



## ORDERING AGREEMENT

This Ordering Agreement (including the Subscription Service Guide, attached hereto as Exhibit A) ("**Agreement**") is made between the VerifiR Inc. d.b.a. WaveOn entity ("**WaveOn**") and the customer entity ("**Customer**") on the ordering document and becomes effective on the last signature date of the ordering document issued by WaveOn ("**Effective Date**").

### GENERAL TERMS AND CONDITIONS

#### 1. DEFINITIONS

**1.1 "Affiliates"** means any person or entity directly or indirectly Controlling, Controlled by, or under common Control with a party, where "**Control**" means the legal power to direct or cause the direction of the general management of the company, partnership, or other legal entity. Affiliates of Customer include its authorized agents, any manufacturers acting under Customer's direction and/or otherwise involved third parties acting under Customer's direction and are, collectively, "**Customer Affiliates**." Affiliates of WaveOn are "**WaveOn Affiliates**".

**1.2 "Aggregate Data"** means the operation of collection and the processing of personal data necessary for statistical surveys or for the production of statistical results. The statistical results of processing for statistical purposes is not personal data, may further be used for different purposes, and the result or the personal data are not used in support of measures or decisions regarding any particular natural person.

**1.3 "Ancillary Software"** means software licensed by WaveOn to Customer that is deployed on machines operated by or for Customer to facilitate operation of the Subscription Service or interoperation of the Subscription Service with other software, hardware, or services. Ancillary Software may include code that is licensed under third-party license agreements, including open source made available or provided with the Ancillary Software.

**1.4 "Anonymized Data"** means information which does not relate to an identified or identifiable natural person or to Personal Data rendered anonymous in such a manner that the Data Subject is not or is no longer identifiable.

**1.5 "Claim"** means any third-party suit, claim, action, or demand.

**1.6 "Confidential Information"** means: (a) WaveOn Core Technology and Personal Data (which is Confidential Information of WaveOn); (b) Customer Technology and Personal Data (which is Confidential Information of Customer); (c) any information of a party that is disclosed in writing or orally and is designated as Confidential or Proprietary at time of disclosure (and, for oral disclosures, summarized in writing within 30 days of initial disclosure and delivered in written summary form to the receiving party), or that, due to the nature of the information or circumstances of disclosure, receiving party would understand it to be disclosing party's confidential information; and (d) the specific terms of this Agreement, any Order Form, any SOW, and any amendment or attachment to any of these, between the parties (which will be deemed Confidential Information of both parties). Confidential Information excludes any information that: (i) is or becomes generally known to the public through no fault or breach of this Agreement by receiving party; (ii) was already rightfully in receiving party's possession, without restriction on use or disclosure, when receiving party received it under this Agreement; (iii) is independently developed by receiving party without use of disclosing party's Confidential Information; or (iv) was or is rightfully obtained by receiving party, without restriction on use or disclosure, from a third party not under a duty of confidentiality to disclosing party.

**1.7 "Customer Technology"** means software, methodologies, templates, business processes, documentation, or other material originally authored, invented, or otherwise created by Customer (or on Customer's behalf, other than by (a) WaveOn or (b) at WaveOn's direction) for use with the Subscription Service, excluding WaveOn Core Technology.

**1.8 "Data Subject"** means an identified or identifiable natural person.

**1.9 "Defect"** means any code or configuration that has been (a) introduced by WaveOn or (b) a person acting at WaveOn's direction and that causes a nonconformity in the Subscription Service as compared to the Product Overview.



**1.10 “Deliverable”** means anything that is created by or on behalf of WaveOn for Customer in the performance of Professional Services.

**1.11 “Documentation”** means the then-current WaveOn product documentation relating to the operation and use of the Subscription Service or Ancillary Software published by WaveOn at <https://docs.WaveOn.com> or its successor website. Documentation includes technical program or interface documentation, user manuals, operating instructions, and release notes.

**1.12 “Intellectual Property Rights”** means all intellectual property or other proprietary rights worldwide, including patents, copyrights, trademarks, moral rights, trade secrets, and any other intellectual or industrial property, including registrations, applications, renewals, and extensions of such rights.

**1.13 “Law”** means any applicable law, rule, statute, decree, decision, order, regulation, judgment, code, and requirement of any government authority (federal, state, local, or international) having jurisdiction.

**1.14 “Newly Created IP”** means Intellectual Property Rights in the inventions or works of authorship that are made by WaveOn specifically for Customer in the course of performing Professional Services for Customer that are expressly identified as “Newly Created IP” in an SOW, excluding WaveOn Core Technology.

**1.15 “Order Form”** means an ordering document signed by Customer and WaveOn.

**1.16 “Personal Data”** means any data of a Data Subject which are related to an identified or identifiable natural person uploaded to the Subscription Service.

**1.17 “Product Overview”** means WaveOn’s published description of its products and their functionalities, solely to the extent attached to or expressly referenced in an Order Form.

**1.18 “Professional Services”** means any consulting, development, or educational services provided by or on behalf of WaveOn pursuant to an agreed SOW or Service Description.

**1.19 “Service Description”** means the written description for a packaged Professional Service, attached to or referenced in an Order Form.

**1.20 “SOW”** means a statement of work that describes scoped Professional Services.

**1.21 “Subscription Service”** means the WaveOn software-as-a-service offering, inclusive of Personal Data and WaveOn software-as-a-service elements that are hosted on on-premise equipment pursuant to an agreed Order Form or SOW, ordered by Customer under an Order Form.

**1.22 “Subscription Term”** means the period of authorized access to and use of the Subscription Service, as set forth in an Order Form.

**1.23 “WaveOn Core Technology”** means: (a) the Subscription Service, Ancillary Software, Documentation, and technology and methodologies (including products, manufacturing processes, software tools, hardware designs, algorithms, templates, software (in source and object forms), architecture, class libraries, objects, and documentation) created by or for, or licensed to, WaveOn; and (b) updates, upgrades, improvements, configurations, extensions, and derivative works of the foregoing and related technical or end user documentation or manuals.

**1.24 “WaveOn Modules”** means any WaveOn-supplied identifier or device for association with Customer products, including but not limited to transponders such as NFC and RFID.

**1.25 “WaveOn Products”** means, collectively, the Subscription Service, WaveOn Modules, Ancillary Software, Documentation, and Deliverables.

## **2. ACCESS AND USE RIGHTS; RESTRICTIONS; PROVISION OF PROFESSIONAL SERVICES**

**2.1 ACCESS AND USE RIGHTS.** For each Subscription Term, WaveOn grants the access and use rights set forth in this Section 2 for the WaveOn Core Technology described in that Order Form.



**2.1.1 SUBSCRIPTION SERVICE.** Subject to the terms of this Agreement, WaveOn authorizes Customer to access and use the Subscription Service during the Subscription Term stated in the applicable Order Form, solely for its internal business purposes in accordance with the Documentation. Customer will not otherwise access or use the Subscription Service in a manner that exceeds Customer's authorized access and use rights as set forth in this Agreement and the applicable Order Form.

**2.1.2 ANCILLARY SOFTWARE.** WaveOn grants Customer a limited, worldwide, non-sublicensable, non-transferable (except as set forth in Section 12.1 (Assignment)), non-exclusive, royalty-free license during the Subscription Term to install and execute Ancillary Software on machines operated by or for Customer, solely to facilitate Customer's authorized access to and use of the Subscription Service.

## **2.2 AFFILIATE ACCESS AND USE.**

**2.2.1 ACCESS THROUGH CUSTOMER.** Customer may, at its option, provide access and use rights to the WaveOn Products to one or more Customer Affiliates, subject to all terms in this Agreement. If Customer provides such access and use rights, Customer will be wholly responsible for the acts and omissions of the Customer Affiliate. No Customer Affiliate shall have the right to take any legal action against WaveOn under this Agreement or any Order Form hereunder who has not entered into a direct Order Form with WaveOn under Section 2.2.2 (Separate Affiliate Ordering) below.

**2.2.2 SEPARATE AFFILIATE ORDERING.** Subject to the parties executing a mutually agreed upon Order Form, Customer Affiliates may purchase the Subscription Service by signing an Order Form that references this Agreement directly with WaveOn (or a WaveOn Affiliate as applicable to Customer Affiliate's location), which will establish a new and separate agreement between the Customer Affiliate and the WaveOn entity signing such Order Form. If such Customer Affiliate resides in a different country than Customer, such Customer Affiliate's Order Form may include modifications particular to international transactions (e.g., tax rates and governing law). Customer Affiliates who have a direct Order Form with WaveOn for the Subscription Service may purchase Professional Services or additional access and use rights.

**2.3 CUSTOMER RESTRICTIONS.** With respect to the WaveOn Core Technology, Customer will not (and will not permit others to): (a) use it in excess of contractual usage limits (including as set forth in an Order Form), or in a manner that circumvents usage limits or technological access control measures; (b) license, sub-license, sell, re-sell, rent, lease, transfer, distribute, time share, or otherwise make any of it available for access by third-parties, except as may otherwise be expressly stated in an Order Form; (c) access it for the purpose of developing or operating products or services for third-parties in competition with the WaveOn Core Technology; (d) disassemble, reverse engineer, or decompile it; (e) copy, create derivative works based on, or otherwise modify it, except as may be otherwise expressly stated in this Agreement; (f) remove or modify a copyright or other proprietary rights notice in it; (g) use it to reproduce, distribute, display, transmit, or use material protected by copyright or other Intellectual Property Right (including the rights of publicity) without first obtaining permission of the owner; (h) use it to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or otherwise engage in a malicious act or disrupt its security, integrity, or operation; or (i) access or disable any WaveOn or third-party data, software, or network (other than Customer's licensed use under this Agreement). Before Customer engages in any of the foregoing acts that it believes it may be entitled to, it will provide WaveOn with 30-days' prior notice to legalnotices@WaveOn.com, and reasonably requested information to allow WaveOn to assess Customer's claim. WaveOn may, in its discretion, provide alternatives that reduce adverse impacts on WaveOn's Intellectual Property Rights or other rights.

**2.4 WAVEON RESTRICTIONS.** With respect to Personal Data submitted to the Subscription Service that can be used to identify a Data Subject's engagement with Customer or with Customer products ("**Data Subject Customer Engagement**"), WaveOn will not (and will not permit others to) license, sub-license, sell, re-sell, rent, lease, transfer, distribute, time share, or otherwise make identifying details of Data Subject Customer Engagement available for access by third-parties, except as may otherwise be expressly stated and mutually agreed upon in writing by Customer and WaveOn.

**2.5 PROVISION OF PROFESSIONAL SERVICES.** Customer and WaveOn may enter into one or more SOWs or Order Forms subject to this Agreement, and which may incorporate one or more Service



Descriptions for the provision of Professional Services. WaveOn will perform the Professional Services, subject to the fulfillment of any responsibilities and payments due from Customer, as stated in the SOW or the Order Form.

**2.6 CHANGE MANAGEMENT.** Either Customer or WaveOn may submit a change request to the SOW or Order Form, detailing the nature of the change and the impact of the change. Identified approvers for each Customer and WaveOn will assess the impact on the cost, time, and project scope, subject to the Agreement. WaveOn will document and communicate approval or rejection of the requested change, and upon approval of a change, Customer and WaveOn will document and sign the change in the Change Order Form. If Customer and WaveOn do not agree on any element of a change order, designees of Customer and WaveOn shall review the change order and attempt to resolve the disagreement in a timely manner. For the avoidance of doubt, Customer is solely responsible for cost increases resulting from Customer's actions or inactions not associated with a change order.

**2.7 TRADEMARKS.** Any trademarks, logos and service marks adopted by WaveOn from time to time belong to WaveOn and its licensors (the "**Trademarks**"). Customer shall not acquire any right to the Trademarks by its use of the Trademarks and any goodwill from such use shall inure solely to the benefit of WaveOn. Customer shall not challenge any intellectual property rights claimed by WaveOn in the Trademarks, nor use or seek to register any mark or trade name which is confusingly similar to a Trademark. Use of the Trademarks by Customer requires prior written consent by WaveOn; any such consent shall be determined and can be revoked by WaveOn in its sole discretion.

### **3. ORDERING**

**3.1 ORDERS AND PAYMENT.** Upon execution by Customer or Customer Affiliate and WaveOn, each Order Form is noncancelable and non-refundable, except as provided in this Agreement. Subscription Service fees are invoiced as set forth in each Order Form. Each Subscription Term is a non-divisible, continuous commitment, regardless of the invoice schedule, and pricing is based on a purchase of the entire Subscription Term. Professional Services fees are invoiced on a fixed price basis plus expenses. Customer is responsible for its and its Customer Affiliate invoices, and is accountable to ensure it or its Customer Affiliates will pay each invoice within 30 days after the invoice date. Any purchase order submitted by Customer or Customer Affiliate is for its internal purposes only, and WaveOn rejects, and in the future is deemed to have rejected, any purchase order's terms to the extent they add to or conflict in any way with this Agreement or the applicable Order Form, SOW, or Service Description, and such additional or conflicting terms will have no effect. On request, WaveOn will reference the purchase order number on its invoices (solely for administrative convenience), so long as Customer or Customer Affiliate provides the purchase order at least 15 business days before the invoice date. Late payments will accrue interest at a rate of 1.5% per month or the legal maximum interest rate, whichever is lower. Customer or Customer Affiliate will cure a delinquency in payment of any amounts owed under this Agreement within 30 days from the date of WaveOn's delinquency notice. If Customer or Customer Affiliate fails to cure or regain compliance under Section 3.2 (Use Verification), WaveOn may suspend Customer's or Customer Affiliate's use of the Subscription Service or terminate this Agreement for breach, in addition to any other available rights and remedies. All terms of this Section 3.1 apply except as may be expressly stated otherwise in the applicable Order Form, SOW, Service Description, or elsewhere in this Agreement.

**3.2 USE VERIFICATION.** WaveOn may remotely review Customer's use of the Subscription Service, and on WaveOn's written request, Customer will provide reasonable assistance to verify Customer's compliance with the Agreement, and access to and use of the Subscription Service. If WaveOn determines that Customer has exceeded its permitted access and use rights to the Subscription Service, WaveOn will notify Customer and within 30 days thereafter Customer shall either: (a) disable any unpermitted use, or (b) submit a Change Order and purchase additional access and use rights commensurate with Customer's actual use.

**3.3 TAXES.** All payments required by this Agreement are stated exclusive of all taxes, duties, levies, imposts, fines, or similar governmental assessments, including sales and use taxes, value-added taxes ("**VAT**"), goods and services taxes ("**GST**"), excise, business, service, and similar transactional taxes imposed by any jurisdiction, and the interest and penalties on any and all of these (collectively, "**Taxes**"). Customer is solely liable for and will pay all Taxes associated with its purchase of, payment for, access to, or use of, any WaveOn Products. For the avoidance of doubt, Taxes will not be deducted from payments to WaveOn, except as required by Law, in



which case Customer will increase the amount payable as necessary so that, after making all required deductions and withholdings, WaveOn receives and retains (free from any liability for Taxes) an amount equal to the amount it would have received had no such deductions or withholdings been made. Each party is solely liable for and will pay taxes imposed on its net income. If Customer is a tax-exempt entity or claims exemption from any Taxes under this Agreement, it will include its tax exemption number on, and provide a tax exemption certificate on execution of the Order Form and, after receipt of valid evidence of exemption, WaveOn will not charge Customer any Taxes from which it is exempt. If WaveOn is required to invoice or collect Taxes associated with Customer's purchase of, payment for, access to, or use of, any WaveOn Products, WaveOn will invoice Customer for those Taxes, itemized where required by Law. Customer will provide to WaveOn its VAT or GST identification number(s) on the Order Form for: (a) the country where Customer has established its business; and (b) any other country where Customer has a fixed establishment. Customer will use the ordered WaveOn Products for Customer's business use in the foregoing location(s) in accordance with the provided VAT or GST identification number(s).

#### **4. INTELLECTUAL PROPERTY**

**4.1 WAVEON OWNERSHIP.** As between the parties, WaveOn and its licensors exclusively own all right, title, and interest in and to all Intellectual Property Rights in the WaveOn Core Technology, notwithstanding anything in this Agreement purportedly to the contrary. Except for the access and use rights, and licenses expressly granted in Section 2 (Access and Use Rights; Restrictions; Provision of Professional Services) of this Agreement, WaveOn, on behalf of itself and its licensors, reserves all rights in the WaveOn Core Technology and does not grant Customer any rights (express, implied, by estoppel, through exhaustion, or otherwise). Any WaveOn Core Technology delivered to Customer or to which Customer is given access shall not be deemed to have been sold, even if, for convenience, WaveOn makes reference to words such as "sale" or "purchase" in the applicable Order Form or other documents.

**4.2 CUSTOMER OWNERSHIP.** As between the parties, Customer and its licensors will retain all right, title, and interest in and to all Intellectual Property Rights in Customer Technology. Customer hereby grants to WaveOn a royalty-free, fully-paid, non-exclusive, non-transferrable (except as set forth in Section 12.1 (Assignment)), worldwide, right to use Customer Technology solely to provide and support the WaveOn Products.

**4.3 FEEDBACK.** WaveOn encourages Customer to provide suggestions, proposals, ideas, recommendations, or other feedback regarding improvements to the WaveOn Products (collectively, "**Feedback**"). If Customer provides such Feedback, Customer grants to WaveOn a royalty-free, fully paid, sub-licensable, transferable (notwithstanding Section 12.1 (Assignment)), non-exclusive, irrevocable, perpetual, worldwide right and license to use, license, and commercialize Feedback (including by incorporation of such Feedback into WaveOn Core Technology) without restriction.

**4.4 PROFESSIONAL SERVICES.** Subject to this Section 4.4, WaveOn assigns (and in the future is deemed to have assigned) to Customer any Newly Created IP upon payment in full by Customer for the Professional Service under which the Newly Created IP was created. If any WaveOn Core Technology is incorporated into a Deliverable, WaveOn grants to Customer a non-exclusive, royalty-free, non-transferable (except as set forth in Section 12.1 (Assignment)), non-sublicensable worldwide license to use the WaveOn Core Technology incorporated into the Deliverable in connection with the Subscription Service as contemplated under this Agreement during the applicable Subscription Term. Nothing in this Agreement shall be deemed to restrict or limit WaveOn's right to perform similar Professional Services for any other party or to assign any employees or subcontractors to perform similar Professional Services for any other party or to use any information incidentally retained in the unaided memories of its employees providing Professional Services.

#### **5. WARRANTIES; DISCLAIMER OF WARRANTIES**

**5.1 LIMITED SUBSCRIPTION SERVICE WARRANTY.** WaveOn warrants that, during the Subscription Term, Customer's production instance of the Subscription Service will materially conform to the Product Overview. To submit a warranty claim under this Section 5.1, Customer will submit a support request to resolve the non-conformity as provided in the Subscription Service Guide. If the non-conformity persists without relief more than 30 days after notice of a warranty claim provided to WaveOn under this Section 5.1, then Customer may terminate the affected Subscription Service, and WaveOn will refund to Customer any prepaid subscription



fees covering that part of the applicable Subscription Term for the affected Subscription Service remaining after the effective date of termination. Notwithstanding the foregoing, this warranty will not apply to any non-conformity due to a modification of or defect in the Subscription Service that is made or caused by any person other than (a) WaveOn or (b) a person acting at WaveOn's direction. **This Section 5.1 sets forth Customer's exclusive rights and remedies (and WaveOn's sole liability) in connection with this warranty.**

**5.2 LIMITED PROFESSIONAL SERVICES WARRANTY.** WaveOn warrants that the Professional Services will be performed in a competent and workmanlike manner, in accordance with accepted industry standards and practices and all material requirements set forth in the SOW or Service Description. Customer will notify WaveOn of any breach within 30 days after performance of the non-conforming Professional Services. On receipt of such notice, WaveOn, at its option, will either use commercially reasonable efforts to re-perform the Professional Services in conformance with these warranty requirements or will terminate the affected Professional Services and refund to Customer any amounts paid for the nonconforming Professional Services. **This Section 5.2 sets forth Customer's exclusive rights and remedies (and WaveOn's sole liability) in connection with this warranty.**

**5.3 DISCLAIMER OF WARRANTIES.** Except for the warranties expressly stated in this Section 5, to the maximum extent allowed by Law, WaveOn disclaims all warranties of any kind (express, implied, statutory, or otherwise, oral or written, including warranties of merchantability, accuracy, title, non-infringement, or fitness for a particular purpose, and any warranties arising from usage of trade, course of dealing, or course of performance). Without limiting the foregoing, WaveOn specifically does not warrant that the WaveOn Products will meet the requirements of Customer or others or will be accurate or operate without interruption or error. Customer acknowledges that in entering this Agreement, it has not relied on any promise, warranty, or representation not expressly set forth in this Agreement.

## **6. CONFIDENTIAL INFORMATION AND PUBLICITY**

**6.1 CONFIDENTIALITY OBLIGATIONS.** The recipient of Confidential Information will: (a) at all times protect it from unauthorized disclosure with the same degree of care that it uses to protect its own confidential information, and in no event use less than reasonable care; and (b) not use it except to the extent necessary to exercise rights or fulfill obligations under this Agreement. Each party will limit the disclosure of the other party's Confidential Information to those of its employees and contractors and the employees and contractors of its Affiliates with a need to access such Confidential Information for a party's exercise of its rights and obligations under this Agreement, and then only to employees and contractors subject to binding disclosure and use restrictions at least as protective as those in this Agreement. Each party's obligations under this Section 6 will remain in effect during, and for three years after termination of, this Agreement. Receiving party will, at disclosing party's request, return all originals, copies, reproductions, and summaries of Confidential Information and other tangible materials and devices provided to receiving party as Confidential Information, or at disclosing party's option, certified destruction of the same.

**6.2 THIRD PARTY REQUESTS.** This Agreement will not be construed to prevent receiving party from disclosing the disclosing party's Confidential Information to a court, or governmental body pursuant to a valid court order, Law, subpoena, or regulation, provided that the receiving party: (a) gives prompt notice (or the maximum notice permitted under Law) before making the disclosure, unless prohibited by Law; (b) provides reasonable assistance to disclosing party in any lawful efforts by disclosing party to resist or limit the disclosure of such Confidential Information; and (c) discloses only that portion of disclosing party's Confidential Information that is legally required to be disclosed. In addition, receiving party will cooperate and assist disclosing party, at disclosing party's cost, in relation to any such request and any response to any such communication.

**6.3 PUBLICITY.** Customer grants WaveOn the right to: (i) use the name, trademark, logo or other identifying marks of the Customer in any sales, marketing or publicity activities or materials, and (ii) issue any press release, interviews or other public statement regarding this Agreement. Following the execution of this Agreement, the Customer and WaveOn shall jointly issue a mutually agreeable press release announcing certain terms of this Agreement.

## **7. INDEMNIFICATION**



## 7.1 BY WAVEON.

**7.1.1 WAVEON OBLIGATION.** Subject to the limitations in this Section 7, WaveOn will: (a) defend Customer and Customer Affiliates, and its and their officers, directors, and employees against any Claim: (i) to the extent alleging that any WaveOn Core Technology accessed or used in accordance with this Agreement infringes any third-party patent, copyright, or trademark, or misappropriates any third-party trade secret; or (ii) to the extent alleging that WaveOn's personnel when onsite at Customer's premises caused death, bodily harm, or damage to tangible personal property due to their negligence or willful misconduct; and (b) pay any settlement amount or any court-ordered award of damages, under the forgoing subsections (a)(i) and (ii) to the extent arising from such Claim.

**7.1.2 MITIGATION.** To the extent any Claim alleges any part of the WaveOn Core Technology infringes any third-party patent, copyright, or trademark, or misappropriates any third-party trade secret, WaveOn may: (a) contest the Claim; (b) obtain permission from the claimant for Customer's continued use of its instance of the Subscription Service or any applicable WaveOn Core Technology; (c) avoid such Claim by replacing or modifying Customer's access to and use of its instance of the Subscription Service or any applicable WaveOn Core Technology as long as WaveOn provides a substantially similar Subscription Service; or, if WaveOn determines the foregoing (a), (b), and (c) are not commercially practicable, then (d) terminate Customer's access to and use of the affected Subscription Service on 60-days' prior notice and refund to Customer any prepaid subscription fees covering that part of the applicable Subscription Term for such Subscription Service remaining after the effective date of termination.

**7.1.3 LIMITATIONS.** Notwithstanding the above, WaveOn will have no obligation or liability for any Claim under Section 7.1.1(a)(i) to the extent arising in whole or in part from: (a) any access to or use of any WaveOn Core Technology not expressly authorized under this Agreement, to the extent the Claim would have been avoided without such unauthorized access or use; (b) Customer Technology; or (c) access to or use of the WaveOn Core Technology: (i) in violation of Law; (ii) after termination under Section 7.1.2(d); (iii) as modified to Customer's specifications or by anyone other than (a) WaveOn or (b) its contractors, if the Claim would have been avoided but for such modifications; or (iv) combined with anything not provided by WaveOn, if the Claim would have been avoided but for such combination.

**7.2 CUSTOMER OBLIGATION.** Customer will: (a) defend WaveOn and WaveOn Affiliates, and its and their officers, directors, and employees against any Claim to the extent alleging that Customer Technology, or a modification to any WaveOn Core Technology made to Customer's specifications or otherwise made by or on behalf of Customer by any person other than (i) WaveOn or (ii) a person acting at WaveOn's direction (but only if the Claim would have been avoided by use of the unmodified WaveOn Core Technology), infringes any patent, copyright, or trademark, misappropriates any third-party trade secret, or violates any third-party privacy rights; and (b) pay any settlement amount or any court-ordered award of damages, under the foregoing subsection (a) to the extent arising from such Claim.

**7.3 PROCESS.** The obligations of WaveOn and Customer under Sections 7.1 and 7.2 are conditioned on the indemnified party (a) notifying the indemnifying party promptly in writing of any actual or threatened Claim, (b) the indemnified party giving the indemnifying party sole control of the defense of such Claim and of any related settlement negotiations, and (c) the indemnified party cooperating and, at the indemnifying party's reasonable request and expense, assisting in such defense. Neither party will stipulate, acknowledge, or admit fault or liability on the other's part without the other's prior, written consent. The indemnifying party will not publicize any settlement without the indemnified party's prior, written consent. **To the extent the parties perform as required, this Section 7 states each party's entire liability and the other party's exclusive remedy for third-party claims and third-party actions.**

## 8. LIMITED LIABILITY

**To the extent permitted by Law, each party's total, cumulative liability arising out of or related to this Agreement and the products and services provided under it, whether based on contract, tort (including negligence), or any other legal or equitable theory, will be limited to the amounts paid by Customer for use of the products or provision of the services giving rise to the claim during the 12-month period preceding**



the first event giving rise to liability. The existence of more than one claim will not enlarge this limit. The foregoing limitation of liability shall not apply to: (a) Customer's obligation to pay for products, services or taxes; (b) a party's obligations in Section 7 (Indemnification); and (c) infringement by a party of the other party's Intellectual Property Rights.

## **9. EXCLUDED DAMAGES**

To the extent permitted by Law, neither WaveOn nor Customer will be liable to the other or any third party for lost profits (direct or indirect) or loss of use or loss of data or for any incidental, other consequential, punitive, special, or exemplary damages (including damage to business, reputation, or goodwill), or indirect damages of any type however caused, whether by breach of warranty, breach of contract, in tort (including negligence), or any other legal or equitable cause of action, even if such party has been advised of such damages in advance or if such damages were foreseeable. The foregoing exclusions shall not apply to: (a) payments to a third party arising from a party's obligations under Section 7 (Indemnification); and (b) infringement by a party of the other party's Intellectual Property Rights.

## **10. GROSS NEGLIGENCE; WILLFUL MISCONDUCT**

As provided by Law, nothing herein shall be intended to limit a party's liability in an action in tort, separate and distinct from a cause of action for breach of this Agreement, for the party's gross negligence or willful misconduct.

## **11. TERM AND TERMINATION**

**11.1 TERMINATION.** This Agreement begins on the Effective Date and continues until terminated under its terms. Each party may terminate this Agreement in its entirety: (a) on 30 days' prior notice to the other, if at the time of notice there are no Order Forms in effect; (b) immediately on notice if the other party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership, or liquidation, in any jurisdiction, that is not dismissed within 60 days of its commencement or an assignment for the benefit of creditors; or (c) immediately on notice if the other party materially breaches this Agreement and does not cure such breach within 30 days after the other party's receipt of notice of the breach. Either party may terminate an Order Form or SOW on notice if the other party materially breaches this Agreement or the applicable Order Form or SOW for the affected service and does not cure the breach within 30 days after receiving notice of the breach from the non-breaching party. Professional Services are separately ordered from the Subscription Service and are not required for use of the Subscription Service. A breach by a party of its obligations with respect to Professional Services shall not by itself constitute a breach by that party of its obligations with respect to the Subscription Service even if the services are enumerated in the same Order Form.

**11.2 TRANSFER OF PERSONAL DATA.** After termination or expiration of this Agreement or the applicable Subscription Service, upon Customer's written request, WaveOn will provide any Personal Data in the Subscription Service to Customer in WaveOn's standard database export format at no additional charge, unless legally prohibited. Customer must submit such request to WaveOn within 45 days after termination or expiration of this Agreement or the Subscription Service. WaveOn is not obligated to maintain or provide any Personal Data after such 45-day period.

**11.3 SURVIVAL.** Sections 2.3 (Restrictions), 3.3 (Taxes), 4 (Intellectual Property), 5 (Warranties; Disclaimer of Warranties) (solely in accordance with its terms), 6 (Confidential Information) through 10 (Gross Negligence; Willful Misconduct), 11 (Term and Termination) (solely in accordance with its terms), and 12 (General Provisions), together with any other terms required for their construction or enforcement, will survive termination or expiration of this Agreement.

## **12. GENERAL PROVISIONS**

**12.1 ASSIGNMENT.** Neither party may assign or novate its rights or obligations under this Agreement, by operation of law or otherwise (any of the foregoing, "Assign"), without the other party's prior written consent. Notwithstanding the foregoing, on notice and without the other's consent: (a) either party may in connection with a merger, reorganization, or sale of all or substantially all of such party's assets or equity, Assign this Agreement in



its entirety to such party's successor; and (b) WaveOn may Assign this Agreement in its entirety to any WaveOn Affiliate. Any attempted or purported Assignment in violation of this Section 12.1 will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors, and permitted assigns.

**12.2 COMPLIANCE WITH LAWS.** WaveOn will comply with all Laws applicable to its provision under the Agreement of the WaveOn Products, including those applicable to privacy and security of personal information (including mandatory trans-border data transfers and mandatory data breach notification requirements), but excluding Laws specifically applicable to Customer and its industry not generally applicable to information technology service providers regardless of industry. Customer will comply with all Laws applicable to its use of the WaveOn Products, including those applicable to collection and processing of Personal Data in WaveOn systems through the Subscription Service. Customer agrees to provide any required disclosures to and obtain any required consents for the transfer of Personal Data to WaveOn.

**12.3 EXPORT COMPLIANCE.** WaveOn Products may be subject to U.S. customs and export control laws and regulations. Customer agrees to comply with all international and national laws and regulations that apply to Customer in relation to WaveOn Products.

**12.4 NOTICE.** Except as otherwise provided in this Agreement, all notices will be in writing and deemed given on: (a) personal delivery; (b) when received by the addressee if sent by a recognized overnight courier (receipt requested); (c) the third business day after mailing; or (d) the first business day after sending by email with confirmation of receipt, except that email will not be sufficient for notices regarding a Claim or alleged breach. Notices will be sent as set forth on the first page of this Agreement or as subsequently updated in writing.

**12.5 FORCE MAJEURE.** WaveOn is not, and may not be construed to be, in breach of this Agreement for any failure or delay in fulfilling or performing the Subscription Service or any Professional Services, when and to the extent such failure or delay is caused by or results from acts beyond WaveOn's reasonable control, including: strikes, lock-outs, or other industrial disputes; trespass, sabotage, theft or other criminal acts, export bans, sanctions, war, terrorism, riot, civil unrest, or government action; failure of Internet connectivity or backbone or other telecommunications failures, in each case outside of WaveOn's local network; breakdown of plant or machinery; nuclear, chemical, or biological contamination; fire, flood, natural disaster, extreme adverse weather, epidemic, pandemic or other acts of God (each a "**Force Majeure Event**"). WaveOn will use reasonable efforts to mitigate the effects of such Force Majeure Event.

**12.6 HIGH RISK ACTIVITY.** The WaveOn Products are not designed for any purpose requiring fail-safe performance, including stock trading, financial transaction processing, operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, weapons systems, or other management or operation of hazardous facilities or applications for which failure could result in death, personal injury, or severe physical, property, or environmental damage (each, a "**High Risk Activity**"). WaveOn, its licensors, and suppliers expressly disclaim all warranties of fitness for any such use.

**12.7 EXECUTION.** This Agreement may be executed in counterparts, by electronic means to accurately send images, such as via email, or by electronic signature service. Neither party will contest the Agreement's validity solely because a signature was faxed or sent through other permitted electronic means. Each party will deliver to the other an original executed copy of the Agreement promptly after execution.

**12.8 WAIVER AND AMENDMENT.** Failure by a party to enforce any part of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. A waiver of any right is effective only if in a writing signed by an authorized representative of the waiving party. Any modification of this Agreement must be in writing and signed by authorized representatives of both parties.

**12.9 SEVERABILITY.** If any term of this Agreement is held invalid, unenforceable, or void by a court of competent jurisdiction, such term will be enforced to the maximum extent permissible, such holding will not affect the remaining terms, and the invalid, unenforceable, or void term will be deemed amended or replaced by a valid, legal, and enforceable term that matches the intent of the original language as closely as possible.



**12.10 RELATIONSHIP.** The parties are independent contractors. Nothing in this Agreement will be construed to create a partnership, joint venture, agency, or other relationship. Neither party has any right or authority to assume or create any obligation of any kind, express or implied, in the other party's name or on its behalf. No third-party is a third-party beneficiary of, or liable under, this Agreement, and no third-party is responsible for any obligations or liability arising out of Customer's use of the WaveOn Core Technology.

**12.11 GOVERNING LAW; JURISDICTION AND VENUE.** If Customer is located in the United States, Canada, or Mexico this Agreement will be governed by the Laws of the State of California, without regard to its conflict of laws principles. The parties irrevocably consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in San Diego County, California, for the purposes of adjudicating any dispute arising out of or related to this Agreement. Each party expressly consents to service of process by registered mail. To the extent permitted by Law, choice of law rules and the United Nations Convention on Contracts for the International Sale of Goods will not apply. Notwithstanding the foregoing, either party may at any time seek and obtain appropriate legal or equitable relief in any court of competent jurisdiction for claims regarding such party's Intellectual Property Rights.

**12.12 EQUITABLE REMEDIES.** The receiving party's disclosure of Confidential Information except as provided in this Agreement, or a party's infringement or misappropriation of the other party's Intellectual Property Rights may result in irreparable injury for which a remedy in money damages may be inadequate. In the event of such actual or threatened disclosure, infringement or misappropriation, disclosing party may be entitled to seek an injunction to prevent the breach or threatened breach without the necessity of proving irreparable injury or the inadequacy of money damages, in addition to remedies otherwise available to disclosing party at law or in equity.

**12.13 CONSTRUCTION.** WaveOn is obligated to provide WaveOn Products only in the English language, unless otherwise agreed in writing. The parties have expressly requested that this Agreement and all related documents be drafted in English. *Les parties confirment avoir expressément exigé que le présent contrat et les documents de WaveOn qui y sont attachés soient rédigés en anglais. Die Vertragsparteien verlangen ausdrücklich den Aufsatz dieser Vereinbarung und aller assoziierten Dokumente in englischer Sprache.* Section headings are for convenience only and are not to be used in interpreting this Agreement. This Agreement has been negotiated by the parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. Lists of examples following "including", "e.g.", "such as", or "for example" are interpreted to include "without limitation", unless qualified by words such as "only" or "solely." Unless stated or context requires otherwise: (a) all internal references are to this Agreement, its parties, and its Exhibits; (b) "days" means calendar days; (c) "may" means that the applicable party has a right, but not a concomitant duty; (d) all monetary amounts are expressed and, if applicable, payable, in U.S. dollars; (e) "current" or "currently" means "as of the Effective Date" but "then-current" means the present time when the applicable right is exercised or performance rendered or measured; (f) the word "or" will be deemed to be an inclusive "or"; (g) Universal Resource Identifiers ("URI") are understood to also refer to successor URIs, URIs for localized content, and information or resources linked from within the websites at such URIs; (h) a writing is "signed" when it has been hand-signed (i.e., with a pen) or electronically signed using an electronic signature service by duly authorized representatives of both parties; (i) a party's choices, elections, and determinations under this Agreement are in its sole discretion; (j) the singular includes the plural and vice versa; (k) a reference to a document includes any amendment, replacement, or novation of it; and (m) a reference to a thing includes a part of that thing (i.e., is interpreted to include "in whole or in part").

**12.14 ENTIRETY.** This Agreement (together with the Order Forms, Product Overviews, SOWs, and Service Descriptions, all of which are also deemed incorporated by this reference) is the parties' entire agreement regarding its subject matter and supersedes all prior or contemporaneous oral or written agreements, representations, understandings, undertakings, negotiations, letters of intent, and proposals, with respect to such subjects. The terms of this Agreement apply to the exclusion of any other terms Customer seeks to impose or incorporate, or that may be implied by trade, custom, practice, or course of dealing. Customer acknowledges it has not relied on any statement, promise, or representation made or given by or on behalf of WaveOn that is not expressly stated in this Agreement. Customer's orders are not contingent, and Customer has not relied, on the delivery of any future functionality regardless of any verbal or written communication about WaveOn's possible future plans.



## EXHIBIT A SUBSCRIPTION SERVICE GUIDE

### 1. SUPPORT

WaveOn will provide support for the Subscription Service as set forth in the **Customer Support Policy** attached to this Subscription Service Guide as Exhibit A.2 and incorporated herein by reference. The Customer Support Policy may be updated periodically.

### 2. UPGRADES AND UPDATES

WaveOn will provide upgrades and updates to the Subscription Service as described in Exhibit A.3 **Upgrades and Updates** attached to this Subscription Service Guide and incorporated herein by reference. The Upgrade and Update exhibit may be updated periodically.

### 3. DATA PROCESSING ADDENDUM

The parties' agreement with respect to the processing of personal information submitted to the Subscription Service is described in the **Data Processing Addendum** attached to this Subscription Service Guide as Exhibit A.4 and incorporated herein by reference. The Data Processing Addendum may be updated periodically.

### 4. DATA SECURITY GUIDE

WaveOn will implement and maintain security procedures and practices appropriate to information technology service providers designed to protect Personal Data from unauthorized access, destruction, use, modification, or disclosure, as described in the **Data Security Guide** attached to this Subscription Service Guide as Exhibit A.5 and incorporated herein by reference. The Data Security Guide may be updated periodically.

### 5. AVAILABILITY SERVICE LEVEL

#### 5.1 DEFINITIONS.

**5.1.1 "Available"** means that the Subscription Service can be accessed by authorized users.

**5.1.2 "Excused Downtime"** means: (a) Maintenance Time; and (b) any time the Subscription Service is not Available due to circumstances beyond WaveOn's control, including modifications of the Subscription Service by any person other than (i) WaveOn or (ii) a person acting at WaveOn's direction, a Force Majeure Event, general Internet outages, failure of Customer's infrastructure or connectivity (including direct connectivity and virtual private network ("VPN") connectivity to the Subscription Service), computer and telecommunications failures and delays, and network intrusions or denial-of-service or other criminal attacks.

**5.1.3 "Infrastructure Modification"** means any repairs, maintenance, improvements, or changes to the cloud infrastructure used by WaveOn to operate and deliver the Subscription Service.

**5.1.4 "Maintenance Time"** means the time the Subscription Service is not Available due to an Infrastructure Modification, Upgrade, and Update.

**5.1.5 "Availability SLA"** means that the production instances of the Subscription Service will be Available at least 99.8% of the time during a calendar month, excluding Excused Downtime.

**5.2 AVAILABILITY.** If Customer's production instances of the Subscription Service fall below the Availability SLA during a calendar month, Customer's exclusive remedy for failure of the Subscription Service to meet the Availability SLA is to request that either: (a) the affected Subscription Term be extended for the number of minutes the Subscription Service was not Available in the month in accordance with the Availability SLA; or (b) WaveOn issue a service credit to Customer for the dollar value of the number of minutes the Subscription Service was not Available in the month in accordance with the Availability SLA (determined at the deemed per-minute rate WaveOn charges to Customer for Customer's use of the affected Subscription Service), which Customer may request WaveOn apply to the next invoice for subscription fees.

**5.3 REQUESTS.** Customer must request all service credits or extensions in writing to WaveOn within 30 days of the end of the month in which the Availability SLA was not met, identifying the support requests relating



to the period Customer's production instances of the Subscription Service was not Available. The total amount of service credits for any month may not exceed the subscription fee for the affected Subscription Service for that month and has no cash value. WaveOn may delay issuing service credits until such amounts reach \$1,000 USD or equivalent currency specified in the applicable Order Form.

**5.4 NOTICE.** WaveOn will give Customer 10 days' prior notice of an Infrastructure Modification if WaveOn, in its reasonable judgment, believes that the Infrastructure Modification will impact Customer's use of its production instances of the Subscription Service, unless, in the reasonable judgment of WaveOn, the Infrastructure Modification is necessary to: (a) maintain the availability, security, or performance of the Subscription Service; (b) comply with Law; or (c) avoid infringement or misappropriation of third-party Intellectual Property Rights.

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## EXHIBIT A.2 - CUSTOMER SUPPORT POLICY

This Customer Support Policy governs the support that WaveOn will provide for its Subscription Service (“**Customer Support**”).

### 1. SCOPE

The purpose of Customer Support is to resolve Defects. A resolution to a Defect may consist of a fix, workaround, or other relief, as WaveOn deems reasonable. Customer Support does not include performing the following services:

- implementation services;
- configuration services;
- integration services;
- customization services or other custom software development;
- training; or
- assistance with administrative functions.

Customer Support is not required to provide resolutions for immaterial defects or defects due to modifications of the Subscription Service made by any person other than (a) WaveOn or (b) a person acting at WaveOn’s direction, or defects on any instance of the Subscription Service not in conformance with Exhibit A.3 - Upgrades and Updates.

### 2. BUSINESS HOURS

Customer Support is available 24 hours a day, 7 days a week, including all holidays. For support on WaveOn holidays, weekends, and outside of the hours of 9:00 and 17:00 Pacific Time on weekdays, support is available via the Support Portal.

### 3. ACCESS CONTACTS

WaveOn’s Customer Support portal (“**Support Portal**”) is located at <https://support.WaveOn.com>. Customer may access the Support Portal or contact its WaveOn account manager for support.

### 4. INCIDENT PRIORITY

Incident priority for a defect is determined using the guidelines below.

| Priority | Definition                                                      |
|----------|-----------------------------------------------------------------|
| P1       | Any defect that causes an instance not to be Available.         |
| P2       | Any defect that causes a critical function to fail.             |
| P3       | Any defect that significantly impedes work or progress.         |
| P4       | Any defect that does not significantly impede work or progress. |



## 5. RESPONSE TIMES AND LEVEL OF EFFORT

Customer may submit an incident with WaveOn via the Support Portal or phone. Response times are not affected by the manner of contact. All support requests are tracked in the Support Portal and can be viewed by Customer's authorized contacts. WaveOn will use reasonable efforts to meet the target response times and target level of effort stated in the table below.

| Priority | Target Response Times | Target Level of Effort                                              |
|----------|-----------------------|---------------------------------------------------------------------|
| P1       | 30 minutes            | Continuously, 24 hours per day, 7 days per week                     |
| P2       | 2 hours               | Continuously, but not necessarily 24 hours per day, 7 days per week |
| P3       | 1 business day        | As appropriate during normal business hours                         |
| P4       | N/A                   | Varies                                                              |

## 6. CUSTOMER RESPONSIBILITIES

Customer's obligations with respect to Customer Support are as follows:

**6.1** Customer will receive from WaveOn communications via email, phone, or through the Support Portal regarding the Subscription Service.

**6.2** Customer will appoint no more than 10 contacts ("**Customer Authorized Contacts**") to engage Customer Support for questions and technical issues.

**6.2.1** Customer must maintain the following Customer Authorized Contacts:

- Primary Business Contact;
- Secondary Business Contact;
- Primary Technical Contact;
- Secondary Technical Contact;
- Support Contact; and
- Security Contact.

**6.2.2** Customer will maintain current information for all Customer Authorized Contacts in the Support Portal.

**6.2.3** Only Customer Authorized Contacts will contact Customer Support.

**6.2.4** Customer will train all Customer Authorized Contacts on the use and administration of the Subscription Service.

**6.3** Customer will cooperate to enable WaveOn to deliver the Subscription Service and Customer Support.

**6.4** Customer is solely responsible for the use of the Subscription Service by its users.



## EXHIBIT A.3 - UPGRADES AND UPDATES

### 1. DEFINITIONS

**1.1** “**Upgrades**” are WaveOn’s releases of the Subscription Service for enhancements or new features (including a new Release Family) applied by WaveOn to Customer’s instances of the Subscription Service at no additional fee during the Subscription Term.

**1.2** “**Updates**” are WaveOn’s releases (including patches and hotfixes) of the Subscription Service applied by WaveOn to Customer’s instances of the Subscription Service at no additional fee during the Subscription Term that provide problem fixes, but do not generally include new functionality, and are released as needed.

**1.3** “**Release Family**” is an Upgrade that is a complete solution with new features or enhancements, including previously released Updates if applicable to the features included in the Upgrade.

**1.4** “**Critical Upgrade**” is an Upgrade that in WaveOn’s reasonable judgment is critical to maintaining the availability, security or performance of the Subscription Service; comply with applicable laws or to avoid infringement or misappropriation of a third-party Intellectual Property Right.

**1.5** “**Critical Update**” is an Update that in WaveOn’s reasonable judgment is critical to maintaining the availability, security or performance of the Subscription Service; comply with applicable laws or to avoid infringement or misappropriation of a third-party Intellectual Property Right.

**1.6** “**Supported Release Family**” at a particular time means the then-current Release Family and the prior Release Family.

### 2. UPGRADES AND UPDATES

WaveOn shall determine, in its sole discretion: (a) whether and when to develop, release and apply any Update or Upgrade to Customer’s instances of the Subscription Service; and (b) whether a particular release is an Update, Upgrade or new service offering that is available separately for purchase.

### 3. SUPPORTED AND NON-SUPPORTED RELEASE FAMILIES

Customer acknowledges that the current Release Family is the version of the Subscription Service containing the most current features, availability, performance and security. Within a Supported Release Family, the most recent Update is the version of the Subscription Service for that Release Family that contains the most current problem fixes, availability, performance and security. A Customer using a Supported Release Family may be required to apply a Critical Update within the Supported Release Family. A Customer that has not Upgraded to a Supported Release Family may experience defects, for which Customer hereby agrees that WaveOn is not responsible, including without limitation those that affect the features, availability, performance and security of the Subscription Service, that are fixed in the most current version of the Subscription Service. A Customer who is not using a Supported Release Family may be required to apply an Upgrade to a Supported Release Family.

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## EXHIBIT A.4 - DATA PROCESSING ADDENDUM

This Data Processing Addendum (“**DPA**”) is deemed to include Sections 1 through 8 below, including the attached Appendix 1, and the Data Security Guide, all of which are expressly deemed incorporated in the Agreement by this reference.

In the event of any conflict between the terms of this DPA and the terms of the Agreement with respect to the subject matter herein, this DPA shall control. Any data processing agreements that may already exist between parties as well as any earlier version of the Data Security Guide to which the parties may have agreed are superseded and replaced by this DPA in their entirety. All capitalized terms not defined in this DPA will have the meaning given to them in other parts of the Agreement.

### 1. DEFINITIONS

**1.1 “Agreement”** means the Ordering Agreement, Order Form or other signed ordering document, as applicable, between WaveOn and Customer and the signed master agreement (if any) for the purchase of the Subscription Service.

**1.2 “Data Processor”** means the natural or legal person, public authority, agency, or other body which Processes Personal Data on behalf of the Data Controller.

**1.3 “Data Controller”** means the natural or legal person, public authority, agency, or other body which, alone or jointly with others, determines the purposes and means of Processing of Personal Data. While WaveOn operates the majority of our services as a Data Controller, there are some instances in which WaveOn operates as a Data Processor when working with businesses and other third parties. **“Data Protection Laws”** means all applicable laws and regulations regarding the Processing of Personal Data and includes GDPR.

**1.4 “GDPR”** means the European Union’s General Data Protection Regulation (2016/679).

**1.5 “Instructions”** means Data Controller’s documented data Processing instructions issued to Data Processor in compliance with this DPA.

**1.6 “Process” or “Processing”** means any operation or set of operations which is performed upon Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, or otherwise making available, alignment or combination, restriction, erasure or destruction.

**1.7 “Professional Services”** means any consulting or development services provided by or on behalf of WaveOn pursuant to an agreed Statement of Work or Service Description described or referenced in a signed ordering document.

**1.8 “Sub-Processor”** means any legal person or entity engaged in the Processing of Personal Data by Data Processor. For the avoidance of doubt, in the event, at WaveOn’s sole discretion, WaveOn elects to use colocation datacenter facilities, WaveOn’s colocation datacenter facilities are not Sub-Processors under this DPA.

**1.9 “Subscription Service”** means the WaveOn software-as-a-service offering ordered by Customer under an Order Form or other signed ordering document between WaveOn and Customer.

**1.10 “Subscription Term”** means the term of authorized use of the Subscription Service as set forth in the Order Form or other ordering document signed by Customer and WaveOn.

### 2. SCOPE OF PROCESSING

**2.1 COMMISSIONED PROCESSOR.** Data Controller may appoint a Data Processor to Process Personal Data on behalf of Data Controller to the extent necessary to provide the Subscription Service described in the Agreement and in accordance with the Instructions.

**2.2 INSTRUCTIONS.** Data Controller shall provide written Instructions to Data Processor for Processing of Personal Data. Data Controller may issue additional or alternate Instructions. Data Controller is responsible for ensuring its Instructions to Data Processor comply with Data Protection Laws.



**2.3** NATURE, SCOPE AND PURPOSE OF PROCESSING. Data Processor shall only Process Personal Data in accordance with Data Controller's Instructions.

**2.4** CATEGORIES OF PERSONAL DATA AND CATEGORIES OF DATA SUBJECTS. Data Controller may submit Personal Data to the Subscription Service, the extent of which is determined and controlled by Data Controller in its sole discretion and is further described in Appendix 1.

### **3. DATA CONTROLLER, DATA PROCESSOR, CUSTOMER**

**3.1** COMPLIANCE WITH DATA PROTECTION LAWS. Data Controller shall comply with all of its obligations under Data Protection Laws when Processing Personal Data.

**3.2** SECURITY RISK ASSESSMENT. Data Controller agrees that in accordance with Data Protection Laws and before submitting any Personal Data to the Data Processor, Data Controller will perform an appropriate risk assessment to determine whether the security measures within the Data Processor provide an adequate level of security, taking into account the nature, scope, context and purposes of the processing, the risks associated with the Personal Data and the applicable Data Protection Laws. Data Processor shall provide Data Controller reasonable assistance by providing Data Controller with information requested by Data Controller to conduct Data Controller's security risk assessment. Data Controller is solely responsible for determining the adequacy of the security measures within the Data Processor in relation to the Personal Data Processed. .

**3.3** COMMUNICATION. Unless otherwise provided in this DPA, all requests, notices, cooperation, and communication, including Instructions issued or required under this DPA (collectively, "**Communication**"), must be in writing and between Customer and WaveOn.

**3.4** LIABILITY. Customer will have no liability for any harm or damages resulting from Data Controller's compliance with or failure to comply with Data Protection Laws in operating the Subscription Service or delivering Professional Services.

**3.5** PERSONNEL. Access to Personal Data by Data Controller will be limited to personnel who require such access to perform Data Controller's obligations under the Agreement and who are bound by obligations to maintain the confidentiality of such Personal Data at least as protective as those set forth herein and in the Agreement.

**3.6** DATA SECURITY MEASURES. In combination with Data Controller's security risk assessment obligations under Section 3.2 (Security Risk Assessment) above, Data Controller shall maintain appropriate technical and organizational safeguards to protect the security, confidentiality, and integrity of Personal Data contained therein, as described in Section 2 (Physical, Technical, and Administrative Security Measures) of the Data Security Guide. Such measures are designed to protect Personal Data from loss, alteration, unauthorized access, acquisition, use, disclosure, or accidental or unlawful destruction, and include:

**3.6.1** SERVICE ACCESS CONTROL. The Subscription Service provides user and role-based access controls. Data Controller is responsible for configuring such access controls within its instance.

**3.6.2** LOGGING AND MONITORING. The production infrastructure log activities are centrally collected and are secured in an effort to prevent tampering and are monitored for anomalies by a trained security team.

**3.6.3** DATA SEPARATION. Personal Data shall be maintained on cloud infrastructure that is logically and physically separate from WaveOn's corporate infrastructure.

**3.6.4** SERVICE CONTINUITY. The production database servers that are hosted on cloud infrastructure are replicated in near real time to a mirrored instance ("**Hot Standby**").

**3.6.5** TESTING. Data Controller regularly tests, assesses, and evaluates the effectiveness of its information security program and may periodically review and update such program to address new and evolving security technologies, changes to industry standard practices, and changing security threats.



**3.7 DELETION OF PERSONAL DATA.** Upon request by the Data Subject, Data Controller shall return, and delete or irreversibly anonymize Personal Data and, in cases where it is reasonable to believe Customer has obtained Data Subject's Personal Data from WaveOn, communicate to the Customer to do the same.

**3.8 DATA CENTERS.** Except for WaveOn software-as-a-service elements that are hosted on on-premise equipment pursuant to an agreed Order Form or SOW, Data Controller's instances of the Subscription Service will be hosted in data centers.

**3.9 DATA PROTECTION IMPACT ASSESSMENTS (DPIA).** Customer will, on request, provide Data Controller with reasonable information required to fulfill Data Controller's obligations under Data Protection Laws to carry out data protection impact assessments, if any, for Processing of Personal Data within the Subscription Service.

**3.10 PRIOR CONSULTATION.** Customer shall provide reasonable assistance in connection with any prior consultation Data Controller is required to undertake with a supervisory authority under Data Protection Laws with respect to Processing of Personal Data in the Subscription Service.

**3.11 ASSISTANCE.** Customer will assist Data Controller in ensuring compliance with Data Controller's obligations pursuant to Articles 32 to 36 of GDPR by providing Data Controller with reasonable information requested pursuant to the terms of this DPA, including information required to conduct Data Controller's security risk assessment and respond to Data Subject Requests (defined below). For clarity, Data Controller is solely responsible for carrying out its obligations under GDPR and this DPA. Customer shall not undertake any task that can be performed by Data Controller.

**3.12 DATA PROTECTION CONTACT.** WaveOn will maintain a dedicated data protection team to respond to data protection inquiries throughout the duration of this DPA and can be contacted at [privacy@WaveOn.com](mailto:privacy@WaveOn.com).

#### **4. REQUESTS MADE FROM DATA SUBJECTS AND AUTHORITIES**

**4.1 REQUESTS FROM DATA SUBJECTS.** During the Subscription Term, Data Controller shall have the ability to access, correct, rectify, erase, or block Personal Data, or to transfer or port such Personal Data, within the Subscription Service, as may be required under Data Protection Laws (collectively, "**Data Subject Requests**").

**4.2 RESPONSES.** Data Controller will be solely responsible for responding to any Data Subject Requests, provided that Customer shall reasonably cooperate with the Data Controller to respond to Data Subject Requests to the extent Data Controller is unable to fulfill such Data Subject Requests using the functionality in the Subscription Service.

**4.3 REQUESTS FROM AUTHORITIES.** In the case of a notice, audit, inquiry, or investigation by a government body, data protection authority, or law enforcement agency regarding the Processing of Personal Data, Data Controller shall promptly notify Customer unless prohibited by applicable law. Data Controller shall keep records of the Personal Data Processed and shall cooperate and provide all necessary information in the event it is required to produce such information to a data protection authority.

**4.4 COOPERATION WITH SUPERVISORY AUTHORITIES.** In accordance with Data Protection Laws, Data Controller and Customer shall cooperate, on request, with a supervisory authority in the performance of such supervisory authority's task.

#### **5. BREACH NOTIFICATION**

**5.1 NOTIFICATION.** Data Controller will report to Customer, and vice versa, any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or access to Personal Data ("**Breach**") that it becomes aware of without undue delay following determination by WaveOn or Customer that a Breach has occurred.

**5.2 REPORT.** The initial report will be made to Customer or Data Controller's security or privacy contact(s) designated in WaveOn's customer support portal (or if no such contact(s) are designated, to the primary contact designated by Customer). As information is collected or otherwise becomes available, Data Controller or



Customer shall provide without undue delay any further information regarding the nature and consequences of the Breach to allow Data Controller to notify relevant parties, including affected Data Subjects, government agencies and data protection authorities in accordance with Data Protection Laws. The report will include the name and contact information of the Data Controller or Customer contact from whom additional information may be obtained. Data Controller shall inform Customer, or vice versa, of the measures that it will adopt to mitigate the cause of the Breach and to prevent future Breaches.

**5.3 DATA CONTROLLER OBLIGATIONS.** Data Controller will cooperate with Customer in maintaining accurate contact information in the customer support portal and by providing any information that is reasonably requested to resolve any security incident, including any Breaches, identify its root cause(s), and prevent a recurrence. Data Controller is solely responsible for determining whether to notify the relevant supervisory or regulatory authorities and impacted Data Subjects and for providing such notice.

## **6. AUDIT**

**6.1 AUDIT.** No more than once per year and upon written request by Customer, Customer shall have the right directly or through its representative(s) (provided however, that such representative(s) shall enter into written obligations of confidentiality directly with WaveOn), to access all reasonable and industry recognized documentation evidencing WaveOn's policies and procedures governing the security of Customer Data ("**Audit**"). Such Audit shall include a written summary report of any assessment performed by an independent third-party of WaveOn's information security management system supporting the Subscription Service against the objectives stated in ISO 27001, ISO 27018, SSAE 18 / SOC 1 and SOC 2 Type 2 (or equivalent successor standards, or standards mutually agreed). WaveOn reserves the right to refuse to provide Customer (or its representatives) with any information which would pose a security risk to WaveOn or its customers, or which WaveOn is prohibited to provide or disclose under Law or contractual obligation.

**6.2 OUTPUT.** Upon completion of the Audit, Customer will share a written report with WaveOn. WaveOn and Customer may schedule a mutually convenient time to discuss the output of the Audit. WaveOn may in its sole discretion, consistent with industry and WaveOn's standards and practices, make commercially reasonable efforts to implement suggested improvements noted in the Audit to improve WaveOn's Security Program. The Audit and the results derived therefrom are Confidential Information of WaveOn.

**6.3 CUSTOMER EXPENSES.** Any expenses incurred by Customer in connection with the Audit shall be borne exclusively by Customer.

## **7. DATA PROCESSORS AND SUB-PROCESSORS**

**7.1 USE OF DATA PROCESSORS AND SUB-PROCESSORS.** Data Controller may appoint a Data Processor and authorize Data Processor to engage Sub-Processors appointed in accordance with this Section 7 to support the provision of the Subscription Service and to deliver Professional Services as described in the Agreement.

**7.1.1 AFFILIATES.** As of the Effective Date, Data Processor may engage, as applicable, Affiliates as Sub-Processors (collectively, "**Sub-Processor Affiliates**"). Each Sub-Processor Affiliate shall comply with the obligations of the Agreement in the Processing of the Personal Data.

**7.1.2 NEW SUB-PROCESSORS.** Prior to Data Processor or a Data Processor Affiliate engaging a Sub-Processor, Data Processor shall: (a) notify Data Controller in writing; and (b) ensure that such Sub-Processor has entered into a written agreement with Data Processor (or the relevant Data Processor Affiliate) requiring that the Sub-Processor abide by terms no less protective than those provided in this DPA. Upon written request by Data Controller, Data Processor shall make a summary of the data processing terms available to Data Controller. Data Controller may request in writing reasonable additional information with respect to Sub-Processor's ability to perform the relevant Processing activities in accordance with this DPA.

**7.2 LIABILITY.** Use of a Data Processor or Sub-Processor will not relieve, waive, or diminish any obligation Data Controller has under the Agreement, and Data Controller is liable for the acts and omissions of any



Data Processor or Sub-Processor to the same extent as if the acts or omissions were performed by Data Controller.

## **8. INTERNATIONAL DATA TRANSFERS**

**8.1 STANDARD CONTRACTUAL CLAUSES AND ADEQUACY.** Where required under Data Protection Laws, Data Controller, Data Processor, or Data Processor's Affiliates shall require Sub-Processors to abide by (a) the Standard Contractual Clauses for Data Processors established in third countries; or (b) another lawful mechanism for the transfer of Personal Data as approved by the European Commission.

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## **APPENDIX 1 DETAILS OF PROCESSING**

### **Nature and Purpose of Processing**

Data Processor will Process Personal Data as required to provide the Subscription Service and Professional Services and in accordance with the Agreement.

### **Duration of Processing**

Data Processor will Process Personal Data for the duration of the Agreement and in accordance with Section 3 (Data Processor) of this DPA.

### **Data Subjects**

Data Controller may submit Personal Data to the Subscription Service, the extent of which is solely determined by Data Controller, and may include Personal Data relating to the following categories of Data Subjects:

- Consumers, customers, and prospects;
- clients and other business contacts;
- employees and contractors;
- subcontractors and agents; and
- consultants and partners.

### **Categories of Personal Data**

Data Controller may submit Personal Data to the Subscription Service, the extent of which is solely determined by Data Controller, and may include the following categories:

- communication data (e.g., telephone, email);
- business and personal contact details;
- date of birth;
- number of children and ages;
- IP addresses;
- activities and interests information;
- products purchased, items scanned, locations, registrations, and warranty information;
- digital content consumed;
- financial account information; and
- other Personal Data submitted to the Subscription Service.

### **Special Categories of Personal Data**

Data Controller may submit Special Categories of Personal Data to the Subscription Service, the extent of which is solely determined by Data Controller in compliance with Data Protection Law, and may include the following categories, if any:

- racial or ethnic origin;
- political opinions;
- religious or philosophical beliefs;

- trade union membership;
- genetic data or biometric data;
- health information; and
- sex life or sexual orientation.

**Processing Operations**

The personal data transferred will be subject to the following basic processing activities:

- All activities necessary for the performance of the Agreement.

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## EXHIBIT A.5 - DATA SECURITY GUIDE

This Data Security Guide forms a part of the Agreement and describes the measures WaveOn takes to protect Personal Data.

In the event of any conflict between the terms of this Data Security Guide and the terms of the Agreement with respect to the subject matter herein, this Data Security Guide shall control. All capitalized terms not defined in this Data Security Guide will have the meaning given to them in other parts of the Agreement.

### 1. SECURITY PROGRAM

While providing the Subscription Service, WaveOn will maintain a written information security program of policies, procedures and controls governing the processing, storage, transmission and security of Personal Data (the “**Security Program**”). The Security Program includes industry-standard practices designed to protect Personal Data from accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access. WaveOn regularly tests, assesses, and evaluates the effectiveness of the Security Program and may periodically review and update the Security Program to address new and evolving security technologies, changes to industry standard practices, and changing security threats, although no such update will materially reduce the commitments, protections or overall level of service provided to Customer as described herein.

### 2. PHYSICAL, TECHNICAL, AND ADMINISTRATIVE SECURITY MEASURES

#### 2.1 PHYSICAL SECURITY MEASURES.

**2.1.1 DATA CENTER FACILITIES.** (a) Physical access restrictions and monitoring that may include a combination of any of the following: multi-zone security, man-traps, appropriate perimeter deterrents (e.g., fencing, berms, guarded gates), on-site guards, biometric controls, CCTV, and secure cages; and (b) fire detection and fire suppression systems both localized and throughout the data center floor.

**2.1.2 SYSTEMS, MACHINES AND DEVICES.** (a) Physical protection mechanisms; and (b) entry controls to limit physical access.

**2.1.3 MEDIA.** (a) Industry standard destruction of sensitive materials before disposition of media; (b) secure safe for storing damaged hard disks prior to physical destruction; and (c) physical destruction of all decommissioned hard disks storing Personal Data.

#### 2.2 TECHNICAL SECURITY MEASURES.

**2.2.1 ACCESS ADMINISTRATION.** Access to the Subscription Service by WaveOn employees and contractors is protected by authentication and authorization mechanisms. User authentication is required to gain access to production and sub-production instances. Access privileges are based on job requirements and are revoked upon termination of employment or consulting relationships. Production infrastructure includes appropriate user account and password controls and is accessible for administration.

**2.2.2 SERVICE ACCESS CONTROL.** The Subscription Service provides user and role-based access controls. Customer is responsible for configuring such access controls.

**2.2.3 LOGGING AND MONITORING.** The production infrastructure log activities are centrally collected and are secured in an effort to prevent tampering and are monitored for anomalies by a trained security team.

**2.2.4 FIREWALL SYSTEM.** An industry-standard firewall is installed and managed to protect WaveOn systems by residing on the network to inspect all ingress connections routed to the WaveOn environment.

**2.2.5 VULNERABILITY MANAGEMENT.** WaveOn conducts periodic security risk evaluations to identify critical information assets, assess threats to such assets, determine potential vulnerabilities, and provide for remediation. When software vulnerabilities are revealed and addressed by a vendor patch, WaveOn will obtain the patch from the applicable vendor and apply it within an appropriate timeframe in accordance with WaveOn's then-current vulnerability management and security patch management standard operating procedure and only after such patch is tested and determined to be safe for installation in all production systems.



**2.2.6 ANTIVIRUS.** WaveOn updates antivirus, anti-malware, and anti-spyware software on regular intervals and centrally logs events for effectiveness of such software.

**2.2.7 CHANGE CONTROL.** WaveOn ensures that changes to platform, applications, and production infrastructure are evaluated to minimize risk and are implemented following WaveOn's standard operating procedure.

**2.2.8 DATA SEPARATION.** Personal Data shall be maintained on cloud infrastructure that is logically and physically separate from WaveOn's corporate infrastructure.

### **2.3 ADMINISTRATIVE SECURITY MEASURES.**

**2.3.1 PERSONNEL SECURITY.** WaveOn performs background screening on all employees and all contractors who have access to Personal Data in accordance with WaveOn's then-current applicable standard operating procedure and subject to Law.

**2.3.2 SECURITY AWARENESS AND TRAINING.** WaveOn maintains a security awareness program that includes appropriate training of WaveOn personnel on the Security Program. Training is conducted at time of hire and periodically throughout employment at WaveOn.

**2.3.3 VENDOR RISK MANAGEMENT.** WaveOn performs vendor risk management to assess all vendors that access, store, process, or transmit Personal Data for appropriate security controls and business disciplines.

## **3. SERVICE CONTINUITY**

**3.1 DATA MANAGEMENT; DATA BACKUP.** Except for WaveOn software-as-a-service elements that are hosted on on-premise equipment pursuant to an agreed Order Form or SOW, WaveOn will host Customer's access to the Subscription Service in data centers that attained SSAE 18 Type 2 attestations or have ISO 27001 certifications (or equivalent or successor attestations) acting in an active/active capacity for the Subscription Term. Each data center includes fault tolerant infrastructure for electrical, cooling and network systems. The production database servers are replicated in near real time to a mirrored instance ("**Hot Standby**").

**3.2 PERSONNEL.** In the event of an emergency that renders the customer support telephone system unavailable, all calls are routed to an answering service that will transfer to a WaveOn telephone support representative, to ensure business continuity for support operations.

## **4. AUDIT**

**4.1 AUDIT.** No more than once per year and upon written request by Customer, Customer shall have the right directly or through its representative(s) (provided however, that such representative(s) shall enter into written obligations of confidentiality directly with WaveOn), to access all reasonable and industry recognized documentation evidencing WaveOn's policies and procedures governing the security of Customer Data ("**Audit**"). Such Audit shall include a written summary report of any assessment performed by an independent third-party of WaveOn's information security management system supporting the Subscription Service against the objectives stated in ISO 27001, ISO 27018, SSAE 18 / SOC 1 and SOC 2 Type 2 (or equivalent successor standards, or standards mutually agreed). WaveOn reserves the right to refuse to provide Customer (or its representatives) with any information which would pose a security risk to WaveOn or its customers, or which WaveOn is prohibited to provide or disclose under Law or contractual obligation.

**4.2 OUTPUT.** Upon completion of the Audit, Customer will share a written report with WaveOn. WaveOn and Customer may schedule a mutually convenient time to discuss the output of the Audit. WaveOn may in its sole discretion, consistent with industry and WaveOn's standards and practices, make commercially reasonable efforts to implement suggested improvements noted in the Audit to improve WaveOn's Security Program. The Audit and the results derived therefrom are Confidential Information of WaveOn.

**4.3 CUSTOMER EXPENSES.** Any expenses incurred by Customer in connection with the Audit shall be borne exclusively by Customer.



## 5. MONITORING AND INCIDENT MANAGEMENT

### 5.1 MONITORING, MANAGEMENT AND NOTIFICATION.

**5.1.1 INCIDENT MONITORING AND MANAGEMENT.** WaveOn will monitor, analyze, and respond to security incidents in a timely manner in accordance with WaveOn's standard operating procedure. WaveOn's security group will escalate and engage response teams as may be necessary to address an incident.

**5.1.2 BREACH NOTIFICATION.** WaveOn will report to Customer any accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data (a "**Breach**") without undue delay following determination by WaveOn that a Breach has occurred.

**5.1.3 REPORT.** The initial report will be made to Customer security or privacy contact(s) designated in WaveOn's customer support portal (or if no such contact(s) are designated, to the primary contact designated by Customer). As information is collected or otherwise becomes available, WaveOn shall provide without undue delay any further information regarding the nature and consequences of the Breach to allow Customer to notify relevant parties, including affected Data Subjects, government agencies, and data protection authorities in accordance with Data Protection Laws. The report will include the name and contact information of the WaveOn contact from whom additional information may be obtained. WaveOn shall inform Customer of the measures that it will adopt to mitigate the cause of the Breach and to prevent future Breaches.

**5.1.4 CUSTOMER OBLIGATIONS.** Customer will cooperate with WaveOn in maintaining accurate contact information in the customer support portal and by providing any information that is reasonably requested to resolve any security incident, including any Breaches, identify its root cause(s), and prevent a recurrence. Customer is solely responsible for determining whether to notify the relevant supervisory or regulatory authorities and impacted Data Subjects and for providing such notice.

**5.2 USE OF AGGREGATE DATA.** WaveOn may collect, use, and disclose quantitative data derived from Customer's use of the Subscription Service for industry analysis, benchmarking, analytics, marketing, and other business purposes. Any such data will be in aggregate form only and will not contain Personal Data.

**5.3 USE OF ANONYMOUS DATA.** WaveOn may render Personal Data anonymous in such a manner that the Data Subject is not or is no longer identifiable and use it for other business purposes. WaveOn may do so in its sole discretion in lieu of deleting the Personal Data.

**5.4 COOKIES.** When providing the Subscription Service, WaveOn uses cookies to: (a) track session state; (b) route a browser request to a specific node when multiple nodes are assigned; and (c) recognize a user upon returning to the Subscription Service. WaveOn shall be responsible for providing notice to, and collecting any necessary consents from, its authorized users of the Subscription Service for WaveOn's use of cookies.

## 6. PENETRATION TESTS

**6.1 BY A THIRD-PARTY.** WaveOn may contract with third-party vendors at its sole discretion to perform a penetration test on the WaveOn application per Release Family to identify risks and remediation that help increase security.

**6.2 BY CUSTOMER.** No more than once per calendar year Customer may request to perform, at its own expense, an application penetration test of a sub-production instance of the Subscription Service. Customer shall notify WaveOn in advance of any test by submitting a request to schedule an application penetration test using WaveOn's customer support portal per WaveOn's then-current penetration testing policy and procedure, including entering into WaveOn's penetration test agreement. WaveOn and Customer must agree on a mutually acceptable time for the test; and Customer shall not perform a penetration test without WaveOn's express written authorization. The test must be of reasonable duration, but in no event longer than 14 days and must not interfere with WaveOn's day-to-day operations. Promptly on completion of the penetration test, Customer shall provide WaveOn with the test results including any detected vulnerability. Upon such notice, WaveOn shall, consistent with industry-standard practices, use all commercially reasonable efforts to promptly make any necessary changes to improve the security of the Subscription Service. Customer shall treat the test results as Confidential Information of WaveOn subject to the confidentiality requirements in the Agreement.



## 7. SHARING THE SECURITY RESPONSIBILITY

**7.1 PRODUCT CAPABILITIES.** The Subscription Service has the capabilities to: (a) authenticate users before access; (b) encrypt passwords; (c) allow users to manage passwords; and (d) prevent access by users with an inactive account. Customer manages each user's access to and use of the Subscription Service by assigning to each user a credential and user type that controls the level of access to the Subscription Service. WaveOn shall be responsible for implementing encryption and access control functionalities available within the Subscription Service for protecting all Personal Data containing sensitive data, including credit card numbers, social security and other government-issued identification numbers, financial and health information and any Personal Data deemed sensitive or "special categories of personal data" under Data Protection Laws. Customer is responsible for protecting the confidentiality of each user's login and password and managing each user's access to the Subscription Service.

**7.2 CUSTOMER COOPERATION.** To the extent applicable, Customer shall promptly apply any Upgrade or Update that WaveOn determines is necessary to maintain the security, performance, or availability of the Subscription Service.

**7.3 LIMITATIONS.** Notwithstanding anything to the contrary in this Data Security Guide or other parts of the Agreement, WaveOn's obligations extend only to those systems, networks, network devices, facilities, and components over which WaveOn exercises control. This Data Security Guide does not apply to: (a) information shared with WaveOn that is not Personal Data; (b) data in Customer's VPN or a third-party network; (c) any data processed by Customer or its users in violation of the Agreement or this Data Security Guide; or (iv) Integrated Products. For the purposes of this Data Security Guide, "**Integrated Products**" shall mean WaveOn-provided integrations to third-party products or any other third-party products that are used by Customer in connection with the Subscription Service. Customer agrees that its use of such Integrated Products will be: (i) in compliance with all Laws, including but not limited to, Data Protection Laws; and (ii) in accordance with its contractual agreement with the provider of such Integrated Products. Any Personal Data populated from the Integrated Products to the Subscription Service must be collected, used, disclosed and, if applicable, internationally transferred in accordance with Customer's privacy policy, which will adhere to Data Protection Laws.

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