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Wave7 Performance Cloud Subscription Agreement

Wave7 Performance Cloud Subscription Agreement as Wave7 last published it (Version 1.0 in the agreement's version history)

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bOpus is the Successor Entity to Wave7 under Section 12.1.1, by assignment dated January 27, 2025; the assignment itself changed no terms.

BY ISSUING A PURCHASE ORDER, SIGNING A SALES ORDER, CLICKING AN "ACCEPT" OR SIMILAR BUTTON, OR ACCESSING OR USING ANY WAVE7 PRODUCT, SERVICE, OR OFFERING PROVIDED ON A HOSTED, CLOUD, OR SOFTWARE-AS-A-SERVICE BASIS, REGARDLESS OF ITS SPECIFIC NAME, BRANDING, OR DESIGNATION, INCLUDING ANY AUTOMATED DATA COLLECTION, MANUAL DATA INPUT, RECEIVING SCHEDULED REPORTS VIA EMAIL, RECEIVING ALERTS OR NOTIFICATIONS VIA EMAIL OR TEXT MESSAGE, USING ON PREMISE KIOSK-BASED DASHBOARDS OR ANY OTHER DISPLAY OR DELIVERY METHOD OF WAVE7 PERFORMANCE CLOUD DATA OR SERVICES, WHETHER REQUIRING USER LOGIN OR NOT, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU AND LEGALLY BINDING BETWEEN YOU AND WAVE7 OR THE APPLICABLE WAVE7 AFFILIATE ("WAVE7"). IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, DO NOT ACCESS OR USE WAVE7 PERFORMANCE CLOUD.

BY ACCEPTING THIS AGREEMENT, YOU REPRESENT AND WARRANT THAT: (A) IF YOU ARE ACCEPTING ON BEHALF OF YOUR EMPLOYER, COMPANY, ORGANIZATION OR OTHER ENTITY, YOU HAVE FULL LEGAL AUTHORITY TO BIND YOUR EMPLOYER, COMPANY, ORGANIZATION OR SUCH ENTITY TO THESE TERMS AND CONDITIONS; (B) IF YOU ARE AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP OR SIMILAR ENTITY, YOU HAVE BEEN AUTHORIZED TO SIGN FOR AND BIND THE ENTITY; (C) YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; AND (D) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH WAVE7. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE WAVE7 PERFORMANCE CLOUD.

IN THE EVENT YOU ARE REDIRECTED TO WAVE7'S WEBSITE, YOU AGREE THAT YOUR USE IS SUBJECT TO ANY TERMS OF SERVICE POSTED THEREON.

This Wave7 Performance Cloud Subscription Agreement (“Agreement”) is between Wave7 and the customer (individual or entity) that has purchased a subscription to Wave7 Performance Cloud (“you” or “your”). “Wave7” means the Wave7 entity designated on the applicable Ordering Document. “Ordering Document” means any order on a Wave7 order form which references this Agreement. Each Ordering Document which references this Agreement shall be deemed a part of this Agreement. The “Effective Date” of this Agreement is the date which is the earlier of (a) your initial access to Wave7 Performance Cloud through any online provisioning, registration or order process, or (b) the effective date of the first Ordering Document referencing this Agreement.

Wave7 Performance Cloud" means all software-as-a-service offerings, hosted services, cloud-based applications, data collection systems, reporting systems, analytics platforms, visualization tools, dashboards, mobile applications, and related services provided by Wave7, regardless of the product name, branding, or marketing designation used by Wave7 in its quotes, websites, marketing materials, or other communications. Any product, service, or offering provided by Wave7 on a hosted, cloud, or software-as-a-service basis shall be deemed part of Wave7 Performance Cloud for purposes of this Agreement. For clarity, Wave7 Performance Cloud includes all products and services provided through online access, data collection hardware, automated data collection, manual data input, scheduled reports, alerts, notifications, on-premise displays, and any other delivery method of Wave7's hosted services or data, whether requiring user login or not.

1. Wave7 Performance Cloud

1.1. Provision of Wave7 Performance Cloud. Wave7 Performance Cloud is a hosted service permitting you to access Wave7’s machine performance and data visualization products, as such products may be modified, enhanced, and/or updated from time to time (“Wave7 Performance Cloud”). Wave7 Performance Cloud is described more fully in the then-current version of any supporting product help and technical specifications documentation provided by Wave7 with Wave7 Performance Cloud to you (“Documentation”). Wave7 Performance Cloud is provided on a subscription basis for a set term designated herein or in the applicable Ordering Document (each, a “Subscription Term”). This Agreement applies only to Wave7 Performance Cloud and does not grant you rights to any other Wave7 services or software. For avoidance of doubt, any reference to specific product names, brands, features, modules, or service offerings in Wave7's quotes, ordering documents, websites, marketing materials, documentation, or other communications shall be deemed references to Wave7 Performance Cloud for purposes of this Agreement, regardless of whether such materials explicitly reference "Wave7 Performance Cloud." The applicability of this Agreement to any Wave7 product or service is not dependent on the product name, branding, or marketing designation used by Wave7.

1.2. Provision of Wave7 Performance Cloud. Wave7 Performance Cloud' refers collectively to Wave7's proprietary cloud-based software-as-a-service offerings, which include the following standalone components that may be licensed individually or in combination as specified in the applicable Ordering Document:

1.2.1. Knowledge Management System: A business process optimization platform that includes some or all of digital content management for multimedia knowledge assets, real-time content creation and sharing capabilities, AI-powered search and retrieval functionality, secure private data storage, centralized best practices repository, collaborative feedback mechanisms, physical asset integration through QR code functionality, multilingual content management with automatic translation features, user-specific language preferences, and personal knowledge storage spaces.

1.2.2. Performance Analytics System: A production monitoring and analysis platform that includes some or all of AI-driven downtime detection and analysis, real-time performance tracking, root cause analysis tools, performance visualization dashboards, automated reporting functionality, mobile accessibility, problem-solving methodology integration, event notification system, improvement tracking, and equipment integration capabilities

1.3. The specific features, functionality, and technical specifications of Wave7 Performance Cloud are described in detail in the then-current version of the Documentation. Wave7 may modify, enhance, or update Wave7 Performance Cloud from time to time, provided that such modifications do not materially reduce the overall functionality of Wave7 Performance Cloud during the Subscription Term.

1.4. Additional modules, features, or capabilities beyond those included in the standard Wave7 Performance Cloud offering may be available for additional fees as specified in the applicable Ordering Document.

1.5. For clarity, 'Wave7 Performance Cloud' includes all updates, modifications, and enhancements to the above components, as well as any underlying technology, databases, data models, algorithms, methodologies, and processes used to deliver these capabilities.

1.6. Evaluation Access. If Wave7 has made available to you free, trial or evaluation access to Wave7 Performance Cloud ("Evaluation Access"), you may use such access solely for the purpose of evaluating Wave7 Performance Cloud to determine whether to purchase a subscription from Wave7. You may not use Evaluation Access for any other purposes, including but not limited to competitive analysis, commercial, professional or for-profit purposes. Evaluation Access is provided for a limited period as specified by Wave7 in the applicable Ordering Document or a separate writing from Wave7 ("Evaluation Period"). Unless you purchase a subscription for Wave7 Performance Cloud, your Evaluation Access may be terminated and, in any event your right to access and use Wave7 Performance Cloud automatically expires at the end of the Evaluation Period. Upon any termination or expiration of the Evaluation Period, your Evaluation Access will cease and you will no longer have access to any Customer Data used in connection with such Evaluation Access. Notwithstanding any other provision of this Agreement, Evaluation Access is provided "AS IS" without warranty or support of any kind, express or implied. Wave7 may terminate your Evaluation Access at any time for any reason and without liability of any kind. IF YOU SUBSEQUENTLY PURCHASE A SUBSCRIPTION TO WAVE7 PERFORMANCE CLOUD, YOUR EVALUATION ACCESS SHALL IMMEDIATELY TERMINATE AND YOU EXPRESSLY AGREE THAT, UNLESS YOU HAVE A SEPARATE SIGNED AGREEMENT GOVERNING YOUR ACCESS TO AND USE OF WAVE7 PERFORMANCE CLOUD, THIS AGREEMENT, AND THE TERMS AND CONDITIONS HEREIN, SHALL GOVERN YOUR USE OF SUCH NON-EVALUATION VERSION.

1.7. Access to Wave7 Performance Cloud. Subject to the terms and conditions of the Agreement, and except as set forth in Section 5 (Term and Termination) Wave7 hereby grants to you a non-exclusive, non-transferable, non- sublicensable (except as permitted under Section 1.5), worldwide right during the applicable Subscription Term to access and use Wave7 Performance Cloud solely for your business purposes but only in accordance with: (i) the Documentation; (ii) the restrictions in Section 1.1 (Provision of Wave7 Performance Cloud), Section 1.11 (General Restrictions), and Section 2 (Customer Data and Customer Obligations) and (iii) any restrictions designated on the applicable Ordering Document, including, but not limited to the number of Authorized Users ("Access Grant"). You will use reasonable efforts to prevent any unauthorized access to or use of Wave7 Performance Cloud and the Documentation. Should unauthorized access occur, you will promptly notify Wave7 in writing of any unauthorized access or use of which you become aware and provide all reasonable cooperation to prevent and terminate such access or use.

1.8. Authorized Users. "Authorized Users" means those uniquely identified individuals subject to an Access Grant who are authorized by you to use and access Wave7 Performance Cloud for any purpose regardless of whether those individuals are actively using Wave7 Performance Cloud at any given time. The Authorized Users will receive user IDs and passwords to access Wave7 Performance Cloud. These credentials are granted to individual, named persons and may not be shared. You will ensure that all Authorized Users keep these credentials strictly confidential. Each Authorized User's access right may be further specified or restricted, and the technical capabilities available to each Authorized User within Wave7 Performance Cloud shall be as set forth in the Documentation. Subscriptions to Wave7 Performance Cloud may be reassigned between uniquely identified individuals over time. You may allow your Contractors and Affiliates to access Wave7 Performance Cloud as Authorized Users in accordance with this Agreement, provided you shall remain liable for all acts and omissions of your Affiliates and Contractors as if their breach were your own. "Affiliate" means each legal entity that is directly or indirectly controlled by you on or after the Effective Date, for so long as such entity remains directly or indirectly controlled by you (where "controlled" means the ownership of, or the power to vote, directly or indirectly, a majority of any class of voting securities of a corporation or limited liability company, or the ownership of any general partnership interest in any general or limited partnership). "Contractor" means those independent third parties who perform services related to this Agreement for you, but solely to the extent they are acting on your behalf.

1.9. Client Sublicensees. Subject to the terms and conditions of this Agreement, during the Subscription Term, you may permit third-parties ("Client Sublicensees") to be Authorized Users of your account to Wave7 Performance Cloud, but only so the Client Sublicensees may (1) interact with visualizations generated by you through your use of Wave7 Performance Cloud and based on Customer Data (as defined in Section 2.1), provided that in each case the Customer Data excludes Client Sublicensee data unless such Client Sublicensee data is combined with Customer Data or is relevant to your provision of services to that particular External Viewer. In providing such access to Client Sublicensees, you may not act as "Marketing Service Provider", "Service Bureau" or other entity with a similar business model. Client Sublicensees may not use or access Wave7 Performance Cloud for any other purposes except as expressly permitted in this Section 1.5. You shall ensure that all Client Sublicensees' use of Wave7

Performance Cloud is limited as described in this Section 1.5 by designating the appropriate access levels for Client Sublicensees within Wave7 Performance Cloud. You shall be solely responsible for your relationships with Client Sublicensees and notify Client Sublicensees that Wave7 shall have no warranty, support or other obligation or liability. You shall be liable for all acts and omissions of Client Sublicensees as if their acts or omissions were your own.

1.10. Third-Party Code. Wave7 Performance Cloud may contain or be provided with components which are licensed from third parties (“Third Party Code”), including components subject to the terms and conditions of “open source” software licenses (“Open Source Software”). Open Source Software may be identified in the Documentation, or in a list of the Open Source Software provided to you upon written request. To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification or reverse engineering.

1.11. General Restrictions. As a condition to the rights granted to you hereunder, you shall not (and shall not allow any third party to): (a) decompile, disassemble, or otherwise reverse engineer Wave7 Performance Cloud or any Third Party Code or attempt to reconstruct or discover any source code, APIs, underlying ideas, algorithms, file formats or programming interfaces of Wave7 Performance Cloud or the Third Party Code by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions, or as permitted by an applicable Open Source Software license); (b) distribute, sell, sublicense, rent, lease or use Wave7 Performance Cloud or any Third Party Code (or any portion thereof) for time sharing, hosting, service provider or like purposes, except as expressly permitted under Section 1.5 of this Agreement; (c) remove any product identification, proprietary, copyright trademark, service mark, or other notices contained in Wave7 Performance Cloud or any Third Party Code (including any reports or data printed via the use of Wave7 Performance Cloud); (d) modify any part of Wave7 Performance Cloud or any Third Party Code, create a derivative work of any part of Wave7 Performance Cloud or any Third Party Code, or incorporate Wave7 Performance Cloud or any Third Party Code into or with other software, except to the extent expressly authorized in writing by Wave7 or as permitted by an applicable Open Source Software license; (e) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to Wave7 Performance Cloud; (f) utilize any equipment, device, software, or other means designed to circumvent or remove any form of copy or other protection used by Wave7 in connection with Wave7 Performance Cloud, or use Wave7 Performance Cloud together with any user credentials or other copy protection device not supplied by Wave7 or through an Authorized Partner; (g) use Wave7 Performance Cloud to develop a product which is competitive with any Wave7 product offerings; (g-1) request, use, or attempt to discover Wave7's proprietary data mapping methodologies, transformation rules, or correlation definitions used to process Customer Data; (h) use unauthorized user credentials or distribute or publish such credentials except as may be expressly permitted by Wave7 in writing; (i) enable access to Wave7 Performance Cloud for a greater number of concurrent Authorized Users than the sum quantity of concurrent subscriptions purchased on the applicable Ordering Document(s); (j) assert, nor will you authorize, assist or encourage any third-party to assert, against Wave7 or any of its

affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding Wave7 Performance Cloud or any support you have purchased or used hereunder; (k) use Wave7 Performance Cloud to develop a product that converts any Wave7 file format to an alternative report file format used by any general-purpose report writing, data analysis or report delivery product that is not the property of Wave7; or (l) automate processes, including without limitation, API calls, or refreshes of visualizations or dashboards, if such automation has a detrimental impact on Wave7's ability to provide Wave7 Performance Cloud to its other customers. (m) The restrictions set forth in this Section 1.11 are in addition to, and not in lieu of, the post-termination restrictions set forth in Section 5.5. Any activities prohibited under this Section 1.11 during the Subscription Term shall remain prohibited after termination or expiration as set forth in Section 5.5.

2. CUSTOMER DATA AND YOUR OBLIGATIONS

2.1. Customer Data. "Customer Data" means any business information or other data which you or your machines input, or provide to Wave7 for inputting, into Wave7 Performance Cloud. Customer acknowledges and agrees that such data may be processed, modified, or transformed by Wave7's proprietary analytics engine using techniques including but not limited to: dead banding, averaging, noise filtering, signal conditioning, unit conversion, normalization, polarity correction, statistical analysis, and time-based calculations, with the specific processing methods applied being at Wave7's sole discretion. Customer specifically acknowledges that all downtime events and production stops are determined, calculated, and stored only after processing through Wave7's proprietary rules engine, and that the raw input signals alone do not constitute stop or downtime data..

2.2. Your Obligations

2.2.1. (a) General. You are solely responsible for the accuracy and content of all Customer Data. You represent and warrant to Wave7 that (i) you have sufficient rights in the Customer Data to authorize Wave7 to process, distribute and display the Customer Data as contemplated by this Agreement and the Documentation, (ii) the Customer Data and its use hereunder will not violate or infringe the rights of any third party, and (iii) your use of Wave7 Performance Cloud and all Customer Data is at all times compliant with your privacy policies and all applicable local, state, federal and international laws, regulations and conventions, including without limitation those related to data privacy, international communications and the exportation of technical or personal data.

2.2.2. (b) Health Information. You will not upload to Wave7 Performance Cloud or publish thereon any patient, medical or other protected health information regulated by HIPAA or any similar federal or state laws, rules or regulations ("Health Information") and acknowledges that Wave7 is not a Business Associate and that Wave7 Performance Cloud is not HIPAA compliant. "HIPAA" means the Health Insurance Portability Act, as amended and supplemented. Wave7 shall have no liability under this Agreement for Health Information, notwithstanding anything to the contrary herein.

2.2.3. (c) Payment Card Data. You will not upload to Wave7 Performance Cloud or publish thereon any payment card information. You acknowledge that Wave7 Performance Cloud is not compliant with the Payment Card Industry Data Security Standards.

2.3. Rights in Customer Data. As between the parties, you shall retain all right, title and interest (including any and all intellectual property rights) in and to your Customer Data as published on Wave7 Performance Cloud. For clarity, while Customer retains all rights to their raw input data and can access their data in its processed form through Wave7 Performance Cloud's standard interfaces and exports, any methodologies, mappings, and transformations used to process such data are Wave7's proprietary intellectual property and constitute trade secrets. Subject to the terms of this Agreement, you hereby grant to Wave7 a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, and distribute, perform and display (including publicly), modify and create derivative works of the Customer Data solely to the extent necessary to provide Wave7 Performance Cloud in accordance with this Agreement and the Documentation.

2.4. Storage of Customer Data. Wave7 provides various live data storage periods, which are documented in the Ordering Document. At the end of the live data storage period, for additional service cost, you will have the opportunity to download your data for local storage, or subscribe to Wave7’s archiving service. At the end of the live data storage period, at additional cost Wave7 will aggregate all historical data into standard loss metrics, which will be available to you for comparison to current live data. At this point live data from before the end of the storage period will no longer be available. Wave7 agrees it shall not intentionally delete any Customer Data from Wave7 Performance Cloud prior to end of the storage period, termination or expiration of Customer’s applicable subscription. Except as otherwise set forth herein, Wave7 expressly disclaims all other obligations with respect to storage of Customer Data.

3. OWNERSHIP

3.1. Wave7 Technology. Notwithstanding anything to the contrary contained herein, except for the limited access and use rights expressly provided herein, Wave7 and its licensors retain all right, title and interest (including, without limitation, all patent, copyright, trade secret and other intellectual property rights) in and to Wave7 Performance Cloud, the Documentation, the Third Party Code, any other Wave7 deliverables and any and all related and underlying software (including interfaces), databases (including data models, structures, and any other non-customer specific data and statistical data), , including but not limited to any and all internal data mapping methodologies, schemas, transformation rules, correlation definitions between input data and output visualizations/reports, organizational structures, hierarchies, taxonomies, and intermediate data processing steps used to analyze or transform Customer Data, technology, reports, documentation, as well as any related process or methodology provided or used by Wave7, and with respect to each of the foregoing, any copies, modifications, improvements, derivative works, or enhancements thereto however developed or provided (including any which incorporate any of your ideas Feedback or suggestions) (collectively, “Wave7 Technology”). You acknowledge that you are obtaining only a limited right to access and use Wave7 Performance Cloud on a hosted basis and that irrespective of any use of the words “purchase”, “sale”, “sublicense” or like terms hereunder no ownership

rights are being conveyed to you under this Agreement or otherwise, and further acknowledge that nothing contained in this Agreement shall be construed to convey to you ownership of any intellectual property rights in or to any Wave7 Technology or any related methodologies or processes. Nothing in this Section 3.1 shall be deemed as granting Wave7 ownership of Customer Data or in any way impacting your ownership of Customer Data.

3.2. Feedback. From time to time, you may submit comments, information, questions, data, ideas, descriptions of processes, or other information to Wave7 (“Feedback”). You agree that all Feedback is and shall be given entirely voluntarily. Feedback, even if designated as confidential by you, shall not, absent a separate written agreement, create any confidentiality obligation for or upon Wave7. You will not give Feedback that is subject to license terms that seek to require any Wave7 product, technology, service or documentation incorporating or derived from such Feedback, or any Wave7 intellectual property, to be licensed or otherwise shared with any third party. Wave7 may in connection with any of its products or services freely use, copy, disclose, license, distribute and exploit any Feedback in any manner it sees fit without any obligation, royalty or restriction based on intellectual property rights.

4. SUBSCRIPTION TERM, FEES & PAYMENT

4.1. Subscription Term.

4.1.1. Initial Term. The Subscription Term for each subscription shall be as specified in the applicable Sales Order.

4.1.2. Renewal Terms for Subscriptions of 6 Months or More. Subscriptions with an initial term of six (6) months or more will automatically renew for additional periods equal to the expiring Subscription Term or for one year (whichever is shorter) unless: 1) otherwise provided on a Sales Order; or 2) either party provides written notice of non-renewal at least ninety (90) days prior to the end of the relevant Subscription Term. All applicable fees for such renewals will be at Wave7's then-current rates, provided that any increase in the renewal fees for subscription items that were active in the previous term shall not exceed six percent (6%) above the previously renewed individual line-item prices. This pricing protection applies only to subscription items that were active for the full previous term and does not apply to any subscription items added during a renewal term. New subscription items added during a renewal term will be charged at then-current rates.

4.1.3. Renewal Terms for Monthly Subscriptions. Subscriptions with a one-month term will automatically renew for additional periods equal to the expiring Subscription Term or for one month (whichever is shorter) unless: 1) otherwise provided on a Sales Order; or 2) either party provides written notice of non-renewal at least thirty (30) days prior to the end of the relevant Subscription Term. All applicable fees for monthly subscription renewals will be at Wave7's then-current rates.

4.1.4. Termination Effect. If your subscription is not renewed, your access to Wave7 Performance Cloud will terminate at the end of the then-current Subscription Term.

4.2. Fees and Payment.

4.2.1. You shall pay all fees set forth in the applicable Ordering Document. All payments shall be made in the currency noted on the applicable Ordering Document prior to the start of the Subscription Term. Except as expressly set forth herein, all fees are non-refundable once paid.

4.2.2. Annual Subscription Terms: Discounts as specified in the applicable Sales Order are available for subscriptions with a 12-month consecutive subscription term. All quotes, sales orders, and invoices for a one-year subscription term automatically include any applicable discounts. For monthly subscription terms, no annual term discounts apply.

4.2.3. Prepayment Requirement: Payment must be received prior to the start of the Subscription Term or collection of data, whichever occurs first. A purchase order (PO) alone does not suffice without accompanying payment.

4.2.4. First-Year Subscription Requirement: All new subscriptions require an initial commitment to a one-year term. After completing the first year, customers may transition to month-to-month terms. Transitioning to a month-to-month term means any annual term discounts will no longer apply, and standard monthly rates will be used for all subsequent quotes, sales orders, and invoices.

4.2.5. General Payment Due Date: Regardless of the subscription term selected, payment is due prior to the start of the Subscription Term.

4.2.6. Unless timely provided with a valid certificate of exemption or other evidence that items are not taxable, Wave7 will invoice you for all applicable taxes including, but not limited to, VAT, GST, sales tax, consumption tax, and service tax. If any withholding tax is required by applicable law to be paid by you in relation to payments due to Wave7 hereunder, you will provide Wave7 with official receipts and/or certificates from the appropriate taxing authorities to establish that any applicable taxes have been paid.

4.3. Suspension of Services. If your account is thirty (30) days or more overdue, in addition to any of its other rights or remedies (including but not limited to any termination rights set forth herein), Wave7 reserves the right to suspend your access to Wave7 Performance Cloud without liability to you until such amounts are paid in full. Within a reasonable time after written notice by Wave7 that your use of the Wave7 Performance Cloud service is having a detrimental impact on Wave7’s ability to provide Wave7 Performance Cloud to its other customers, Wave7 reserves the right, at its sole discretion, to suspend or limit your access to Wave7 Performance Cloud.

5. TERM AND TERMINATION

5.1. Term. This Agreement is effective as of the Effective Date and expires on the date of expiration or termination of the Subscription Term(s).

5.2. Termination for Cause. Either party may terminate this Agreement (including all related Ordering Documents) if the other party (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach including without limitation your failure to pay, provided that Wave7

may terminate this Agreement immediately upon any breach of Section 1.11 (General Restrictions) or if you violate any other restrictions contained in Section 2 (Customer Data and You Obligations), or Section 11 (Export Control); (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter). Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

5.3. Effect of Termination. Upon any termination or expiration of this Agreement, you shall immediately cease any and all use of and access to Wave7 Performance Cloud and destroy (or, at Wave7's request, return), any Wave7 Confidential Information in its possession. You acknowledge that, except as exported or printed prior to termination or expiration by you as may be permitted through the functionality of Wave7 Performance Cloud, following termination or expiration it shall have no further access to any Customer Data input into Wave7 Performance Cloud, and that Wave7 may delete any such data at any time. Except where an exclusive remedy is specified in this Agreement, the exercise by either party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

5.4. Survival. The following Sections shall survive any expiration or termination of this Agreement: Sections 1.11 (General Restrictions), 2 (Customer Data and Your Obligations), 3 (Ownership), 4.2 (Fees and Payment), 5 (Term and Termination, including without limitation Section 5.5 (Post-Termination Competitive Restrictions)), 6.3 (Warranty Disclaimer), 8 (Limitation of Remedies and Damages), 9.2 (Indemnification by You), 10 (Confidential Information), 11 (Export Control) and 12 (General Terms)

5.5. Post-Termination Competitive Restrictions.

5.5.1. For a period of three (3) years following the termination or expiration of this Agreement for any reason ("Restricted Period"), you shall not, and shall ensure that your Affiliates, employees, contractors, and agents do not, directly or indirectly: (i) develop, create, manufacture, market, sell, license, or otherwise commercially exploit any software, system, or service that replicates or competes with Wave7 Performance Cloud's functionality, including but not limited to manufacturing performance monitoring, downtime analysis, or production analytics systems; (ii) assist, advise, or enable any third party, including but not limited to vendors, contractors, or service providers, in developing, creating, manufacturing, marketing, selling, licensing, or otherwise commercially exploiting any software, system, or service that replicates or competes with Wave7 Performance Cloud's functionality; (iii) use any knowledge, information, methodologies, or understanding gained during the Subscription Term to facilitate or enable the activities prohibited under subsections (i) and (ii) above.

5.5.2. You acknowledge and agree that: (i) the restrictions contained in this Section 5.5 are reasonable and necessary to protect Wave7's legitimate business interests, including but not limited to its trade secrets, proprietary methodologies, and competitive advantage; (ii) the three-year Restricted Period is reasonable given the nature of the technology and the time and investment required to develop

competing solutions; (iii) you have received sufficient consideration under this Agreement to justify these restrictions; (iv) any violation of these restrictions would cause Wave7 irreparable harm for which monetary damages alone would be inadequate.

5.5.3. In the event of a breach or threatened breach of this Section 5.5, Wave7 shall be entitled to: (i) immediate injunctive relief without the requirement of posting a bond; (ii) monetary damages, including but not limited to lost profits, development costs, and loss of competitive advantage; (iii) recovery of legal costs and reasonable attorneys' fees. (d) Nothing in this Section 5.5 shall restrict your right to: (i) retain and use your Customer Data as defined in Section 2.1; (ii) develop solutions that do not rely on or incorporate Wave7's proprietary methodologies; (iii) engage in general business operations and development activities that do not violate the specific restrictions contained herein.

6. LIMITED WARRANTY

6.1. Limited Warranty. Wave7 warrants to you that Wave7 Performance Cloud will operate in substantial conformity with the applicable Documentation. Wave7 does not warrant that your use of Wave7 Performance Cloud will be uninterrupted or error-free, nor does Wave7 warrant that it will review the Customer Data for accuracy or that it will preserve or maintain the Customer Data without loss. Wave7’s sole liability (and your sole and exclusive remedy) for any breach of this warranty shall be, in Wave7’s sole discretion and at no charge to you, to use commercially reasonable efforts to correct the reported non-conformity, or if Wave7 determines such remedy to be impracticable, to allow you to terminate the applicable Subscription Term and receive as its sole remedy a refund of: (a) the monthly subscription fees specified in the applicable Ordering Document which are allocable to the thirty (30) day period prior to the date the warranty claim was made and (b) any fees you have pre-paid for use of Wave7 Performance Cloud or related services it has not received as of the date of the warranty claim.

6.2. Exclusions. The above warranty shall not apply: (i) unless you make a claim within thirty (30) days of the date on which the condition giving rise to the claim first appeared; (ii) if Wave7 Performance Cloud is used with hardware or software not authorized in the Documentation; (iii) if the error was caused by misuse, unauthorized modifications or third-party hardware, software or services; (iv) to any Evaluation Access or other use provided on a no charge or evaluation basis.

6.3. Warranty Disclaimer. THIS SECTION IS A LIMITED WARRANTY AND, EXCEPT AS EXPRESSLY SET FORTH IN IN THIS SECTION, WAVE7 PERFORMANCE CLOUD, INCLUDING WITHOUT LIMITATION THE THIRD-PARTY CODE ARE PROVIDED “AS IS”. NEITHER WAVE7 NOR ITS LICENSORS MAKES ANY OTHER WARRANTIES, CONDITIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. YOU MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES SHALL BE LIMITED AS PROVIDED HEREIN. WAVE7 SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF WAVE7.

7. SUPPORT AND SECURITY.

7.1. During the Subscription Term, Wave7 Performance Cloud is subject to the support terms and security procedures set forth in the then-current Wave7 Performance Cloud Support Policy.

8. LIMITATION OF REMEDIES AND DAMAGES

8.1. BUT FOR: (1) BREACH OF SECTION 1.5 (CLIENT SUBLICENSEES), SECTION 1.11 (GENERAL RESTRICTIONS), OR SECTION 11 (EXPORT CONTROL), OR (2) DAMAGES ARISING OUT OF CLIENT SUBLICENSEE'S USE OF WAVE7 PERFORMANCE CLOUD, INCLUDING YOUR OBLIGATIONS UNDER SECTION 9.2, NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

8.2. BUT FOR: (1) BREACH OF SECTION 1.5 (CLIENT SUBLICENSEES), SECTION 1.11 (GENERAL RESTRICTIONS), OR SECTION 11 (EXPORT CONTROL), OR (2) DAMAGES ARISING OUT OF CLIENT SUBLICENSEE'S USE OF WAVE7 PERFORMANCE CLOUD, INCLUDING YOUR OBLIGATIONS UNDER SECTION 9.2, EACH PARTY'S ENTIRE LIABILITY AND OBLIGATION TO THE OTHER PARTY SHALL NOT EXCEED THE LESSER OF (A) FEES PAID OR OWED BY YOU TO WAVE7 UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRECEDING THE CLAIM OR (B) US $1,000,000.

8.3. Failure of Essential Purpose. The parties agree that the limitations specified in this Section 8 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

9. INDEMNIFICATION

9.1. Wave7 Indemnification. Wave7 shall defend you from and against any claim by a third party alleging that Wave7 Performance Cloud, when used as authorized under this Agreement, infringes a U.S. patent, U.S. copyright, or U.S. trademark and shall indemnify and hold your harmless from and against any damages and costs awarded against you or agreed to in settlement by Wave7 (including reasonable attorneys' fees). Provided that Wave7 shall have received from you: (i) prompt written notice of such claim (but in any event notice in sufficient time for Wave7 to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (iii) all reasonably necessary cooperation from you. If your use of Wave7 Performance Cloud is (or in Wave7's opinion is likely to be) enjoined, if required by settlement or if Wave7 determines such actions are reasonably necessary to avoid material liability, Wave7 may, in its sole discretion: (a) substitute for

Wave7 Performance Cloud substantially functionally similar programs and documentation; (b) procure for you the right to continue using Wave7 Performance Cloud; or if (a) and (b) are not commercially reasonable, (c) terminate the Agreement and refund to you the subscription fees paid by you for the portion of the Subscription Term which was paid by you but not rendered by Wave7. The foregoing obligations of Wave7 shall not apply: (1) if Wave7 Performance Cloud is modified by any party other than Wave7, but solely to the extent the alleged infringement is caused by such modification; (2) if Wave7 Performance Cloud is combined with other non-Wave7 Performance Cloud services or processes not provided or authorized by Wave7, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of Wave7 Performance Cloud; (4) to any action arising as a result of Customer Data or any third-party components contained within or uploaded to Wave7 Performance Cloud; or (5) if you settle or make any admissions with respect to a claim without Wave7's prior written consent. THIS SECTION 8 AND 9 SETS FORTH WAVE7 AND ITS LICENSOR'S SOLE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

9.2. Indemnification by You. Subject to this Section 9, you shall defend Wave7 from and against any and all claims by third parties (including any Client Sublicensees and Contractors) resulting from or relating to: (i) the Customer Data, including without limitation any claim based on your breach or alleged breach of Section 2.2 (Customer Data and Your Obligations) or alleging that the Customer Data infringes upon any valid patent, copyright, trademark, trade secret, or other proprietary right of, or otherwise harms, such third party; (ii) any breach by you of Section 1.5 (Client Sublicensees); or (iii) a Client Sublicensee's use of Wave7 Performance Cloud, and shall indemnify and hold Wave7 harmless from and against any damages and costs awarded against Wave7 or agreed in settlement by you (including reasonable attorney's fees) resulting from such claims, provided that you shall have received from Wave7: (i) prompt written notice of such claim (but in any event notice in sufficient time for you to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (iii) all reasonably necessary cooperation from Wave7. You may not settle any such claim relating to Wave7 Performance Cloud without Wave7's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

10. CONFIDENTIAL INFORMATION.

10.1. Use of Confidential Information. Each party (as "Receiving Party") agrees that all code, inventions, know-how, business, technical and financial information it obtains from the disclosing party ("Disclosing Party") constitute the confidential property of the Disclosing Party ("Confidential Information"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any software, Pricing, documentation or technical information provided by Wave7 (or its agents), performance information relating to Wave7 Performance Cloud, and the terms and conditions of this Agreement shall be deemed Confidential Information of Wave7 without any marking or further designation. Customer Data shall be deemed your Confidential Information without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold

in confidence and not use or disclose any Confidential Information to anyone other than its affiliates, employees and consultants (“Representatives”) who have a need to know and who agree in writing to keep the information confidential on terms no less restrictive than those contained in this Agreement. Both Wave7 and you will ensure that their respective Representatives comply with this Agreement and will be responsible for any unauthorized use or disclosure of Confidential Information by such Representatives. The Receiving Party’s nondisclosure obligation shall not apply to information which the Receiving Party can document: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information could cause substantial harm for which damages alone would not be a sufficient remedy, and therefore upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

10.2. Privacy Policy: Your use of the Software, Support and Maintenance or Professional Services is subject to Wave7’s Privacy Policy, a current version of which is available at https://wave7.co.

11. Export Control

11.1. You acknowledge that Wave7 Performance Cloud is subject to United States export control and economic sanctions laws, regulations and requirements and to import laws, regulations and requirements of foreign governments. You agree that (1) all use, exports, and imports related to this Agreement will be in compliance with these laws and regulations and (2) you shall not allow any third party to export, re-export, or transfer any part of Software in violation of these laws and regulations. The foregoing obligations include but are not limited to you or a third party exporting, transferring, or importing the Software to: (i) to any country subject to export control embargo or economic sanctions implemented by any agency of the U.S. or foreign governments; (ii) to any person or entity on any of the U.S. Government’s Lists of Parties of Concern (http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of- concern) or applicable international specially-designated parties or economic sanctions programs; (iii) to any end-user or for any known end-use related to the proliferation of nuclear, chemical or biological weapons or missiles, without first obtaining any export license or other approval that may be required by any U.S. Government agency having jurisdiction with respect to the transaction; or (iv) otherwise in violation of any export or import laws, regulations or requirements of any United States or foreign agency or authority.

12. GENERAL TERMS

12.1. Assignment.

12.1.1. Assignment to New Entity. Wave7 may, for strategic purposes, including the creation of a specialized entity to manage its subscription services, assign this Agreement in its entirety to a subsidiary, an affiliate, or a new legal entity created through a spin-off, divestiture, or other form of corporate reorganization (hereafter the “Successor Entity”). In the event of such an assignment, the Successor Entity will be deemed the “Wave7” party under this Agreement and will assume all of Wave7's rights and obligations without altering the terms and conditions of your subscription. Wave7 shall provide you with written notice of any such assignment.

12.1.2. This Agreement will bind and inure to the benefit of each party’s permitted successors and assigns. Wave7 may assign this Agreement to any affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of Wave7’s assets or voting securities. You may not assign or transfer this Agreement, in whole or in part, without Wave7’s written consent except that you may assign this Agreement, in whole but not in part, without Wave7’s written consent in connection with any merger, consolidation, sale of all or substantially all of you assets, or any similar transaction provided that: (i) the assignee must not be a direct competitor of Wave7; (ii) you provide prompt written notice of such assignment to Wave7; (iii) the assignee is capable of fully performing your obligations under this Agreement, and (iv) the assignee agrees to be bound by the terms and conditions of this Agreement. Any attempt to transfer or assign this Agreement without such written consent will be null and void.

12.2. Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

12.3. Governing Law; Jurisdiction and Venue. Excluding conflict of laws rules, this Agreement shall be governed by and construed under (a) the laws of the State of Washington, U.S. if you are located in North or South America, (b) the laws of Japan if you are located in Japan, (c) the laws of Singapore if you are located in Asia (excluding Japan) or Australia, or (d) the laws of England and Wales if you are is located outside of North or South America, Asia and Australia. All disputes arising out of or in relation to this Agreement shall be submitted to the exclusive jurisdiction of the courts of (i) Seattle, Washington when the laws of Washington apply, (ii) Tokyo, Japan when the laws of Japan apply, (iii) Singapore when the laws of Singapore apply, or (iv) London when the laws of England and Wales apply. Nothing in this section shall restrict Wave7’s right to bring an action (including for example a motion for injunctive relief) against you in the jurisdiction where your place of business is located. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction, do not apply to this Agreement.

12.4. Attorneys’ Fees and Costs. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys’ fees and costs in connection with such action.

12.5. Wave7's Customer List. You agree that Wave7 may disclose you as a customer of Wave7 and use your name and logo on Wave7's website and in Wave7's promotional materials.

12.6. Notice. Any notice or communication required or permitted under this Agreement shall be in writing or in electronic format. If to Wave7 by mail, such notice or report shall be sent to Wave7 at 8524 W. Gage Blvd, STE A357, Kennewick WA 99336 to the attention of "Legal Department". If to Wave7 by email, such notice or report shall be sent to: legal@wave7.co. If to you such notice or report shall be sent to the mailing or email address you provided upon placing your order. Notices and reports sent by mail shall be deemed given: (a) upon receipt if by personal delivery; (b) upon receipt if sent by certified or registered mail (return receipt requested); or (c) one day after it is sent if by next day delivery by a major commercial delivery service. Any notices and reports sent by email shall be effective upon receipt of the same.

12.7. Amendments; Waivers. From time to time, Wave7 may modify this Agreement. Unless otherwise specified by Wave7, changes become effective for existing subscription customers upon renewal of the then- current Subscription Term. Wave7 will use reasonable efforts to notify you of the changes through communications through Wave7 Performance Cloud, email, or other means. You may be required to click to accept the modified Agreement before using Wave7 Performance Cloud in a renewal Subscription Term, and in any event continued use of Wave7 Performance Cloud during the renewal Subscription Term will constitute your acceptance of the version of the Agreement in effect at the time the renewal Subscription Term begins. Further, from time to time, Wave7 may modify the Wave7 Performance Cloud Support Policy referenced in Section 7, however Wave7 shall not substantially reduce the overall level of beneficial service provided to you under the Wave7 Performance Cloud Support Policy existing as of commencement of the then-current Subscription Term, unless such reduction results from governmental regulation or requested modifications by you or is otherwise agreed to by you. Except as set forth in this Section 12.7, no supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by you, including any electronic invoicing portals and vendor registration processes, will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

12.8. Entire Agreement. This Agreement (including each Ordering Document, and any other mutually agreed exhibits or attachments) is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. You acknowledge that Wave7 Performance Cloud is an on-line, subscription-based product, and that in order to provide improved customer experience Wave7 may make changes to Wave7 Performance Cloud (which may include making available different or substitute code compared to those available as of the Effective Date), and Wave7 will update the Documentation accordingly. You expressly acknowledge and agree that Wave7 markets and sells its products and services under various names, brands, and designations, all of which constitute part of Wave7 Performance Cloud for purposes of this Agreement. The rights, restrictions, and obligations set

forth in this Agreement apply to all Wave7 products and services provided on a hosted, cloud, or software-as-a-service basis, regardless of how such products and services are identified in quotes, invoices, ordering documents, marketing materials, or other communications. No variation in product naming, branding, or marketing designations shall affect the applicability of this Agreement to such products or services.

12.9. Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

12.10. Audit Rights. You understand that Wave7 may monitor your use of Wave7 Performance Cloud in order to verify that you have not exceeded its permitted number of Authorized Users. If Wave7 becomes aware of any excess usage of Wave7 Performance Cloud, then you will pay for the excess usage and for any ongoing excess usage at Wave7's then-current rates. Upon Wave7's written request, you shall furnish Wave7 with a signed certification certifying that Wave7 Performance Cloud is being used pursuant to the terms of this Agreement, including any access and user limitations. With prior reasonable notice, Wave7 may audit your compliance with this Agreement, your use of Wave7 Performance Cloud, and your software monitoring system and records, provided such audit is during regular business hours. If such inspections or audits disclose that you have accessed or permitted access to Wave7 Performance Cloud in a manner that is not permitted under this Agreement, then Wave7 may terminate this Agreement pursuant to Section 5 and you are liable for the reasonable costs of the audit in addition to any other fees, damages and penalties Wave7 may be entitled to under this Agreement and applicable law.

12.11. Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which occur after the signing of this Agreement and which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by the government or other governmental agencies, in so far as such an event prevents or delays the affected party from fulfilling its obligations and such party is not able to prevent or remove the force majeure at reasonable cost.

12.12. Government End-Users. Wave7 Performance Cloud is commercial computer software. If the user of Wave7 Performance Cloud is an agency, department or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure or transfer of Wave7 Performance Cloud, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. Wave7 Performance Cloud was developed fully at private expense. All other use is prohibited.

12.13. Authorized Partner. If you received Wave7 Performance Cloud under an agreement ("Partner Agreement") with an authorized Wave7 reseller, partner ("Authorized Partner") then, notwithstanding anything to the contrary in this Agreement: (a) your use of Wave7 Performance Cloud is subject to any

additional terms in the Partner Agreement, including any limitations on use of Wave7 Performance Cloud in conjunction with third-party applications; and (b) you agree to pay the Authorized Partner the fees agreed in the Partner Agreement and you have no direct payment obligations to Wave7 for that purchase under Section 5 above. If your warranty and support terms stated in your Partner Agreement are different than what is stated in Section 6 or 7 herein, then Wave7 has no warranty or support obligations to you under this Agreement (although the disclaimers of warranties in Section 6.3 still apply to you). If your warranty and support terms passed on in your Partner Agreement are as stated herein, then Section 6 and 7 shall apply to you as written. Notwithstanding anything in this Agreement to the contrary, (i) the Partner Agreement may not modify any of the remaining terms of this Agreement and (ii) the Partner Agreement is between you and the Authorized Partner and is not binding on Wave7. Wave7 may terminate this Agreement (including your right to use Wave7 Performance Cloud) in the event Wave7 fails to receive payment for your use of Wave7 Performance Cloud from the Authorized Partner or if you breach any term of this Agreement.

12.14. Third Party Beneficiaries. Wave7, its affiliates and its licensors may be third party beneficiaries of this Agreement. No other third party, including without limitation Client Sublicensees under Section 1.5, is intended to be a beneficiary of this Agreement entitled to enforce its terms directly.

12.15. Language. Regardless of any language into which this Agreement may be translated, the official, controlling and governing version of this Agreement shall be exclusively the English language version