

any Customer Content) to any third party; provided, however, that notwithstanding anything to the contrary contained in this Agreement, (i) Rave may disclose any such information to Third Party Service Providers and Emergency Service Providers in connection with the operation and use of the Services or as necessary to comply with applicable laws and governmental orders and (ii) under no circumstances shall Rave or any Rave Representative be liable for the failure of Customer or any third party (including, but not limited to, any Designated Institution, Third Party Service Provider or Emergency Service Provider) to comply with its own privacy policies and all applicable privacy laws and regulations.

## **8. INDEMNIFICATION**

**8.1** Except as otherwise provided below, Rave shall defend or, at its option, settle any claim, suit, or other action brought by a third party against Customer directly and to the extent arising out of an allegation by such third party that any use of or access to a Product by Customer as expressly authorized under this Agreement infringes any U.S. patent issued to such third party (each, a "Claim"), and Rave shall indemnify and hold Customer harmless against all costs and reasonable expenses (including reasonable attorneys' fees), damages, and liabilities arising out of any such Claim finally awarded to such third party by a court of competent jurisdiction after all appeals have been exhausted or at the time of a final settlement of such Claim by Rave (collectively, "Losses"), provided that Customer gives Rave (i) prompt written notice of such Claim; (ii) sole authority to control and direct the defense and/or settlement of such Claim; and (iii) such information and assistance as Rave may reasonably request, at Rave's expense, in connection with such defense and/or settlement. Upon the occurrence of any Claim for which indemnity by Rave is or may be due under this Section 8, or in the event that Rave believes that such a Claim is likely, Rave may, at its option (I) modify the relevant Product so that it becomes non-infringing, or substitute functionally equivalent software or services; (II) obtain a license to the applicable third-party intellectual property rights; or (III) terminate this Agreement (or the license to such Product hereunder) on written notice to Customer and provide a prorated refund to Customer for any unused license fees under the then-current License Term. Rave shall not be liable for any costs or expenses incurred by or on behalf of Customer in connection with any Claim for which indemnity by Rave is or may be due under this Section 8 without the prior written consent of an authorized officer of Rave. Rave's indemnity obligations set forth in this Section 8 shall constitute Rave's entire liability and Customer's sole remedy for any actual or alleged intellectual property infringement claim with respect to the Services or Products. Notwithstanding anything herein to the contrary, Rave shall have no obligation or liability for any intellectual property infringement claim and any related losses, costs, expenses, damages and liabilities whatsoever to the extent arising from (a) the combination, operation, or use of the Product with products, services, information, materials, technologies, business methods or processes not furnished by Rave or otherwise expressly contemplated by the Documentation; (b) modifications to the Product, which modifications are not made by Rave or any party expressly authorized by Rave in writing; (c) use of the Product except in accordance with this Agreement, the Documentation and any other applicable user documentation or specifications furnished by Rave in writing; (d) failure of Customer to implement any updates and upgrades provided by Rave that would make the Product non-infringing; and/or (e) any intellectual property provided or otherwise made accessible to Rave by Customer or any of its Affiliates.

**8.2** To the extent permitted by applicable law, in connection with any intellectual property infringement claim against Rave and/or any Rave Representative by a third party arising out of any actions or omissions by Customer covered by Section 8.1(a)-(e), Customer shall defend, indemnify, and hold Rave and each Rave Representative harmless against all costs and reasonable expenses (including reasonable attorneys' fees), damages, and liabilities to the extent arising out of any such claim against Rave and/or such Rave Representative by a third party (including without limitation any End User or governmental agency), provided that Rave gives Customer (i) prompt written notice of such claim; (ii) sole authority to control and direct the defense and/or settlement of such claim; and (iii) such information and assistance as Customer may reasonably request, at Customer's expense, in connection with such defense and/or settlement; provided that Rave shall have the option to participate in any such matter with counsel of its choice at its expense. Customer shall not be liable for any costs or expenses incurred by or on behalf of Rave in connection with any intellectual property infringement claim for which indemnity by Customer is or may be due under this Section 8 without the prior written consent of any authorized officer of

Customer.

## **9. MISCELLANEOUS**

**9.1 Applicable Law/Dispute Resolution.** This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with, and shall be governed by, the laws of the Commonwealth of Massachusetts without giving effect to its rules regarding conflicts of laws. Regarding any action for injunctive or other equitable relief arising from the breach by the other Party of any license, usage or confidentiality obligations hereunder, each Party irrevocably submits to the jurisdiction of the Federal courts located within the Commonwealth of Massachusetts in connection with any and all causes of action between the Parties arising from or in relation to this Agreement. Except as provided in the preceding sentence, the Parties agree that any disputes regarding this Agreement that cannot be resolved through negotiations between the designated representatives from each Party within thirty (30) days of the date the dispute arose shall be submitted to binding arbitration conducted by the American Arbitration Association ("AAA") at its Boston, Massachusetts location. Any such arbitration will be conducted in accordance with the Commercial Arbitration Rules of the AAA. Any such arbitration will be conducted by a single arbitrator, and the arbitrator will issue his/her award in writing with findings. The decision of the AAA shall be binding as between the Parties, shall not be subject to appeal, and shall be enforceable in any court of competent jurisdiction. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**9.2 Services Outside the US.** If Customer is interested in purchasing Services for delivery outside of the United States, Customer acknowledges and agrees that, in addition to any restrictions that may be imposed on Customer by any Third Party Service Provider, any such territory outside the United States may impose its own restrictions resulting from applicable law, telecommunication or internet infrastructure limitations, telecommunication or internet service provider policies, or communication device customizations that inhibit or prevent the delivery of SMS, text or other messaging, or restrict the ability to place or receive certain calls (e.g., outbound toll-free calls). Such restrictions may impede certain aspects of the Services. Rave shall not be responsible for any such impediments or any unavailability of the Services as a result thereof.

**9.3 Force Majeure.** A Party shall be excused from performance of its obligations under this Agreement if such a failure to perform results from compliance with any requirement of applicable law, acts of god, fire, strike, embargo, terrorist attack, war or any other military action, acts of local, state or national governments or public agencies, insurrection or riot or other causes beyond the reasonable control of that Party.

**9.4 Notices.** All notices required by or relating to this Agreement shall be in writing and shall be sent by means of certified mail, postage prepaid or by nationally recognized overnight courier service, to the Parties to the Agreement and addressed, if to Customer, as set forth in the Customer Acceptance Form, or if to Rave, as follows:

**Rave Wireless, Inc.  
492 Old Connecticut Path, 2<sup>nd</sup> Floor  
Framingham, MA 01701  
Attention: Chief Executive Officer**

or addressed to such other address as that Party may have given by written notice in accordance with this provision. All notices required by or relating to this Agreement may also be communicated by facsimile, provided that the sender receives and retains confirmation of successful transmittal to the recipient and sends a duplicate of such notice by the means specified herein. Such notices shall be effective on the date indicated in such confirmation.

**9.5 Assignment.** Neither Party may assign its rights or delegate its obligations under this Agreement without the other Party's prior written consent, and, absent such consent, any purported assignment or delegation shall be null, void and of no effect; provided, however, that either Party, upon written notification to the other Party, may assign this Agreement in connection with any merger, consolidation, corporate restructuring, sale of any substantial portion of its assets, or any transaction in which more than fifty percent (50%) of its voting securities are transferred, unless any such successor or assignee of Customer is a competitor of Rave, in which case Customer must obtain Rave's prior written consent. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of Rave and Customer and their respective permitted successors and assigns.