



## GENERAL BUSINESS TERMS AND CONDITIONS

1. **PAYMENT & BILLING TERMS.** Customer shall pay the fees and other charges for each Order.
  - a. **Billing.** Billing shall begin on the date PS Lightwave notifies Customer that services are fully available for Customer's use regardless of whether Customer has procured services from third-party vendors (i.e. equipment suppliers, software developers, telecommunication Customers, etc.) required to operate the services, and regardless of whether Customer is otherwise prepared to accept delivery of ordered services (the Commencement Date).
  - b. **Invoicing.** PS Lightwave bills for one (1) full month of Monthly Recurring Charges ("MRC") in advance. Each MRC covers services delivered from the first of the month through the end of the month. PS Lightwave will bill services in arrears or as otherwise provided by the Order.
  - c. **First Invoice.** The first invoice will be sent to the Customer following the Commencement Date. The invoice will include prorated MRC from the Commencement Date to the end of the month. When multiple services are included in a single Order, Customer agrees to pay PS Lightwave the MRC and any additional charges associated with those services that are installed or activated even though the Commencement Date for the entire Order has not commenced. Invoices shall be delivered via email (regular mail only if Customer request at a charge of \$7.50 per month).
  - d. **Payment of Invoices.** All invoices are due upon receipt and become past due thirty (30) days from the invoice date (the "Delinquency Date"). If PS Lightwave is not in receipt of any payment on or before the Delinquency Date, such payment becomes a Late Payment. At PS Lightwave's discretion, in addition to the Customer's obligation to pay such Late Payment, Customer will pay a Late Charge of \$30.00 on the Late Payment and interest on the Late Payment ("Late Payment Interest") at a rate equal to 1.5% (or the highest amount permitted by law) per month or portion thereof, on the outstanding balance unpaid for more than thirty (30) days; however a minimum interest charge of \$1.00 will be assessed for each billing period subject to a finance charge. In no event, however, shall the charges permitted under this Section, to the extent the same are considered to be interest under applicable law, exceed the maximum lawful interest rate. PS Lightwave shall not be prevented from exercising any of the other rights and remedies available to PS Lightwave hereunder or under any applicable laws. PS Lightwave shall have the right to suspend or terminate services if an account is past due for more than thirty (30) days from the Delinquency Date. If PS Lightwave has to take action of any kind to collect any balance due, then Customer agrees to pay PS Lightwave's reasonable expenses, including but not limited to all reasonable and necessary attorney and collection agency fees.
  - e. **Taxes and Fees.** Except for taxes based on PS Lightwave's net income and ad valorem, personal and real property taxes imposed on PS Lightwave's and not Customer's owned or leased property, Customer is responsible for payment of all property, sales, use, gross receipts, excise, building access, bypass, franchise, or other local, state, and federal taxes and/or fees, however designated, imposed on, or based upon the provision of the services.
  - f. **Disputed Invoices.** If Customer reasonably disputes any portion of a PS Lightwave invoice, Customer must pay the undisputed portion of the invoice in accordance with the terms and conditions of these Terms and Condition or associated Order and submit a written claim to PS Lightwave for the disputed amount. All claims must be submitted to PS Lightwave within sixty (60) days from the invoice date for those services. Customer waives the right to dispute any charges not disputed within the time frame set forth above. In the event the dispute is resolved against Customer in accordance with the procedures hereunder, Customer shall pay such amounts plus interest within ten (10) business days of receipt of notice of the determination from PS Lightwave.
  - g. **Credit Review and Other Assurances.** In order to support Customer's payment obligation, PS Lightwave may perform a credit review of Customer from time to time. Based on Customer's credit review and/or other information available to PS Lightwave (including any history of delinquent payments), PS Lightwave may require at any time Customer provide adequate assurances that Customer will pay all obligations as they become due. To avoid confusion, Customer understands that PS Lightwave may require Customer to provide a deposit either as a condition precedent to the beginning new Services and/or any time during existing Services.
2. **INDEMNITY & LIMITATIONS OF LIABILITY.**
  - a. Subject to any other provision, Customer shall defend, indemnify and hold harmless PS Lightwave from and against any loss, debt, liability, damage, obligation, claim, demand, judgement or settlement of any nature or kind, known or unknown, liquidated or unliquidated, of any third party, including without limitation all reasonable costs and expenses, such as reasonable litigation costs and attorneys' fees ("Claim"), relating to damage to tangible property or bodily injury, or wrongful death, to the extent such Claim arises out of the negligence or willful misconduct of the Customer or PS Lightwave, its employees, agents or contractors in connection with these Terms and Conditions or the provision of Services hereunder. **THE PARTIES INTEND THAT THE INDEMNITY OBLIGATIONS IN THIS SECTION SHALL APPLY PROPORTIONALLY EVEN IF CAUSED, IN WHOLE OR IN PART, BY THE SOLE, JOINT OR CONCURRENT NEGLIGENCE OR OTHER FAULT, WHETHER PASSIVE OR ACTIVE, OF PS LIGHTWAVE, ITS AFFILIATES, SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS.**
  - b. **Customer Indemnity.** Customer agrees to release, defend, indemnify and hold harmless PS Lightwave, its officers, directors, employees, contractors and agents from and against any Claim to the extent such Claim is brought by Customer and arises out of an alleged defect in or failure of Service; or (ii) arises out of or relates to the content transmitted over PS Lightwave's network, whether sent by Customer, including without limitation, claims relating to any violation of copyright law, export control laws, or that such transmissions are libelous, slanderous or an invasion of privacy or illegal. **THE PARTIES INTEND THAT THE INDEMNITY OBLIGATIONS IN THIS SECTION SHALL APPLY PROPORTIONALLY EVEN IF CAUSED, IN WHOLE OR IN PART, BY THE SOLE, JOINT OR CONCURRENT NEGLIGENCE OR OTHER FAULT, WHETHER PASSIVE OR ACTIVE, OF PS LIGHTWAVE, ITS AFFILIATES, SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS.**
  - c. **Damages / Causes of Action.**
    - i. For purposes of this Section, the term "PS Lightwave" shall be deemed to include PS Lightwave, its Affiliates, owners, directors, officers, employees, and any person or entity assisting PS Lightwave in its performance pursuant to this Agreement.
    - ii. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIABILITY OF PS LIGHTWAVE TO CUSTOMER, (A) FOR BODILY INJURY OR DEATH TO ANY PERSON OR FOR DAMAGE TO ANY REAL OR TANGIBLE PROPERTY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF PS LIGHTWAVE SHALL BE LIMITED TO CUSTOMER'S RIGHT TO PROVEN DIRECT DAMAGES, AND (B) FOR ALL OTHER DAMAGES OTHER THAN THOSE SET FORTH IN SUBSECTION (A) AND NOT OTHERWISE EXCLUDED OR LIMITED BY THIS AGREEMENT, SHALL, IF PS LIGHTWAVE IS JUDICIALLY DETERMINED TO HAVE SOME LIABILITY TO CUSTOMER, FOR WHATEVER REASON, ARISING UNDER OR RELATED TO ACTS OR OMISSIONS RELATED TO THIS AGREEMENT, IN THE AGGREGATE FOR ALL SUCH ACTS OR OMISSIONS, BE LIMITED TO AN AMOUNT EQUAL TO THE RECURRING CHARGES

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UNDER THIS AGREEMENT FOR THE FIRST TWO (2) MONTHS OF THE TERM HEREOF.

- iii. NOTWITHSTANDING ANYTHING TO THE CONTRARY, PS LIGHTWAVE SHALL NOT BE LIABLE FOR ANY DAMAGES SUFFERED BY CUSTOMER OR ANY END USER ARISING FROM OR RELATED TO ANY FORCE MAJEURE EVENT.
  - iv. NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS AND CONDITIONS TO THE CONTRARY, IN NO EVENT SHALL CUSTOMER OR PS LIGHTWAVE OR THEIR RESPECTIVE AFFILIATES BE LIABLE TO EACH OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE (OTHER THAN SUCH DAMAGES AS MAY BE INCLUDED AS A COMPONENT OF LIQUIDATED DAMAGES OR TERMINATION CHARGES UNDER THESE TERMS AND CONDITIONS) SUFFERED BY SUCH OTHER PARTY AS A RESULT OF THE PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THESE TERMS AND CONDITIONS, OR ITS ACTS OR OMISSIONS RELATED TO THESE TERMS AND CONDITIONS WHETHER OR NOT ARISING FROM SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, VIOLATION OF LAW, BREACH OF CONTRACT, BREACH OF INDEMNITY PROVISIONS, BREACH OF WARRANTY OR ANY OTHER THEORY OR SOURCE, WHETHER OR NOT FORESEEABLE AND EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY THEREFROM. IN ADDITION, PS LIGHTWAVE SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION PROBLEMS WITH APPLICATIONS, AUTHORIZED EQUIPMENT, SERVICES, CONTENT OR NETWORKS NOT PROVIDED BY PS LIGHTWAVE; SERVICE INTERRUPTIONS OR LOST OR ALTERED MESSAGES OR TRANSMISSIONS (EXCEPT TO THE EXTENT OF SERVICE CREDIT ALLOWANCES SPECIFIED IN THE RELEVANT PRODUCT SUPPLEMENT) OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S OR ANY THIRD PARTY'S APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORK OR SYSTEMS.
  - v. THE INDEMNIFIED PARTY SHALL PROMPTLY NOTIFY THE INDEMNIFYING PARTY IN WRITING OF ANY CLAIMS WHICH ARE SUBJECT TO THE TERMS OF THIS SECTION. THE INDEMNIFIED PARTY SHALL HAVE THE RIGHT AT ITS OWN EXPENSE TO APPOINT ITS OWN COUNSEL WHO SHALL BE ENTITLED TO PARTICIPATE IN ANY SETTLEMENT NEGOTIATIONS OR LITIGATION REGARDING ANY MATTER FOR WHICH IT IS ENTITLED TO BE INDEMNIFIED HEREUNDER. THE INDEMNIFYING PARTY SHALL NOT AGREE TO ANY SETTLEMENT OR CONSENT TO ANY DECREE, ORDER OR JUDGMENT WITHOUT OBTAINING THE CONSENT OF THE INDEMNIFIED PARTY, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD.
- d. **Limitation of Representations and Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS, PS LIGHTWAVE MAKES NO WARRANTY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, INFRINGEMENT, TITLE, COMPLETENESS OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY SERVICES PROVIDED OR NOT PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES BY PS LIGHTWAVE ARE HEREBY EXCLUDED AND DISCLAIMED. CUSTOMER AGREES THAT PS LIGHTWAVE DOES NOT MONITOR, EXERCISE CONTROL OVER, NOR ACCEPT RESPONSIBILITY FOR THE CONTENT OF THE INFORMATION PASSING THROUGH OR CONTAINED WITHIN PS LIGHTWAVE'S FACILITIES, HOST COMPUTERS, NETWORK HUBS AND POINTS OF PRESENCE (THE "PS LIGHTWAVE NETWORK") OR THE INTERNET, OR THE CONTENT OF THE INFORMATION RESIDING ON THE CUSTOMER'S EQUIPMENT OR TRANSMITTED OVER ITS NETWORK, AND IS NOT LIABLE FOR THE CONTENT OF ANY DATA TRANSFERRED EITHER TO OR FROM THE CUSTOMER OR STORED BY CUSTOMER OR ANY OF CUSTOMER'S CLIENTS VIA THE SERVICES PROVIDED BY PS LIGHTWAVE. CUSTOMERS SHALL INDEMNIFY AND HOLD PS LIGHTWAVE HARMLESS FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT OF OR RELATED TO CUSTOMER'S CONTENT OR USE OF ANY INFORMATION RESIDING ON CUSTOMER'S EQUIPMENT OR TRANSMITTED OVER ITS NETWORK. USE OF ANY INFORMATION OBTAINED VIA PS LIGHTWAVE'S SERVICES IS AT CUSTOMER'S OWN RISK. PS LIGHTWAVE SPECIFICALLY DENIES ANY RESPONSIBILITY FOR THE ACCURACY OR QUALITY OF INFORMATION OBTAINED THROUGH ITS SERVICES. IN THE EVENT THAT PS LIGHTWAVE PROVIDES CUSTOMER WITH PRODUCTS IN CONJUNCTION WITH THE SERVICES (I.E., THIRD PARTY SOFTWARE PRODUCTS OR EQUIPMENT), PS LIGHTWAVE ALSO PROVIDES SUCH PRODUCTS AS IS WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, OR IMPLIED. No Service Level Agreement or service credits shall apply to the services provisioned under a Business Class Internet Service Order.
- e. **Survival and Duration.** These indemnification provisions and obligations shall survive these Terms and Conditions and as set forth, represent the entire liability of PS Lightwave and Customer's sole and exclusive remedies, with respect to any claim subject to indemnification under these Terms and Conditions.
3. **NETWORK DISRUPTIONS & SECURITY**
- a. PS Lightwave shall have no liability whatsoever for any damage to, loss or destruction of any of Customer's hardware, software, files, data or peripherals caused by network disruptions. The installation, use, inspection, maintenance, repair and removal of the Authorized Equipment may result in network disruptions, service outages or potential damage to Customer's network operations. Customer therefore agrees to take reasonable precautions during use of the Services. In the event of an emergency, PS Lightwave has the right to perform maintenance and/or restoration of its facilities, including but not limited to actions required to restore continuity to a severed or partially severed fiber optic cable, restore dysfunctional power and ancillary support Authorized Equipment, or correction of any potential jeopardy conditions. PS Lightwave shall notify Customer as soon as is reasonably practicable of any further disruptions to Services related to the emergency event.
  - b. PS Lightwave shall not be liable for any third-party network breaches on Customer's premises, equipment, software or hardware. Customer assumes the risk of any unauthorized third-party access to Customer's network. PS Lightwave makes an effort to keep its network secure but no network is perfect. Customer should take whatever steps it deems necessary to ensure its data is not accessed by unauthorized third parties.
4. **GENERAL TERMS**
- a. **Severability.** If any provision of these Terms and Conditions shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of these Terms and Conditions shall remain in full force and effect.
  - b. **Force Majeure.** Neither party shall be liable to the other or in default of these Terms and Conditions, nor shall any credit allowance or other remedy be extended, for any failure of performance or Authorized Equipment due to causes beyond such party's reasonable control including but not limited to any catastrophic event, earthquakes or other Acts of God, wars, civil disturbances, revolts, sabotage, theft, vandalism, transportation disasters, explosions, fire, acts or omissions of suppliers, fiber/cable cut, equipment or power failure, rodent damage, flood, any law, order or regulations or requests of any governmental entity, national emergency, terrorist activities, insurrections, riots, any acts or restraints of government or any regulatory authority, work stoppages or disruptive labor activities, global or natural disasters or like events, lack or delay in transportation, or failure of a third party to grant or recognize a right beyond the reasonable control of the party delayed. Both parties shall be excused from such performance to the extent, *but only to the extent*, that it is prevented, hindered or delayed by such causes. Upon the occurrence of any of such events, the party whose performance is prevented, interrupted, hindered or delayed shall give prompt notice to the other party, updating such notice at regular intervals

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regarding such event and the effect thereof, and use reasonable efforts to continue performance notwithstanding such cause. Financial inability to perform shall never be deemed a force majeure event unless it is caused by a moratorium on banking operations.

- c. **Notices.** Notices hereunder shall be deemed properly given when delivered. If delivered in person, or when sent via facsimile, overnight courier, electronic mail or when deposited with the U.S. Postal Service. Customer shall notify PS Lightwave of any changes to its address listed on any Service Order. For Service Discontinuation, Customer must send a request to [support@pslightwave.com](mailto:support@pslightwave.com) or to PS Lightwave at 5959 Corporate Drive, Suite 3300, Houston TX 77036, or such other address as PS Lightwave may specify from time-to-time.
  - d. **Governing Law.** The validity, interpretation, enforceability and performance of these Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Texas.
  - e. **Jurisdiction & Venue.** ALL PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE STATE DISTRICT COURT OF HARRIS COUNTY, TEXAS AND HEREBY AGREE THAT ANY SUCH COURT AND ONLY SUCH COURT SHALL BE THE PROPER FORUM AND VENUE FOR THE DETERMINATION OF ANY DISPUTE ARISING HEREUNDER. EACH PARTY WAIVES ALL DEFENSES OF EACH OF PERSONAL JURISDICTION AND FORUM NON CONVENIENS. PROCESS MAY BE SERVED ON EITHER PARTY IN THE MANNER AUTHORIZED BY APPLICABLE LAW OR COURT RULE.
5. **CONTRACT INTREPRETATION.** Ambiguities, inconsistencies, or conflicts in this Agreement shall not be strictly construed against the drafter of the language but will be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the parties' intentions at the time this Agreement is entered into.
6. **WAIVER OF JURY TRIAL & ATTORNEYS' FEES.**
- a. **Waiver of Jury Trial.** Each Party hereby irrevocably waives its rights to trial by jury in any action or proceeding arising out of these Terms and Conditions or the transactions relating to its subject matter.
  - b. **Attorney's Fees.** The Parties agree that if either Party to these Terms and Conditions brings any civil action related in any manner to these Terms and Conditions, the prevailing party in such civil action shall recover all of its reasonable attorneys' fees and litigation expenses incurred from the non-prevailing Party.
7. **DISPUTE RESOLUTION.** Except under circumstances requiring immediate injunctive relief, any dispute, controversy or claim arising out of or relating to these Terms and Conditions, the Parties' performance under it, or its breach ("Dispute") shall, upon the written request of either Party, be dealt with in accordance with the dispute resolution process before resorting to litigation.
- a. **Executive-Level Negotiations.** If any Dispute is not resolved promptly in the ordinary course of business, either Party may request to resolve such Dispute through face-to-face executive level negotiations, as provided herein, before resorting to litigation. Any such executive level negotiations shall be initiated within five (5) business days (or such other period as the Parties shall otherwise agree) of the date of written notice from the requesting Party to the other Party of the Dispute ("Negotiation Notice"), which Negotiation Notice shall be delivered to the other Party in accordance with the notice section of the applicable, disputed Service Order, and shall: (i) outline the allegations that form the basis of any anticipated complaint; (ii) invite a written response within a reasonable period of time; and (iii) request to initiate to executive level negotiations within the aforementioned five (5) day time period. All executive Level negotiations shall be conducted by a management representative of each Party with authority to settle the Dispute. Either Party may elect, upon two (2) business days written notice to the other Party, to bring its legal counsel to such executive level negotiations. The location, form, frequency, duration and conclusion of the executive level negotiations will be at the discretion of the Parties' representatives; provided, however, that either Party shall be entitled to terminate executive level negotiations at any time.
  - b. **Non-Binding Mediation.** If the Parties do not resolve the Dispute in accordance with the negotiation process set forth above, the Dispute must be submitted to non-binding mediation before an independent mediator, who shall be mutually designated and agreed upon by the Parties. All costs associated with non-binding mediation shall be borne equally by the Parties.
  - c. **Settlement.** Completion of Dispute Resolution Process. All matters resolved pursuant to this Section shall be documented through the Parties' execution of a written settlement agreement. The Parties agree that the refusal or failure of either Party to participate in executive levels discussions, as described herein, or to otherwise engage in good faith informal dispute resolution efforts, including but not limited to non-binding mediation above, shall constitute an unjust and unreasonable practice. In the event any Dispute is not resolved through the dispute resolution process set forth herein, either Party may seek any legal remedies to which it may be entitled before any Harris County State District Court.
  - d. **Effect of Dispute Resolution.** All conferences, discussions and correspondence that occur in connection with the dispute resolution procedures conducted shall be deemed settlement discussions, and nothing said or disclosed, nor any document produced, which is not otherwise independently discoverable, shall be offered or received as evidence, or used for impeachment or for any other purpose, in any current or future litigation. Unless otherwise agreed, each Party shall bear its own costs and expenses, including attorneys' fees, incurred in connection with the dispute resolution process, except that the expenses and fees for independent mediation services, and for any independent facilities used for mediation, if any, shall be shared equally between the Parties.