTH BEFORE THE LIABILITY AROSE AND MAY NOT EXCEED THE TOTAL AMOUNT OF ONE HUNDRED UNITED STATES DOLLARS US\$100;

b) EXCLUSION

IN NO EVENT WILL NODEWAVE BE LIABLE FOR LOSS OF REVENUE OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, EVEN IF THE PARTY KNEW THEY WERE POSSIBLE. THE LIABILITIES LIMITED BY THIS SECTION 7 APPLY: (i) TO LIABILITY FOR NEGLIGENCE; (ii) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (iii) EVEN IF NODEWAVE IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (iv) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Section 7, Nodewave's liability will be limited to the maximum extent permissible.

c) Exceptions to Limitations

The limits of liability in this Section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under Section 6 or subsection 9(n); or (2) violation of the other's intellectual property rights.

9. Software

a) Software Provided for Use on Devices

If the Software is provided to you with its own proprietary license terms, those terms control. If the Software does not have its own license terms, then you may install and use any number of copies of Software on your devices for use with Services. This Section does not apply to Software addressed in subsection 8(b).

b) Software provided for Use within Services

We may provide you with the option of running Software within the Services (for example, in a virtual machine). Your use of the Software is subject to Nodewave's proprietary license terms contained in the Software, as modified below:

- i. You may use such Software only within the Services and only in conjunction with your permitted use of any applicable Services role. To the extent of any conflict between this paragraph and the proprietary license terms contained in the Software, this paragraph controls.
- ii. You have no other rights under the Software's license terms or under this agreement to run the software (for example, you may not run copies on your on-premise servers or other devices unless you separately obtain the license to do so).

c) Effect of termination or expiration on Software

If this agreement or a Subscription is terminated or expires and you do not exercise an available buy-out option for Software, then you must delete all copies of Software licensed under this agreement and destroy any associated media.

d) Other rights

Rights to access Software on any device do not give you any right to implement Nodewave patents or other Nodewave intellectual property in software or devices that access that device.

e) Third party Software

Software may contain third party proprietary programs that are licensed under separate terms that are presented to you. Software may also contain third party open source programs that we, not the third party, licenses to you under Nodewave's license terms. Notices, if any, for the third party open source programs are included for your information only.

10. Miscellaneous

a) Notices

You agree to receive electronic notices from us, which will be sent by email to the Customer's account you specify in the Portal. Notices are effective on the date on the return receipt or, for email, when sent. Customer must send notices pursuant to this Agreement by mail to the address below:

Michel Bagnol

Grand-Rue 8A, 2035 Corcelles, Switzerland

and such notices will be deemed received 30 days after they are sent by the Customer.

b) Assignment

You may not assign this agreement either in whole or in part.

c) Consent to Partner fees

When you place an Order, you may be given the option to identify a "Partner of Record" associated with your Subscriptions. By identifying a Partner of Record, directly or by authorizing a third party to do so, you consent to us paying fees to the Partner of Record. The fees are for pre-sales support and may also include post-sales support. The fees are based on, and increase with, the size of your Order. Our prices for Products are the same whether or not you identify a Partner of Record.

d) Severability

In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

e) Waiver

To the extent permitted by applicable law, you waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. Failure to enforce any provision of this agreement will not constitute a waiver.

f) No agency

The parties are independent contractors and will so represent themselves in all regards. This agreement does not create an agency, partnership or joint venture. Neither party may bind the other in any way.

g) No third-party beneficiaries

There are no third-party beneficiaries to this agreement.

h) Applicable law and venue

This agreement is governed solely by the internal laws of the State of Switzerland, without regard to its conflict of laws principles except that (1) if you are a Swiss Government entity, this agreement is governed by the laws of Switzerland, and (2) if you are a state or local government entity in Switzerland, this agreement is governed by the laws of that state. If we bring an action to enforce this agreement, we will bring it in the jurisdiction where you have your headquarters. If you bring an action to enforce this agreement, you will bring it in Switzerland. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Neuchâtel, Switzerland.

This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to violation of intellectual property rights.

i) Entire agreement

This agreement (which includes the Acceptable Use Policy, the Services Terms, the SLAs and the pricing and payment terms listed on the Portal) is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications, negotiations, and discussions with respect to the subject matter hereof. Neither party has relied upon any such prior or concurrent communications, negotiations, and discussions.

j) Conflicts among Attachments

In the event of any conflict between the terms of this main body of this Agreement and those of the SLA, Privacy Statement or Data Policy, the terms of this main body will govern. In the event of any conflict between this Agreement and any Nodewave policy posted online, including without limitation the AUP and Privacy Statement, the terms of this Agreement will govern.

k) Survival

The following provisions will survive this agreement's termination or expiration: (i) any obligation of Customer to pay for Service rendered before termination; and (ii) 1c-f, 2b-g, 3e, 4a-c, 5-7, 8c, and 9-10; and (iii) any other provision of this Agreement that must survive termination to fulfill its essential purpose.

This agreement will remain in effect for any Subscription term.

l) Swiss export jurisdiction

The Product is subject to Swiss export jurisdiction. You must comply with all applicable laws, including the Swiss Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by Swiss and other governments. For additional information, see <http://www.nodewave.com/legal/Exporting> or an alternate site we identify.

m) International availability

Availability of the Services, including specific features and language versions, varies by country. Information on availability is located at <http://www.nodewave.com/online/faq.aspx#international> or at an alternate site we identify.

n) Acquired rights

You will defend us against any claim that arises from (1) any aspect of the current or former employment relationship between you and any of your current or former personnel or contractors or under any collective agreements, including, without limitation, claims for wrongful termination, breach of express or implied employment contracts, or payment of benefits or wages, unfair dismissal costs, or redundancy costs, or (2) any obligations or liabilities whatsoever arising under the Acquired Rights Directive (Council Directive 2001/23/EC, formerly Council Directive 77/187/EC as amended by Council Directive 98/50/EC) or any national laws or regulations implementing the same, or similar laws or regulations, (including the Transfer of Undertakings (Protection of Employment) Regulations 2006 in the United Kingdom) including a claim from your current or former personnel or contractors (including a claim in connection with the termination of their employment by us following any transfer of their employment to us pursuant to such laws or regulations). You must pay the amount of any resulting adverse final judgment (or settlement to which you consent). This section provides our exclusive remedy for these claims. We will notify you promptly in writing of a claim subject to this section. We must (1) give you sole control over the defense or settlement of such claim; and (2) provide reasonable

assistance in defending the claim. You will reimburse us for reasonable out of pocket expenses that we incur in providing assistance.

o) Force majeure

Neither party will be liable for any failure in services or performance due to causes beyond its reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Services). This section will not, however, apply to your payment obligations under this agreement.

p) Modifications

We may modify this Agreement (including the SLA, Data Policy or Privacy Statement) at any time by posting a revised version on the legal information section of the Portal (<http://www.nodewave.com/legal/> or an alternate site we identify) or by notifying you in accordance with subsection 9a. Modified terms that relate to changes or additions to the Product or that are required by law will be effective immediately, and by continuing to use the Services you will be bound by the modified terms. All other modified terms will be effective upon renewal (including automatic renewal) of an existing Subscription or order for a new Subscription.

This Agreement may not be amended in any other way except through a written agreement executed by Authorized Representatives of each party. Notwithstanding the foregoing, we may amend the AUP at any time by posting a new version at its website or by notifying you in accordance with subsection 9a, and such amended version will become effective immediately.

q) Waiver of right to void Online purchases

To the maximum extent permitted by applicable law, you waive your rights to void purchases under this agreement pursuant to any law governing distance selling or electronic or online agreements, as well as any right or obligation regarding prior information, subsequent confirmation, rights of withdrawal, or cooling-off periods.

r) Assignment & Successors

Neither party may assign this Agreement or any of its rights or obligations hereunder without the other's express written consent, except that either party may assign this Agreement to the surviving party in a merger of that party into another entity. Except to the extent forbidden in the previous sentence, this Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the parties.

s) Certain Notices

Pursuant to 47 U.S.C. Section 230(d), we hereby notifies you that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist in limiting access to material that is harmful to minors. Information regarding such protections may be found on the Internet by searching "parental control protection" or similar terms.

Appendix to this Term of Service Agreement

Data Processing Agreement

This Data Processing Agreement ("DPA") supplements the terms of this Term of Service Agreement.

1. Definitions

In this DPA, "Customer" means the entity that entered into the Terms of Service Agreement with Nodewave. Capitalized terms used in this DPA, but not defined, will have the definition in the Terms of Service Agreement and any documents that expressly amend or supplement those terms (collectively, the "Agreement"). Terms not defined in this DPA or the Agreement will have the meaning given in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ("Data Protection Directive").

2. Roles of the parties

For the Services, Nodewave is a data processor (or sub-processor) acting on Customer's behalf. As data processor (or sub-processor), Nodewave will only act upon Customer's instructions. The Agreement constitutes Customer's complete and final instructions to Nodewave for the processing of Customer Data.

3. Customer's Rights

Customer possesses and retains all right, title, and interest in and to Customer Data, and Nodewave's use and possession thereof is solely as Customer's agent.

4. Duration of data processing

Nodewave will process Customer Data during the term of its provision of the Services to Customer. Upon expiration or termination of Customer's use of the Services, Customer may extract Customer Data, and Nodewave will delete Customer Data, each as set forth in the Agreement.

5. Scope and purpose of data processing

The scope and purpose of processing of the Customer Data that Customer provides to Nodewave through the use of the Services is described in the Agreement. Nodewave will only process such Customer Data for the purpose of providing the Services and performing its obligations in accordance with the Agreement.

Notwithstanding the foregoing, Nodewave may disclose Customer Data as required by applicable law or by proper legal or governmental authority. Nodewave will give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.

6. Technical and organizational security measures

Nodewave will take technical and organizational measures to help protect Customer Data from unauthorized access, use, or disclosure.

7. Correction, deletion and blocking of Customer Data

For the duration of Nodewave's provision of the Services to Customer, Nodewave will, at its election and as necessary under applicable law implementing Article 12(b) of the Data Protection Directive, either: (1) provide Customer with the ability to correct, delete, or block Customer Data it provides to Nodewave through the use of the Services, or (2) make such corrections, deletions, or blockages on Customer's behalf.

8. Nodewave personnel

Nodewave personnel will not process Customer Data without authorization. Such personnel shall be obligated when taking up their duties to maintain confidentiality. The obligation of confidentiality shall continue after their engagement ends.

9. Transfer of Customer Data; subcontractors

Subject to any restrictions set forth in the Privacy Statement, Customer appoints Nodewave to transfer, store and process Customer Data that Nodewave processes on Customer's behalf in Switzerland and the United States or any other country in which Nodewave or its affiliates maintain facilities in order to provide the Services. Nodewave may also hire other companies to provide services on its behalf, such as providing data storage or email sending or customer support. Any such subcontractors are prohibited from using personal data for any purpose other than to deliver the services Nodewave has retained them to provide. Nodewave is responsible for its subcontractors' compliance with the obligations of this DPA. Customer consents to Nodewave's transfer of Customer Data to subcontractors in Switzerland and the United States or any other country in which they maintain facilities as described herein.

10. Safe Harbor

Nodewave Corporation and its controlled subsidiaries (1) abide by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland ("Safe Harbor Principles"), and (2) will, during the term designated under the Agreement, remain certified under the EU and Swiss Safe Harbor programs so long as they are maintained by the United States government. Any subcontractors to whom Nodewave Corporation transfers personal data will first enter into written agreements requiring that the subcontractor provide at least the same level of privacy protection with respect to personal data it receives from Nodewave Corporation as is required by the relevant Safe Harbor Principles.

11. Data protection officer

Nodewave's data protection officer is:

Michel Bagnol

Grand-Rue 8A, 2035 Corcelles, Switzerland

12. Term

This DPA is coterminous with this Terms of Service Agreement to which this DPA is appended.