

## ATTACHMENT A

### WAVESTREAM CORPORATION — TERMS AND CONDITIONS FOR PROCUREMENT (“Terms and Conditions”)

#### Definitions

(a) **Contract** - means the instrument of contracting, such as "Purchase Order", "Service Order", "Subcontract", or other such type designation, including these Terms and Conditions, all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a "Purchase Order" or other such document) the term "Contract" shall also mean the release document for the Work to be performed.

(b) **The Supplier** - the person/corporation contracting with the Buyer pursuant to this Contract.

(c) **The Buyer** - Wavestream Corporation, a Delaware Company with offices at 545 W. Terrace Drive, San Dimas, CA 91773-2915 or an affiliate or a subsidiary issuing a Contract.

(d) **Work** - means all required labor, articles, materials, supplies, goods, and/or services constituting the subject matter of this Contract.

#### Acceptance of Terms and Conditions

These Terms and Conditions apply to the Contract in which they are referred to or to which they are attached and together constitute an offer to purchase the goods and/or services stated therein. Such offer is revocable at any time before acceptance. This Contract becomes a contract upon Supplier's (i) acknowledgment of the Contract, (ii) acceptance of payment, or (iii) commencement of performance of Work. Once the contract is formed, the terms and conditions may be modified only in writing with a modification signed by both parties. No prior proposals, statements, course of dealing, or usage of the trade will be part of this Contract except in the case where Buyer and Supplier expressly state otherwise in writing. Unless expressly accepted in writing by Buyer, additional or differing terms or conditions proposed by Supplier are rejected to by Buyer and have no effect.

#### Assignment

Any assignment of Supplier's Contract rights or delegation of Supplier's duties shall be void, unless prior written consent is given by Buyer.

#### Compliance with Anti-Corruption Laws

Supplier warrants that it has read and understood (1) Buyer's Code of Ethics and Policy Prohibiting Bribery and Corruption; (2) the prohibitions contained in the U.S. Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, 78dd-2 and 78dd-3; (3) the prohibitions contained in the UK Bribery Act; and (4) the anti-bribery and conflict of interest laws and relevant regulations in the countries in which it performs services. Where applicable, Supplier further represents that it has trained its officers, directors, employees and other agents with respect to anti-corruption compliance. Supplier warrants that it has not made or authorized, and agrees that it will not make, authorize or receive, directly or indirectly through another person or entity, any offer or payment of anything of value to any Government Official (as defined in Buyer's Code of Ethics and Policy Prohibiting Bribery and Corruption) in any way connected to performance of this Contract or Buyer's services and activities.

#### Export Control

The Supplier shall obtain, at its own expense, any license, including marketing licenses, export and re-export licenses, brokerage licenses and any other permit, required to allow Buyer to receive and to export, including to re-export, the subject matter of the Contract by Buyer and by its clients whose identity has been conveyed to the Supplier. the Supplier will report to Buyer within 30 days from receipt of this Contract pertaining to the various laws that exercise control over the subject matter of the Contract (dual

use, EAR, USML, etc.). The Supplier will be exclusively responsible and liable for the validity of any document executed by the Supplier, and shall indemnify the Buyer on account of any damages caused to Buyer's customers on account of any such document. In any matter pertaining to the laws of f export control, the Supplier will be deemed the exporter until the subject matter of the PO is supplied to Buyer's customer.

#### Independent Contractor Relationship

This Contract does not create an employer-employee or agency relationship, or a joint venture or partnership between Buyer and the Supplier. The Supplier is engaged as and shall be an independent contractor only for all purposes. The Supplier shall be solely responsible for all persons and entities which Supplier engages to carry out any or all of its obligations under this Contract.

#### Contract Direction

(a) Only the Buyer procurement representative has authority on behalf of Buyer to make changes to this Contract. All amendments must be identified as such in writing and executed by the parties.

(b) Except as otherwise provided herein, all notices to be furnished by Supplier shall be in writing and sent to the Buyer procurement representative.

#### Changes

(a) Buyer's procurement representative may at any time, by written notice, make changes within the general scope of this Contract in any one or more of the following: (i) drawings, designs, specifications, or description of services; (ii) method of shipping or packing (iii) place of inspection, acceptance, or point of delivery; and (iv) delivery schedule or time of performance.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, Buyer shall make an equitable adjustment in the Contract price and/or delivery schedule, and modify this Contract accordingly. Changes to the delivery schedule or time of performance will be subject to a price adjustment only.

(c) Supplier must assert its right to an equitable adjustment under this clause within fifteen (15) days from the date of receipt of the written change order from Buyer.

(d) Nothing contained in this "Changes" clause shall excuse Supplier from proceeding without delay in the performance of this Contract as changed.

#### Inspection and Acceptance

(a) Buyer and its customer may inspect all Work at reasonable times and places, including, when practicable, during manufacture and before shipment. Supplier shall provide all information, facilities, and assistance necessary for safe and convenient inspection without additional charge.

(b) No such inspection shall relieve Supplier of its obligations to furnish and warrant all Work in accordance with the requirements of this Contract. Buyer's final inspection and acceptance shall be at destination.

(c) If Supplier delivers non-conforming Work, Buyer may, in addition to any other remedies available at law or at equity: (i) accept all or part of such Work at an equitable price reduction; or (ii) reject such Work; or (iii) require Supplier, at Supplier's cost, to make all repairs, modifications, or replacements at the direction of Buyer necessary to enable such Work to comply in all respects with Contract requirements.

#### Quality Control System

(a) Supplier shall provide and maintain a quality control system to an industry recognized Quality Standard and in compliance with

any other specific quality requirements identified in this Contract.

(b) Records of all quality control inspection work by Supplier shall be kept complete and available to Buyer and its customers.

#### **Furnished Property**

(a) Buyer may, by written authorization, provide to Supplier property owned by either Buyer or its customer ("Furnished Property"). Furnished Property shall be used only for the performance of this Contract.

(b) Title to Furnished Property shall remain in Buyer or its customer. Supplier shall clearly mark all Furnished Property to show its ownership.

(c) Except for reasonable wear and tear, Supplier shall be responsible for, and shall promptly notify Buyer of, any loss or damage to Furnished Property. Without additional charge, Supplier shall manage, maintain, and preserve Furnished Property in accordance with applicable law, the requirements of this Contract and good commercial practice.

(d) At Buyer's request, and/or upon completion of this Contract, Supplier shall submit, in an acceptable form, inventory lists of Furnished Property and shall deliver or make such other disposal as may be directed by Buyer.

**Confidentiality** Supplier will ensure that any information Buyer shall disclose to Supplier or Supplier shall develop for Buyer shall be kept confidential to the extent it is not otherwise publicly available. This obligation will survive any termination or expiration hereof.

#### **Stop Work**

(a) Supplier may, at any time, require the Supplier to stop Work for up to ninety (90) days in accordance with any written notice received from Buyer, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.

(b) Within such period, Buyer shall either terminate in accordance with the provisions of this Contract or continue the Work by written notice to Supplier. In the event of a continuation, an equitable adjustment in accordance with the principles of the Changes clause shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

#### **Termination for Convenience**

(a) Buyer reserves the right to terminate this Contract, or any part hereof, for its convenience. Buyer shall terminate by delivering to Supplier a notice of termination specifying the extent of termination and the effective date. In the event of such termination, Supplier shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Contract, Supplier shall be paid a percentage of the Contract price reflecting the percentage of the Work performed prior to the notice of termination, plus reasonable charges Supplier can demonstrate to the satisfaction of Buyer using its standard record keeping system have resulted from the termination. Supplier shall not be paid for any Work performed or costs incurred which reasonably could have been avoided.

(b) In no event shall Buyer be liable for lost or anticipated profits, or unabsorbed indirect costs or overhead, or for any sum in excess of the total Contract price. Supplier's termination claim shall be submitted within sixty (60) days from the effective date of the termination.

(c) Supplier shall continue all Work not terminated.

#### **Work on Buyer's and Third Party's Premises**

(a) "Premises" as used in this clause means premises of Buyer, its customers, or other third parties where Work is being performed.

(b) Supplier shall ensure that Supplier personnel working on premises of Buyer, its customers, or other third parties where Work is being performed comply with any on-premises policies.

(c) Prior to entry on the premises, Supplier shall coordinate with Buyer or third party where Work is being performed to gain access.

(d) Buyer may, at its sole discretion, have Supplier remove any specified employee of Supplier from the premises and require that such employee not be reassigned to any premises under this Contract.

#### **Price**

The prices set forth in the Contract are firm fixed unless otherwise stated therein. No additional charges (e.g., for packing, handling, cartage, or change in currency) shall apply in addition to the Contract price. The prices include all taxes, tariffs, and similar fees imposed by any government. All taxes, if applicable, shall be listed as a separate line item on the invoice.

#### **Invoices**

Invoices shall be submitted in duplicate after delivery and acceptance by Buyer, with the second copy to be marked as a duplicate, and shall include the order reference and the number of each delivery item.

#### **Payments**

(a) Unless explicitly agreed otherwise, payments will be made within sixty (60) days from the latest of the following: (i) Buyer's receipt of Supplier's proper invoice; (ii) scheduled delivery date of the Work; or (iii) actual delivery date of the Work.

(b) In the event that Supplier has to carry out material tests and/or supply test reports, quality documents, or other papers, the completion of the delivery and service also implies the reception of these documents.

(c) In addition to Buyer's remedies and rights pursuant to these Terms and Conditions, Buyer is entitled to take a cash discount, setoff, or withhold a reasonable amount of the payment, due to defects, late delivery, late performance or any other material breach of the Contract. Notwithstanding anything else including payments by Buyer, the period of payment shall not begin before Buyer's deemed acceptance of Work.

#### **Warranty**

All goods and services supplied shall be warranted (i) to conform to the items' specifications, (ii) to be new and made from new materials, unless otherwise stated, (iii) to be free from claims by third parties, and (iv) to be free from defects in design (except in the case of Buyer's design), material, and workmanship until the earlier of at least 18 months from delivery to Buyer or 12 months from delivery to Buyer's customer. If any of the items or services delivered by Supplier do not meet these warranties, Buyer may, in addition to any other rights Buyer may have under law, (i) require Supplier to repair, replace or reperform at no cost to Buyer any defective or non-conforming item, or (ii) return to Supplier the defective or non-conforming item at your expense and receive a full refund of the purchase price, or (iii) correct the defective or non-conforming item / service and charge Supplier with the cost of such correction. This warranty shall survive any inspection, delivery, acceptance, or payment by us for the items.

#### **Transportation.**

Unless otherwise specified, the goods shall be shipped to Buyer FCA (Incoterms 2010) by standard freight methods unless specified otherwise in the Contract.

#### **Delivery**

Time is of the essence with respect to all deliveries specified in the Contract and/or in Buyer's procurement follow-up memos. Items delivered either early or late may be returned at Supplier expense,

and Buyer reserves all other remedies under law in this regard.

#### **Set-Off**

Buyer may set-off any amount Supplier owe to Buyer against any amount Buyer owe Supplier under this Contract or any other contract between the parties or between Buyer's affiliates and Supplier.

#### **Termination for Default**

If Supplier defaults in the performance of this Contract and such default or delay is not cured within ten (10) days from receipt of written notice from Buyer of such default or delay, Buyer may immediately terminate any part or all of this Contract without liability, and Buyer reserves its rights to all remedies available to us under law with respect thereto. A default under this Contract shall be any of the following failures of Supplier to:

- (i) Deliver the supplies or to perform the services within the time specified or service levels in this Contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract; or
- (iii) Perform any of the other provisions of this Contract.

#### **License**

To the extent any products, designs or components supplied by Supplier to Buyer hereunder include any pre-existing intellectual property owned or licensed by Supplier ("Supplier's licensed IP"), Supplier hereby grants to Buyer a worldwide, non-exclusive, perpetual, fully paid-up, royalty-free license, with the right to use, reproduce, modify Supplier's licensed IP, to make, use, sell, distribute, support, develop or otherwise exploit (in each case, directly or indirectly) Buyer's products and services. Supplier will promptly provide to Buyer any enhancements or updates to Supplier's licensed IP made during the term of this Contract.

#### **Covenant Not to Sue**

Supplier hereby covenants that: (i) Buyer and its Affiliates and their customers shall have the right to use Supplier's licensed IP as integrated in Buyer's products and/or services; and that (ii) Supplier shall not sue, take action or otherwise attempt to enforce against Buyer, its Affiliates, customers or contractors any of Supplier's licensed IP or other Supplier's intellectual property, which Supplier now holds, or may acquire hereafter that pertains to the products, designs or components supplied by Supplier and/or that relates to Buyer's products or any rights therein; (iii) Supplier shall not take any action to contest Buyer's intellectual property rights or infringe them in any way.

#### **Indemnification**

Supplier shall, at its own expense, indemnify Buyer and/or Buyer's customers, affiliates, subsidiaries, officers, agents and employees and hold harmless from and against any and all damages, liabilities, claims, including third party claims for infringement of IP, costs, charges, judgments and expenses (including reasonable attorneys' fees) (collectively "Damages") that may be sustained, suffered or incurred, arising from or related to any act or omission of Supplier, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

#### **Intellectual Property of Third Parties**

(a) Supplier warrants that no third party has any property rights on any item listed in this Contract and in particular that no patents, licenses or other property rights will be violated through the delivery and use of the items listed in this Contract.

(b) Supplier shall defend any claim that is brought against Buyer or its customers that an item or service supplied by Supplier or listed in this Contract or a device or process resulting from its use infringes or misappropriates a patent, copyright, or trade secret of

any third party, provided that Buyer shall notify Supplier promptly in writing and give Supplier authority, information, and assistance, at Supplier's expense, to defend the claim. Supplier will pay all damages and costs awarded against Buyer or its customers and cost of investigation and legal advice. If use of an item is enjoined, Supplier will, at Supplier's expense, procure the right to continue using the item, replace the item with a non-infringing equivalent, or with Buyer written approval, remove the item and refund the purchase price and the transportation and installation cost.

#### **Software Open Code Limitations**

(a) Supplier shall disclose to Buyer in writing any software open code limitation that will be used or delivered in connection with this Contract and shall obtain Buyer's prior written consent before using or delivering such open code in connection with this Contract. Buyer may withhold such consent in its sole discretion.

(b) If no disclosure and process under (a) above took place, the Supplier's goods or services shall not include any open code software, whether in the product or in its components. The Supplier shall take any action that will cause the goods or services not to be subject to the terms and conditions of an open code license

#### **Subcontracting**

Supplier shall not subcontract orders or part thereof to third parties, without Buyer's prior written consent. If such consent is granted, Supplier shall remain responsible for meeting all contractual obligations.

#### **Publicity**

Supplier will not (a) issue any press release, (b) use any of Buyer's products or Buyer's name in promotional activity, or (c) otherwise publicly announce or comment on this Contract, without our prior written consent of Buyer.

#### **Governing Law**

The law governing this Contract shall be the law of the state from which this Contract is issued by Buyer, and the courts situated in the jurisdiction from which this Contract is issued by Buyer shall have exclusive jurisdiction over any dispute hereunder. The provisions of the "United Nations Convention on Contracts for International Sale of Goods" shall not apply to this Contract

#### **Rights and Remedies**

The rights and remedies of either party in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity. Any failure by either party to enforce strict performance by the other party of any provision hereof shall not constitute a waiver of the right to subsequently enforce such provision or any other provision of this Contract.

#### **Change in Control of Supplier**

Prior to a potential change of control of Supplier and at least ninety (90) days prior to the proposed effectiveness of such change of control, Supplier will promptly notify Buyer in writing thereof, and provide the identity of the potential new controlling party and information on such party and the transaction as Buyer may request, consistent with applicable law and confidentiality restrictions.