

## WAVECOM SOLUTIONS STANDARD TERMS AND CONDITIONS

These terms and conditions specify the regulations, terms and conditions for the provision of telecommunication and data services by Pacific LightNet, Inc., a Hawaii Corporation, doing business as Wavecom Solutions ("Wavecom Solutions").

1. **Attachments and Service Orders:** The Service Order(s) and other attachments are incorporated by reference detail the price, location and other information about the service(s) provided by WAVECOM SOLUTIONS to Customer ("Services"), and are incorporated herein by reference.
  
2. **Authorized Use:** Customer may use Services only for authorized and lawful purposes. WAVECOM SOLUTIONS has the right to limit the manner in which any portion of its network and facilities ("Network") is used to protect the technical integrity of the Network. Customer will not permit or allow others to: (a) abuse or fraudulently use Services, including, but not limited to, unauthorized or attempted access, alteration, or destruction of WAVECOM SOLUTIONS's customers or other authorized user's information; (b) use Services in such a manner that causes interference or tampers with another customer's or authorized user's use of the WAVECOM SOLUTIONS Network; or (c) use Services in a manner that violates WAVECOM SOLUTIONS's acceptable use policy. WAVECOM SOLUTIONS offers all services subject to availability; provided, however, if a Service Order has been accepted by WAVECOM SOLUTIONS, WAVECOM SOLUTIONS will provide Services for the term of such Service Order. WAVECOM SOLUTIONS does not undertake to transmit messages, but offers the use of its Service when available. WAVECOM SOLUTIONS is not liable for content, errors in transmission or failure to establish connections.
  
3. **Cancellation, Modification or Expedition of Orders:** Cancellation, Modification and Expedite Charges referenced hereunder are posted on the WAVECOM SOLUTIONS website or related tariff and are subject to modification from time to time by WAVECOM SOLUTIONS. (a) Cancellation: Customer may request to cancel any Service Order(s) if the request is received in writing by WAVECOM SOLUTIONS prior to the start of service date. When a Service Order is canceled or modified within three (3) days, no charges will apply. When a service order is canceled or modified within four (4) to seven (7) days the customer is responsible for all nonrecurring charges, including any waived nonrecurring charges incurred by the company. When a service order is canceled or modified after seven (7) days the customer is responsible for all termination liability charges as set forth in Section 14. A Service Order can only be cancelled one time; the execution of a new Service Order restarts the cancellation process. (b) Modification: Customer may request the modification of any Service Order(s) and such requests must be made in writing. Each request shall result in the assessment by WAVECOM SOLUTIONS of a Service Order Modification Charge. If WAVECOM SOLUTIONS receives a written modification request for delay of installation less than 3 days prior to the due date, Customer must pay, in addition to the Service Order Modification Charge, all recurring charges for the shorter of one billing month or the period from the original due date to the requested installation date. WAVECOM SOLUTIONS reserves the right to limit the number of requests to delay the due date. (c) Expedites: At WAVECOM SOLUTIONS's discretion, WAVECOM SOLUTIONS may accommodate Customer requests for an expedited due date. If an expedited due date is accepted by WAVECOM SOLUTIONS, Customer shall pay an Expedite Charge. The Service Order Modification Charge shall be waived in those cases where the Expedite Charge is applicable. (d) In addition to any charges imposed under clauses (a), (b) or (c) above, WAVECOM SOLUTIONS reserves the right to assess Customer any third party charges

incurred by WAVECOM SOLUTIONS to fulfill any request to cancel, modify or expedite the Service Order(s).

**4. Term:** This Agreement is effective for the period (“Contract Term”) indicated on Customer’s service order and commences upon execution of the Service Order by Customer and WAVECOM SOLUTIONS.

Prior to expiration of the Service Term the customer may select one of the following options to be effective at the end of the Service Term:

- i. Renew their entire Service Term commitment
- ii. Commit to a new Service Term period
- iii. Arrange for a change of Service, or
- iv. Arrange for termination of Service

In the event that the customer does not select one of the above options, the customer will be converted to the shortest term period available under tariff or pricelist for the same service, and will be subject to the applicable Term commitment, if any, unless the customer terminates service within sixty (60) days after the conversion date. Upon termination of this Agreement, all rights of Customer to order new Services cease and Supplier has no further obligations to furnish new Services to Customer.

**5. Equipment, Installation and Interconnection:** Other than the facilities, termination equipment or other devices provided by the Customer, and unless otherwise provided elsewhere in this Agreement or any attachments hereto, WAVECOM SOLUTIONS will, provide, install, maintain, operate, control and own any equipment, cable or facilities connected to the Network (“System Equipment”), which equipment at all times remains WAVECOM SOLUTIONS’s personal property, regardless of where located or attached. WAVECOM SOLUTIONS may change, replace or remove the System Equipment, regardless of where located, so long as the basic technical parameters of the Service are not altered, and this Agreement constitutes Customer’s consent to such change, replacement or removal. WAVECOM SOLUTIONS is not liable if any changes in Services cause hardware or software not provided by WAVECOM SOLUTIONS to become obsolete, require alteration, or perform at lower levels. Customer may not rearrange or move or disconnect the System Equipment, and is responsible for any damage to or loss of System Equipment caused by Customer’s negligence or willful misconduct or that of its end users. WAVECOM SOLUTIONS has no obligation to install, maintain or repair any equipment owned or provided by the Customer, except as may be specifically provided herein. If Customer’s or end user’s equipment is incompatible with Service, Customer is responsible for any special interface equipment or facilities necessary to ensure compatibility. WAVECOM SOLUTIONS may suspend Services until Customer addresses the incompatibility. If such hardware or software impairs Customer’s use of Services, or there is a suspension of Services, Customer will continue to pay WAVECOM SOLUTIONS for the Services. If any impairment interferes with the use of the WAVECOM SOLUTIONS network by WAVECOM SOLUTIONS or other customers or end users, WAVECOM SOLUTIONS may suspend or disconnect the affected Services without providing advanced notice to the Customer. If, in responding to a Customer-initiated service call, WAVECOM SOLUTIONS reasonably determines that the cause of such service call is a failure, malfunction or inadequacy of Customer-provided equipment or software, Customer will pay WAVECOM SOLUTIONS for the service call at WAVECOM SOLUTIONS’s then prevailing rates.

**6. Access:** WAVECOM SOLUTIONS requires a Customer contact that can be reached 24x7. WAVECOM SOLUTIONS may require access to Customer’s premises to install and maintain the Service and System Equipment necessary for the provision of Service. Customer must provide, or cause its end users to provide, at no cost to WAVECOM SOLUTIONS, reasonable access, space,

power and environmental conditioning as applicable to the particular installation, and must use, and cause its end users to use, commercially reasonable efforts to obtain any necessary consents or rights of way from third parties. WAVECOM SOLUTIONS will observe Customer's reasonable security procedures and provide Customer with reasonable notice of required access, with the exception of access required in emergency situations. Upon termination or expiration of this agreement or any Service Order, Customer will surrender and immediately return the WAVECOM SOLUTIONS-provided equipment to WAVECOM SOLUTIONS and will provide WAVECOM SOLUTIONS access to reclaim such equipment.

**7. Installation:** Upon completing installation, WAVECOM SOLUTIONS will notify Customer that Service had been installed, tested by WAVECOM SOLUTIONS, and is available for Customer's use ("Service Date"). Unless Customer notifies WAVECOM SOLUTIONS by fax or in writing by close of business on the Service Date that Service is not operational, the term of the Service Order ("Service Term") will begin and billing will commence on the following day. If Customer so notifies WAVECOM SOLUTIONS, WAVECOM SOLUTIONS will work to correct any compliance issues. If WAVECOM SOLUTIONS does not find a defect in service, WAVECOM SOLUTIONS will notify Customer, and the Service Date will remain unchanged.

**8. Charges, Billing and Payment:** Provision of Service is subject to WAVECOM SOLUTIONS's approval of Customer's credit standing. WAVECOM SOLUTIONS may require a deposit prior to the provision of Service or as a condition to the continued provision of Service, if Customer's credit standing or payment record so indicates. Billing for Services begins on the Service Date and will not be delayed due to Customer premises equipment or Customer's readiness to use Service. WAVECOM SOLUTIONS bills in advance for Service, except for usage-based charges. Any installation charges or other non-recurring charges, which are non-refundable, will appear on the first monthly invoice. Taxes, surcharges, any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise and governmental fees are not included in WAVECOM SOLUTIONS's charges and will be billed and paid by Customer as separate line items. Customer will pay any and all taxes, fees, surcharges or assessments unless and until Customer provides WAVECOM SOLUTIONS with an exemption certificate. All amounts billed are due on the 25<sup>th</sup> of the month. Any payment or portion thereof not made when due is subject to a late charge of 1.5% per month on the unpaid amount. Failure to make payment of amounts past due within 7 days following WAVECOM SOLUTIONS's written notice of non-payment may result in immediate termination of the Agreement and/or the Services, at WAVECOM SOLUTIONS's option.

**9. Claims and Disputes:** If Customer disputes any charges on the invoice, Customer must submit a documented claim regarding the disputed amount within 90 days of receipt of the bill on which the disputed charges appear. All claims regarding disputed charges not submitted to WAVECOM SOLUTIONS within such time are deemed waived. Withheld disputed amounts determined in favor of WAVECOM SOLUTIONS and paid disputed amounts determined in favor of Customer will bear interest at 1.5% per month from the date payment was due or made, as applicable, to the date payment was made or refunded, as applicable.

**10. Governmental Authorization, Regulatory Changes:** This Agreement is subject to all applicable federal, state and local laws, rules and regulations, and each party must comply with all applicable federal, state and local laws, rules, regulations and orders in performing its obligations hereunder. To the extent any provision of this Agreement conflicts with any such applicable law, rule or regulation, such law, rule or regulation will supersede the conflicting provision. WAVECOM SOLUTIONS may discontinue, limit or impose additional requirements to the provision of Service, upon 15 days written notice, as required to meet regulatory requirements or when such requirements

have a material, adverse impact on the economic feasibility of WAVECOM SOLUTIONS providing Service, as determined in WAVECOM SOLUTIONS's reasonable business judgment.

**11. Customer Proprietary Network Information (CPNI):** CPNI means information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications or VoIP service subscribed to by Customer, and information contained in the bills issued by WAVECOM SOLUTIONS to Customer. CPNI does not include the Customer's name and address. Under applicable law, WAVECOM SOLUTIONS may use, disclose, or permit access to CPNI, without Customer approval, for the following purposes: providing or marketing service offerings among the categories of service (i.e., local, interexchange, and CMRS) to which the customer already subscribes; providing Customer with the purchased services; billing and collection for purchased services; customizing purchased services; to perform maintenance and diagnostics; providing technical support; installing hardware and software upgrades; preventing fraud; responding to lawful service of process; protecting against unlawful use of our network; and protecting other network users. Any use of CPNI for WAVECOM SOLUTIONS's sales and marketing campaigns is subject to the notification and opt-in/opt-out requirements of applicable law, specifically, 47 C.F.R. 64.2001-.2009 ("CPNI Rules"), meaning that WAVECOM SOLUTIONS is required to verify the status of Customer's CPNI approval prior to using CPNI. WAVECOM SOLUTIONS is also subject to the recordkeeping and safeguarding procedures set forth in the CPNI Rules which may require an authentication process prior to disclosing CPNI information to the customer.

**12. Indemnification:** Each party ("Indemnitor") must indemnify, defend and hold harmless the other party ("Indemnitee") from all losses or damages arising from or related to personal injury or property damage caused by the negligence or willful misconduct of Indemnitor. Customer must indemnify, defend and hold harmless WAVECOM SOLUTIONS from all losses or damages arising from Customer's breach of this Agreement, violation of any third party intellectual property right, all claims of any kind by Customer's end users, or any act or omission of Customer in connection with any Service provided hereunder.

**13. Limitation of Liability:** WAVECOM SOLUTIONS is not liable for any indirect, incidental, consequential, special or punitive damages (including without limitation, lost profits or revenue, loss of business opportunity and incidental damage to customer's premises for service installation, whether or not the other party was advised or should have been advised of the possibility of these damages) arising out of or related to the provision of Services hereunder, including any claims made by or through third parties. WAVECOM SOLUTIONS's liability to Customer may not exceed one month's calculation of monthly charges for the applicable Services. WAVECOM SOLUTIONS has no liability whatsoever for the content of information passing through its Network.

**14. Termination by WAVECOM SOLUTIONS:** (a) WAVECOM SOLUTIONS may terminate this Agreement or any Service Order hereunder or suspend Services, with prior written notice, upon: (i) Customer's failure to pay any amounts as provided herein; (ii) Customer's breach of any provision of this Agreement or any law, rule or regulation governing the Services; (iii) any insolvency, bankruptcy assignment for the benefit of creditors, appointment of trustee or receiver or similar event with respect to Customer; or (iv) any governmental prohibition or required alteration of the Services. (b) WAVECOM SOLUTIONS may terminate or suspend Services without notice if: (i) necessary to protect WAVECOM SOLUTIONS's Network; (ii) WAVECOM SOLUTIONS has reasonable evidence of Customer's fraudulent or illegal use of Services; or (iii) required by legal or regulatory authority. Any termination shall not relieve Customer of any liability incurred prior to such termination, or for payment of unaffected Services. All terms and conditions of this Agreement shall continue to apply to any Services not so terminated, regardless of the termination of this Agreement. If the Service provided under any Service Order hereunder has been terminated by WAVECOM SOLUTIONS in accordance with this section, and Customer wants to restore such

Service, Customer first must pay all past due charges, a non-recurring charge, reconnection charge and a deposit equal to 2 months' recurring charges. All requests for disconnection will be processed by WAVECOM SOLUTIONS in 30 days or less. Customer must pay for Services until such disconnection actually occurs.

15. **Termination Liability:** If, prior to the end of the term, WAVECOM SOLUTIONS terminates this Agreement or any Service Order(s) hereunder under section 14, above, or if Customer terminates this Agreement or any Service Order(s) hereunder for any reason other than WAVECOM SOLUTIONS's material breach of this Agreement that remains uncured after written notice and a reasonable cure period, Customer must pay immediately to WAVECOM SOLUTIONS any unpaid non-recurring charges including any non-recurring charges waived at installation and all monthly recurring charges associated with the terminated Service(s) for the balance of the Service Term in such Service Order(s) and any disconnection, early cancellation or termination charges incurred and paid to third parties by the Company on behalf of the customer.

16. **Assignment:** Neither party may assign this Agreement without the prior written consent of the other party, not to be unreasonably conditioned, withheld or delayed, except that WAVECOM SOLUTIONS may assign its rights and/or obligations hereunder (a) to any parent, affiliate or subsidiary of WAVECOM SOLUTIONS, (b) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all its assets, or (c) for purposes of financing.

17. **Force Majeure:** Neither party is liable for any failure of performance if such failure is due to any cause or causes beyond such party's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, cable cut, adverse weather conditions, governmental action, labor difficulties and supplier failures. Either party's invocation of this clause shall not relieve Customer of its obligation to pay for any Services actually provided up to Customer's demarcation point.

18. **Governing Law:** This Agreement is governed by and subject to the laws of the State of Hawaii excluding its principles of conflicts of law.

19. **Headings:** The headings herein are for convenience only and are not intended to have any substantive significance in interpreting this Agreement.

20. **Relationship of Parties:** The parties are independent contractors, and nothing herein creates or implies an agency relationship or a joint venture or partnership between the parties.

21. **Jurisdictional Reports:** Upon WAVECOM SOLUTIONS's request, customer will provide WAVECOM SOLUTIONS with reports of its estimated or actual percentage of interstate and intrastate use of WAVECOM SOLUTIONS's Services.

22. **Dispute Resolution:** Any dispute arising out of or relating to this Agreement, may, at the option of both Parties, be finally settled by arbitration and must be attempted prior to any litigation.

23. **Litigation:** If either party commences litigation under this Agreement, the prevailing party is entitled to reimbursement of its costs and attorneys' fees from the other party.

24. **Non-Exclusivity:** This Agreement is non-exclusive. Nothing herein prevents either party from entering into similar arrangements with other entities.

25. **Notices:** Whenever written notice is required to be provided by this Agreement, WAVECOM SOLUTIONS must provide such notice to Customer's billing address, and Customer must provide

such notice to WAVECOM SOLUTIONS at 1132 Bishop Street Suite 800, Honolulu, HI 96813 Attn: Contracts Administration. A notice is deemed given when delivered.

26. **No Waiver:** Either party's failure to enforce any provision or term of this Agreement shall not be construed as a future or continuing waiver of such provision or term of this Agreement.

27. **Use of name, Service Marks, Trademarks or Trade Secrets:** Neither party may issue a news release, public announcement, advertisement or other form of publicity concerning the existence of the Agreement or the Services provided hereunder without the prior written consent of the other party. Customer may not use WAVECOM SOLUTIONS's name, logo or service mark in marketing services to end users.

28. **Representations and Warranties:** Each party represents and warrants that it is fully authorized to enter into this Agreement. WAVECOM SOLUTIONS represents and warrants to Customer that any Services provided hereunder will be performed in a professional manner by qualified and trained personnel. UNLESS SPECIFICALLY STATED HEREIN OR IN ANY SERVICE ORDER, WAVECOM SOLUTIONS MAKES NO WARRANTIES, REPRESENTATIONS, OR AGREEMENTS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

29. **Severability:** If any provision hereunder is declared or held invalid, illegal or unenforceable, this Agreement will be revised only to the extent necessary to make such provision(s) legal and enforceable, or if impossible, the unaffected portions of this Agreement shall remain in full force and effect so long as the Agreement remains consistent with the parties' original intent.

30. **Survival:** The terms and conditions of this Agreement will survive the expiration or other termination of this Agreement to the fullest extent necessary for their enforcement and for the realization of the benefit thereof by the party in whose favor they operate.

31. **Entire Agreement:** This Agreement, together with the Service Order(s), any attachments and all applicable tariffs incorporated herein by this reference, sets forth the entire agreement of the parties with respect to the subject matter hereof, and supersedes any prior agreements, promises, representations, understandings and negotiations between the parties. In the event of a conflict, the Service Order shall prevail over this Agreement and any applicable tariff shall prevail over both. Any modifications, amendments, supplements to or waivers of this Agreement must be in writing and executed by authorized representatives of both parties.