



## WAVE2WAVE COMMUNICATIONS

# WAVE2WAVE® BASIC SECURITY TERMS AND CONDITIONS

Wave2Wave is a provider of access to the Internet and related services. Customer is a tenant in a commercial building (the "Building") that currently receives an Internet connection and related services from Wave2Wave as specified in the Service Agreement. The services identified on the Account Information page attached to the Service Agreement are being provided to Customer by Wave2Wave and are subject to the following terms and conditions:

1. Description of the Basic Security Service. Wave2Wave will install, monitor and maintain a basic firewall for Customer. Wave2Wave will configure the firewall to exclude all incoming traffic from the Internet, except for traffic in direct response to a request generated from inside the firewall. Customer understands and agrees that it will be using the Basic Security Service at its own risk and that Wave2Wave will have no liability for any losses, liabilities or damages suffered by Customer arising from or relating to unauthorized parties obtaining access to the information safeguarded by the firewall, except to the extent that such unauthorized access results from the gross negligence of Wave2Wave.
2. Pricing. Customer will, in accordance with the fees and charges set forth on the Service Agreement, pay to Wave2Wave upon invoice 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 on the Service Agreement. At Customer's request, Wave2Wave 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 Wave2Wave will route the Building's Internet connection, which Wave2Wave cannot control. Wave2Wave may, on thirty (30) days' notice to Customer, at any time during the term, increase any of the monthly recurring charges set forth in the Service Agreement. All fees and charges set forth on 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 therefore. All payments shall be made, made, without set-off or deduction, to the address stated on Wave2Wave's invoice and are due upon receipt of invoice. Payments not received within thirty (30) days of the date of Wave2Wave's invoice shall bear simple interest at the maximum rate permitted by applicable law. Wave2Wave reserves the right to modify its rates and the Terms and Conditions of service 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 Service 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.
3. Terms of Service.
  - a. Wave2Wave guarantees to Customer that the Internet connection underlying the Basic Security Service will be available 99.99% of the time in a given month. In the event the Basic Security Service is unavailable during a given day for a period in excess of one hour, cumulative, Wave2Wave will grant Customer a credit for the applicable service fee(s) for that day (i.e., Customer's monthly service fee(s), divided by 30). Such credit will be applied to the next monthly fee(s) payable by Customer. Notwithstanding the foregoing, no credit will be given if either service is unavailable due to (i) network maintenance activities by Wave2Wave; (ii) interruptions of the Internet feed from the third party vendor through which Wave2Wave's Internet feed is routed or interruptions resulting from other causes beyond Wave2Wave's control; (iii) Customer's applications, equipment or facilities, (iv) acts or omissions of Customer or any user of the services provided to Customer by Wave2Wave, or (v) any service interruption of one hour or less which Customer fails to report to Wave2Wave within five (5) days of the occurrence thereof. Wave2Wave'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, Wave2Wave will deem that Customer's Internet access is unavailable and endeavor to resolve the problem. The foregoing is intended to be Customer's sole remedy in the event of service interruptions and is not to be interpreted as an admission of liability by Wave2Wave.



amendment hereof. Neither the course between parties nor trade practice shall act to modify any provision of the Service Agreement.

- d. In the event that any portion of the Service Agreement is held by a court of competent jurisdiction to be unenforceable, the unenforceable portion shall be deemed modified to the extent necessary to make it enforceable under applicable law and the remainder of the provisions shall remain in full force and effect.
- e. The Service Agreement may not be assigned by Customer without the prior written consent of Wave2Wave. The Service Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
- f. The Service Agreement shall be governed by the laws of the State of New York without giving effect to the principles of conflicts of law. In the event of any dispute arising from or related to the Service Agreement, the parties hereby irrevocably consent to the jurisdiction of the federal and state courts situated in New York, New York.
- g. Wave2Wave shall not be liable to or through Customer for delays or inability to perform due to circumstances beyond its reasonable control including, without limitation, fire, flood, explosion, severe weather, acts of God, war, terrorism or other hostilities, civic commotion, acts of government, acts or omissions of other contractors, inability or difficulty in obtaining parts, strikes, lockout or other form of labor action.
- h. All notices given hereunder will be in writing, delivered personally or mailed by registered or certified mail, return receipt requested, postage prepaid, or delivered by overnight mail or by confirmed facsimile; if to Customer, to the address specified in the Service Agreement; if to Wave2Wave, to the address on Service Agreement with a copy of all legal notices to:

Wave2Wave Communications Inc.  
Continental Plaza -6<sup>th</sup> Floor  
433 Hackensack Ave  
Hackensack, NJ 07601

All notices will be deemed given when delivered personally; if mailed by registered or certified mail, five (5) days after the date of mailing; if delivered by overnight mail, 72 hours after mailing; or if by confirmed facsimile, 24 hours after the time of sending.

- i. No Insolvency Proceeding has ever been initiated or threatened against the Customer or any of its affiliates. "Insolvency Proceeding" means any bankruptcy, insolvency, reorganization, assignment for the benefit of creditors, receivership, moratorium or similar action, proceeding or arrangement with respect to the person or entity referred to under any applicable bankruptcy, insolvency or similar law or regulation. In addition, Customer represents and warrants as of the date hereof that it is currently not involved in any Insolvency Proceeding nor is it contemplating entering into any Insolvency Proceeding during the Term of the Service Agreement.
- j. 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
- k. Customer is not entitled to transfer or assign the Wave2Wave's prior written consent. Wave2Wave is entitled, without prior written consent, to transfer, assign, or sub-contract the Service Agreement or any part thereof. The Service Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- l. The Service Agreement may be signed in one or more counterparts, which together shall constitute one binding and enforceable agreement. The Service Agreement may be executed and delivered by a party's signature transmitted by facsimile ("**Fax**"). Copies of the Service Agreement executed and delivered by Fax, including facsimile signatures, shall have the same force and effect as originals with original signatures.