

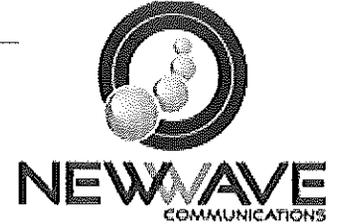
Filing Purposes Only:

Customer Name in Billing: \_\_\_\_\_

Customer Account #: \_\_\_\_\_

Customer Federal Tax ID#: \_\_\_\_\_

Proposed Installation Date: \_\_\_\_\_



## BUSINESS INTERNET, VIDEO AND MUSIC SERVICE AGREEMENT

This Business phone, and Fiber Service Agreement ("Service Agreement" or "Agreement") is made on September 13, 2011, by and between NewWave Communications, ("NewWave Business") with local offices at [906 South 12<sup>th</sup> ST Murray KY 42071] and Union County Courthouse- All Offices, ("Customer") with offices located at 309 West Market ST Jonesboro, IL 62952.

Both parties desire to enter into this Agreement in order to set forth the general terms under which NewWave is to provide Customer with NewWave's services ("Service" or "Services") to Customer site(s), the scope and description to be specified per site below and/or in a Service order(s) executed by both parties (each instance of site identification and order a "Service Order" or collectively the "Service Orders"), which shall be incorporated in this Agreement upon execution. This Agreement and each Service Order will be effective only after both parties have signed each document.

### SERVICE ORDER

#### Under the Business Internet, Video and Music Service Agreement

THE PARTIES AGREE TO THE FOLLOWING SERVICE ORDER TERMS WHICH FORM A PART OF AND ARE INCORPORATED INTO THE SERVICE AGREEMENT:

#### CUSTOMER INFORMTION:

Account Name: Union County Courthouse – All Offices

Invoicing Address: 309 West Market St Jonesboro, IL 62952

Invoicing Special Instructions: \_\_\_\_\_

Customer Federal Tax ID#: \_\_\_\_\_

#### 1. SITE-SPECIFIC INFORMATION.

X NEW     RENEWAL     CHANGE    Specify: New Customer

Service Location (Address): **Union County Courthouse 309 West Market St Jonesboro IL62952 Fiber Assessor 302 West Market St Jonesboro, IL 62952, General Assistance 209 West Market ST Jonesboro, IL 62952 Cable Coax**

Service Location Name (for purposes of identification): \_\_\_\_\_

Service Location Special Instructions: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Customer Contact Information.** To facilitate communication the following information is provided as a convenience and may be updated at any time without affecting the enforceability of the terms and conditions herein:

➡ Customer Initial: RL

	Billing Contact	Site Contact	Technical Contact
Name		Tyler Edmonds/ Darren Bailey	Rollie Hawk
Phone		618-833-7216	618-925-2470
Fax			
Cell			
Pager			
Email Address			

MONTHLY SERVICE FEES:	
<b>Phone Services:</b> 27 Phone Lines Unlimited local & long distance	\$945.00
<b>Data Services:</b> <u>Fiber Service</u> Speed: 8X8 Fiber	\$1400.00
	\$2345.00 Total Monthly Cost Plus taxes & Surcharges
Up Front Investment Fiber Install Fee <b>\$2000.00</b>	
<b>Based on a 5 year agreement</b>	

➡ Customer Initial: RL

Equipment need to connect service.	
1 POS/Install	\$4000.00
5yr Smart Net 8X5 NBD	\$600.00
1 Cigo gig Switch	\$2000.00
2 Adtran IADS	\$1600.00
 Total	 \$9800.00

Total \$9800.00

**2. TOTAL FEES.**

Total Monthly Service Fees of \$2345.00 are due upon receipt of the monthly invoice.

Total One-Time Charges of \$2000.00 are due as follows:

3. **SERVICE PERIOD.** The initial Service Period of this Service Order shall begin on the date installation is completed and shall continue for a period of 60 months. Upon expiration of the initial term, this Service Order shall automatically renew for a term of 12 months at NewWave's then-current applicable business rates, unless either party terminates this Service Order by giving thirty (30) days prior written notice to the other party before the expiration of the current term. Video Services are subject to rate increases during the term of the contract as described in Video, Music and Content Services.
4. **NO UNTRUE STATEMENTS.** Customer further represents and warrants to NewWave that neither this Service Order, nor any other information, including without limitation, any schedules or drawings furnished to NewWave contains any untrue or incorrect statement of material fact or omits or fails to state a material fact.
5. **CONFIDENTIALITY.** Customer hereby agrees to keep confidential and not to disclose directly or indirectly to any third party, the terms of this Service Order or any other related Service Orders, except as may be required by law. If any unauthorized disclosure is made by Customer and/or its agent or representative, NewWave shall be entitled to, among other damages arising from such unauthorized disclosure, injunctive relief and a penalty payment in the amount of the total One-Time Charges associated with this Service Order, and NewWave shall have the option of terminating this Service Order, other related Service Orders and/or the Service Agreement. A facsimile of a duly executed Service Order signed by both authorized parties shall be considered evidence of a valid order, and NewWave may rely on such facsimile copy of the Service Order as if it were the original.

**NOW THEREFORE,** NewWave and Customer agree to the terms and conditions included within this Service Agreement, including the Standard Terms of Service which follow, and hereby execute this Service Agreement by their duly authorized representatives.

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

By: Randall Lumb  
 Name: /  
 Title: Chairman

**NewWave Business Manager:**

Name: Michelle Woods  
 Telephone: (270) 978-5308

Sales Code:  
 Fax: (270) 873-2685



➡ Customer Initial: RL

## STANDARD TERMS OF SERVICE

1. **SERVICE.** NewWave agrees to provide the Services during the Service period to the Customer at the site(s) identified in the Service Order(s). "Service Period," is the time period starting on the date the Services are fully functional in all material respects and available for use as described in a Service Order (the "Turn-up Date"), notice of which NewWave shall provide to Customer, and continuing for the number of months specified in the Service Order(s).
  2. **STANDARD PAYMENT TERMS.** Customer agrees to pay the monthly Service fees and one-time charges as set forth in the Service Order(s) incorporated under this Service Agreement by execution thereof by the parties. "Monthly Service Fees" is the amount specified as the monthly fee to be paid by the Customer for the Services. "One-Time Charges" include, but are not limited to, construction, Service installation charge(s), repair, replacement, or any non-recurring charges. "Service Installation Charge" is the amount specified as the fee for installation of equipment and network facilities. "Equipment" means components including, but not limited to, any gateway or edge electronic device, antenna, node, concentrator, bridge, receiver, transmitter, transceiver, router, switch, hub or communications lines/cables that makes up the network of NewWave-provided Equipment, facilities and materials (the "Network") necessary to provide the Services.
    - (a) Monthly Service Fees. Customer agrees to pay Monthly Service Fees in advance of the provision of the Services. Monthly Service Fees are due upon receipt of the invoice.
    - (b) One-Time Charges. Customer agrees to pay the One-Time Charges as described on the applicable Service Order(s).
    - (c) Taxes, Fees and Government Charges. Customer agrees to pay any sales, use, property, excise or other taxes, franchise fees, and governmental charges (excluding income taxes), arising under this Agreement, including, without limitation, applicable state property taxes. A copy of the Customer's tax exemption document, if applicable, must be provided to NewWave to certify tax-exempt status. Tax-exempt status shall not relieve Customer of its obligation to pay any applicable franchise fees.
    - (d) Charges for Change Requests. Any charges associated with Service and Equipment installations, additions, modifications, substitutions, upgrades, reconfigurations, rebuilds or relocations at a site and requested by Customer subsequent to executing a Service Order for that site, are the sole financial responsibility of Customer. NewWave shall notify Customer, orally or in writing, of any additional One-Time Charges and/or adjustments to Monthly Service Fees associated with or applicable to such Customer change requests prior to making any such additions or modifications. Customer's failure to object to such additional charges within three (3) days of receiving such notice shall be deemed an acceptance by Customer of such charges. Customer shall be assessed such additional One-Time Charges and/or adjusted Monthly Service Fees, either (i) in advance of implementation of the change request or (ii) beginning on the Customer's next and/or subsequent invoice(s).
  - (e) Site Visits and Repairs. If Customer's misuse, abuse or modification of the Services, Equipment or Network facilities supplied by NewWave necessitates a visit to the Customer site for inspection, correction or repair, NewWave shall charge Customer a site visit fee as well as charges for any Equipment or Network repair or replacement necessary to restore Service.
  - (f) Invoicing Errors. Customer must provide notice to NewWave of any invoice errors or disputed charges within thirty (30) days of the invoice date on which the errors and/or disputed charges appear in order for Customer to receive any credit that may be due.
  - (g) Late Fees. If Customer fails to pay an invoice within thirty (30) days of issuance, NewWave will issue a notice of late payment. Customer will be charged a late fee of not more than five percent (5%) per month on any outstanding past-due balance.
  - (h) Non-Payment. If Services are disconnected because Customer does not pay the invoice, NewWave may, in its sole discretion, require that Customer pay all past due charges, a reconnect fee, and a minimum of one month's Monthly Service Fees in advance before NewWave will reconnect Services.
  - (i) Returned Checks, Bankcard or Credit Card Charge-Backs and Collection Fees. NewWave may charge a reasonable service fee for all returned checks and bankcard, credit card or other charge card charge-backs.
  - (j) Collection Fees. Customer shall be responsible for all expenses, including reasonable attorney's fees and collection costs, incurred by NewWave in collecting any unpaid amounts due under this Agreement.
3. **SERVICE LOCATION ACCESS AND INSTALLATION.**
    - (a) Access. Customer shall provide NewWave with reasonable access to each Service Location listed on a Service Order as necessary for NewWave to review, install, inspect, maintain or repair any Equipment or Materials necessary to provide the Services. If Customer owns and/or controls the Service Location(s) Customer grants to NewWave permission to enter the site(s) for the exercise of such right. If a site is not owned and/or controlled by Customer then Customer will obtain, with NewWave's assistance, appropriate right of access. If Customer is not able to gain right of access for a site from owner and/or controlling party, NewWave's obligations under this Agreement and the appropriate Service Order for such site are terminated, null and void.
    - (b) Installation Review. NewWave may perform an installation review of each Service Location prior to installation of the Services at that Service Location. Customer may be required to provide NewWave with accurate site and/or physical network diagrams or maps of a Service Location prior to the installation review. NewWave may directly or through its agents inspect the Customer Premises before beginning installation, and shall satisfy itself that safe installation and proper operation of its Equipment and the Services are possible in the location(s) provided by



Customer Initial: \_\_\_\_\_

RL

Customer. If NewWave, in its sole discretion, determines that safe installation and/or activation of one or more of the Services will have negative consequences to NewWave's personnel or Network and/or cause technical difficulties to NewWave or its customers, NewWave may terminate the Service Order effective upon prior written notice to Customer or may require the Customer to correct the situation before proceeding with installation or activation of the Services.

(c) Site Preparation. Customer shall be responsible, at its own expense, for all site preparation activities necessary for delivery and installation of the Equipment and the installation and ongoing provision of Services, including, but not limited to, the relocation of Customer's equipment, furniture and furnishings as necessary to access the Equipment and/or Services. To ensure proper installation of the Equipment and the Services, Customer may be required to provide electrical or other utility service, and/or accurate physical network diagrams and/or maps prior to installation.

(d) Installation. NewWave will schedule one or more installation visits with Customer. Customer's authorized representative must be present during installation. During installation, NewWave shall test to confirm that the Services can be accessed from the Service Location. Customer shall be responsible for access paths, moving or relocating furniture, furnishings, or equipment, or other preparation activities necessary for NewWave to install the Services. Customer shall connect any Equipment provided by NewWave to Customer's computer or network to enable access to the Services. With respect to any excavation, NewWave shall be responsible for reasonable restoration efforts necessary to address any displacement resulting from such excavation.

(e) Ongoing Visits. NewWave will need access to the Customer Premises from time to time for inspecting, constructing, installing, operating and maintaining NewWave's Network facilities, Equipment or materials and/or any related facilities. Except in emergency situations, NewWave will obtain approval from the Customer (not to be unreasonably withheld or delayed) before entering the Customer Premises. At NewWave's request, Customer, or a representative designated by Customer, will accompany NewWave's employees or agents into any unoccupied unit for the purpose of installing, repairing, maintaining, upgrading, and/or removing the Equipment.

#### 4. EQUIPMENT AND MATERIALS.

(a) Responsibilities and Safeguards. Except as otherwise provided in this Service Agreement or any Service Order(s), neither party shall be responsible for the maintenance or repair of cable, electronics, structures, Equipment or materials owned by the other party, provided, however, that subject to the limitations set forth in Indemnification, each party shall be responsible to the other for any physical damage or harm such party causes to the other party's personal or real property through the damage-causing party's negligence or willful misconduct.

Without limiting the foregoing, Customer will not be liable for loss of or damage to cable, electronics,

structures or Equipment owned by NewWave and located on Customer Premises which occurred as a result of the occurrence of any Force Majeure Event, natural disaster or other casualty loss over which Customer has no control.

Customer shall:

- i Safeguard NewWave-provided Equipment against others;
- ii Not add other equipment nor move, modify, disturb, alter, remove, nor otherwise tamper with any portion of the Equipment;
- iii Not hire nor permit anyone other than personnel authorized by NewWave acting in their official capacity to perform any work on the Equipment; and
- iv Not move nor relocate Equipment to another location or use it at an address other than the Service location without the prior written consent of NewWave.

Any unauthorized connection or other tampering with the Services, Equipment, any system or its components shall be cause for immediate disconnection of Services, termination of this Agreement and/or legal action, and NewWave shall be entitled to recover damages, including, but not limited to, the value of any Services and/or Equipment obtained in violation of this Agreement in addition to reasonable collection costs including, but not limited to, reasonable attorneys' fees. Should any antenna, or signal amplification system for use in connection with communication equipment hereafter be installed on the Premises which interferes with the Services provided by NewWave hereunder, Customer acknowledges and agrees that NewWave shall not be obligated to distribute a quality signal to the Premises better than the highest quality which can be furnished as a result of such interference, until such time as the interference is eliminated or corrected by Customer or a third party.

(b) Ownership. Customer understands and agrees that notwithstanding any other provision contained herein to the contrary, all Equipment and materials installed or provided by NewWave are and shall always remain the property of NewWave, shall not become a fixture to the Premises, and must be returned to NewWave at any time Services are disconnected in the condition in which they were received subject to ordinary wear and tear. Customer will not sell, lease, assign nor encumber any Equipment.

(c) Equipment Return, Repair and Replacement. Immediately upon termination of Services ("Termination" shall mean the termination of the Service Agreement and/or Service Order(s)), Customer shall return the Equipment supplied by NewWave to NewWave in good condition. Failure to return Equipment within ten (10) days after Services are terminated will result in a charge to Customer's account equal to the full retail cost of replacement of the unreturned Equipment. In addition, Customer agrees to pay for the repair or replacement of any damaged Equipment (whether or not caused by Customer's negligent act, except such repairs or replacements as may be necessary due to normal and ordinary wear and tear or material/workmanship

Customer Initial: RL

defects), together with any costs incurred by NewWave in obtaining or attempting to regain possession of such Equipment, including, but not limited to, reasonable attorneys' fees.

5. **VIDEO, MUSIC AND CONTENT SERVICE.** This Video, Music and Content Service section shall only apply if Video, Music and Content Services are included in this Service Agreement or any related Service Order. Continued reception of the Video Services is subject to these Terms and Conditions. NewWave may, in its sole discretion, preempt, rearrange, delete, add, discontinue, modify or otherwise change any or all of the advertised programming, packaging, and distribution of its Video Services or of any of NewWave's Video Services packages.

(a) Payment Terms. Increases in any and all programming, license, copyright, retransmission and/or other costs, charges, fees or amounts including, without limitation, taxes and any and all other governmental fees, charges and/or other amounts, shall not be deemed to be included in the Monthly Service Fees or limited by any provision in this Agreement, and may be passed onto Customer at any time when such costs are incurred by, assessed or required of NewWave.

The initial Monthly Service Fees shall remain in effect for the first 12-months of this Agreement. Thereafter, NewWave may increase the Monthly Service Fees from time to time upon thirty (30) days' prior written notice to Customer. Customer hereby agrees to any such increases that do not exceed ten percent (10%) of the Customer's total Monthly Service Fees incurred in the month immediately preceding the month in which the increase is to be effective. Increases shall not occur more frequently than once per 12-month period. In the event such increased Monthly Service Fee would exceed the amount permitted under applicable law, the Monthly Service Fees shall be increased only to the maximum allowable under applicable law. Notwithstanding the foregoing, increases in any and all programming, license, copyright, retransmission and/or other costs, charges, fees or amounts including, without limitation, taxes and any and all other governmental fees, charges and/or other amounts, shall not be limited by any provision in this Agreement, and may be passed onto Customer at any time when such costs are passed on to NewWave.

In the event of an increase in the Monthly Service Fees exceeding ten percent (10%) of the Monthly Service Fees in the immediately preceding month, Customer, at its option, may terminate this Agreement without early Termination Charges by providing written notice to NewWave within thirty (30) days of NewWave's notice of such increase in the Monthly Service Fees. Customer's failure to provide NewWave notice of Termination within such thirty (30) day period shall constitute an acceptance of such increase in the Monthly Service Fees exceeding ten percent (10%).

(b) Music Rights Fees. In all cases, Customer is responsible for and must secure any music rights and/or pay applicable fees required by the American Society of Composers, Authors & Publishers ("ASCAP"), Broadcast Music, Inc. ("BMI") and

SESAC, Inc. ("SESAC") or their respective successors, and any other entity, person or governmental authority from which a license is necessary or appropriate in connection with Customer's transmission, retransmission, communication, distribution, performance or other use of the Services.

(c) Premium and Pay-Per-View. Customer may not exhibit any premium Services such as HBO or Showtime in any public or common viewing area. Customer may not order or request Pay-Per-View (PPV) programming for receipt, exhibition or taping in a commercial establishment. Customer may not exhibit nor assist in the exhibition of PPV programming in a commercial establishment unless explicitly authorized to do so by agreement with an authorized program provider and subject to NewWave's prior written consent. If Customer fails to abide by these restrictions, in addition to all other liability and not by way of limitation, Customer accepts liability for any and all claims made against Customer or NewWave of any unauthorized commercial exhibition and Customer agrees to indemnify and hold NewWave harmless from any loss, cost, liability, or expense, including reasonable attorney's fees, arising from a breach of this provision.

(d) Provision of Service. NewWave may, in its sole discretion, from time to time, rearrange, delete, add or otherwise change packaging and programming of Services contained in NewWave's basic cable, Digital Music or other Services provided pursuant to this Agreement. Customer acknowledges that NewWave has the right at any time to preempt without notice specific advertised programming and to substitute programming that NewWave deems to be comparable.

(e) Restrictions. Customer shall not and shall not authorize or permit any other person to (i) copy, record, dub, duplicate, alter, make or manufacture any recordings or other reproductions of the Services (or any part thereof); (ii) transmit the Services (or any part thereof) by any television or radio broadcast or by any other means or use the Services (or any part thereof) outside the Service Location. Customer acknowledges that such duplication, reproduction or transmission may subject Customer to criminal penalties and/or civil liability and damages under applicable copyright and/or trademark laws. Customer shall not, and shall not authorize or permit any other person to (i) charge a cover charge or admission fee to any Service Location(s) at the time the Services (or any part thereof) are being performed or are to be performed; (ii) permit dancing, skating or other similar forms of entertainment or physical activity in conjunction with the performance of the Services (or any part thereof) unless Customer can demonstrate to the reasonable satisfaction of NewWave that Customer or a third-party has obtained a then-current music license permitting such activity; or (iii) insert any commercial announcements into the Services or interrupt any performance of the Services for the making of any commercial announcements. If Customer fails to abide by these restrictions, Customer accepts liability for any and all claims made against Customer or NewWave due to any unauthorized commercial exhibition and Customer agrees to indemnify and hold NewWave harmless

➡ Customer Initial: RL

from any damages, loss, cost, liability, or expense, including reasonable attorneys' fees, arising from a breach of these restrictions.

6. **INTERNET ACCESS SERVICE.** Continued use of the Internet Service is subject to these Terms and Conditions. NewWave may provide the Internet Services in partnership with other companies ("Partners"). Customer agrees to abide by the terms and conditions of Partners' Services.

- (a) Equipment and Software Requirements. Customer shall maintain certain minimum Equipment and software to receive the Service. Please refer to [www.NewWave-business.com](http://www.NewWave-business.com) (or the applicable successor URL) for the current specifications.
- (b) Internet Service Speeds. NewWave shall use commercially reasonable efforts to achieve the Internet speed selected by the Customer on the Service Order. However, Customer understands and agrees that such speeds may vary.
- (c) Access and Use. Customer agrees to ensure that any person who has access to the Internet Services through Customer's computer(s), Service Location, facilities or account shall comply with the terms of this Agreement. Customer shall be responsible for all charges incurred and all conduct, whether authorized or unauthorized, caused by use of Customer's computers, service locations, facilities or account using the Internet Services.
- (d) Security. Customer shall be responsible for the implementation of reasonable security procedures and standards. NewWave may temporarily discontinue or disconnect the Internet Services upon learning of a breach of security and will attempt to contact Customer in advance, if possible. The temporary discontinuation or disconnection of the Internet Services shall not constitute a breach of this Agreement.
- (e) Electronic Addresses. All e-mail addresses, e-mail account names, and IP addresses ("Electronic Addresses") provided by NewWave are and shall remain the property of NewWave. Customer may not alter, modify, sell, lease, assign, encumber or otherwise tamper with the Electronic Addresses.
- (f) No Liability for Changes of Address. Due to growth, acquisitions and changes in technology, NewWave reserves the right to change addressing schemes, including e-mail and IP addresses.
- (g) No Liability for Risks of Internet Use. The cable network is a shared network and NewWave does not warrant that Service will be error-free. The Service, NewWave's network and the Internet are not secure, and others may access or monitor the Customer's traffic. NewWave does not warrant that data or files sent or received by the Customer over the Network will not be subject to unauthorized access by others, that other users will not gain access to the Customer's data, nor that the data or files will be free from computer viruses or other harmful components. NewWave has no responsibility and assumes no liability for such acts or occurrences.
- (h) No Liability for Purchases. Through use of the Service, the Customer may access certain information, products and services of others, for which

there is a charge. The Customer shall be solely liable and responsible for all fees or charges for these online services, products or information. NewWave shall have no responsibility to resolve disputes with other vendors.

- (i) Blocking and Filtering. While the computer industry may provide blocking and filtering software that empowers Customer to monitor and restrict access to Customer's computer and its data, NewWave is not the publisher of this software. NewWave strongly recommends that the Customer employ a "firewall" or other security software. The Customer assumes all responsibility for providing and configuring any "firewall" or security measures for use with the Service. NewWave shall not be responsible in any manner for the effectiveness of these blocking and filtering technologies. NewWave does not warrant that other users will be unable to gain access to Customer's computer(s) and/or data even if the Customer utilizes blocking and filtering technologies.
- (j) Acceptable Use Policy. Customer agrees to comply with the terms of NewWave's Acceptable Use Policy ("AUP"), found at [www.NewWave-business.com](http://www.NewWave-business.com) (or the applicable successor URL) and that policy is incorporated by reference into this Agreement. Customer represents and warrants that Customer has read the AUP and agrees to be bound by its terms as they may from time to time be amended, revised, replaced, supplemented or otherwise changed. Customer expressly understands and agrees that the AUP may be updated or modified from time to time by NewWave, with or without notice to Customer. NewWave may discontinue or disconnect Services immediately for any violation of the NewWave AUP with or without notice to Customer.

7. **NO THIRD-PARTY HARDWARE OR SOFTWARE SUPPORT.** Customer is responsible for the installation, repair and use of Customer-supplied third-party hardware and/or software. NewWave does not support third-party hardware or software supplied by Customer. Any questions concerning third-party hardware or software should be directed to the provider of that product. NewWave assumes no liability or responsibility for the installation, maintenance, compatibility or performance of any Customer-supplied hardware or software with the Services. If such third-party equipment or software impairs the Services, Customer shall remain liable for payments as agreed without recourse for credit or prorated refund for the period of impairment. NewWave has no responsibility to resolve the difficulties caused by such third-party equipment or software. If, at Customer's request, NewWave should attempt to resolve difficulties caused by such third-party equipment or software, such efforts shall be performed at NewWave's discretion and at then-current commercial rates and terms.

8. **CUSTOMER USE.** Customer agrees not to re-sell or re-distribute access to the Service(s) or system capacity, or any part thereof, in any manner without the express prior written consent of NewWave. Customer agrees not to use or permit third parties to use the Service(s), including but not limited to the Equipment and software provided by NewWave, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material. Customer agrees not to interfere with other customers' use of the Equipment or Services or disrupt the NewWave

Network, backbone, nodes or other Services. Violation of any part of this section is grounds for immediate Termination of this Service Agreement and/or all Service Orders in addition to any other rights or remedies NewWave may have hereunder.

9. **PERFORMANCE.** NewWave will use commercially reasonable efforts in keeping with normal industry standards to ensure that the Service is available to Customer twenty-four (24) hours per day, seven (7) days per week. It is possible, however, that there will be interruptions of Service. Specifically, Customer understands and agrees that the Service may be unavailable from time to time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond NewWave's reasonable control. Temporary service interruptions/outages for such reasons, as well as service interruptions/outages caused by the Customer, its agents and employees, or by a Force Majeure Event, shall not constitute a failure by NewWave to perform its obligations under this Service Agreement, and Customer will not hold NewWave at fault for loss of Customer revenue or lost employee productivity due to Service outages.

10. **DEFAULT; SUSPENSION OF SERVICE; TERMINATION.** No express or implied waiver by NewWave of any event of default shall in any way be a waiver of any further subsequent event of default. Nothing herein, including, but not limited to Termination, shall relieve Customer of its obligation to pay NewWave all amounts due.

(a) Default by Customer. Customer shall be in default under this Service Agreement in the event that the Customer does one (1) or more of the following (each individually to be considered a separate event of default) and the Customer fails to correct each such noncompliance within twenty (20) days of receipt of written notice in cases involving non-payment or within thirty (30) days of receipt of written notice in cases involving any other noncompliance:

- i Customer is more than thirty (30) days past due with respect to any payment required hereunder;
- ii Customer otherwise has failed to comply with the terms of this Service Agreement or any other Service Order(s) incorporated herein by execution thereof by the parties; or
- iii Customer files or initiates proceedings or has proceedings filed or initiated against it, seeking liquidation, reorganization or other relief (such as appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law and such proceedings are not dismissed within sixty (60) days.

(b) NewWave's Right to Terminate and Termination Charge. In the event Customer is in default, NewWave shall have the right, at its option, and in addition to any other remedies it may have, to:

- i Immediately suspend Services to the Customer until such time as the underlying noncompliance has been corrected without affecting Customer's on-going obligation to pay NewWave any amounts due under this Agreement (e.g., the Monthly Service Fees), as if such suspension of Services had not taken place;

- ii Terminate the Services; or
- iii After the occurrence of two (2) such events of Customer default in any twelve (12) month period of time, terminate this Service Agreement and/or any or all of the applicable Service Order(s).

If Termination is due to noncompliance by the Customer, Customer must pay NewWave a Termination charge (a "Termination Charge"), which the parties recognize as liquidated damages. This Termination Charge shall be equal to one hundred percent (100%) of the unpaid balance of the Monthly Service Fees that would have been due throughout the remainder of the applicable Service Period plus one hundred percent (100%) of (a) the outstanding balance of any and all One-Time Charges and (b) any and all previously waived One-Time Charges.

(c) Default by NewWave. NewWave shall be in default under this Service Agreement in the event that NewWave does one (1) or more of the following (each instance individually to be considered a separate event of default), and NewWave fails to remedy each such noncompliance or occurrence within thirty (30) days of receipt of written notice from Customer describing in reasonable detail the nature, scope and extent of the default or noncompliance:

- i NewWave fails to comply with the terms of this Service Agreement and/or any or all of the applicable Service Order(s);
- ii NewWave files or initiates proceedings or has proceedings filed or initiated against it, seeking liquidation, reorganization or other relief (such as appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law and such proceedings are not dismissed within sixty (60) days.

(d) Customer's Right to Terminate and Termination Charge.

- i Customer shall have the right, at its option and in addition to any other remedies it may have, to terminate any applicable Service Order(s), if the underlying event of default and/or noncompliance by NewWave is limited to Services provided under the applicable Service Order(s) or this Service Agreement, if such noncompliance is not so limited, provided that NewWave's diligent efforts to correct such breach are not commenced and pursued within thirty (30) days after NewWave's receipt of a written notice from the Customer describing in reasonable detail the nature, scope and extent of the event of default/noncompliance.
- ii If Termination is due to noncompliance by NewWave, NewWave shall reimburse Customer for any pre-paid, unused Monthly Service Fees attributable to such terminated Service Order(s). In addition, if Termination is due to noncompliance by NewWave within one (1) year of the applicable Turn-Up Date, NewWave shall pay a Termination Charge, which the parties recognize as liquidated damages, equal to a portion of any One-Time Charge that has already been paid by the Customer to NewWave relative to Service at the sites covered by the terminated

Service Order. This Termination Charge NewWave must pay Customer shall be equal to the product of a) the number of months (or portion thereof) remaining in the initial twelve (12) months of the initial Service Period at the time of Termination and b) a ratio in which the numerator is the total of One-Time Charges paid to date and the denominator is twelve (12).

- iii Notwithstanding any provision herein to the contrary, Customer, at its option, may terminate this Agreement without early termination charges by providing written notice to NewWave not more than thirty (30) days following receipt from NewWave of notice of any increase in the Monthly Service Fees attributable to Video Services exceeding ten percent (10%) of the Monthly Service Fees attributable to the Video Service in the immediately preceding month. Customer's failure to provide NewWave notice of Termination within such thirty (30) days period shall constitute an acceptance of such increase in the Monthly Service Fees exceeding ten percent (10%).

11. **LIMITATION OF LIABILITY.** PLEASE READ THIS SECTION CAREFULLY, IT CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY.

- (a) Limited Warranty. At all times during the Service Period, NewWave warrants that it will use commercially reasonable efforts in keeping with industry standards to cause the Services to be available to the Customer.

THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL EXPRESS AND IMPLIED WARRANTIES WHATSOEVER.

EXCEPT AS OTHERWISE STATED IN THIS SERVICE AGREEMENT, NEWWAVE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE PROVIDED HEREUNDER AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

WITHOUT LIMITING ANY EXPRESS PROVISIONS PROVIDED FOR ELSEWHERE IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES HEREUNDER (INCLUDING ANY SERVICE IMPLEMENTATION DELAYS AND/OR FAILURES), UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

THE FOREGOING LIMITATIONS APPLIES TO ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT,

BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

Any warranty claim by Customer must be made within thirty (30) days after the applicable Services have been performed. NewWave's sole obligation and Customer's sole remedy, with respect to any breach of the limited warranty set forth herein, shall be a prorated refund of the fees paid by Customer based on the period of time when the Services are out of compliance with this limited warranty provision.

- (b) Content. Customer acknowledges that any content that Customer may access or transmit through any Service is provided by independent content providers, over which NewWave does not exercise and disclaims any control. NewWave neither previews content nor exercises editorial control; does not endorse any opinions or information accessed through any Service; and assumes no responsibility for content. NewWave specifically disclaims any responsibility for the accuracy or quality of the information obtained using the Service. Such content or programs may include, without limitation, programs or content of an infringing, abusive, profane or sexually offensive nature. Customer and their authorized users accessing other parties' content through Customer's facilities do so at Customer's own risk, and NewWave assumes no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such content.

- (c) Damage, Loss or Destruction of Software Files and/or Data. Customer agrees that Customer uses the Services and Equipment supplied by NewWave at its sole risk. NewWave does not manufacture the Equipment, and the Services and Equipment are provided on an "as is basis" without warranties of any kind.

NewWave assumes no responsibility whatsoever for any damage to or loss or destruction of any of Customer's hardware, software, files, data or peripherals which may result from Customer's use of any Service or from the installation, maintenance or removal of any Service, Network, or related Equipment or software. NewWave does not warrant that data or files sent by or to Customer will be transmitted in uncorrupted form or within a reasonable period of time.

- (d) Unauthorized Access. If Customer chooses to run or offer access to applications from its equipment that permits others to gain access through the Network, Customer must take appropriate security measures. Failing to do so may cause immediate Termination of Customer's Service by NewWave without liability for NewWave. NewWave is not responsible for and assumes no liability for any damages resulting from the use of such applications, and Customer shall hold NewWave harmless from and indemnify NewWave against any claims, losses, or damages arising from such use. NewWave is not responsible and assumes no liability for losses, claims, damages, expenses, liability, or costs resulting from others accessing the Customer's computers, its internal network and/or the Network through Customer's equipment, and Customer shall hold NewWave harmless from and

indemnify NewWave against any such claims, losses, or damages to the full extent arising from such access.

(e) Force Majeure Event. Customer agrees that NewWave shall not be liable for any inconvenience, loss, liability or damage resulting from any failure or interruption of Services, directly or indirectly caused by circumstances beyond NewWave's control, including but not limited to denial of use of poles or other facilities of a utility company, labor disputes, acts of war or terrorism, criminal, illegal or unlawful acts, natural causes, mechanical or power failures, or any order, law or ordinance in any way restricting the operation of the Services.

12. **INDEMNIFICATION.** In addition to its specific indemnification responsibilities set forth elsewhere in this Service Agreement and as permissible under applicable law, Customer agrees, at its own expense, to indemnify, defend and hold harmless NewWave and its directors, employees, representatives, officers and agents, (the "Indemnified Parties") against any and all claims, liabilities, lawsuits, damages, losses, judgments, costs, fees and expenses incurred by NewWave Indemnified Parties, including but not limited to, reasonable attorneys' fees and costs incurred by NewWave Indemnified Parties in enforcing its rights under this Service Agreement, to the full extent that such arise from Customer's misrepresentation with regard to or noncompliance with the terms of this Service Agreement and any or all Service Orders, Customer's failure to comply with applicable law, and/or Customer's negligence or willful misconduct. NewWave Indemnified Parties shall have the right but not the obligation to participate in the defense of the claim at Customer's cost and Customer agrees to cooperate with NewWave Indemnified Parties in such case.

13. **TITLE.** Title to the Network facilities shall remain with NewWave during the applicable Service Period. Customer shall keep that portion of the Network located on Customer Premises free and clear of all liens, encumbrances and security interests. Upon Termination of Service or expiration of a Service Order's Service Period for a specific site, NewWave shall have the right to remove all Network components and/or leave any of such components in place, assigning title and interest in such components to the Customer, it being understood that no further notice or action is required to accomplish the assignment contemplated hereunder. NewWave shall have the right to remove the Network and all components within sixty (60) days after such Termination.

14. **COMPLIANCE WITH LAWS.** Customer shall not use or permit third parties to use the Services in any manner that violates applicable law or causes NewWave to violate applicable law. Both parties shall comply with all applicable laws and regulations when carrying out their respective duties hereunder.

15. **PRIVACY.** NewWave treats private communications on or through its Network or using any Service as confidential and does not access, use or disclose the contents of private communications, except in limited circumstances and as permitted by law. NewWave also maintains a Privacy Policy with respect to the Services in order to protect the privacy of its customers. The Privacy Policy can be found on NewWave's website at [www.Newwavecom.com](http://www.Newwavecom.com). Customer represents and warrants that Customer has read the Privacy Policy and

agrees to be bound by its terms. Customer expressly understands and agrees that the Privacy Policy may be updated or modified from time to time by NewWave, with or without notice to Customer.

16. **GENERAL CUSTOMER REPRESENTATIONS AND OBLIGATIONS.** Customer represents to NewWave that Customer has the authority to execute, deliver and carry out the terms of this Service Agreement and associated Service Orders. Customer also represents that any person who accesses any Services through Customer's equipment or through the Network facilities in Customer's Premises will be an authorized user, will use the Service, Network and/or Network facilities in an appropriate and legal manner, and will be subject to the terms of this Service Agreement. Customer shall be responsible for ensuring that all such users understand the Service Agreement and comply with its terms.

The Customer shall be responsible for all access to and use of the Service by means of the Customer's equipment, whether or not the Customer has knowledge of or authorizes such access or use. The Customer shall be solely liable and responsible for all charges incurred and all conduct through either authorized or unauthorized use of the Service, until the Customer informs NewWave of any breach of security.

NewWave expressly prohibits using the Service for the posting or transferring of sexually explicit images, material inappropriate for minors, or other offensive materials. By signing, Customer expressly acknowledges that Customer will not post or transfer or permit others to post or transfer such materials using the Service.

17. **NOTICES.** Any notices to be given under this Service Agreement shall be validly given or served only if in writing and sent by nationally recognized overnight delivery service or certified mail, return receipt requested, to the following addresses:

If to NewWave:

NewWave Communications  
ATTN: General Manager  
5026 South Hwy 27  
Somerset, KY 42501

If to Customer:

Each party may change its respective address(es) for legal notice by providing notice to the other party.

18. **MISCELLANEOUS.**

(a) Entire Agreement. This Service Agreement and any related, executed Service Order(s) constitute the entire Agreement with respect to the Services, Network and Equipment. This Service Agreement supersedes all prior understandings, promises and undertakings, if any, made orally or in writing by or on behalf of the parties with respect to the subject matter of this Service Agreement.

(b) No Amendments, Supplements or Changes. This Service Agreement and the associated executed Service Order(s) may not be amended, supplemented or changed without both parties' prior written consent.

(c) No Assignment or Transfer. The parties may not assign or transfer (directly or indirectly by any means, by operation of law or otherwise) this Service

Customer Initial: RL

Agreement and the associated Service Order(s), or their rights or obligations hereunder to any other entity without first obtaining written consent from the other party, which consent shall not be unreasonably withheld, provided, however, that NewWave may assign this Service Agreement and the associated executed Service Order(s) to affiliates controlling, controlled by or under common control with NewWave, or to its successor-in-interest in the event NewWave sells the underlying communications system, without Customer's consent.

- (d) Severability. If any term, covenant, condition or portion of this Service Agreement, any related, executed Service Order(s) shall, to any extent, be invalid or unenforceable, the remainder of this Service Agreement, any related, executed Service Order(s), shall not be affected and each remaining term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law.
- (e) Section Headings. The section headings are furnished for the convenience of the parties and are not to be considered in the construction or interpretation of this Service Agreement.
- (f) Governing Law. This Service Agreement and all matters arising out of or related to this Agreement shall be governed by the laws of the State of Missouri, without regard to conflicts of law provisions. Customer agrees that the federal and state courts of Missouri alone have jurisdiction over all disputes arising under this Agreement, and Customer consents to personal jurisdiction of those courts with respect to any disputes arising under this Agreement. IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING

OUT OF OR RELATING TO THIS AGREEMENT, ITS NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, CUSTOMER AND NEWWAVE EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.

- (g) Jointly Drafted. Both parties hereby acknowledge that they participated equally in the negotiation and drafting of this Service Agreement and any related, executed Service Order(s) and that, accordingly, no court construing this Service Agreement and any related, executed Service Order(s) shall construe it more stringently against one party than against the other.
- (h) No Third Party Beneficiaries. The parties agree that the terms of this Service Agreement and the parties' respective performance of obligations as described are not intended to benefit any person or entity not a party to this Service Agreement, that the consideration provided by each party under this Service Agreement only runs to the respective parties hereto, and that no person or entity not a party to this Service Agreement shall have any rights under this Service Agreement nor the right to require the performance of obligations by either of the parties under this Service Agreement.
- (i) Waiver. Except as otherwise provided herein, the failure of NewWave to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.