



**WAVE2WAVE**  
COMMUNICATIONS

## **WAVE2WAVE® WEB HOSTING TERMS AND CONDITIONS**

Wave2Wave is a provider of access to the Internet and related services. Customer desires to obtain web hosting service from Wave2Wave as specified in the Service Agreement. The web hosting 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. Wave2Wave will provide Customer with shared space on an Wave2Wave server for the storage by Customer of the data which comprises Customer's website.
2. 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.
3. Customer understands that although Wave2Wave will use reasonable efforts to maintain service 99.99% of the time, interruptions can occur due to circumstances beyond Wave2Wave's control. If a service interruption of more than thirty (30) consecutive minutes occurs which is solely attributable to Wave2Wave's negligence during any given day, Customer will be given a credit applicable to the next month's charges of one (1) day's service (monthly fee/30). At no time will the amount of rebate to Customer exceed the value of the total month's hosting charge. Notwithstanding the foregoing, no credit will be given if the service is unavailable due to (i) interruptions or failures of Wave2Wave's service caused by disruptions in the Internet backbone; (ii) Customer's applications, equipment or facilities; (iii) acts or omissions of Customer or any user of Customer's website; or (iv) any other failure or interruption of Wave2Wave's service resulting from causes beyond Wave2Wave's control. 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. Other than claims for the aforementioned credit, Customer agrees to hold Wave2Wave harmless from any liability for any and all losses, liabilities, damages, and costs incurred by Customer in the event of any such service interruption or other event beyond Wave2Wave's control which effects Customer's use and enjoyment of the web hosting service.
4. While Wave2Wave will use reasonable efforts to protect the data stored on Wave2Wave's server, Wave2Wave is not responsible for the loss, corruption or security of Customer's data, files or directories residing on Wave2Wave's equipment, or for interruptions or failures of transmission. Customer is solely responsible for maintaining data, file and directory structure backups.

5. Customer acknowledges that it has read and understands Wave2Wave's Acceptable Use Policy, a copy of which can be found on Wave2Wave's website located at [www.Wave2Wave.com](http://www.Wave2Wave.com). 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 is engaged in activity with respect to Customer's website that constitutes a violation of the Acceptable Use Policy, it will immediately notify Wave2Wave 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 Wave2Wave 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 Wave2Wave 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.
6. Customer acknowledges and agrees that Wave2Wave 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 Service Agreement by Customer, any of its employees, or any other persons who have access to Customer's Internet connection, 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 (2) or more such violations Wave2Wave may terminate the Service Agreement and Customer's service without notice. In addition, Wave2Wave may terminate the Service Agreement with or without notice in the event Customer becomes insolvent, admits to a failure to be able to pay its debts, has a receiver appointed for its assets, or files or is subject to a petition for protection from creditors under any applicable bankruptcy statute. Should the Service Agreement and Customer's service be so terminated by Wave2Wave, Customer will pay to Wave2Wave as liquidated damages within ten (10) days after such determination an amount equal to the full amount Customer would have paid Wave2Wave for service fees for the remaining term of the Service Agreement if it had not been so terminated. The foregoing payment will not relieve Customer of any other liability to Wave2Wave hereunder for violating the Acceptable Use Policy or the Service Agreement.
7.
  - a. NEITHER CUSTOMER NOR WAVE2WAVE WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR ANY OTHER LOSSES OR 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, INCLUDING BUT NOT LIMITED TO MISTAKES, ACCIDENTS, ERRORS, OMISSIONS, INTERRUPTIONS OR DEFECTS IN TRANSMISSION, OR DELAYS, INCLUDING THOSE WHICH MAY BE CAUSED BY REGULATORY OR JUDICIAL AUTHORITIES.
  - b. Customer assumes total responsibility and risk for the use of Wave2Wave's web hosting service and related Internet access by Customer, its employees and other persons having access to Customer's Internet connection. Neither Wave2Wave, 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 information, and the quality and merchantability of all merchandise, provided through Wave2Wave's service or on the Internet generally.
  - c. Wave2Wave's web hosting service is provided on an "as is" and "as available" basis without warranties of any kind, either express or implied, including, but not limited to warranties of title, non-infringement or implied warranties of merchantability or fitness for a particular purpose, except as otherwise expressly set forth in the Service Agreement. No advice or information given by Wave2Wave, its affiliates or its contractors or their respective officers, directors, employees and agents shall create a warranty. Neither Wave2Wave nor its affiliates warrants that the service will be uninterrupted or error free or that any information, software or other material accessible through the service is free of viruses, worms, trojan horses or other harmful components, and Wave2Wave 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 anything herein to the contrary, Customer's exclusive remedy for all damages, losses and liabilities, whether in contract, tort, or otherwise, shall not exceed the aggregate dollar amount which customer paid during the term of the Service Agreement.

8. Wave2Wave shall not be liable for any taxes or other fees to be paid in accordance with or related to purchases made from Customer or Customer's use of web hosting services. Customer agrees to take full responsibility for all taxes and fees of any nature associated with such products sold or services offered by Customer.
9. In the event that any Federal, State or Local government imposes any form of tax on access to the Internet that becomes by virtue of the services to be provided to Customer hereunder, Customer agrees to pay such tax in addition to the normal monthly access fee. In such event, the Company reserves the right to modify its rates and terms and conditions of service as required.
10. Due to the public nature of the Internet, all information should be considered publicly accessible, and important or private information should be treated carefully. Wave2Wave is not liable for protection or privacy of electronic mail or other information transferred through the Internet or any other network Wave2Wave or Customer may utilize.
11. Nothing in the Service Agreement, by implication or otherwise, shall be interpreted as a grant of any right to Customer to use any of Wave2Wave's trademarks, trade names or service marks.
12. Customer agrees that it will defend, indemnify and hold harmless Wave2Wave from any and all demands, liabilities, losses, costs and claims, including attorneys' fees and court costs, that may arise or result from (i) any breach by Customer of any of its obligations and representations and warranties set forth in the Service Agreement and (ii) any service provided or performed or agreed to be performed or any product sold or otherwise distributed by Customer, its agents, employee or assigns through Customer's website.
13. 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's service is first activated 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 5, 6, 7 and 14 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.
14. The Service Agreement (including the terms and conditions herein) constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and arrangements of the parties, written and oral, with respect to such subject matter. The Service Agreement may not be amended, modified or altered unless in a written document signed by both parties. Wave2Wave'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 by Wave2Wave shall be binding unless in writing and signed by an authorized officer of Wave2Wave. The Service Agreement may not be assigned by Customer. All notices delivered hereunder shall be in writing and addressed to the parties at the addresses indicated in the Service Agreement or to such other address as the parties shall designate by delivery of written notice to the other party's address stated in the Service Agreement. 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. 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. The parties agree to the exclusive jurisdiction of the federal and state courts located in New York State in the event of any dispute arising from, in connection with or related or pursuant to the interpretation or construction of or performance under the Service Agreement. 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.
15. 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.

16. 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.
17. 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.
18. 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.
19. 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.