

WAVE2WAVE BANDWIDTH – TERMS AND CONDITIONS

The Agreement (as defined below) between Customer and Wave2Wave Communications, Inc. ("W2W") sets forth the legal rights and obligations governing W2W's provisioning and delivery of Services by W2W to the Customer and Customer's use of the Services set forth in the Service Agreement. Wave2Wave ("W2W") is a provider of access to the Internet and related services as well as other broadband services. Customer desires to obtain an Internet connection or other broadband service from W2W as specified in the Service Agreement. The Service Agreement and these Terms and Conditions shall be collectively referred to herein as the Agreement.

1. IN-BUILDING BROADBAND: Regarding services in buildings where W2W operates under a building lease or building services agreement with the owner or manager of such building ("In-Building"), W2W will provide Customer with a high-speed connection to the Internet via a 10 Base T Ethernet link to the dedicated Internet circuit installed by W2W in Customer's building identified in the Service Agreement (the "Building"), which is connected to W2W's network. A 100 Base T connection will be provided if the Customer requires bandwidth in excess of 10 mbps. Customer's initial bandwidth requirements are as set forth in the Service Agreement, however, Customer may request an increase of its bandwidth requirements at any time, subject to price adjustments for such requests. W2W guarantees to Customer that the bandwidth which Customer contracts for will be available to Customer from the point of the Internet connection installed in Customer's premises through W2W's router or switch port installed in the Building. W2W makes no guarantee regarding end-to-end bandwidth from W2W's router or switch port installed in the Building to the Internet backbone, as the availability of such bandwidth is beyond W2W's reasonable control.

STAND ALONE ACCESS: W2W will provide Customer with a high-speed connection to the Internet via a link through a dedicated Internet circuit installed by W2W in Customer's premises, which is connected to W2W's network. Customer's initial bandwidth requirements are set forth in the Service Agreement, however, Customer may request an increase of its bandwidth requirements at any time, subject to price adjustments for such requests. W2W makes no guarantee regarding end-to-end bandwidth to the Internet backbone, as the availability of such bandwidth is beyond W2W's reasonable control.

ETHERCONNECTSM SERVICE: W2W provides high-speed broadband service for data transmission in a point-to-point or point-to-multipoint configuration as requested by Customer. EtherConnect can be configured to connect In-Building locations and Stand-Alone Access locations, with or without an associated connection to the Internet, and at any broadband connection speed offered by W2W for connection to the Internet. All terms and conditions applicable to high-speed broadband Internet access are applicable to EtherConnect Service unless a provision applies by its terms only to the Internet connection or access.

2. IP ADDRESSES: W2W will designate IP addresses for Customer's use, as required by Customer. W2W will at all times retain administrative control over such IP addresses and upon termination of the Service Agreement, all of Customer's rights to use such IP addresses will terminate. Nothing in these Terms and Conditions, the Service Agreement or elsewhere is intended to or shall create any rights in Customer to administer or control such IP addresses. Customer is primarily responsible for Customer's DNS services, but W2W will provide secondary DNS

services (i.e., announcing Customer's IP addresses). Customer may not resell its Internet connections either directly or indirectly.

3. SERVICE LEVEL/CREDITS: W2W guarantees that Customer's broadband access service, Internet connection, and/or EtherConnect Service will be available 99.99% of the time in a given month. In the event that Customer's broadband access service, Internet connection, and/or EtherConnect Service is unavailable during a given day for a period in excess of one hour, cumulative, W2W will grant Customer a credit for Customer's service fee for that day (i.e., Customer's monthly service fee, divided by 30). Such credit will be applied to the next monthly fee payable by Customer. Notwithstanding the foregoing, no credit will be given if the service is unavailable due to (i) network maintenance activities by W2W; (ii) a failure or interruption of the circuit leased by W2W by which Customer is connected to W2W's network; (iii) a failure or interruption of the connection from W2W's network to the Internet backbone; (iv) interruptions or failures of W2W's service caused by disruptions in the Internet backbone; (v) Customer's applications, equipment or facilities; (vi) acts or omissions of Customer or any user of Customer's Internet connection; (vii) any service interruption of one hour or less which Customer fails to report to W2W within five (5) days of the occurrence thereof; or (viii) any other failure or interruption of W2W's service resulting from any Force Majeure, as set forth herein, and/or other causes beyond W2W's control. W2W's standard practice is to ping Customer's router every five (5) minutes. If Customer's router does not respond after two consecutive five-minute ping cycles, W2W will deem that Customer's Internet access is unavailable and endeavor to resolve the problem. The remedies set forth in this Section are Customer's sole and exclusive remedies in the event of service interruptions and is not to be interpreted as an admission of liability by W2W.

4. BILLING/ PAYMENT/ DISPUTES: Customer will, as set forth in the Service Agreement, pay to W2W upon invoicing a non-recurring charge consisting of a one-time, non-refundable set-up fee which covers the partial cost of the installation of Customer's Internet connection.

Customer will also be charged monthly in advance, the monthly recurring charge for the Services set forth in the Service Agreement. Billing charges for EtherConnect Service are dependent on the broadband speed selected by Customer and on the distance of each segment in Customer's EtherConnect Service configuration. Billing charges for the W2W Burstable Bandwidth consist of two (2) components: (i) a fixed monthly recurring port charge; and (ii) monthly recurring charges based on usage. Customer's usage of W2W Burstable Bandwidth (the greater of Send Traffic or Receive Traffic) will be measured and recorded by W2W every five (5) minutes. At the end of the month, the top five percent (5%) of the traffic samples will be discarded. The Customer will then be billed for the amount of W2W Burstable Bandwidth usage shown in the ninety-fifth percentile (95%) of the traffic sample. At Customer's request, W2W will provide consulting or other custom services for prices to be agreed upon. Customer understands that the timing of the initiation of Service is subject to the timing of the installation in the Building of the leased circuit through which W2W will route the Building's Internet connection, which W2W cannot control. W2W may, on thirty (30) days' notice to Customer, at any time during the term, increase any of the monthly recurring charges

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set forth in the Service Agreement. All fees and charges set forth in the Service Agreement are exclusive of federal, state and local sales, use, excise, and other applicable taxes, surcharges, fees or assessments, which are payable by Customer upon invoice thereof. All payments shall be made, made, without set-off or deduction, to the address stated on W2W's invoice and are due upon receipt of invoice. Payments not received within thirty (30) days of the date of W2W's invoice shall bear simple interest at the rate of one and a half per cent (1.5%) per month or the maximum amount of interest which may be legally be charged on an open account, whichever is less. W2W reserves the right to modify its rates and the Agreement based upon any tax, surcharge, fee, assessment, requirement or the like applicable to the Services provided hereunder, which may be imposed during the term by any Federal, State or local government. In such event, the Agreement shall be deemed modified to incorporate such modified rates, terms and conditions and/or tax, surcharge, fee, assessment or requirement. Customer agrees to pay such tax in addition to the normal monthly access fee.

5. **INVOICE DISPUTE:** In the event of a good faith invoice dispute, the disputing Customer may withhold payment of such disputed amounts pending resolution of the dispute. Once non-disputed payment is received by W2W, the Parties will negotiate the invoice dispute provided that the Customer:

a) Presents any invoicing discrepancies in reasonable detail, and in writing, within thirty (30) days after the due date for payment of the disputed amount, with supporting documentation; and

b) Negotiates in good faith for the purpose of resolving such disputes within a fifteen (15) day period after receipt of such documentation. In the event such dispute is resolved in favor of the disputing Party, the disputing Party will receive an adjustment and a credit for the applicable late fees. W2W shall not be obligated to consider any notice of invoicing discrepancies received more than forty-five (45) days following the date the invoice in question is received absent manifest invoice error. If any invoicing dispute cannot be resolved within the fifteen (15) day resolution period, the Parties may, upon mutual agreement, extend this time period in additional fifteen (15) day increments, not to exceed forty-five (45) days total.

c) If any disputed amount for which payment has not been made by Customer is determined to have been a correct or proper charge, interest, not to exceed the lesser of 1.5% per month or the maximum rate allowed by law, may be charged on the unpaid amount, calculated from the invoice due date.

6. **ACCEPTABLE USE POLICY:** Customer acknowledges that it has read and understands W2W's Acceptable Use Policy, which can be found at www.wave2wave.com/misc/aup.php. Customer agrees to abide by all of the terms of the Acceptable Use Policy and to direct its employees and all other persons who have access to Customer's Internet connection to abide by the terms of the Acceptable Use Policy. If Customer becomes aware that one of its employees or anyone else with access to its Internet connection is engaged in activity that constitutes a violation of the Acceptable Use Policy, it will immediately notify W2W and take all steps necessary to cause such person to terminate the activity causing such violation. Customer is solely responsible for any and all penalties and/or damages that Customer incurs due to a violation of the

Acceptable Use Policy by it, its employees or any person that has access to its Internet connection, and will defend, indemnify and hold W2W harmless from and against any and all claims, losses, liabilities, damages and expenses (including but not limited to attorneys' fees and other litigation expenses) that W2W incurs as a result of a violation of the Acceptable Use Policy by Customer, an employee of Customer, or any other person that has access to Customer's Internet connection.

7. **SUSPENSION/TERMINATION:** Customer acknowledges and agrees that W2W may, in its discretion, suspend or terminate Customer's Service in the event of any violation of the Acceptable Use Policy or any other term of the Agreement by Customer, any of its employees, or any other persons who have access to Customer's Internet connection or other W2W Services provided under this Agreement, subject to (i) W2W providing Customer with written notice of such breach and (ii) Customer failing to cure such breach within five (5) business days after receipt of said notice. Notwithstanding the foregoing, in the event of two (2) or more such violations, W2W may terminate the Agreement and Customer's Service without notice. Further, W2W may immediately suspend and/or terminate without notice the furnishing of Service if Customer fails or refuses to pay for Service in accordance with its obligations under the Agreement or any other agreement between W2W and Customer.

Should the Agreement and Customer's Service be so terminated by W2W, Customer shall pay to W2W as liquidated damages, within ten (10) days after such determination, an amount equal to the remaining amount due to W2W pursuant to the relevant Service Agreement for the remaining term of that Service Agreement in addition to any other charges due under the Agreement. If Customer elects to have its Service restored, it will be charged a \$50.00 reconnection fee. The foregoing payments will not relieve Customer of any other liability to W2W hereunder for violating the Acceptable Use Policy or the Agreement. In addition, W2W may terminate the Agreement with or without notice in the event of an admission by Customer of an inability to pay its debts, the entering into by Customer of a composition or other arrangement with its creditors, the appointment of a trustee or receiver, with or without consent, for Customer of all or any substantial portion of its property or the filing of a petition for relief by or against Customer under the Bankruptcy Code or any similar federal or state statute (including moratorium laws).

8. **LIABILITY AND INDEMNIFICATION:**

a. Customer assumes total responsibility and risk for the use of W2W's Internet access service and the Internet by Customer, its employees and any other persons having access to Customer's Internet connection. Neither W2W, its affiliates, nor any of their respective directors, officers, employees or agents make any express or implied warranties, representations or endorsements whatsoever (including, without limitation, warranties of title or non-infringement, or the implied warranties of merchantability or fitness for a particular purpose) with regard to any merchandise, information or service provided through the Internet, and they shall not be liable for any cost or damage arising either directly or indirectly from any such transaction. It is solely the responsibility of Customer, Customer's employees' and persons having access to Customer's Internet connection to evaluate the accuracy, completeness and usefulness of all opinions, advice, services and other

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information, and the quality and merchantability of all merchandise, provided through W2W's Service or on the Internet generally.

b. Customer understands that the Internet contains unedited materials, some of which are sexually explicit or may be offensive to some people. Customer, Customer's employees and all persons having access to Customer's Internet connection access such materials at their own risk. W2W and the Landlord Parties (as defined in Section 8(d) below) have no control over and accept no responsibility whatsoever and are not liable in any way for such materials.

c. W2W's Services are provided on an "as is" and "as available" basis. Except for any express warranties stated in the Service Agreement, W2W disclaims and Customer waives all warranties including without limitation, all implied or statutory warranties of merchantability, fitness for a particular purpose and non-infringement, whether such warranties are made before or after the execution hereof. The stated warranties are in lieu of all obligations or liabilities on the part of W2W for damages including, but not limited to, special, indirect or consequential damages (e.g., loss of revenue, loss of customers, clients or members, loss of goodwill, loss of data, or loss of profits) arising out of or in connection with the use or performance of W2W's Service and the performance or non-performance of its obligations under the Service Agreement. No advice or information given by W2W, its affiliates or its contractors or their respective officers, directors, employees and agents shall create a warranty. Neither W2W nor its affiliates warrants that the Service will be uninterrupted or error free or that any information, software or other material accessible on the Service is free of viruses, worms, trojan horses or other harmful components, and W2W will have no liability for any cost or damage including, but not limited to, losses arising from delays, non-deliveries, wrong deliveries and service interruptions, including those that may be caused by regulatory or judicial authorities. Notwithstanding any other provision in the Agreement, it is expressly understood that the sole remedy of Customer or Customer's end users for breach of this Agreement by W2W for any damage to Customer or Customer's end users (including without limitation that caused by mistakes, accidents, errors, omissions, interruptions or defects in transmission, or delays, including that which may be caused by regulatory or judicial authorities) is to seek direct damages, but in no event shall such direct damages exceed the price charged for such Services.

d. **IN-BUILDING SERVICES ONLY:** Customer acknowledges and agrees that the owner, managing agent, net lessee, and mortgagee(s) of the Building, and any and all of their respective officers, directors, employees successors and assigns (collectively the "Landlord Parties"), shall be entitled to all protections and rights of W2W set forth in Sections 6, and 8 hereof and for this purpose shall be deemed to be third-party beneficiaries of the Service Agreement and may enforce their rights hereunder against Customer.

e. **IN-BUILDING SERVICES ONLY:** Customer understands and acknowledges that the owner or manager of the Building has entered into an agreement with W2W granting it the right to install and maintain equipment, cable and circuits in Building and to provide its services to tenants. Customer acknowledges and agrees that the Landlord Parties have no control over and assume no responsibility for W2W's equipment, cable, circuit, services and operations. Customer agrees, that as a material inducement for W2W to enter into the Service Agreement and provide its Services to Customer, that Customer will not utilize any matter

related to W2W's services operations, or any act, omission, negligence or malfeasance on the part of W2W or any of its employees, agents or contractors as the basis for (i) withholding rent due to the owner of the Building, (ii) raising any claim or commencing any litigation or other legal proceeding against any Landlord Party, or (iii) raising any defense to any claim brought against Customer by a Landlord Party. The Customer agrees that the Landlord Parties bear no responsibility for W2W's Service, any disruption of W2W's Service and/or any dispute relating to the Service Agreement, and the Customer expressly waives any such claim against the Landlord Parties. Customer agrees that the Landlord Parties may enforce the provisions of this Section 8(e) against Customer.

f. W2W has no responsibility nor bears any liability for the installation and maintenance of Customer's on-premises equipment (e.g. CSU/DSU, router, firewall, etc.) or on-premises software. Customer is responsible for and must provide all telephone, computer, hardware and software equipment and services necessary to access the services provided by W2W. W2W makes no representations, warranties or assurances that Customer's equipment will be compatible with W2W's services.

g. In the event Customer does not purchase necessary and/or recommended equipment from W2W required for Customer to utilize or fully utilize the Service(s), W2W shall in no way be responsible for any Customer issues arising from the incompatibility of such equipment purchased by Customer from a third party, and Customer shall continue to be responsible for Service payments owed pursuant to the Agreement.

h. Due to the public nature of the Internet, all information should be considered publicly accessible, and important or private information should be treated carefully and with due care. W2W is not liable for protection or privacy of electronic mail or other information transferred through the Internet or any other network W2W or Customer may utilize.

9. **TERM; SERVICE UPGRADE; TERMINATION:** The Service Agreement will be considered binding upon the signature of all parties and W2W's receipt of the total amount due at signing (see Service Agreement). The Term will commence on the date in which Customer's Service is first activated and will continue until the expiration of the Term, including the Renewal Term, if any, unless the Service Agreement is sooner terminated in accordance with these Terms and Conditions. The Service Agreement will automatically renew for consecutive additional periods of one (1) year unless either party delivers written notice of termination no later than sixty (60) days before the scheduled expiration of the initial Term stated in the Service Agreement or any renewal thereof, as applicable. If Customer requests a service upgrade from W2W during the initial or subsequent Renewal Term of the Service Agreement, the Term of the Service Agreement will automatically be extended for a period of one (1) year from the activation date of the service upgrade. All service upgrade information, including the new Term of the Service Agreement, will be set forth in a new Service Agreement. Notwithstanding anything to the contrary in the Agreement, W2W reserves the right to terminate the Service Agreement (i) in the event that W2W's right to provide services in the Building is terminated for any reason or (ii) if W2W determines in its sole judgment that it would be economically imprudent or technically

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infeasible to continue providing Service to Customer upon delivery of thirty (30) days advance written notice of termination to Customer. Customer may terminate the Service Agreement by providing no less than sixty (60) days prior written notice to W2W but, if the resulting termination date is before the expiration of the then-current Term of the Service Agreement, either its initial Term or its Renewal Term, Customer must pay 100% of the remaining charges due pursuant to the Services Agreement that would otherwise have been paid between the date of termination and the expiration of the initial Term or the Renewal Term, as the case may be.

10. **SAVINGS AND SURVIVAL CLAUSES:** If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of the Agreement shall be valid and be enforced to the fullest extent permitted by law.

All obligations and duties, which by their nature extend beyond the expiration or termination of this Agreement shall survive and remain in effect beyond any expiration or termination, including without limitation, the provisions of Sections 6, 7, 8 and 15 herein. The expiration or earlier termination of the Service Agreement shall not relieve either party from liabilities or obligations incurred prior to such expiration or termination.

11. **INTEGRATION:** This Agreement represents the entire agreement and understanding between Customer and W2W as to the subject matter hereof, superseding any prior oral or written communication relative to such subject matter. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together will constitute one and the same instrument. This Agreement and any amendments hereto, to the extent signed and delivered by means of a facsimile, shall be considered to have the same binding legal effect as if it were the original signed version delivered in person. No Party shall raise the use of a facsimile machine to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile as a defense to the formation or enforceability of this Agreement and Customer forever waives any such defense.

12. **AUTHORITY TO CONTRACT:** Each Party hereto warrants that it has full power and authority to enter into this Agreement and bind their respective entities to the terms hereof and have been duly authorized to do so in accordance with such entities' corporate or other organizational documents and procedures, and Customer forever waives any such defense relating thereto.

Each Party hereto warrants that the execution, delivery, and performance of this Agreement will not conflict with, result in breach of, or cause a default under its Articles of Incorporation, By-Laws, partnership or joint Customer agreements, or any material agreement or instrument to which it is party or by which it or any of its property is bound, nor will it conflict with or violate any statute, law, rule, regulation, order, decree or judgment of any court or governmental authority which is binding upon it or its property.

13. **WAIVER:** Failure or delay on the part of either Party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof. A waiver of one obligation hereunder shall not operate as a waiver of any other obligation. A waiver of breach by a Party of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by the other Party. No waiver of any provisions of this Agreement by W2W shall be binding unless in writing and signed by an authorized officer of W2W.

14. **AMENDMENTS:** The Agreement may not be amended or modified unless in writing signed by Customer and W2W. Neither the course of conduct between parties nor trade practice shall act to modify any provision of the Agreement.

15. **APPLICABLE LAW, CHOICE OF LAW FORUM; COMPLIANCE:** This Agreement and any disputes arising therefrom shall be governed by the laws of the State of New York without regard to that state's laws concerning conflicts of laws. The Parties hereby stipulate to venue in New York, unless otherwise mutually agreed by the Parties in writing. Customer shall not use the Services in any manner or for any purpose that constitutes a violation of applicable laws in any jurisdiction in which the Services are being provided, and shall indemnify W2W against any such unlawful use of the Services and any related legal or regulatory actions W2W must take to defend itself against claims of such unlawful use. Notwithstanding any other provision of the Agreement to the contrary, should W2W in its sole discretion determine that the Services, or any portion thereof, are being used for unlawful purposes, W2W may suspend or terminate the unlawful use without any liability, regardless of whether such Services are actually determined to be unlawful.

Any cause of action Customer may have with respect to the Service must be commenced within six (6) months after the claim or cause of action arises or such claim or cause of action is barred.

16. **FORCE MAJEURE:** Except as to the payment of monies pursuant to the Agreement, neither Party shall be liable to the other for any delay or failure to perform hereunder, which delay or failure is due to causes beyond the control of said Party, including, but not limited to: acts of God, acts of the Public enemy; acts of the United States of America, or any State, territory or political subdivision thereof or of the District of Columbia; fires, floods; epidemics; quarantine restrictions; or strikes or freight embargoes.

17. **NOTICE:** All notices to this Agreement shall be in writing and shall be sent by overnight mail or by registered or certified mail, return receipt requested, postage prepaid. If to Customer at the address identified in the Service Agreement or elsewhere in the Agreement. If to W2W, to the address on the Service Agreement with a copy to:

Wave2Wave Communications, Inc.
433 Hackensack Avenue
Hackensack, NJ 07601
Attn: Legal Department
Ph: 201-968-9797

Notices to Customers with notice addresses outside of the United States may be delivered to Customer via email, facsimile or overnight mail, at W2W's option.

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18. **AUTHORIZATION; REGULATORY APPROVAL** No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or any other third party is required for the due execution, delivery or performance by the Customer of its obligations under the Service Agreement, or for the consummation of the transactions contemplated hereunder, except for authorizations and approvals that have been duly obtained or given and are in full force and effect. This Agreement shall be subject to and governed by any applicable state and federal regulatory agencies having jurisdiction over the subject matter hereof. Should any approval or authority be required for any acts, duties or obligations to be performed hereunder, the Parties will cooperate in securing the same.

19. **SUCCESSION; ASSIGNMENT**: This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successor in all or substantially all interests and assigns; provided, however, Customer may not assign this Agreement, without prior written consent of W2W, which consent may not be unreasonably withheld or delayed.

20. **TRADE NAMES AND TRADEMARKS**: All trade names, trademarks and service marks owned or employed by Customer and W2W or any subsidiary or affiliate of Customer and W2W, used or employed in each Party's business operations, shall remain the sole and exclusive property of Customer or W2W, or such subsidiary or affiliate, and such trade names, trademarks and service marks shall not be used by W2W or Customer without the prior written consent of the proprietary Party or such subsidiary or affiliate. Parties shall immediately discontinue any use of such marks and names upon termination of this Agreement.

21. **CONTINGENCY; CHANGE OF LAW**: (a) This Agreement is specifically conditioned on W2W's continuing ability to maintain suitable arrangements with various third-party entities to provide the contracted for Services. In the event that W2W is unable to maintain arrangements with one or more of these entities under terms or conditions that W2W, in its sole discretion, determines are fair and adequate, W2W may not be able to provide, or may elect to not provide, Service, and W2W may, upon thirty (30) days' written notice to Customer, (or shorter notice if required under the circumstances) terminate this Agreement or raise rates for the impacted Service, as necessary, at W2W's sole discretion, without incurring any liability. In the event of such notice by W2W, Customer may terminate this Agreement, without liability, upon thirty (30) days' written notice to W2W given no later than sixty (60) days after being so notified by W2W. Notwithstanding any other provision of this Agreement, if any legislative, regulatory, judicial or other governmental decision, order, determination or action with jurisdiction over this Agreement, or any change in applicable law, affects any material provision of this Agreement, the provisioning of Services hereunder, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, then W2W shall have the right to amend in writing this Agreement in order to make such revisions to this Agreement as may be required in order to conform the Agreement to applicable law upon thirty (30) days written notice (or shorter notice if required under the circumstances). In the event of such occurrence and notice, Customer shall have the right to terminate this Agreement upon thirty (30) days written notice to W2W.

22. **CAPTIONS; SECTION**: Captions contained herein are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of any provisions hereof. Use of the term "Section" shall include the entire subject Section and all its subsections where the context requires.

23. **INDEPENDENT BUSINESS JUDGMENT; NEGOTIATED AGREEMENT**: The Parties hereby acknowledge and agree that they are independent businesses sufficiently sophisticated to exercise and exercising their own business judgment. The Parties hereby further acknowledge and agree that no recommendations or representations regarding any aspect of a Party's business including, but not limited to, any representations with regard to a Party's profits there from have been made by the Parties. The Parties hereby mutually agree and stipulate that this Agreement is the result of negotiations between the Parties and terms hereof are negotiated terms. Accordingly, any rules of interpretation, construction or resolving ambiguity against the drafter that otherwise might apply, shall not apply hereto.

24. **LAW ENFORCEMENT**:

Notwithstanding any other provision to the contrary, each Party may cooperate with law enforcement authorities and national security authorities to the full extent required or permitted by applicable law in matters related to the Services provided by it under this Agreement, including the production of records, the establishment of new lines or the installation of new Services on an existing line in order to support law enforcement and/or national security operations, and the installation of wiretaps, trap-and-trace facilities and equipment, and dialed number recording facilities and equipment.

A Party shall not have the obligation to inform the other Party or the end users of the other Party of actions taken in cooperating with law enforcement or national security authorities, except to the extent required by applicable law.

25. **SCOPE OF AGREEMENT**: Each Party is a non-exclusive independent contractor for the purposes expressly stated herein. A Party is not a general or special agent of said Parties, and this Agreement does not create a joint customer or apply to confer any status, power or authority upon either Party other than as expressly set forth herein. The scope of a Party's authority is specially limited to the minimum authority necessary to perform the duties accepted pursuant to this Agreement

26. **PARTIES' EMPLOYEES**: All persons employed or contracted by the Parties to perform duties under this Agreement are, and will remain, the employees and agents of each Party, and each Party shall remain responsible for the acts and omissions of its employees and agents and shall have sole responsibility for their supervision, direction and control. The Parties shall comply with all applicable laws regarding withholding and payment of all income or other state taxes, social security taxes, unemployment insurance, workmen's compensation and disability benefits as well as those regarding equal employment opportunities and safety of the work place insofar as such concerns the subject matter hereof.

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27. **RIGHT TO CONDUCT OTHER BUSINESS:** Each Party hereto understands and acknowledges that this Agreement is non-exclusive and that the Parties themselves, their Affiliates, their representatives, and other entities with whom they may contract may compete with the other Party hereto in the businesses subject hereto. This Agreement shall not in any way limit either Party's power and right to contract with other persons concerning the matter hereof on such terms as that Party sees fit even though such persons, as a result compete with said Party. This Agreement also shall not in any way limit the Parties' power and right to contract with other persons concerning the subject matter hereof, either during the term hereof or thereafter, on such terms as the Parties see fit even though such persons, as a result, compete with the other Party.

28. **INDEMNIFICATION:** Customer shall indemnify, defend and hold harmless W2W, its directors, officers, employees, trade contractors, suppliers, successors and assigns from any loss, damage, cost of defense (including court costs and reasonable attorneys' fees and expenses), resulting from injury to persons (including death) or damage to property, arising in connection with this Agreement to the extent caused by a breach of contract, or by the negligence or willful misconduct of Customer, its employees, agents, invitees, or contractors. Customer shall also indemnify W2W against any legal action taken by any Landlord Parties arising from the actions of Customer, its employees, agents, invitees, or contractors.

29. **INSURANCE:**

a. Customer shall at its own expense procure and maintain throughout the Term, the following insurance coverage from one or more insurance companies reasonably satisfactory to W2W:

(i) commercial general liability insurance, including insurance against contractual liability and liability for personal injury or death, property damage or other loss in an amount of not less than \$1,000,000 combined single limit with respect to any occurrence and \$2,000,000 in the aggregate;

(ii) Personal property insurance sufficient to cover the full replacement value of Customer's equipment; and

b. Such insurance shall name W2W as an additional insured as its interests may appear and shall require notice to W2W not less than twenty (20) days prior to cancellation of, or a material change in, any such coverage.

c. Each policy of insurance carried by Customer relating to this Agreement shall contain an express waiver of the right of subrogation against W2W. In furtherance of such waiver and not by way of limitation thereof, Customer hereby waives claims for injury and damage to persons (including loss of life), property or otherwise, including consequential damages, sustained by Customer or by any person claiming through or under Customer from any accident or occurrence in or upon the Premises or the Building.

d. At W2W's request from time to time, Customer shall deliver to W2W a certificate of insurance evidencing all of the above insurance coverage. The required minimum amounts of insurance shall not be construed to limit or diminish Customer's liability under this Agreement.