

# Free, starter and business terms & conditions

Date of version: 2023-06-01

These Free, Starter, and Business 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"). 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, or otherwise commercially exploit the Services; (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, or access the Services to build a similar or competitive service; (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. Customer must use the Services in a lawful manner, and must obey all laws, rules, and regulations ("Laws") applicable to your use of the Service. As applicable, this may include compliance with domestic and international Laws related to notification and consumer protection, unfair competition, privacy, and false advertising, and any other relevant Laws. Any future release, update, or other addition to functionality of the Services will be subject to the terms of this Agreement.

- 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. **Mobile Apps.** The Provider will make available a Mobile App to access the Services via a mobile device. To use the Mobile App, the Customer must have a mobile device that is compatible with the Mobile App. The Provider does not warrant that the Mobile App will be compatible with the Customer's mobile device. The Provider grants to the Customer a non-exclusive, non-transferable, revocable license to use an object code copy of the Mobile App for one registered account owned or leased solely by the Customer, for their personal and non-commercial use.
- h. The Customer may not: (a) modify, disassemble, decompile, or reverse engineer the Mobile App; (b) rent, lease, loan, resell, sublicense, distribute, or otherwise transfer the Mobile App to any third-party; (c) make any copies of

the Mobile App; (d) remove, circumvent, disable, damage or otherwise interfere with security-related features of the Mobile App, features that prevent or restrict use or copying of any content accessible through the Mobile App, or features that enforce limitations on use of the Mobile App; or (e) delete the copyright and other proprietary rights notices on the Mobile App.

- i. The Customer acknowledges that the Provider may from time to time issue upgraded versions of the Mobile App and may upgrade automatically to their mobile device the version of the Mobile App they are using. The Customer consents to such automatic upgrading and agrees that these Terms of Use will apply to all such upgrades. The Provider may elect to provide the Customer with support or modifications for the Mobile App ("Support"), in its sole discretion, and may change, reduce or terminate such Support at any time without notice to the Customer. The Provider reserves the right to charge fees for Support. Any use of third-party software provided in connection with the Services will be governed by such third parties' licenses and not by these Terms of Use.
- j. **App Store.** The Customer acknowledges and agrees that the availability of the Mobile Apps is dependent on the third-party websites from which they download the Mobile Apps, such as the App Store from Apple or the Android app market from Google (each an "App Store"). The Customer acknowledges that these Terms are between them and the Provider and not with an App Store. Each App Store may have its own terms and conditions to which the Customer must agree before downloading Mobile Apps from it. The Customer agrees to comply with, and their license to use the Mobile Apps is conditioned upon their compliance with, such App Store terms and conditions. To the extent such other terms and conditions from such App Store are less restrictive than or otherwise conflict with the terms and conditions of these Terms, the more restrictive or conflicting terms and conditions in these Terms apply.
- k. **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.
- 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.
- c. **Communications with Guests.** All communications with Guests through the Waitwhile platform must comply with the Acceptable Use Policy stated below in section 3.f. Provider may place restrictions on the number of contacts the Customer can make with a Guest through our platform in association with each Guest entry into the queue. Customer acknowledges that it is solely liable for its communications with Guests. Customer is prohibited from using guest information from our platform for the purpose of sending marketing communications to Guest that have not expressly agreed to receive such communications or for the purpose of selling such data to third parties. Customer agrees to indemnify Waitwhile for all costs and fees incurred by Waitwhile in association with any claims made by Guest relating to Businesses communications with Guests or the authorized sale of customer data.
- d. **Customer Account creation.** In order to use certain features of the Services, you must register for an account with the Provider ("your Account") and provide certain information about yourself as prompted by the registration form. You represent and warrant that: (a) all required registration information you submit is truthful and accurate; (b) you will maintain the accuracy of such information. You may delete your Account at any time, for any reason, by following the instructions on the Site. The Provider may suspend or terminate your Account in accordance with the Terms and Termination.
- e. **Customer Account Responsibilities.** You are responsible for maintaining the confidentiality of your Account login information and are fully responsible

for all activities that occur under your Account. You agree to immediately notify the Provider of any unauthorized use, or suspected unauthorized use, of your Account or any other breach of security. The Provider cannot and will not be liable for any loss or damage arising from your failure to comply with the above requirements.

- f. **Acceptable Use Policy.** Customer's permission to use the Services is conditioned upon the following Use Restrictions and Conduct Restrictions: Customer acknowledges that they will not under any circumstances:
- post any information that is abusive, threatening, obscene, defamatory, libelous, or racially, sexually, religiously, or otherwise objectionable and offensive;
  - use the service for any unlawful purpose or for the promotion of illegal activities;
  - attempt to, or harass, abuse or harm another person or group;
  - use another user's account without permission;
  - provide false or inaccurate information when registering an account;
  - interfere or attempt to interfere with the proper functioning of the Service;
  - make any automated use of the system, or take any action that we deem to impose or to potentially impose an unreasonable or disproportionately large load on our servers or network infrastructure;
  - use the Site, Mobile App or any of its contents to advertise or solicit, for any commercial purpose or to compete, directly or indirectly, with our Service;
  - bypass any robot exclusion headers or other measures we take to restrict access to the Service or use any software, technology, or device to scrape, spider, or crawl the Service or harvest or manipulate data; or
  - publish or link to malicious content intended to damage or disrupt another user's browser or computer

## 4. Fees and Payment

- a. **Subscription Fees.** The Services may be provided for a fee, subscription or other charge, as per agreement. If you purchase a subscription from Wait-while, the subscription will automatically renew at the end of each billing cycle at which point you will automatically be charged for the next billing cycle. The length of a billing cycle may vary depending on the type of subscription the User purchases (i.e. monthly, annual).
- b. **Fees.** Use of the Site Mobile App and Services may be subject to certain payment terms or fees as determined in our sole discretion. We will provide notice of those fees then in effect in relation to any of our paid Services. If you wish to receive or use a paid Services, you are required to pay all applicable Fees in advance.

- c. **Pricing.** Our pricing may vary. Please see current pricing for more information. Waitwhile may add new services for additional fees and charges, add or amend fees and charges for existing services, at any time in its sole discretion. Any change to our pricing or payment terms will become effective in the billing cycle following notice of such change to you as provided in this Agreement.
- d. **Subscription and Billing.** Certain aspects of the Services may be provided for a fee, subscription or other charge. If you purchase a subscription from Waitwhile, the subscription will automatically renew at the end of each billing cycle at which point you will automatically be charged on your anniversary date for the next billing cycle. The length of a billing cycle may vary depending on the type of subscription the User purchases (i.e. monthly, annual).
- e. **Payment Information.** All information that you provide in connection with a purchase or transaction must be accurate, complete, and current. You agree to pay all charges incurred by users of your credit card, debit card, or other payment method used in connection with a purchase or transaction at the prices in effect when such charges are incurred. You will pay any applicable taxes, if any, relating to any such purchases or transactions.
- f. **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.
- g. **Responsibility for Payment.** You are responsible for all fees, including taxes, associated with your use of the Service. You are responsible for providing us with a valid means of payment. User must keep current payment information on file with Waitwhile and User's account must be adequately funded to pay for any services rendered.
- h. **Payment Authorization.** By agreeing to these terms, you are giving Waitwhile permission to charge your on-file credit card, PayPal account, or other approved methods of payment for fees that you authorize Waitwhile to satisfy.
- i. **Notification of Payment or Non-Payment.** We will email you a receipt when your card has been charged or if a payment fails. If your card cannot be charged your access to Services may be suspended and you will need to update your card information in order to resume use.



- j. **Chargebacks.** If you have a dispute concerning any payment transaction, please contact our billing department at [billing@waitwhile.com](mailto:billing@waitwhile.com). If, at any time, you contact your bank or credit card company to reject the charge of any payable Fees ("Chargeback"), this act will be considered a breach of your payment obligations, and we reserve the right to automatically terminate your use of the Services. We reserve the right to dispute any Chargeback and take all reasonable action to authorize the transaction. In the event of a Chargeback, your User Account may be terminated and any files, data, or content contained in your Account may be subject to cancellation. Waitwhile will not be liable for any loss of files, data or content as a result of a Chargeback. In order to resume use of the Services, you must re-subscribe for the Services and pay all applicable fees for the Service as well as any fees incurred by us or our payment processor as a result of the Chargeback.
- k. **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.
- l. **PASS THROUGH COSTS AND PAYMENT TERMS**
- xiii. **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.
- xiv. **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 up-front.

- xv. **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.
- xvi. **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).

## 5. 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. For Businesses that are located in the European Union or the European Economic Area, the Standard Contractual Clauses adopted by the European Commission, attached to the Data Processing Agreement, with Waitwhile, Inc., which provide adequate safeguards with respect to the personal data processed by us under this Agreement and pursuant to the provisions of our Data Processing Agreement apply. You acknowledge in all cases that Waitwhile acts as the data processor of Business data and you are the data controller of Business data under applicable data protection regulations in the European Union and European Economic Area. Business will obtain and maintain any required consents necessary to permit the processing of Business Data under this Agreement. If you are subject to the GDPR you understand that if you give an integration provider access to your Waitwhile account, you serve as the data controller of such information and the integration provider serves as the data processor for the purposes of those data laws and regulations that apply to you. In no case are such integration providers our sub-processors.
- 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.

## 6. 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. Customer further acknowledge that all intellectual property rights, including copyrights, patents, trademarks, and trade secrets, in the Services, including the Site and Mobile App, are owned by Provider or its licensors. Provider reserves all rights not granted in this Agreement.
- 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.

## **7. 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 7(a) AND 7(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 7(a) AND 7(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 PER-**

SON'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.

## **8. Indemnification**

- a. Customer Indemnification. The Customer agrees to indemnify, hold harmless, and defend the Provider (and its officers, employees, and agents) from and against any Losses resulting from any third-party claim related to (a) the Customer's use of the Services, (b) the Customer's User Content, (c) the Customer's violation of this Agreement or applicable laws, rules, regulations, and guidance, (d) notifications to Guests and communications between Guests and the Customer in connection with the Services, (e) claims by Guests against Provider related to the Customer's use of the Services, and (f) any use of the Services within the scope of the exclusions from our indemnification set forth in Sections 9(a)(ii). We reserve the right, at the customer's expense, to assume the exclusive defense and control of any matter for which the customer is required to indemnify us, and the customer agrees to cooperate with our defense of these claims. The customer agrees not to settle any matter without our prior written consent, and we will use reasonable efforts to notify the customer of any such claim, action, or proceeding upon becoming aware of it.
- b. Indemnification Procedures. The following shall apply with respect to all indemnification obligations under this Section 8: (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.

## 9. 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.

## 10. Term and Termination

- a. **Term.** Subject to this Section, this Agreement will remain in full force and effect while you use the Services. We may (a) suspend your rights to use the Site, Mobile App and/or Services (including your Account) or (b) terminate this Agreement, at any time for any reason at our sole discretion, including for any use of the Services in violation of this Agreement. Upon termination of this Agreement, your Account and right to access and use the Services will terminate immediately. You understand that any termination of your Account involves deletion of your User Content from our live databases. We will not have any liability whatsoever to you for any termination of this Agreement, including for termination of your Account or deletion of your User Content. Upon termination of this Agreement, all of the provisions will terminate except those that by their nature should survive.

- b. **Termination.** Customer may cancel a Free, Starter, or Business Subscription at any time, but will remain responsible for all Fees due until the end of the then-current subscription term.
- c. **Non-refundable Policy.** The Parties hereby mutually agree that the Provider will not provide refunds, credits, nor carry-overs in the event of early termination or non-utilization of Services or SMS/Message Credits. This non-refundable Policy applies regardless of the cause of circumstances leading to the said early termination or underutilization.

## 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. **No Support or Maintenance.** Customer acknowledge and agree that the Provider will have no obligation to provide Customer with any support or maintenance in connection with the Services.
- c. **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.
- d. **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.
- e. **Release.** The Customer releases and forever discharges the Provider (and its officers, employees, agents, successors, and assigns) from, and waives and relinquishes, each and every past, present, and future dispute, claim,



controversy, demand, right, obligation, liability, action, and cause of action of every kind and nature (including personal injury, death, and property damage), that has arisen or arises directly or indirectly out of, or relates directly or indirectly to, the use of the Services. This release includes, without limitation, any and all claims for negligence, breach of contract, breach of fiduciary duty, breach of warranty, strict liability, violation of any law or regulation, and any other theory of liability. The foregoing release includes, without limitation, any interactions with other Service users or Third-Party Sites & Ads. The Customer understands and acknowledges that the Provider is not responsible for the conduct, whether online or offline, of any user of the Services. If the Services are provided to California residents, the Customer hereby waives California Civil Code Section 1542, which states: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." If the Services are provided to residents of another jurisdiction, the Customer agrees to waive any similar laws or provisions that may apply in that jurisdiction.

- f. **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.
- g. **Subcontractors.** Provider may from time to time in its discretion engage third parties to perform Services (each, a "Subcontractor").
- h. **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.
- i. **Changes to Agreement.** This Agreement is subject to occasional revision, and if we make any substantial changes, we may notify you by sending

you an e-mail to the last e-mail address you provided to us (if any) and/or by prominently posting notice of the changes on our Site. Any significant changes to this Agreement will be effective 30 days after posting such notice. Customer is responsible for providing Provider with its most current e-mail address. In the event that the last e-mail address that Customer has provided the Provider is not valid, or for any reason is not capable of delivering to Customer the notice described above, the Provider's dispatch of the e-mail containing such notice will nonetheless constitute effective notice of the changes described in the notice. Continued use of our Site, Mobile App or Services following notice of such changes will indicate Customer acknowledgement of such changes and agreement to be bound by the terms and conditions of such changes.

- j. **Modification.** We reserve the right, at any time, to modify, suspend, or discontinue the Services with or without notice. You agree that we will not be liable to you or to any third party for any modification, suspension, or discontinuance of the Services, except and if otherwise expressly set forth in these Terms.
- k. **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.
- l. **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 regarding 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 granted 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.

- m. 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.
- n. 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.
- o. 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.
- p. 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.
- q. 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.

- r. **Copyright Policy.** We respect the intellectual property of others and ask that users of our Site, Mobile App and Services do the same. In connection with our Site, Mobile App, and Services and in accordance with the Digital Millennium Copyright Act's ("DMCA"), we have adopted and implemented a policy respecting copyright laws that provide for the removal of any infringing materials and for the termination, in appropriate circumstances, of users of our online Services who are repeat infringers of intellectual property rights, including copyrights. If you believe that one of our users is, through the use of our Services, unlawfully infringing the copyright(s) in a work, and wish to have the allegedly infringing material removed, the following information in the form of a written notification (pursuant to 17 U.S.C. § 512(c)) must be provided to our designated Copyright Agent:
- i. your physical or electronic signature;
  - ii. identification of the copyrighted work(s) that you claim to have been infringed;
  - iii. identification of the material on our Services that you claim is infringing and that you request us to remove;
  - iv. sufficient information to permit us to locate such material;
  - v. your address, telephone number, and e-mail address;
  - vi. a statement that you have a good faith belief that use of the objectionable material is not authorized by the copyright owner, its agent, or under the law; and
  - vii. a statement that the information in the notification is accurate, and under penalty of perjury, that you are either the owner of the copyright that has allegedly been infringed or that you are authorized to act on behalf of the copyright owner.
  - viii. Please note that, pursuant to 17 U.S.C. § 512(f), any misrepresentation of material fact (falsities) in a written notification automatically subjects the complaining party to liability for any damages, costs and attorney's fees incurred by us in connection with the written notification and allegation of copyright infringement.
- s. Our designated Copyright Agent is: Waitwhile, Inc. Attn: Privacy Officer Address: 548 MARKET ST STE 45862, SAN FRANCISCO CA 94104-5401 and email: [legal@waitwhile.com](mailto:legal@waitwhile.com).
- t. **Legal Disputes.** PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR RIGHTS AND WILL HAVE A SUBSTANTIAL IMPACT ON HOW CLAIMS YOU AND WAITWHILE HAVE AGAINST EACH OTHER ARE RESOLVED. You and Waitwhile agree that any claim or dispute at law or equity that has arisen or may arise between us relating in any way to or arising out of this or previous versions of our Terms of Service Agreement, your use of or access to the Services, or any products or services sold or purchased through the Services, will be resolved in accordance with the provisions set forth in this Legal Disputes Section.

- u. Choice of Law. This Agreement is made under and will be governed by and construed in accordance with the laws of the State of California, without giving effect to any principles that provide for the application of the law of another jurisdiction.
- v. Claim Limitations. You agree that any cause of action arising out of or related to the Services must commence within one (1) year after the cause of action accrues. Otherwise, such cause of action is permanently barred.
- w. Agreement to Arbitrate. You and Waitwhile each agree that any and all disputes or claims that have arisen or may arise between you and Waitwhile relating in any way to or arising out of this or previous versions of the Terms of Service Agreement, your use of or access to Waitwhile 's Services, or any products or services sold, offered, or purchased through our Services will be resolved exclusively through final and binding arbitration, rather than in court. Alternatively, you may assert your claims in small claims court in San Francisco, California, if your claims qualify and so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis. The Federal Arbitration Act governs the interpretation and enforcement of this Agreement to Arbitrate.
- x. The arbitration will be conducted by JAMS Arbitration ("JAMS") under its applicable rules and procedures, as modified by this Agreement to Arbitrate. The arbitration will be conducted before one commercial arbitrator with substantial experience in resolving commercial contract disputes. The forum will be located in San Francisco, California.
- y. Your rights will be determined by a neutral arbitrator and not a judge or jury. You understand that arbitration procedures can be more limited than rules applicable in court. Arbitrator decisions are as enforceable as any court order and are subject to very limited review in court.
- z. You and we must abide by the following rules: (a) ANY CLAIMS BROUGHT BY YOU OR US MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING; (b) THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING, AND MAY NOT AWARD CLASS-WIDE RELIEF, (c) the arbitrator will honor claims of privilege and privacy recognized at law; (d) the arbitration will be confidential, and neither you nor we may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award; (e) the arbitrator may award any individual relief or individual remedies that are permitted by applicable law; and (f) each side pays its own attorneys' fees and expenses unless there is a statutory provision that requires the prevailing party to be paid its fees and litigation expenses, and then in such instance, the fees and costs awarded will be determined by the applicable law.

aa. With the exception of subparts (a) and (b) in the paragraph above (prohibiting arbitration on a class or collective basis), if any part of this arbitration provision is deemed to be invalid, unenforceable or illegal, or otherwise conflicts with the Rules and Procedures, then the balance of this arbitration provision will remain in effect and will be construed in accordance with its terms as if the invalid, unenforceable, illegal or conflicting provision were not contained herein. If, however, either subpart (a) or (b) is found to be invalid, unenforceable or illegal, then the entirety of this arbitration provision will be null and void, and neither you nor we will be entitled to arbitration. If for any reason a claim proceeds in court rather than in arbitration, the dispute will be exclusively brought in state or federal court in San Francisco, California.