



WAVE2WAVE
COMMUNICATIONS

WAVE2WAVE® MANAGED 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 VPN Service.
 - a. Wave2Wave will install the VPN Service by encrypting the data which passes over the public Internet between multiple client offices. The VPN Service will allow each Customer user to directly exchange, store and access data and other information in a private access transmission that will not be exposed to security risks normally associated with transmission of data over the public Internet. Customer is responsible for ensuring that its internal systems are compatible with the components of the VPN Service. The VPN Service will not prohibit access to the public Internet. Customer understands and agrees it will be using the VPN 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 placed on or communicated by means of the VPN Service, except to the extent that such unauthorized access results from the gross negligence of Wave2Wave.
 - b. Description of the Managed Firewall Service. Wave2Wave will install, monitor and maintain firewall software on dedicated hardware for Customer. Wave2Wave will configure the firewall to perform proxy and packet filtering according to client's specified security requirements. Customer is responsible for ensuring that its internal systems are compatible with the components of the Managed Firewall Service. Customer understands and agrees that it will be using the Managed Firewall 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 software and dedicated hardware that comprise the Managed Firewall Service, except to the extent that such unauthorized access results from the gross negligence of Wave2Wave.
2. Location of Equipment on Customer Premises. Wave2Wave will locate equipment required for the operation of the Managed Firewall Service and/or the VPN Service on Customer's premises subject to, in each instance, the prior approval of Customer, such approval not to be unreasonably withheld or delayed. Customer acknowledges and agrees that the equipment installed by Wave2Wave is and shall remain the sole and exclusive property of Wave2Wave. Upon the termination of the Service Agreement, Wave2Wave will remove all such equipment from Customer's premises.
3. 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 service. 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.

4. Terms of Service.

- a. Wave2Wave guarantees to Customer that the Internet connection underlying the Managed Firewall Service and/or the VPN Service will be available 99.99% of the time in a given month. In the event the Managed Firewall Service and/or the VPN 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.
- b. Wave2Wave reserves the right to terminate Customer's Managed Firewall Service and/or VPN Service for any breach of the Service Agreement subject to (i) Wave2Wave 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 or more such violations Wave2Wave may terminate the Service Agreement, and all Customer services without notice. Should the services be so terminated, Customer remains obligated for any amount due Wave2Wave for the remaining term of the Service Agreement. No termination hereof shall relieve either party from liabilities or obligations incurred prior to termination. Notwithstanding anything to the contrary set forth herein, Wave2Wave reserves the right to terminate the Service Agreement in the event that its right to provide services in the Building is terminated for any reason.

5. Limited Warranty.

- a. The services to be provided by Wave2Wave hereunder are offered "as is". Wave2Wave has no responsibility nor bears any liability for the failure of the hardware or software constituting the Managed Firewall Service or the VPN Service, other than failures due to Wave2Wave's gross negligence in installing or maintaining the Managed Firewall Service or the VPN Service.
- b. Notwithstanding anything herein to the contrary, neither party will be liable to the other party for any indirect, special, incidental, punitive, or consequential damages, including without limitation loss of revenue, loss of customers, clients or members, loss of goodwill, loss of data, or loss of profits arising in any manner from the Service Agreement and the performance or non-performance of obligations thereunder.
- c. Neither Wave2Wave nor its affiliates make any express or implied warranties, representations or endorsements whatsoever (including, without limitation, implied warranties or merchantability or fitness for a particular purpose) with regard to the Managed Firewall Service or the VPN Service.

6. Term. The Service Agreement will be considered binding upon the signature of all parties and Wave2Wave's receipt of the total amount due at signing (see Service Agreement). The Term will commence on the date in which Customer and Wave2Wave complete acceptance testing of the firewall software is properly safeguarding data and/or encrypted data traffic is being successfully passed by the VPN and will continue until the expiration of the Term, including any Renewal Term, if any, unless the Service Agreement is sooner terminated pursuant to the terms or provisions hereof. The Service Agreement will automatically renew for consecutive additional periods of one year each unless either party delivers written notice of termination no later than 60 days before the scheduled expiration of the initial Term stated in the Service Agreement or any renewal thereof, as the case may be. If Customer requests a service upgrade from Wave2Wave 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 year from the activation date of the service upgrade. All Internet service upgrade information, including the new Term of the Service Agreement, will be indicated on a new Service Agreement. Notwithstanding anything to the contrary set forth herein, Wave2Wave reserves the right to terminate the Service Agreement (i) in the event that Wave2Wave's right to provide services in the Building is terminated for any reason or (ii) if Wave2Wave determines in its sole judgment that it would be economically imprudent or technically infeasible to continue providing service to Customer upon delivery of 30 days advance written notice of termination to Customer. At the conclusion of the Service Agreement, the provisions of Sections 4.b., 6 and 7.g. shall survive in accordance with their terms. 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..

7. Confidentiality. Both parties acknowledge that all materials and information concerning the other party and its affiliates, including without limitation information concerning customers, business practice, arrangements and methods of doing business, learned in connection with the Service Agreement are trade secrets and are not to be disclosed, discriminated or otherwise revealed in whole or in part in any manner whatsoever to any third party. The parties acknowledge that the breach of this Section 6 may result in irreparable damage to the non-breaching party for which money damages may not be an adequate remedy. Accordingly, in the event of a breach or threatened breach of this Section 6, the non-breaching party will be entitled to seek the imposition of injunctive relief, in addition to any and all other remedies available to it, and the breaching party will not claim that the non-breaching party has an adequate remedy at law.
8. Miscellaneous.
- a. The Service Agreement (including the terms and conditions herein) constitutes the entire agreement between Customer and Wave2Wave with respect to the subject matter hereof and supersedes all prior agreements between the parties, written or verbal, with respect to such subject matter.
 - b. Any party's failure to insist upon or enforce strict performance of any provision of the Service Agreement shall not be construed as a waiver of any provision or right. No waiver of any provisions of the Service Agreement shall be binding unless in writing and signed by an authorized officer of both parties.
 - c. The Service Agreement may not be amended or modified unless in writing signed by an authorized officer of both parties, referring to the Service Agreement and stating that the document is an 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. This 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, Inc.
1156 Avenue of the Americas, 5th Floor
New York, New York 10036
Attn: Legal Department

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 approvals that have been duly obtained or given and are in full force and effect.

- k. Customer is not entitled to transfer or assign the Service Agreement without 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.