

# Enterprise terms & conditions

Date of version: 2023-06-01

These Enterprise Terms & Conditions (the "Agreement") are between Waitwhile, Inc., a Delaware corporation with offices at 548 Market St., Suite 45862, San Francisco, CA 94104 ("Provider"), and the Customer on behalf of itself and its applicable affiliates (the "Customer"). **This Agreement only applies to Customers of an Enterprise Subscription Plan.** In this Agreement, Provider and Customer may be referred to collectively as the "Parties" or individually as a "Party."

WHEREAS, Provider provides access to the Services to its customers; and

WHEREAS, Customer desires to access the Services, and Provider desires to provide Customer access to the Services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## 1. Definitions

Capitalized terms not defined elsewhere in this Agreement have the meanings given below:

- a. **"Aggregated Statistics"** means data and information related to Customer's use of the Services and Customer Data that is used by Provider in an aggregate and/or anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.
- b. **"Authorized User"** means (i) Customer's employees (a) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and (b) for whom access to the Services has been purchased hereunder; and (ii) Guests.
- c. **"Customer Data"** means information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services.
- d. **"Documentation"** means Provider's technical user manuals and guides relating to the Services made available by Provider electronically or through the Site. Documentation does not include general description, marketing, and similar materials.
- e. **"Guest"** means users of the Site and/or Mobile App, who are customers or prospective customers of Customer, who engage to use the Services to enter a queue for access to or receiving Customer's products or services and receiving related notifications specific to their position in line or estimated wait time.

- f. **“Losses”** means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.
- g. **“Provider IP”** means the Services, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP includes Aggregated Statistics and any information, data, or other content derived from Provider’s monitoring of Customer’s access to or use of the Services, but does not include Customer Data.
- h. **“Services”** means the Waitwhile waitlist management platform for management of Guest wait time, line position, capacity, and related notifications as further described on <https://waitwhile.com/> (the “Site”), in this Agreement, and/or in the Documentation, including the Site and/or mobile applications through which the Services may be used in accordance with the Agreement (the “Mobile App”) and all other components of the waitlist management platform, in addition to any future release, update, or other addition to the foregoing.
- i. **“Third-Party Products”** means any third-party products, software, data, or other materials provided by a third party provided with or incorporated into the Services.

## 2. Access and Use

- a. **Provision of Access.** Subject to and conditioned on Customer’s payment of Fees and Customer’s and Authorized Users’ compliance with all other terms and conditions of this Agreement, Provider hereby grants Customer a limited, personal, non-exclusive, non-transferable (except in compliance with Section 12(h)), non-sublicensable right to access and use the Services and Documentation during the Term for Authorized Users to manage and communicate with Guests about wait time through the Service in accordance with the terms and conditions of this Agreement.
- b. **Use Restrictions.** Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Without limiting the foregoing, Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any copyright or other proprietary notices from the Services or Documentation; (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any

applicable law; (vi) remove, circumvent, disable, damage or otherwise interfere with security-related features of the Services, features that prevent or restrict use or copying of any content accessible through the Services, or features that enforce limitations on use of the Services; (vii) input, upload, transmit, or otherwise provide to or through the Services or provider systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any virus, worm, malware, or other malicious computer code; (viii) access or use the Services or Provider IP for purposes of competitive analysis of the Services or Provider IP, the development, provision, or use of a competing software service or product or any other purpose that is to the Provider's detriment or commercial disadvantage; (ix) access or use the Services or Provider IP in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Services could lead to personal injury or severe physical or property damage; (x) use the Services to market or advertise to, or otherwise communicate with Guests after the purpose for which the Guest provided consent to be contacted is fulfilled (e.g., after the Guest is removed from the queue); or (xi) use the Services to contact or communicate with any Guest without receiving all consent required by applicable law, or otherwise use the Services except in strict compliance with applicable law, rules, regulations, and guidance.

- c. **Reservation of Rights.** Provider reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP.
- d. **Modification of the Services.** Provider reserves the right, at any time, to modify features and functionalities of the Services and Support without notice to or prior approval from Customer, provided that such modification does not materially diminish the overall Services.
- e. **Customer Control and Responsibility.** Customer has and will retain sole responsibility for: (i) all Customer Data, including its content and use; (ii) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (iii) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services ("Customer Systems"); (iv) the security and use of Customer's and its Authorized Users' access credentials; and (v) all access to and use of the Services directly or indirectly by or through the Customer Systems or its or its Authorized Users' access credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.
- f. **Suspension.** Notwithstanding anything to the contrary in this Agreement, Provider may temporarily suspend Customer's and any Authorized User's

access to any portion or all of the Services (“Service Suspension”) if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Customer’s or any Authorized User’s use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Customer, or any Authorized User, is using the Provider IP for fraudulent or illegal activities; or (D) Provider’s provision of the Services to Customer or any Authorized User become prohibited by applicable law; or (ii) any vendor of Provider has suspended or terminated Provider’s access to or use of any third-party services or products required to enable Customer to access the Services (any such suspension described in subclause (i) or (ii), a “Service Suspension”). Provider will have no liability for as a result of a Service Suspension.

- g. **Aggregated Statistics.** Notwithstanding anything to the contrary in this Agreement, Provider may monitor Customer’s use of the Services and collect and compile Aggregated Statistics. As between Provider and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Provider. Customer agrees that Provider may use Aggregated Statistics to the extent and in the manner not prohibited under applicable law provided that such Aggregated Statistics do not identify Customer or Customer’s Confidential Information.

### 3. Customer Responsibilities

- a. **General.** Customer is responsible and liable for all uses of the Services and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement’s provisions as applicable to such Authorized User’s use of the Services, and shall cause Authorized Users to comply with such provisions. Customer acknowledges and agrees that each Authorized User agrees to, must comply with, and is bound by the Terms of Use as may be updated from time to time, located at <https://waitwhile.com/terms/>.
- b. **Third-Party Products.** Provider may from time to time make Third-Party Products available to Customer. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions and the applicable flow-through provisions. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not install or use such Third-Party Products.

## 4. Support

Subject to the terms and conditions of this Agreement, as part of an Enterprise Agreement, Provider shall use commercially reasonable efforts to make the Services available and provide support during the Term in accordance with **Exhibit A**.

## 5. Fees and Payment

- a. **Fees.** Provider shall invoice Customer via email. Customer shall pay Provider the invoiced fees (“Fees”) as set forth in Provider’s current pricing and/or as agreed upon without offset or deduction. Customer shall make all payments hereunder in US dollars on or before the due date set forth. Customer shall make all payments via Automated Clearing House transaction, electronic funds transfer, or credit card using Stripe or such other payment processor as Provider may select from time to time. If Customer fails to make any payment when due, without limiting Provider’s other rights and remedies: (i) Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse Provider for all reasonable costs incurred by Provider in collecting any late payments or interest, including attorneys’ fees, court costs, and collection agency fees.
- b. **Taxes.** All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider’s income.
- c. **Fee Increases.** Provider may increase Fees for any Renewal Term by an amount equal to the greater of 5% or the percentage increase in the Consumer Price Index, all items, for the preceding 12 months, as reported by the US Bureau of Labor Statistics. Provider will provide written notice to Customer at least thirty (30) calendar days prior to the beginning of the Renewal Term.
- d. **Additional Features.** Provider may add new features and/or functionalities to the Services for additional fees and charges at any time in its sole discretion. Any associated change to pricing will become effective in the billing cycle following implementation of such changes.
- e. **PASS THROUGH COSTS AND PAYMENT TERMS**
  - i. **Twilio passthrough costs.** As part of the Services, Waitwhile is integrated with Twilio, a leading SMS messaging vendor. Twilio charges Waitwhile for each SMS segment, which is approximately 160 characters in length (with some exceptions as detailed in Twilio’s documentation here). Waitwhile agrees to act as an intermediary between Twilio and the Customer for the purpose of facilitating payment for SMS segment costs incurred by the Customer in connection with the performance

of the Services. An SMS segment is consumed whenever a message is sent between the Customer, Guest, and Waitwhile Platform, regardless of the message's direction. This means that both incoming and outgoing messages, as well as messages between the Customer, Guest, and Waitwhile Platform, will count towards the total SMS segment usage. The Customer will be responsible for all SMS segment costs incurred, which will be charged by Waitwhile.

- ii. **SMS Credits.** The Customer agrees to purchase SMS Credits for any given term at a price mutually agreed upon by the parties. The SMS Credits can be used for SMS segments where prices apply, depending on which countries the Customer chooses to use the SMS segments in. The SMS Credits will be counted towards the SMS segment consumption for the then current term and will be subject to changes in the Twilio country-specific SMS segment fee from time to time. Waitwhile reserves the right to adjust the SMS segment pricing to reflect the Twilio SMS segment pricing at any given time. Any additional SMS segment usage beyond the purchased SMS Segment Credits will be invoiced separately at the then-current SMS segment rate. If the Customer requires additional SMS segments, they may refill their SMS Credits at any time during the term. These SMS Credit refills will be invoiced separately and purchased upfront.
- iii. **Carry-over.** Any SMS Segment Credits that remain at the end of each term will expire and cannot be carried over to the next term. However, any unused refill of SMS Segment Credits will be automatically added to the next term's allotment. Please note that any remaining SMS segments at the end of the final term will be considered consumed, and Waitwhile will not issue any refunds or credits for unused SMS Credits.
- iv. **Pass Through Email Costs.** Waitwhile enables the Customer to send emails through its platform for the purpose of facilitating communication with their users. The Customer will be responsible for all email costs incurred, and Waitwhile will invoice the Customer for such costs on an email package basis, in advance, as per agreement. If the Customer requires additional email messages, they may purchase additional packages and pay the email rate of \$0.0007 per email. These additional email messages will be invoiced separately, and purchased upfront in the requested volume.
- v. **Billing Schedule.** Pursuant to the Agreement, all fees shall be paid in United States Dollars (USD), annually in advance, with a net payment term of 30 days. Unless otherwise agreed, all invoices shall be submitted electronically via Vendor's designated third-party software (e.g., Stripe) (hereinafter, "Invoice System"). The Customer shall provide an email address for invoice processing. Vendor reserves the right to reject any requests to use the Customer's Invoice System (e.g., Ariba).

## 6. Confidentiality and Privacy

- a. During the term of this Agreement, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, whether or not marked, designated, or otherwise identified as “confidential” (collectively, “Confidential Information”). Confidential Information does not include information that, at the time of disclosure is: (i) in the public domain; (ii) known to the receiving Party at the time of disclosure; (iii) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (iv) independently developed by the receiving Party.
- b. The receiving Party shall treat the Confidential Information as it does its own valuable and sensitive information of a similar nature and, in any event, with not less than a reasonable degree of care. The receiving Party shall not disclose the disclosing Party’s Confidential Information to any person or entity, except to the receiving Party’s employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party’s rights under this Agreement, including to make required court filings.
- c. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party’s Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party’s obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.
- d. Provider’s Privacy Policy located at <https://waitwhile.com/privacy/>, as may be updated from time to time (“Privacy Policy”) explains how Provider collects, uses, and discloses Guest information. By licensing, accessing, or using the Service, as applicable, Customer and all Guests agree to the terms and conditions of the Privacy Policy.
- e. To the extent that Provider processes any Guest Personal Information in connection with the Services as a Processor on behalf of the Customer as Controller of such Personal Information (as those terms are defined by the

EU General Data Protection Regulation (2016/679) (“GDPR”), such processing shall be governed by the Waitwhile Data Processing Agreement, which is hereby incorporated herein by reference.

- f. If Customer is a Covered Entity or a Business Associate and Guest information may include Protected Health Information, Customer shall not request or require that any Guest provide Protected Health Information through or in connection with the Services unless Customer and Provider have previously entered into a Business Associate Agreement (as this and the preceding terms are defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations and the Health Information Technology for Economic and Clinical Health Act (HITECH) and its implementing regulations).
- g. Provider shall use commercially reasonable efforts to provide the Services in accordance with its security policies as may be updated from time to time, available at <https://waitwhile.com/security/> (“Security Policy”). Notwithstanding any provision to the contrary, Provider may modify its Security Policy at its discretion provided that such modification does not result in a material degradation of the protections provided thereunder.

## 7. Intellectual Property Ownership; Feedback

- a. **Provider IP.** Customer acknowledges that, as between Customer and Provider, Provider owns all right, title, and interest, including all intellectual property rights, in and to the Provider IP and, with respect to Third-Party Products, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products.
- b. **Customer Data.** Provider acknowledges that, as between Provider and Customer, Customer is solely responsible and liable for and owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Provider a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Provider to provide the Services to Customer. The Services do not replace the need for Customer to maintain regular data backups or redundant data archives. Provider has no obligation or liability for any loss, alteration, destruction, damage, corruption, or recovery of Customer Data.
- c. **Feedback.** If Customer or any of its employees or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like (“Feedback”), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Provider on Customer’s behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Provider is free to use,

without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Provider is not required to use any Feedback.

## **8. Limited Warranty and Warranty Disclaimer**

- a. Each Party represents and warrants to the other Party that (i) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; and (ii) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement.
- b. Provider warrants that the Services will substantially conform in all material respects to the Documentation when operated and used as recommended in the Documentation and in accordance with this Agreement. Customer's sole and exclusive remedy for any breach of the limited warranty set forth herein shall be to notify Provider of the specific non-conformity, in which case, Provider shall use commercially reasonable efforts to correct such non-conformity and make the corrected Services available to Customer. Notwithstanding any provisions to the contrary in this Agreement, the limited warranty set forth herein does not apply to issues arising out of or relating to Customer's or any third party's negligence, abuse, misapplication, or misuse of the Services, including any use of the Services other than as specified in the Documentation. THE FOREGOING WARRANTY DOES NOT APPLY, AND PROVIDER STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.
- c. Customer represents, warrants, and covenants to that: (i) Customer's use of the Services shall comply with all applicable laws, rules, regulations, ordinances, and governmental guidance; and (ii) Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Provider and processed in accordance with this Agreement, the Customer Data does not and will not infringe, misappropriate, or otherwise violate any intellectual property rights or any privacy or other rights of any third party or violate any applicable law.
- d. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTIONS 8(a) AND 8(b), THE PROVIDER IP IS PROVIDED "AS IS" AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTIONS 8(a) AND 8(b), PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER

- SERVICES, BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE, OR COMPLY WITH ANY PARTICULAR LAW, RULE, OR REGULATION.
- e. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, (i) ALTHOUGH THE SERVICES MAY ESTIMATE AN APPROXIMATE WAIT TIME, PROVIDER MAKES NO GUARANTEES AND EXPRESSLY DISCLAIMS ALL WARRANTIES CONCERNING SUCH WAIT TIMES, (ii) PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES, AND CUSTOMER IS SOLELY RESPONSIBLE FOR, ALL NOTIFICATIONS TO AND COMMUNICATIONS WITH GUESTS, INCLUDING, WITHOUT LIMITATION, THE SUBSTANCE OF ALL SUCH COMMUNICATIONS AND OBTAINING ALL CONSENT NECESSARY OR RECOMMENDED BEFORE SENDING SUCH COMMUNICATIONS AND NOTIFICATIONS, AND (iii) CUSTOMER IS SOLELY RESPONSIBLE FOR ENSURING THAT ITS USE OF THE SERVICES COMPLY WITH APPLICABLE LAWS, RULES, REGULATIONS, AND GUIDANCE, INCLUDING, WITHOUT LIMITATION, THE TELEPHONE CONSUMER PROTECTION ACT AND REGULATIONS AND GUIDANCE ISSUED THEREUNDER. ANY TEMPLATES, POLICIES, OR OTHER MATERIALS PROVIDER MAY PROVIDE THROUGH THE SERVICES OR OTHERWISE ARE PROVIDED "AS IS" AND IN NO WAY REDUCE, DIMINISH, OR OTHERWISE LIMIT CUSTOMER'S RESPONSIBILITY TO ENSURE ITS USE OF THE SERVICES COMPLIES WITH APPLICABLE LAWS, RULES, REGULATIONS, AND GUIDANCES. CUSTOMER'S COMMUNICATIONS WITH GUESTS ARE AT CUSTOMER'S OWN RISK AND CUSTOMER ACKNOWLEDGES AND AGREES THAT IT ASSUMES ALL RESPONSIBILITY THEREFOR.

## **9. Indemnification**

- a. **Provider Indemnification.**
- vi. Provider shall indemnify, defend, and hold harmless Customer from and against any Losses resulting from any third party claim alleging that the Services infringe any United States patent, copyright, trademark, or service mark, or misappropriates any United States trade secret, and resulting losses, damages, liabilities, costs, and expenses, including, without limitation, reasonable attorneys' fees. If the Services, or any part thereof, is, or in Provider's opinion is likely to be, claimed to infringe, misappropriate, or otherwise violate any third party intellectual property right, or if Customer's use of the Services is enjoined or threatened to be enjoined, Provider may, at its option and sole cost and expense: (a) obtain the right for Customer to continue to use the Services materially as contemplated by this Agreement; (b) modify or replace the Services, in whole or in part, to make the Services non-infringing; or (c) terminate this Agreement, in its entirety or with respect to the affected part or feature of the Services, effective immediately on written notice to Customer, in which case, Provider shall promptly refund to Customer, on a pro rata basis, the share of any license fees prepaid by Customer for the future portion of the Term that would have remained but for such termination.
- vii. Section 9(a)(i) does not apply, and Provider has no obligation hereunder, if any alleged infringement or misappropriation is caused by or related to (a) combination, operation, or use of the Services in or with, any tech-

nology, materials, service, information, data, or anything else not provided by Provider; (b) modification of the Services other than by Provider; (c) use of the Services after Provider's notice to Customer of alleged, potential, or actual infringement, misappropriation, or other violation of a third party's rights; (d) negligence, abuse, misapplication, or misuse of the Services or Documentation by or on behalf of Customer or a third party; (e) use of the Services or Documentation by or on behalf of Customer that is outside the purpose, scope, or manner of use authorized by this Agreement; (f) claims for which Customer is obligated to indemnify Provider; (g) Customer's instructions or specifications, (h) Customer Data, or (xi) Third-Party Products.

- b. **Customer Indemnification.** Customer shall indemnify, hold harmless, and defend Provider from and against any Losses resulting from any third-party claim related to (i) Customer Data, (ii) notifications to Guests and communications between Guests and Customer in connection with the Services, (iii) Customer's failure to comply with applicable laws, rules, regulations, and guidance, (iv) claims by Guests against Provider related to Customer's use of the Services, and (v) any use of the Services within the scope of the exclusions from Provider indemnification set forth in Sections 9(a)(ii).
- c. **Indemnification Procedures.** The following shall apply with respect to all indemnification obligations under this Section 9: (i) the indemnified Party shall provide the indemnifying Party with prompt written notice of any claim; (ii) the indemnified Party shall permit the indemnifying Party to assume and control the defense of any action; and (iii) the indemnifying Party shall not enter into any settlement or compromise of any claim without the indemnified Party's prior written consent, unless such settlement includes no liability or admission of fault whatsoever on the part of the indemnified Party or its affiliates or agents. In addition, the indemnified Party may, at its own expense, participate in the defense or settlement of any claim.
- d. **Sole Remedy.** This Section 9 sets forth Customer's sole remedies and Provider's sole liability and obligation for any actual, threatened, or alleged claims that the Services provided by the Provider infringe, misappropriate, or violate any intellectual property rights of any third party.

## 10. Limitations of Liability

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, (A) THE MAXIMUM LIABILITY OF PROVIDER, ITS AFFILIATES, AND SUPPLIERS, FOR ANY DAMAGES FOR ANY AND ALL CAUSES WHATSOEVER, SHALL BE LIMITED TO THE FEES PAID TO PROVIDER DURING THE 6 MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM THAT GAVE RISE TO SUCH DAMAGES, AND (B) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR ANY PARTY CLAIMING THROUGH THE OTHER PARTY) FOR (I) LOST PROFITS, LOSS OF GOODWILL OR REPUTATION, LOST REVENUES, LOST SAVINGS, LOST, CORRUPTED, OR DAMAGED DATA OR EQUIPMENT, COST OF COVER, LOSS OF BUSINESS OPPORTUNITY, OR (II) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR LIKE DAMAGES ARISING OUT OF OR RELATING

TO THIS AGREEMENT OR THE PROVIDER IP, SERVICES, OR DOCUMENTATION PROVIDED HEREUNDER. THE DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH ABOVE SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY). THE FOREGOING LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN EACH CASE REGARDLESS OF WHETHER THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

## 11. Term and Termination

- a. Term. The Term of this Agreement shall be determined by mutual agreement between the parties in an order form, statement of work (SOW), or other contract executed by both parties.
- b. **Termination.** In addition to any other express termination right set forth in this Agreement:
  - i. Provider may terminate this Agreement, effective on written notice to Customer, if Customer: (a) fails to pay any amount when due hereunder; or (b) breaches any of its obligations under Sections 2(a), (b), or (c) or 6;
  - ii. either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (a) is incapable of cure; or (b) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; or
  - iii. either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (a) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (b) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (c) makes or seeks to make a general assignment for the benefit of its creditors; or (d) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- c. **Effect of Expiration or Termination.** Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Provider IP and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Provider IP and certify in writing to the Provider that the Provider IP has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund. As such, we will not provide refunds, credits, or carry-overs for early terminations or unused services and credits.

- d. **Survival.** In the event of any termination or expiration of this Agreement for any reason, all provisions of this Agreement whose meaning requires them to survive shall survive the expiration or termination of this Agreement.

## 12. Miscellaneous

- a. **Data Retention.** The Provider shall retain Customer Data for a period of two (2) years from the date the Customer Data is first entered into the Provider's system ("Retention Period"). At the end of the Retention Period, Provider shall permanently delete or destroy all Customer Data in its possession, unless required to retain such data by applicable law, regulation, or legal process. In any event, Provider shall delete or destroy all Customer Data upon the expiration of the agreement as required by section 11.c of this Agreement.
- b. **Relationship of the Parties.** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
- c. **Entire Agreement.** This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this Agreement, excluding its Exhibits; (ii) second, the Exhibits to this Agreement as of the Effective Date; and (iii) third, any other documents incorporated herein by reference.
- d. **Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees prepaid), or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.
- e. **Subcontractors.** Provider may from time to time in its discretion engage third parties to perform Services (each, a "Subcontractor").
- f. **Insurance.** Provider maintains and, upon Customer's request, shall provide a certificate of insurance evidencing the following insurance coverage: (i) Workers' Compensation and Employers' Liability Coverage in amounts and

in form in accordance with all statutory requirements applicable to Provider; (ii) Commercial General Liability Insurance with a limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (iii) Umbrella Liability Insurance with a limit of \$4,000,000 per occurrence and \$4,000,000 in the aggregate; and (iv) Cyber Liability, Errors and Omissions, Media Liability, and Privacy Insurance combined coverage with \$5,000,000 per occurrence and \$5,000,000 in the aggregate. Provider reserves the right to modify such insurance coverage and limits at its sole discretion.

- g. **Force Majeure.** In no event shall Provider be liable, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Provider's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.
- h. **Amendment and Modification; Waiver.** No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- i. **Severability.** If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- j. **Governing Law; Venue; Time Limit for Bringing Claims.** This Agreement is governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of California. Any claim or action by Customer in relation to an alleged breach of this Agreement shall be commenced within one (1) year of the date of the breach, without regard to the date the breach was discovered. Any claim or action not brought within such time period shall be irrevocably barred. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses grant-

ed hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of California in each case located in the city of San Francisco and County of San Francisco, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

- k. **Assignment.** Neither party may assign any of their rights or delegate any of their obligations under this agreement, whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of the other party. Such consent shall not be unreasonably withheld, conditioned, or delayed. Any attempted assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve either party of any of their obligations under this agreement. This Agreement binds and benefits both parties and their respective permitted successors and assigns.
- l. **Export Regulation.** Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), that prohibit or restrict the export or re-export of the Services or any Customer Data outside the US.
- m. **US Government Rights.** Each of the Documentation and the software components that constitute the Services is a “commercial item” as that term is defined at 48 C.F.R. § 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefore, Customer only receives those rights with respect to the Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.
- n. **Equitable Relief.** Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under 6 or, in the case of Customer, Sections 2 (a), (b), or (c) would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.
- o. **Marketing:** The Provider shall have the right to use the Customer’s logo and trademarks on the Provider’s website, at tradeshow, and in marketing materials for the purpose of identifying the Customer as a user of the Provider’s software as a service. The Customer grants the Provider a non-exclusive, non-transferable license to use the Customer’s logo and trademarks for the purposes outlined in this Agreement, and for no other purpose without the prior written consent of the Customer.

## EXHIBIT A – SERVICE LEVEL AGREEMENT

This Service Level Agreement (“SLA”) between Waitwhile, Inc. (“Waitwhile”, “us” or “we”) and users of the Waitwhile Services (“you”) govern the use of the Waitwhile Services under the provisions of the Agreement. Unless otherwise provided herein, this SLA is subject to the provisions of the Agreement. Please be advised that this Service Level Agreement only pertains to Enterprise customers and shall not be applicable to Customers who have subscribed to Waitwhile’s Free, Starter or Business Plans

### 1. Definitions

“**Maintenance**” means scheduled Unavailability of the Waitwhile Services, as announced by us prior to the Waitwhile Services becoming Unavailable.

“**Monthly Uptime Percentage**” is calculated by subtracting from 100% the percentage of minutes during the month in which the Waitwhile Services were Unavailable. Monthly Uptime Percentage measurements exclude downtime resulting directly or indirectly from any SLA Exclusion.

“**Service Credit**” means a credit denominated in US dollars, calculated as set forth below, that we may credit back to an eligible account.

“**Unavailable**” and “**Unavailability**” mean, for our service, when it is not running or not reachable due to Waitwhile’s fault.

### 2. Service Commitments and Service Credits

Service Credits are calculated as a percentage of the total charges due on your Waitwhile invoice for the annual or monthly billing cycle in which the Unavailability occurred, applied proportionally to the Services that were Unavailable, in accordance with the schedule below:

For Monthly Uptime Percentage less than 99.95% but equal to or greater than 99.0%, you will be eligible for a Service Credit of 10% of the charges attributable to the affected resources.

For Monthly Uptime Percentage less than 99.0%, you will be eligible for a Service Credit of 30% of the charges attributable to the affected resources.

We will apply any Service Credits only against future payments for the Services otherwise due from you. At our discretion, we may issue the Service Credit to the credit card you used to pay for the billing cycle in which the Unavailabili-

ty occurred. Service Credits will not entitle you to any refund or other payment from Waitwhile. A Service Credit will be applicable and issued only if the credit amount for the applicable monthly billing cycle is greater than one dollar (\$1 USD). Service Credits may not be transferred or applied to any other account.

### **3. Sole Remedy**

Unless otherwise provided in the Terms, your sole and exclusive remedy for any unavailability, non-performance, or other failure by us to provide the Services is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLA.

### **4. Credit Request and Payment Procedures**

To receive a Service Credit, you must submit a claim by emailing: [hello@waitwhile.com](mailto:hello@waitwhile.com). To be eligible, the credit request must be received by us by the end of the second billing cycle after which the incident occurred and must include:

- The words "SLA Credit Request" in the subject line;
- The dates and times of each Unavailability incident that you are claiming;
- The account handle(s); and
- Logs that document the errors and corroborate your claimed outage (any confidential or sensitive information in these logs should be removed or replaced with asterisks).

If the Monthly Uptime Percentage of such request is confirmed by us and is less than the Service Commitment, then we will issue the Service Credit to you within one billing cycle following the month in which your request is confirmed by us. Your failure to provide the request and other information as required above will disqualify you from receiving a Service Credit.

### **5. SLA Exclusions**

The Service Commitment does not apply to any Unavailability:

- a. That results from a suspension or Remedial Action, as described in the Terms;
- b. Caused by factors outside of our reasonable control, including any force majeure event, Internet access, or problems beyond the demarcation point of the Waitwhile network;
- c. That results from any actions or inactions of you or any third party;

- d. That results from the equipment, software or other technology of you or any third party (other than third party equipment within our direct control);
- e. That results from failures of Waitwhile Services not attributable to Unavailability; or
- f. That results from any Maintenance.

If availability is impacted by factors other than those used in our Monthly Up-time Percentage calculation, then we may, but are not required to, issue a Service Credit considering such factors at our sole discretion.

## **6. Service Management**

Effective support of in-scope services is a result of maintaining consistent service levels. The following sections provide relevant details on service availability, monitoring of in-scope services and related components.

### **6.1. Service Availability**

Coverage parameters specific to the service(s) covered in this Agreement are as follows:

**Telephone support:**

+1 888-983-0869

9:00 A.M-5:00 P.M EST Helpdesk Access

Calls received out of office hours will be followed up during standard business hours (9:00 A.M. to 5:00 P.M. CST Monday – Friday).

**Chat support:**

Available inside application

24/7 Online Helpdesk Access

**Email support:**

support@waitwhile.com

Monitored 9:00 A.M. to 5:00 P.M. CST Monday – Friday

All emails will receive an acknowledgement of receipt within 10 minutes. Email response to issue within 1 business day. This email response is not a guarantee of a resolution but rather constitutes, at minimum, a check-in regarding the status of a helpdesk ticket.

## 6.2. Service Requests and Classification Errors

In support of services outlined in this Agreement, the Waitwhile will respond to service related incidents and/or requests submitted by the Customer within the following time frames:

- 0-8 hours (during business hours) for issues classified as Severity Level 1.
- Within 48 hours for issues classified as Severity Level 2.
- Within 5 working days or the next scheduled update for issues classified as Severity

### Level 3.

All Errors reported by Customer to Waitwhile will be assigned a severity level by Waitwhile. Reported Errors will be classified as follows:

- Severity Level 1- Severity Level 1 implies that the Application is not functioning or Customer is unable to use major portions of the Application.
- Severity Level 2- Severity Level 2 implies that the Application is running but that Customer is unable to use major portions of the Application.
- Severity Level 3- Severity Level 3 implies that the Application is operating close to normal, but there is a noncritical Error. Severity Level 3 Errors will be fixed in the next scheduled Update.

## 6.3. Response to Error Reports

### Severity Level 1:

- Error Resolution - Immediate steps will be taken toward solving the Error. Waitwhile will work to resolve Severity Level 1 Errors on a twenty-four (24) hour basis until the Error is resolved. If required, Waitwhile staff will be moved off of lower Severity Level Errors to service Severity Level 1 Errors.
- Resource Commitment - When a Severity Level 1 Error is reported, Waitwhile will assign all resources required to correct the Error. Work on the Error will be continuous until a Fix is found. If system access is required, Customer will provide a contact available to Waitwhile and access to its system and software for the duration of the Error correction procedures.
- Completion Goal - The completion goal will be to resolve one hundred percent (100%) of all Severity Level 1 Errors with a Fix or Bypass within eight (8) hours of receipt of the Error Report.
- The Customer will be notified of the status of the Error.

### Severity Level 2:

- Error Resolution - Severity Level 2 Errors will be analyzed in the order that they are reported. Severity Level 1 Errors will take priority over Severity Level 2 Errors.
- Resource Commitment - Appropriate technical resources will be assigned

- to Severity Level 2 issues as long as Severity Level 1 Errors are not open.
- Completion Goal - The completion goal will be to resolve one hundred percent (100%) of all Severity Level 2 Errors within forty-eight (48) hours of receipt of the Error Report.
  - The Customer will be notified of the status of the Error.

**Severity Level 3:**

- Error Resolution - Severity Level 3 errors will be researched after Severity Level 1 and Severity Level 2 Errors. The majority of the Severity Level 3 Errors will be scheduled for correction and be resolved as part of the next scheduled Update to all of Waitwhile's users of the Application generally.
- Resource Commitment - Severity Level 3 Fixes will be included in the next scheduled Update.
- Completion Goal - The completion goal and objective will be to correct Errors in the next scheduled Update to all of Waitwhile's users of the Application generally.