



## WAVE2WAVE COMMUNICATIONS

# WAVE2WAVE® EMAIL SECURITY SYSTEM TERMS AND CONDITIONS

### 1. [Definitions and Interpretation](#)

- 1.1 In this Agreement, the following words shall have the following meanings, unless the context clearly requires otherwise,:

“**Agreement**” means the Service Agreement, these Terms and Conditions, and the attached schedules and appendices.

“**Bulk Email**” means a group of more than five hundred (500) Email messages with substantially similar content sent or received in a single operation or a series of related operations.

“**Email**” means any SMTP message sent or received via the Service.

“**Normal Working Day**” means Monday to Friday excluding public holidays as recognized in the United States.

“**Open Relay**” means an Email server configured to receive Email from an unknown or unauthorised third party and forward the Email to one or more recipients that are not users of the Email system to which that Email server is connected. Open Relay may also be referred to as “Spam relay” or “public relay”.

“**Parties**” means Wave2Wave and the Customer, as defined in the Service Agreement.

“**Service**” means the Email Security System services defined in the Service Agreement.

“**Spam**” means unsolicited commercial Email.

“**User**” means a person or mailbox on behalf of which Email is being scanned by the Service.

“**Virus**” means a piece of program code, including a self-replicating element, usually (but not necessarily) disguised as something else that causes some unexpected and, for the victim, usually undesirable event and which is designed so that it may infect other computer systems.

- 1.2 References to Sections, Clauses, Sub-Clauses, Schedules and Appendices are to the sections, clauses, sub-clauses of and schedules and appendices to, this Agreement.
- 1.3 This Agreement constitutes the entire understanding between Wave2Wave and the Customer with respect to the subject matter herein and expressly excludes and/or supersedes any previous statements or agreements between Wave2Wave and the Customer whether written or oral relating to the provision of the Service.
- 1.4 Headings are for convenience only and shall be ignored in interpreting this Agreement.

### 2. [Supply of Service](#)

- 2.1 Subject in each case to the prior written acceptance by Wave2Wave of an order placed by the Customer, Wave2Wave undertakes to use all reasonable endeavours to provide for the term of this Agreement and in accordance with the terms herein:

- (a) The Service ordered; and
- (b) Technical support and customer service in respect of the Service

- 2.2 Wave2Wave reserves the right both prior to the provisioning of the Service and at any time during the supply of the Service to test whether the Customer's Email systems allow Open Relay. If at any time the Customer's Email systems are found to allow Open Relay, Wave2Wave will inform the Customer and reserves the right to withhold provision of or suspend all or part of the Service immediately and until the problem has been resolved.

- 2.3 If at any time the Customer's Email systems are found to be being used for Bulk Email or Spam, Wave2Wave reserves the right to withhold provision of or suspend all or part of the Service immediately and until such use is terminated.

- 2.4 If at any time continued provision of the Service would compromise the security of the Service due, without limitation, to hacking attempts, denial of service attacks, mail bombs or other malicious activities either directed at or originating from the Customer's domains the Customer agrees that Wave2Wave may suspend all or part of the Service immediately and until the problems has been resolved.

- 2.5 Wave2Wave reserves the right to suspend all or part of the Service in cases of late or non-payment of Wave2Wave's invoices.

- 2.6 Subject to applicable law, Wave2Wave may provide the Service from any hardware installation forming part of the Service anywhere in the world and may, at any time, transfer the provision of the Service from one installation to another. Wave2Wave does not guarantee that any such installation, or part thereof, is dedicated to the sole use of the Customer.

- 2.7 In order to fulfil its obligations in managing the Service, Wave2Wave may at any time amend or modify the Service and any documentation relating thereto for any reason including, but not limited to: legal; safety; business; or technical considerations.
- 2.8 Should the Service be suspended or terminated for any reason whatsoever, Wave2Wave shall reverse all configuration changes made upon provisioning the Service and it shall be the responsibility of the Customer to undertake all other necessary configuration changes to their mail servers, and to inform their ISP of the need to reroute inbound Email.

### 3. Customer's Obligations

- 3.1 In consideration of Wave2Wave supplying the Service to the Customer, the Customer shall pay Wave2Wave's charges from time to time in accordance with Section 4 below.
- 3.2 The Customer will cooperate with Wave2Wave, including without limit by providing technical data and other information, as Wave2Wave may reasonably request from time to time in order to allow Wave2Wave to supply the Service to the Customer. All information the Customer supplies will be complete, accurate and given in good faith.
- 3.3 The Customer shall not allow its Email systems to:
  - (a) Act as an Open Relay; or
  - (b) Send or receive Bulk Email; or
  - (c) Send SpamShould the Customer fail to meet these obligations and disruption occur to the Service then, in addition to Wave2Wave rights to suspend the Service in Clauses 2.2 and 2.3 above, Wave2Wave reserves the right to charge the Customer at Wave2Wave's then current rates for any remedial work which becomes necessary as a direct result of the Customer's failure to meet these obligations.
- 3.4 The Customer recognizes that information sent to and from the Customer will pass through the Service and accordingly the Customer agrees that the Customer will use the Service for legitimate business purposes only and that the Customer will:
  - (a) Comply with all applicable law, including without limit that relating to use of the Internet;
  - (b) Conform to the protocols and standards published on the Internet from time to time and adopted by the majority of Internet users; and
  - (c) Indemnify Wave2Wave against any liability to third parties resulting from information passing through the Service from the Customer.
- 3.5 The Customer agrees that the Customer will not use the Service for any unlawful purpose or in violation of any applicable law, including without limit that relating to use of the Internet. Prohibited uses include, but are not limited to:
  - (a) Civil and criminal offenses of copyright and trademark infringement; or
  - (b) Transmission or display or posting to a bulletin board of obscene, indecent or pornographic material; or
  - (c) Commission of any criminal offense; or
  - (d) Any transmission or display or posting to a bulletin board of any material which is of a defamatory, offensive, abusive, or menacing character or which harasses or causes annoyance, inconvenience or unreasonable anxiety to any person or entity; or
  - (e) Transmission or display or posting to a bulletin board of any material in breach of any law dealing with data protection, privacy or the protection of minors, or of any material which is confidential or is a trade secret; or
  - (f) Use of the Service in any manner which is a violation or infringement of the right of any person or entity.
- 3.6 The Customer agrees to indemnify Wave2Wave against all and any losses, costs and expenses (including without limit attorney fees and legal disbursements) Wave2Wave may incur as a result of any breach by the Customer of this Agreement.
- 3.7 In addition to Wave2Wave's termination rights set out elsewhere in this Agreement, Wave2Wave may, at any time and at Wave2Wave sole option, suspend the Service until the Customer give suitable undertakings and provides security in terms satisfactory to Wave2Wave to comply with the Customer's obligations hereunder or terminate the Service if the Customer is in breach of any of the obligations set out herein. On any termination in accordance with this Clause 3.7, the provisions of Clause 4.3 will apply in respect of the charges payable for the Service.

### 4. Charges and Payment

- 4.1 The charges to be paid by the Customer to Wave2Wave for the Service are shown in the Service Agreement or if no charges are shown in the Service Agreement then at Wave2Wave's then current standard rates.
- 4.2 Wave2Wave will commence the charging for the Service from the date that the Service is made available to the Customer. Charges for the Service shall relate to the number of Users and domains being scanned by the Service (the "Registered Usage").
  - (a) The initial invoice shall relate to the Registered Usage declared by the Customer upon ordering the Service.
  - (b) The Customer shall notify Wave2Wave if at any time the number of Users or domains being scanned exceeds the Registered Usage and Wave2Wave may increase the Registered Usage accordingly. Additionally, Wave2Wave may monitor the Customer's actual usage of the Service and if the actual number of Users or domains being scanned exceeds the Registered Usage, Wave2Wave may increase the Registered Usage accordingly. Where Wave2Wave increases the Registered Usage, Wave2Wave may at its sole option and at its then prevailing rates issue additional invoices on a pro rata basis for the then current invoice period and/or make adjustments to subsequent invoices to cover charges for the increase in Registered Usage.

- 4.3 Wave2Wave shall invoice the Customer monthly, in advance, on or shortly after the Service is made available to the Customer and thereafter each month until termination of this Agreement. The Customer shall pay the full amount invoiced to it by Wave2Wave within thirty (30) days of the date of the invoice.
- 4.4 When domains are added to the Service or removed from the Service whether during the initial set up or for subsequent changes to the Services, a setup charge per domain at Wave2Wave's then prevailing rates will be levied to cover administration costs.
- 4.5 The Customer shall not be entitled by reason of any set-off, counter-claim, abatement or other similar deduction to withhold payment of any amount due to Wave2Wave. All payments made are non-refundable.
- 4.6 Interest shall be chargeable on any amounts overdue at the rate of one and a half percent (1.5%) per month or part thereof to run from the due date for payment until receipt by Wave2Wave in full of the outstanding amount whether or not after judgement and without prejudice to any other right or remedy of Wave2Wave including the recovery of costs incurred in pursuing the outstanding debt.
- 4.7 The charges shown in this Agreement are exclusive of any applicable taxes or surcharges. Such taxes or surcharges will be added to any invoice for the Service at the rate current at the date of the invoice.

## 5. Terms and Conditions

- 5.1 The Terms and Conditions of this Agreement shall apply to the provision of the Service.

## 6. Wave2Wave Warranties

- 6.1 Wave2Wave will provide the Service with reasonable skill, care and diligence and in accordance with the Service Description contained in Schedule 1.
- 6.2 Certain aspects of the Service as defined in the Service Description in Schedule 1 may have specific additional warranties as defined in that Schedule.
- 6.3 To the extent permitted by law, the foregoing conditions are in lieu of and exclude all other express and implied warranties, conditions and other terms, including but not limited to warranties of merchantability, satisfactory quality and fitness for a particular purpose.

## 7. Limitation of Liability

- 7.1 Wave2Wave does not limit its liability (if any) in respect to the following:
  - (a) Fraud;
  - (b) The death of, or personal injury to, any person caused by negligence; or
  - (c) The intellectual property rights indemnity specified in Section 9.
- 7.2 Wave2Wave shall indemnify the Customer for loss or damage to the Customer's tangible property, caused either by:
  - (a) Defects in the Service resulting from Wave2Wave's negligence; or
  - (b) The negligence of Wave2Wave's employees up to a maximum of the amount actually paid by the Customer to Wave2Wave for the Service provided to the Customer during the six (6) months immediately prior to the event causing such loss. For the avoidance of doubt data does not constitute tangible property.
- 7.3 Wave2Wave shall indemnify the Customer for actual loss by the Customer caused either by:
  - (a) Defects in the Service resulting from Wave2Wave's negligence; or
  - (b) The negligence of Wave2Wave's employees up to a maximum of the actual amount paid by the Customer to Wave2Wave for the Service provided to the Customer during the six (6) months immediately prior to the event causing such loss.
- 7.4 Wave2Wave does not accept any liability under or in relation to this Agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) for any loss of profits, loss of sales or revenue, loss of or damage to reputation, loss of contracts, loss of customers, loss of, or loss of use of, any software or data, loss of use of any computer or other equipment or plant, wasted management or other staff time, losses or liabilities under or in relation to any other contract, indirect loss or damage, consequential loss or damage, loss(es) directly or indirectly due to network access by third parties; or special loss or damage. For the purposes of this Clause 7.4 the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.
- 7.5 Wave2Wave's liability, whether in contract, tort or otherwise, howsoever arising out of or in connection with this Agreement, shall be limited to one hundred and twenty percent (120%) of the total amount paid by the Customer to Wave2Wave for the Service during the six (6) months immediately prior to the event causing such loss.

## 8. Intellectual Property Rights

- 8.1 The intellectual property rights in the Service and any hardware or software used in connection with the Service are and will at all times remain Wave2Wave property or that of Wave2Wave's licensors.

## 9. Intellectual Property Rights Indemnity

- 9.1 In the event that the Service infringes any third party rights, Wave2Wave will defend and/or settle any third party claim that the Service infringes provided always that the Customer promptly notifies Wave2Wave of any such claim in writing, gives Wave2Wave the sole control of any such action or proceedings and gives Wave2Wave such assistance as it may reasonably require to settle and/or defend such action or proceedings (at the cost of Wave2Wave). Any award of costs and/or damages shall belong to Wave2Wave. In such event, Wave2Wave may, at its option:

- (a) Procure for the Customer the right to continue to use the Service;
  - (b) Make the Service available without infringing (so far as Wave2Wave is aware) any third party intellectual Property Rights; or
  - (c) Terminate this Agreement immediately on written notice to the Customer.
- 9.2 The indemnity in Clause 9.1 above shall not apply to any infringement resulting from:
- (a) Use of the Service which does not comply with the uses permitted under this Agreement;
  - (b) Any modification or change to the Service carried out by Wave2Wave on the request of the Customer; or
  - (c) The combination of the Service with any third party product and/or service or modification undertaken by the Customer without the prior written consent of Wave2Wave.

## 10. [Term](#)

- 10.1 The term of the Agreement shall commence on the date Service is first activated and, subject to any earlier termination as permitted under Section 11, it shall remain in effect for a period of twelve (12) calendar months from such commencement (the “**Minimum Period**”).
- 10.2 Upon expiration of the Minimum Period, the term of the Agreement shall continue on a month-to-month basis unless either of the Parties gives the other thirty (30) days advance written notice, which notice may not be effective prior to the expiration of the Minimum Period.

## 11. [Termination](#)

- 11.1 Without prejudice to any other rights to which it may be entitled, either party may terminate this Agreement with immediate effect:
- (a) If the other party commits any material breach of this Agreement (other than a failure to pay by Customer) and fails to remedy that breach within thirty (30) days of that party being notified of the breach, such notice to refer to the notifying party's intent to terminate this Agreement unless the breach is remedied; or
  - (b) If a bankruptcy petition is filed, an order is made or a resolution is passed for the winding up or dissolution of the other party, or if an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or if a bankruptcy trustee, receiver, administrator or administrative receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a Court or a creditor to appoint a bankruptcy trustee, receiver or administrator, or which entitle a Court to make a winding-up order, or if the other party takes or suffers any similar or analogous action in consequence of debt; or
  - (c) If there is a change of control of the Customer.
- 11.2 Without prejudice to any other rights to which it may be entitled, in the case of a force majeure event as specified in Section 14 either party may terminate this Agreement with immediate effect pursuant to that Section.
- 11.3 Wave2Wave may at any time suspend the provision of the Service to the Customer or terminate this Agreement with immediate effect if:
- (a) The Customer is in material breach of any obligation in this Agreement; or
  - (b) The Customer allows an Open Relay to occur; or
  - (c) Wave2Wave no longer has rights from any licensor, supplier or other third party that may be used or useful in order to provide the Service.

## 12. [Effects of Termination](#)

- 12.1 Termination of this Agreement shall be without prejudice to any rights or liabilities accrued at the date of termination.
- 12.2 Upon termination:
- (a) Wave2Wave shall be entitled to cancel the provision of Service to the Customer;
  - (b) All invoices shall become due and payable; and
  - (c) Subject to Clause 12.3 all rights of the Customer under this Agreement shall terminate on the termination date.
- 12.3 The following Sections shall survive termination:
- (a) Section 4 Charges and Payment
  - (b) Section 7 Limitation of Liability
  - (c) Section 9 Intellectual Property Rights Indemnity
  - (d) Section 12 Effects of Termination
  - (e) Section 13 Confidentiality

## 13. [Confidentiality](#)

- 13.1 Each party agrees and undertakes that during the term of this Agreement and for one (1) year thereafter it will keep confidential and will not use for its own purposes nor without the prior written consent of the other party disclose to any third party any information of a confidential nature (including trade secrets and information of commercial value) which may become known to that party from the other party (“Confidential Information”) unless the information is public knowledge or already known to that party at the time of disclosure or subsequently becomes public knowledge other than by breach of this Agreement or subsequently comes lawfully into the possession of that party from a third party.

- 13.2 To the extent necessary to implement the provisions of this Agreement and to provide the Service each party may disclose the Confidential Information to its employees and suppliers as may be reasonably necessary, provided that before any such disclosure each party shall make their employees and suppliers aware of and agree to the obligations of confidentiality under this Agreement.
- 13.3 Wave2Wave acknowledges and agrees that the content of all Emails sent to or received from the Customer by the Service is confidential. In the normal provision of the Service Wave2Wave would not access, read or copy Emails or their attachments other than by electronic methods for the purposes of providing the Service. However, Wave2Wave reserves the right to utilize the Virus-related content of such Email or its attachments solely for the purposes of:
- (a) Maintaining and improving the performance and the integrity of the Service;
  - (b) Complying with all regulatory, legislative or contractual requirements; and
  - (c) Making available to any licensors to Wave2Wave of the Service any information passing through the Service which may be of interest to the licensors solely for the purpose of further developing and enhancing the Service.
- Where Wave2Wave exercises the foregoing rights Wave2Wave will use all reasonable endeavours to keep confidential all information received from the Customer or for the Customer in connection with the Service.

#### 14. Force Majeure

- 14.1 Excepting any obligation to make payment hereunder the obligations of each party under this Agreement shall be suspended during the period and to the extent that such party is prevented or hindered from complying with them by any cause beyond its reasonable control including events such as, but not limited to: strikes; lock-outs; labour disputes; act of God; war; riot; civil commotion; malicious damage; compliance with any law or governmental order; rule; regulation or direction; accident; loss of electrical power; loss of telephone/Internet/wide area network and similar infrastructure; fire; flood; storm; materials; unavailability of goods or raw materials.
- 14.2 In the event of either party being so hindered or prevented, the party concerned shall give notice of suspension for force majeure as soon as reasonably possible to the other party stating the date and extent of the suspension and its cause. Any party whose obligations have been suspended as aforesaid shall resume the performance of those obligations as soon as reasonably possible after the removal of the cause and shall so notify the other party. In the event that the cause continues for more than thirty (30) days after written notification as aforesaid either party may terminate this Agreement in accordance with Clause 11.2.

#### 15. Dispute Resolution

- 15.1 All disputes between the parties arising out of or relating to this Agreement or the breach, termination or validity thereof shall be referred by either party in writing, first to each party's representative. The representatives shall meet and attempt to resolve the dispute within a period of thirty (30) days from the date of referral of the dispute to them.

#### 16. Third Party Beneficiaries

- 16.1 Nothing in this Agreement is intended to confer on any person or entity other than the Parties any right to enforce this Agreement.

#### 17. Data Privacy and Regulation of Investigatory Powers

- 17.1 The Customer shall take all necessary measures to ensure that it, and all its employees, are aware of any responsibilities they have in respect of data protection and privacy laws and/or regulations. As Wave2Wave has no control or influence over the content of the Emails processed by the Service the Customer shall hold Wave2Wave harmless for any claims by any party relating thereto.
- 17.2 The Customer acknowledges that all Email and other communications systems are subject to interception. The Customer shall use all reasonable efforts to inform (for example, via a banner message on its Emails) those who use any communications system covered by the Service, that communications transmitted through such system may be intercepted. The Customer shall hold Wave2Wave harmless from any claims from its employees, any third party and/or governmental agencies relating to such interceptions. The Customer shall not use, or require Wave2Wave to use, any data obtained via the Service for any unlawful purposes.
- 17.3 The Customer acknowledges and agrees that it has in place appropriate technical and organizational data security measures.

#### 18. Amendments

- 18.1 Except as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorized representative of each of the Parties.

#### 19. [Assignment](#)

19.1 Customer is not entitled to transfer or assign this Agreement without Wave2Wave's prior written consent. Wave2Wave is entitled, without prior written consent, to transfer, assign, or sub-contract this Agreement or any part thereof. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

#### 20. [Waiver](#)

20.1 The failure of a party to exercise or enforce any right under this Agreement shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.

#### 21. [Severability](#)

21.1 If any provision of this Agreement becomes invalid, illegal or unenforceable then such provision shall be severed and the remainder of this Agreement shall continue in full force and effect.

#### 22. [Notices](#)

22.1 Any notice required to be given pursuant to this Agreement shall be in writing and shall be given by delivering the notice by hand, or by sending the same by prepaid first class mail to the address of the relevant party set out in this Agreement or such other address as either party notifies to the other from time to time. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery (if delivered by hand) and when received (if sent by mail). Notwithstanding the foregoing, Wave2Wave may give any permitted or required notice to the Customer by email sent to the Customer's Administrator's Email Address specified in the Service Agreement.

#### 23. [Governing Law and Jurisdiction](#)

23.1 This Agreement shall be governed by and construed in accordance with the laws of the jurisdiction where Wave2Wave maintains its offices. The Parties consent to the exclusive jurisdiction and venue of any court located in the City and State where Wave2Wave maintains its offices.

#### 24. Counterparts and Facsimile Signatures

24.1 This Agreement may be signed in one or more counterparts, which together shall constitute one binding and enforceable agreement. This Agreement may be executed and delivered by a party's signature transmitted by facsimile ("**Fax**"). Copies of this Agreement executed and delivered by Fax, including facsimile signatures, shall have the same force and effect as originals with original signatures.

## Schedule 1

### Service Description

#### 1. [Introduction](#)

- 1.1 Wave2Wave is an Internet Services Provider (ISP) offering Internet-level Email security. Wave2Wave's Email security services are offered under the Wave2Wave Email Security System, powered by MessageLabs, and include anti-virus, anti-spam and porn filtering services as further described or provided in the attached Appendices.
- 1.2 The Service is managed on a twenty-four (24) hours/day by seven (7) days/week basis through MessageLabs. The Service is monitored for hardware availability, service capacity and network resource utilization. Through monitoring of service levels, regular adjustments are made to the Service to ensure its optimum efficiency is maintained.
- 1.3 The Service is available to Customers whose Email systems are permanently connected to the Internet with a fixed IP address. It cannot be provided to Customers whose Email systems are connected to the Internet via dial-up or ISDN lines or whose IP address is dynamically allocated.

#### 2. [Management](#)

- 2.1 Wave2Wave may monitor Email queue lengths. If a rising Email queue is detected for a connected domain, Wave2Wave may test for the ability of the receiving mail server to receive Email. If this test fails, the affected party will be notified. If Wave2Wave is unable to deliver Email to a Customer's mail server, Wave2Wave will store the Customer's inbound Email for up to seven (7) days pending delivery.
- 2.2 The flow of Email traffic in any given period may have great variance for reasons that are beyond the control of Wave2Wave. For this reason, Wave2Wave cannot guarantee service levels.
- 2.3 Wherever possible, planned maintenance will be carried out without affecting the Service. This will generally be achieved by carrying out planned maintenance during periods of anticipated low Email traffic and by carrying out planned maintenance on part, not all, of the network at any one time. During planned maintenance periods the Email traffic may be diverted round sections of the network not undergoing maintenance in order to minimize disruption to the Service.
- 2.4 Where emergency maintenance is necessary and is likely to affect the Service, Wave2Wave may inform the affected parties and may post an alert message on InSight (which is described in Clause 3.1 of this Schedule 1).

#### 3. [InSight](#)

- 3.1 An integral part of the Service is an Internet-based configuration, management and reporting tool called InSight. InSight is made available to the Customer via a secure password protected login which should not be disclosed to a third party. InSight allows the Customer to view data and statistics on its use of the Service and offers a number of configuration and management options.

#### 4. [Technical Support](#)

- 4.1 If a fault with the Service is reported by the Customer to Wave2Wave, Wave2Wave will determine its priority level and attempt to respond as described in the table below:

Priority Level	Definition	Response Target
Critical	Loss of Service that cannot be circumvented	95% of calls responded to within 2 hours
Major	Loss of Service that can be circumvented, partial loss of Service or Service impairment	85% of calls responded to within 4 hours
Minor	Potentially Service affecting	75% of calls responded to within 8 hours
Information	Non-Service affecting information request	65% of calls responded to within 24 hours

- 4.2 Faults originating from the Customer's actions or requiring the actions of other service providers are beyond the control of Wave2Wave and as such are specifically excluded from the above fault response target times.

#### 5. [Customer Service](#)

- 5.1 Wave2Wave will provide customer service during Normal Working Hours to:
  - (a) Receive and process orders for provisioning the Service;
  - (b) Receive and process requests for modifications to the operational aspects of the Service; and
  - (c) Respond to billing and invoicing queries.

## Schedule 1 Appendix 1

### Wave2Wave Anti-Virus Service

#### 1. [Overview](#)

- 1.1 Wave2Wave Anti-Virus, powered by MessageLabs, is an Internet-level Email Virus scanning service. The Customer's inbound and outbound Email including all attachments, macros or executables are directed through the Wave2Wave Anti-Virus service using DNS and MX record settings.

#### 2. [Infection](#)

- 2.1 The Customer's systems are deemed to be infected if a Virus contained in an Email received through the Service has been activated within the Customer's systems either automatically or with manual intervention.
- 2.2 Should the Customer's systems be infected by one or more Viruses in any calendar month during the Minimum Period, subject to notification by the Customer to Wave2Wave in one or more logged and validated support calls, and subject to confirmation by Wave2Wave that one or more Viruses has in fact been passed to the Customer through the Service, the Customer shall receive a credit for one month of the monthly recurring charge for the Wave2Wave Anti-Virus service. The remedy set out in this Clause 2.2 shall be the sole and exclusive remedy in contract, tort or otherwise in respect of any infection of the Customer's systems by a Virus passed to the Customer through the Service. For the avoidance of doubt, the remedy set out in this Clause 2.2 shall not apply in cases of self-infection by the Customer.
- 2.3 Customer acknowledges that it may not be possible for Wave2Wave to scan attachments with content that is under the direct control of the sender (for example, password protected and/or encrypted attachments). Such Email and/or attachments are excluded from the remedy set out in Clause 2.2 of this Appendix 1.

#### 3. [Alert Messages](#)

- 3.1 If a Customer's inbound Email or attachments are found to contain a Virus, an automatic alert will be sent to the sender and intended recipient by way of notification. With a Customer's outbound Email the Service will notify the sender only and not the intended recipient. Notification may also be sent to the Customer's Email administrator in both cases. The infected Email is forwarded to a secure server pending automatic destruction after thirty (30) days.
- 3.2 In the case of a major breakout of a new Virus, an alert message will be posted on InSight.

#### 4. [Releasing a Virus-Infected Email](#)

- 4.1 Where a Virus-infected Email is shown to be releasable, it can be released from the secure server using InSight. The Email will be released to the first address of the original recipient list (Note: this address may be a group Email name or alias in which case the Email will be released to all addressees in the group or alias). Wave2Wave will not return Virus-infected Email to the sender. Wave2Wave will not forward Virus-infected Email to third parties. Certain Virus-infected Emails sent to the customer are not releasable due to them containing a Virus which is particularly infectious or damaging. These are shown on InSight as being not releasable.

#### 5. [Additional Wave2Wave Anti-Virus Terms and Conditions](#)

- 5.1 The Customer agrees to indemnify Wave2Wave against all and any losses, costs and expenses Wave2Wave may incur as a result of the release of a Virus-infected Email under Section 4 of this Appendix 1.

## Schedule 1 Appendix 2

### Wave2Wave Porn Filtering Service

#### 1. [Overview](#)

- 1.1 Wave2Wave Porn Filtering, powered by MessageLabs, is an Internet-level Email anti-porn service which is designed to detect pornographic images contained in image files only.
- 1.2 Wave2Wave Porn Filtering can only be provisioned to Customers whose Email is also being Virus-scanned by the Wave2Wave Anti-Virus service.

#### 2. [Service Description](#)

- 2.1 The Customer's inbound and outbound Email may be scanned for pornographic images contained in image files attached to Email.
- 2.2 If a Customer's inbound or outbound Email is suspected to contain a pornographic image, one of a number of actions may be taken depending on the configuration options selected by the Customer.

#### 3. [Configuration](#)

- 3.1 The Customer is responsible for setting the configuration options for Wave2Wave Porn Filtering for each domain according to the Customer's needs. The Customer configures Wave2Wave Porn Filtering using InSight.
- 3.2 Options are available for specifying the level of detection sensitivity. Sensitivity can be set to High, Medium or Low. The definition of pornography under these settings are subjective, however, as a guide more images will be suspected to be pornographic at High sensitivity and fewer images will be suspected to be pornographic at Low sensitivity.
- 3.3 Options are available for defining the actions to be taken on detecting a suspected pornographic image. These options may be set independently for inbound and outbound Email and should be set in line with the Customer's existing Acceptable Computer Use Policy (or its equivalent). These options are:
  - (a) Log suspected Email (provides statistics viewable via InSight).
  - (b) Tag suspected Email within the header (for inbound Email only).
  - (c) Copy suspected Email to a pre-defined Email address.
  - (d) Redirect suspected Email to a pre-defined Email address.
  - (e) Delete suspected Email.

#### 4. [Reporting](#)

- 4.1 If the chosen options in Section 3.3 of this Appendix are to redirect or delete Email containing a suspected pornographic image, then an automatic alert is also sent to the intended recipient.
- 4.2 Reporting on the effectiveness of Wave2Wave Porn Filtering is provided through InSight where statistics are available on the number of inbound and outbound Emails suspected of containing pornographic images. InSight may be configured to generate reports which are sent by Email to the Customer on a weekly or monthly basis.

#### 5. [Wave2Wave Porn Filtering Terms and Conditions](#)

- 5.1 NO PORNOGRAPHIC IMAGE DETECTION SOFTWARE CAN GUARANTEE A ONE HUNDRED PERCENT (100%) DETECTION RATE AND THEREFORE WAVE2WAVE CAN ACCEPT NO LIABILITY FOR ANY DAMAGE OR LOSS RESULTING DIRECTLY OR INDIRECTLY FROM ANY FAILURE OF THE SERVICE TO DETECT A PORNOGRAPHIC IMAGE OR FOR WRONGLY IDENTIFYING AN IMAGE AS SUSPECTED TO BE PORNOGRAPHIC WHICH PROVES SUBSEQUENTLY NOT TO BE SO. Furthermore the Customer agrees to indemnify Wave2Wave for any damages (including reasonable attorney fees and costs) that may be awarded to any third party in respect of any claim or action arising out of delivery or non-delivery of any suspected pornographic or non-pornographic image.
- 5.2 It may not be possible to scan attachments with content which is under the direct control of the sender (for example, password protected and/or encrypted attachments).
- 5.3 Wave2Wave Porn Filtering is not able to scan for pornographic images embedded in other documents.
- 5.4 Customer acknowledges that the configuration of Wave2Wave Porn Filtering is entirely in the control of the Customer. Wave2Wave Porn Filtering is intended to be used solely to enable the Customer to enforce an existing, effectively implemented Acceptable Computer Use Policy (or its equivalent). Wave2Wave shall have no liability for any civil or criminal liability that may be incurred by the Customer as a result of the operation of Wave2Wave Porn Filtering. The Customer recognizes that the definition of what does and what does not constitute a pornographic image is subjective. The Customer should take this into consideration when configuring the Service.
- 5.5 Wave2Wave will not under any circumstances have any obligation to store any item suspected to contain a pornographic image.
- 5.6 If the Customer releases or requests the release of a Virus-infected Email, the released Email will not be scanned by Wave2Wave Porn Filtering prior to release.

## Schedule 1 Appendix 3

### Wave2Wave Anti-Spam Service

#### 1. [Overview](#)

- 1.1 Wave2Wave Anti-Spam is an Internet-level Email Anti-Spam service, powered by MessageLabs, which is designed to protect the Customer from unsolicited or unwanted Email.

#### 2. [Service Description](#)

- 2.1 The Customer's inbound Email may be scanned using a number of different detection methods to determine whether or not it is Spam. If an inbound Email is suspected as being Spam, one of a number of actions may be taken depending on the configuration options selected by the Customer. The configuration options are listed in Section 3.2 and are accessible by the Customer through InSight.
- (a) A private blacklist may be compiled by the Customer. If this detection method is selected and an incoming Email is received from a blacklisted domain an action will be taken as defined by the configuration options in Section 3.2
  - (b) A number of public blacklists may be used. If any of these detection methods are selected and an incoming Email is received from a domain listed on one of the selected public blacklists an action will be taken as defined by the configuration option in Section 3.2.
  - (c) If the Email has not been deleted as a result of being blacklisted as above and heuristics detection is selected and the action that would be taken as a result of detecting the Email as Spam as configured by the Customer is more severe than that already selected as a result of blacklist detection, the Customer's inbound Email is scanned using heuristics scanning. If an incoming Email is heuristically detected as being Spam action will be taken as defined by the configuration options in Section 3.2. This action will supersede any less severe action previously allocated by any of the blacklist methods.
  - (d) A private whitelist may be compiled by the Customer. If this detection method is selected and an incoming Email is received from a whitelisted domain, it will automatically bypass any other selected Spam detection methods.

#### 3. [Configuration](#)

- 3.1 The Customer is responsible for setting the configuration options for Wave2Wave Anti-Spam for each domain according to the Customer's needs. The Customer configures Wave2Wave Anti-Spam using InSight.
- 3.2 Options are available for specifying the actions to be taken should an Email be suspected as being Spam. These options, listed below in increasing severity, are selectable for each of the available detection methods:
- (a) Tag suspected Email within the header.
  - (b) Redirect suspected Email to a pre-defined Email address.
  - (c) Delete suspected Email.

#### 4. [Reporting](#)

- 4.1 Reporting on the effectiveness of Wave2Wave Anti-Spam is provided through InSight. InSight may be configured to generate reports which are sent by Email to the Customer on a weekly or monthly basis.

#### 5. [Wave2Wave Anti-Spam Terms and Conditions](#)

- 5.1 NO ANTI-SPAM SOFTWARE CAN GUARANTEE A ONE HUNDRED PERCENT (100%) DETECTION RATE AND THEREFORE WAVE2WAVE CAN ACCEPT NO LIABILITY FOR ANY DAMAGE OR LOSS RESULTING DIRECTLY OR INDIRECTLY FROM ANY FAILURE OF THE SERVICE TO DETECT SPAM OR FOR WRONGLY IDENTIFYING ANY EMAIL AS SUSPECTED OF BEING SPAM WHICH PROVES SUBSEQUENTLY NOT TO BE SO. Furthermore the Customer agrees to indemnify Wave2Wave for any damages (including reasonable attorney fees and costs) that may be awarded to any third party in respect of any claim or action arising out of delivery or non-delivery of any item suspected as being Spam.
- 5.2 Customer acknowledges that the configuration of Wave2Wave Anti-Spam is entirely in the control of the Customer. Wave2Wave recommends that the Customer have an Acceptable Computer Use Policy (or its equivalent) in place. Wave2Wave shall have no liability for any civil or criminal liability that may be incurred by the Customer as a result of the operation of Wave2Wave Anti-Spam.
- 5.3 Wave2Wave will not under any circumstances have any obligation to store any item suspected to be Spam.

#### 6. [Spam Quarantine Service Description](#)

- 6.1 If the Customer has configured Spam Quarantine for a domain each User's Spam Quarantine account will be set up automatically upon the first time that suspected Spam is identified by the Service. The User will automatically receive an Email notification with instructions on how to access and use the interface (Spam Manager) through which Spam Quarantine is administered.

- 6.2 The User's Spam Quarantine account is accessible only by the User.
- 6.3 Suspected Spam can be stored for a maximum of fourteen (14) days after which it will be automatically deleted.
- 6.4 If for any reason the Spam Quarantine service is not able to accept Email the suspected Spam will be tagged and sent to the recipient as per Schedule 1, Section 8.4 of these Terms.
- 6.5 *Spam Quarantine Configuration.* When requested, Wave2Wave will enable Spam Quarantine for each of the domains nominated by the Customer. Spam Quarantine will only become available to a User once the Customer configures each domain according to the Customer's needs. The Customer configures Spam Quarantine via InSight.
- 6.6 The default for notifying the User that Spam has been stored is set to (i) below. The User may at any time alter the default setting to one of the following options: (i) Notifications to be received on a per day basis; (ii) Notifications to be received at various frequencies; (iii) Notifications are not to be received.
- 6.7 When utilizing Spam Manager the User may select one of the following options: (i) Delete Email; (ii) Release Email to the User's Email address for which the Email was originally intended; (iii) Review the text of Email.