

From: Jeffrey Hoskins <jhoskins@newwavecom.com>

To: wdonahued2 <wdonahued2@aol.com>

Subject: NewWave Service Agreement

Date: Tue, Oct 9, 2012 8:18 am

Attachments: Submitted_Master_Agreement_-_Vermilion_Manor_-_10.09.12.pdf (368K)

Bill,

I did confirm that there was a line extender that was going bad and had to be replaced. We should be good on the plant side of our network. I am sure that the 50x5 internet will provide amazing results on your side of the network. I have attached the new service agreement. Please let me know if you have any questions.

Thanks,

Jeff Hoskins

Business Sales Manager

NewWave

Communications

Westville, Illinois

phone: 812-830-8070

fax: 217-267-9865

jhoskins@newwavecom.com





NewWave Communications Company

Service Agreement

REPRESENTATIVE NAME: **Jeff Hoskins**

TITLE: **Business Services Manager**

AGREEMENT DATE: 10/09/12

AGREEMENT INITIAL TERM: 60 MONTH(S):

Either party may terminate this Service Agreement at the end of the Initial Term by providing not less than thirty (30) days written notice to the other party prior to the end of the Initial Term. If neither party provides such written notice of termination at least thirty (30) days prior to the end of the Initial Term, this Agreement shall continue for additional one-year periods (each a "Renewal Term").

CUSTOMER NAME: Vermilion Manor ATTN: Bill Donahue

BILLING ADDRESS: 14792 Catlin-Tilton Rd Danville, IL 61834

PHONE: (217) 443-6430 Fax: (217) 443-1558

MAIN PHONE: (217) 443-6430

EMAIL ADDRESS: wdonahued2@aol.com FEDERAL TAX ID #: _____

TAX EXEMPTION: _____ FEDERAL _____ STATE _____ COUNTY _____ CITY

IF TAX EXEMPT, A COPY OF TAX EXEMPTION CERTIFICATES MUST ACCOMPANY CONTRACT

SITE NAME: Vermilion Manor

INSTALL ADDRESS: 14792 Catlin-Tilton Rd Danville, IL 61834

INSTALL CONTACT: Bill Donahue PHONE: (217) 443-6430 FAX: (217) 443-1558

CELL/PAGER: (217)474-6403

VOICE SERVICES

INITIAL LOCAL CARRIER: _____

SELECTED LOCAL CARRIER: New Wave Communications

INITIAL INTRALATA CARRIER: _____

SELECTED INTRALATA CARRIER: New Wave Communications

INITIAL LD CARRIER: _____

SELECTED LD CARRIER: New Wave Communications

SPECIAL INSTRUCTIONS:

PHONE INFORMATION				
SERVICE DESCRIPTION		QTY	EACH	TOTAL
Advanced Business Lines (ABS) Include: Unlimited Local Calls, Unlimited US Outbound (1+) Long Distance, Caller ID, Voice Mail, call forwarding with remote access and call transfer disconnect.		n/a		

CUSTOMER AUTHORIZATION

Customer acknowledges and agrees that it assumes the responsibility for notifying its current carrier(s) that it has changed and/or disconnected its current carrier(s) services to avoid incurring future charges from its current carrier(s). If customer adds or makes changes to services, the contract term for these services is coterminous with the length of the Customer's original contract term.

NewWave Communications will pass through any third-party charges incurred by NewWave Communications as a result of hosting the customer's DNS, including, but not limited to domain name, registration and renewal charges.

Liquidated Damages: Because NewWave relies upon Customer to complete the Initial Term of this Agreement, if Customer or its successor in interest or assignee elects to terminate any or all Services provided pursuant to this Service Agreement (or Services added by Customer later) prior to the expiration of the Initial Term or a Renewal Term, NewWave will suffer damages. Therefore, in the event of early termination Customer agrees to pay NewWave, as liquidated damages and not as a penalty, 50% of the unpaid balance of the MRCs that would have been due throughout the remainder of the applicable Term plus 100% of (1) the outstanding balance of any and all OTCs plus (2) any and all previously waived OTCs. Customer agrees that the actual damage to NewWave is difficult to ascertain and the amounts fixed for Liquidated damages are a reasonable estimate of the actual reduction in the value of the Service Agreement that NewWave will sustain in the event of Customer's early termination.

Partial Cancellations: NewWave's prices are conditioned on Customer's continuing Services and quantities of Services contained in this Service Agreement. In the event Customer elects to cancel Services equivalent to 25% or more of the total initial contract value, NewWave may seek the liquidated damages described above for any percent decrease of contract value greater than 25%.

NewWave Service Agreement Definitions:

"Customer" refers to the entity on whose behalf this Agreement is being executed. "NewWave" refers to NewWave Communications subsidiary that operates in the state in which the customer obtains service. "Effective Date" is the date this Agreement is executed by NewWave. This Service Agreement includes the NewWave Communications Terms and Conditions of Commercial Services attached hereto and posted at www.newwavecom.com/business.

AGREED TO BY: Vermilion Manor DATE: 12/15/2011

TITLE: VP of Sales

CUSTOMER SIGNATURE: [Signature] PRINTED NAME: Vermilion Manor

AGREED TO BY: **NEWWAVE COMMUNICATIONS** DATE: _____

TITLE: BUSINESS SERVICES MANAGER

SIGNATURE: _____

NewWave Communications Terms and Conditions of Commercial Services

Following are the terms and conditions that govern the relationship between you ("Customer") and NewWave Communications ("NewWave") regarding the commercial services that you have selected on the Services Agreement. Services may include cable television service, Internet service and telephone voice service (collectively the "Services"). The terms and conditions of commercial services set forth in this document (the "Agreement") and in any applicable Tariff(s) on file with the FCC, state utility commission or other comparable state agency and any documents referenced herein are binding upon you. We may change our Services and/or the terms and conditions of this Agreement in the future. Unless this Agreement or applicable law specifies otherwise, we will give you thirty (30) days prior notice of any material changes. If you find the change unacceptable, you may have the right to cancel your Service(s). However, if you continue to receive Service(s) after the end of the notice period, we will consider that you have accepted the changes. The current version of this Agreement may always be found at www.newwavecom.com/business. You may not modify this Agreement by making any typed, handwritten, or any other changes to it for any purpose.

SERVICE. NewWave shall provide the Services to Customer at the site(s) identified in the Service Agreement ("Site") for the Initial Term specified therein and any subsequent Renewal Terms (collectively the "Term").

PAYMENT TERMS. Customer shall pay fees and charges for the Services in the amount specified on the Service Agreement in accordance with this Agreement. A one-time charge ("OTC") is a non-recurring charge for construction, installation, repair, replacement, or any other non-recurring costs or charges. "Equipment" means the components (e.g., any gateway or edge electronic device, node, router, switch, communications lines/cables, etc.) that make up the Network. "Network" means all of the physical elements necessary to provide the Services.

Charges. Customer shall pay all associated charges associated with the Service(s), as set forth or referenced in the applicable Service Agreement or invoiced by NewWave. These charges may include, but are not limited to a monthly recurring charges ("MRC"), any OTC, usage charges such as, pay-per-view charges, and applicable federal, state, and local taxes, fees, surcharges and recoupments (however designated), MRCs shall be subject to increases attributable to cable programming based on actual increases, license, copyright, retransmission and/or other similar costs imposed upon NewWave, NewWave shall provide not less than thirty (30) days prior notice to Customer of any MRC change. If Customer's misuse, abuse or modification of the Services, Equipment or Network results in a visit to the Site for inspection, correction or repair, NewWave may charge Customer a Site visit fee as well as charges for any resulting Equipment or Network repair or replacement, which may be necessary.

Invoicing and Payment. Customer must provide written notice to NewWave of any invoice errors or disputed charges within 30 days of the invoice date on which the errors and/or disputed charges appear for Customer to receive any credit that may be due. Customer must have and present a reasonable basis for disputing any amount charged. Undisputed amounts not paid within 30 days of the invoice date shall be past due and subject to a late fee of not more than 1.5% per month of the maximum amount permitted by law. ~~If Services are suspended due to late payment, NewWave may require that Customer pay all past due charges, a reconnect fee, and one or more MRCs in advance before reconnecting Services. NewWave may charge a reasonable service fee for all returned checks and bank card, credit card or other charge card charge-backs. Customer shall be responsible for all expenses, including reasonable attorney fees and collection costs, incurred by NewWave in collecting any unpaid amounts due under this Agreement.~~ 60

Taxes, Surcharges, and Fees. Customer shall pay any sales, use, property, excise or other taxes, franchise fees, and governmental charges (excluding income taxes) arising under this Agreement, in addition to any surcharges that may be imposed as may be permitted under and consistent with applicable law. A copy of 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. NewWave reserves the right from time to time to change the surcharges for Services under this Agreement to reflect the charges or payment obligations imposed on NewWave which NewWave is permitted or required under applicable law to pass through to Customer (e.g., universal service fund ("USF") charges, franchise fees etc.).

Change Requests. Any charges associated with Service and Equipment installations, changes, or additions requested by Customer subsequent to executing a Service Agreement for the Site(s) are the sole financial responsibility of Customer. NewWave shall notify Customer, in writing, of any additional OTCs and/or adjustments to MRCs associated with or applicable to such Customer change requests prior to making any such additions or modifications. Customer's failure to accept such additional charges within three days of receiving such notice shall be deemed a rejection by Customer, and NewWave shall not be liable to perform any work giving rise to such charges. For accepted charges, Customer shall be assessed such additional OTCs and/or adjustments of the MRCs either in advance of implementation of the change request, or beginning on Customer's next and/or subsequent invoice(s).

Satisfaction Guarantee. If there is a material failure by NewWave in the provision of the services to Customer (excluding billing issues) during the initial sixty (60) days following the first installation of Services ("Satisfaction Period"), and NewWave fails to cure such material failure within ten (10) days of receipt of written notice of such failure from Customer, Customer may terminate this Agreement without incurring liquidated damages (as described herein) by delivering written notice of such termination to NewWave at the address provided herein and making payment of any outstanding balance for Services rendered by NewWave to Customer through the date of the written notice of termination. Customer may not exercise this Satisfaction Period termination clause if a material failure by NewWave in the provision of Services cannot reasonably be cured within ten (10) days if NewWave begins to cure the failure within ten (10) days and continues actively and diligently in good faith to cure such failure.

SITE ACCESS AND INSTALLATION.

Access. NewWave will require reasonable access to each Site as necessary to review, install, inspect, maintain or repair any Equipment or Materials necessary to provide the Services. If Customer owns or controls the Site(s), Customer grants NewWave permission to enter the Site for the exercise of such right. If a Site is not owned and/or controlled by Customer, Customer will obtain, appropriate right of access. If such right of access is not obtained, then NewWave's obligations with respect to such Site shall be considered null and void.

Site Preparation. Customer shall be responsible for necessary preparations at the Site for delivery and installation of Equipment and the installation and ongoing provision of Services, including the relocation of Customer's equipment, furniture and furnishings as necessary to access the Equipment or Services. Upon request, Customer shall provide any available electrical, utility service, and/or general physical network diagrams or maps prior to installation or maintenance work to be undertaken by NewWave.

Installation. NewWave will schedule one or more installation visits with Customer. Customer's authorized representative must be present

during installation. If during the course of installation NewWave determines additional work is necessary to enable NewWave to deliver the Services to the Site, NewWave will notify Customer of any additional OTCs. If Customer does not agree to pay such OTCs by executing a revised Service Agreement within five business days of receiving the same, Customer and NewWave shall each have the right to terminate the applicable Service Agreement. Customer shall connect Customer's computer or network to applicable NewWave-provided Equipment to enable access to the Services. NewWave shall be responsible for reasonable restoration efforts necessary to address any displacement resulting from excavation. Customer acknowledges and agrees that if Customer causes an installation delay of any Service that lasts longer than thirty (30) days past the Customer's originally scheduled installation date and NewWave has incurred charges from any vendor, Customer will pay all applicable MRC's for Services as if all Services were installed on the thirty-first (31st) day past the original installation due date. Additionally, in the event installation delays occur for any reason, NewWave shall not be responsible for charges imposed on Customer by Customer's previous service provider(s) and/or the difference between such charges and the charges that NewWave would have imposed pursuant to this Agreement.

Installation Review; Interference. NewWave may perform an installation review of Site prior to installation of the Services. Upon request, Customer shall provide NewWave with accurate site and/or physical network diagrams or maps of Site, including electrical and other utility service maps, prior to the installation review. If prior to installation or at any time during the Term NewWave determines that safe installation and/or operation of one or more of the Services or any Equipment will have negative consequences or may endanger, hinder, harm or injure NewWave's personnel or Network or cause technical difficulties to NewWave or its customers, NewWave may terminate the Service Agreement without liability upon written notice to Customer, or may require Customer to correct the situation before proceeding with installation or activation of the Services. NewWave may need periodic access for inspection, operation and maintenance of the Network. Except in emergency situations, NewWave will obtain approval from Customer (not to be unreasonably withheld or delayed) before entering Site. At NewWave's request, Customer, or a representative designated by Customer, will accompany NewWave's employees or agents into any unoccupied unit for any purpose relating to the Equipment.

EQUIPMENT.

Responsibilities and Safeguards. Except as otherwise provided in this 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 indemnification limitations set forth in this Agreement, 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. Customer shall: i. Safeguard 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 Equipment; and iv. Not move nor relocate Equipment to another location or use it at an address other than the Site without the prior written consent of NewWave. Any unauthorized connection or other tampering with the Services or Equipment shall be cause for immediate suspension of Services, termination of this Agreement and/or legal action, and NewWave shall be entitled to recover damages, including the value of any Services and/or Equipment obtained in violation of this Agreement in addition to reasonable collection costs including reasonable attorney fees. Should any antenna, or signal amplification unit for use in connection with communication equipment hereafter be installed on the Site which interferes with the Services, NewWave shall not be obligated to distribute a signal to the Site better than the highest quality which can be furnished without additional cost to NewWave as a result of such interference, until such time as the interference is eliminated. Customer shall be responsible for the implementation of reasonable security measures and procedures with respect to use of and access to the Service and/or Equipment. NewWave may suspend the Services upon learning of a breach of security and will attempt to contact Customer in advance, if practicable.

Ownership. Notwithstanding any other provision contained in this Agreement 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 Site, 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. Customer shall not obtain or acquire title to, interest or right (including intellectual property rights) in the Service or Equipment other than to the limited extent of use rights expressly granted under this Agreement. Immediately upon termination of this Agreement and/or Service Agreement, Customer shall return, or allow NewWave to retrieve, the Equipment. NewWave may elect to leave any Equipment in place assigning ownership thereof to Customer, in NewWave's sole discretion. Failure of Customer to return Equipment, if directed by NewWave, will result in a charge to Customer's account equal to the retail cost of replacement of the unreturned Equipment. Customer shall pay for the repair or replacement of any damaged Equipment, except such repairs or replacements as may be necessary due to normal and ordinary wear and tear or material/workmanship defects, together with any costs incurred by NewWave in obtaining or attempting to regain possession of such Equipment, including reasonable attorney fees.

VOICE SERVICE. This Section shall apply if Telephone Voice Service is included in your Service Agreement, however continued use of Voice Service is subject to the provisions of this Agreement.

Tariff Considerations. Depending on the Customer's Services, Customer may receive from NewWave and its affiliates, regulated local, interstate, intrastate, and local toll telecommunications services provided pursuant to Big River Telephone tariffs and price lists and the terms and conditions contained therein (collectively the "Tariffs") and available from Big River Telephone. If Customer's Services includes detariffed services, this Agreement is subject to and incorporates by reference NewWave's rates, rules, and regulations applicable to the Services as provided to Customer or posted on NewWave's website or, the local Tariffs of the state in which Services are provided. If Customer's Service includes unregulated services, this Agreement is subject to and incorporates by reference the general rules and regulations of the local Tariffs of the state in which the Services are provided. To the extent this contract differs from any terms and conditions in Big River Telephone's tariffs, the Tariffs control. Big River Telephone may modify its Tariffs from time to time in accordance with law. These modifications may affect Service furnished to Customer.

900 Access; International Calling. At Customer's request, NewWave will permit Customer dial-up access to 900 service numbers provided by third-party vendors or international calling capabilities by removing the "blocking" that NewWave applies to those services. If blocking is removed, Customer shall be liable for all charges associated with 900 services or international calling dialed from the Site, regardless of whether such use (1) is authorized by Customer management; (2) is initiated by Customer employees or third parties; or (3) constitutes or involves fraudulent activity of any nature. Customer agrees that NewWave assumes no liability of any kind with respect to providing access to 900 services or international calling, the use of international calling or 900 services, or the content or use of the information provided via 900 services, via connections from Sites where Customer uses NewWave Service. Customer shall indemnify, defend and hold NewWave harmless against any and all claims made by third party vendors of 900 services or information services providers that subscribe to services provided by such third party providers of information services or made by any third party related to the use of international calling services. Customer

acknowledges that, pursuant to government regulation, failure to make proper payment to third parties could result in suspension, failure or interruption of long distance and/or local services provided by NewWave. NewWave assumes no liability of any kind with respect to such potential suspensions or interruptions.

CABLE TELEVISION SERVICE. This Section shall only apply if Cable Television Services are included in your Service Agreement; however, continued use or reception of the Cable Television Services is subject to the provisions of this Agreement. 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 relating to Customer's transmission, retransmission, communication, distribution, performance or other use of the Services. Customer may not: (i) exhibit any premium Services such as HBO or Showtime in any public or common area; (ii) order or request Pay-Per-View (PPV) programming for receipt, exhibition or taping in a commercial establishment; or (iii) 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 has selected High Definition ("HD") formatted programming, Customer is responsible for provision, installation and maintenance of the receiving equipment and/or facilities necessary for its reception and display. Any failure of Customer to fulfill the foregoing obligation shall not relieve Customer of its obligation to pay the applicable MRCs or OTCs for the HD formatted programming. Without notice, NewWave may preempt, rearrange, delete, add, discontinue, modify or otherwise change any or all of the advertised programming comprising, packaging of, line-up applicable to, and/or distribution of its Cable Television Services. 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); or (ii) transmit the Services by any television or radio broadcast or by any other means or use the Services outside the Site. 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. With respect to the music programming comprising a portion of the Services, Customer shall not, and shall not authorize or permit any other person to, do any of the following unless Customer has obtained a then-current music license permitting such activity: (i) charge a cover charge or admission fee to any Site at the time the Services 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 (iii) insert any commercial announcements into the Services or interrupt any performance of the Services for the making of any commercial announcements.

INTERNET SERVICE. This Section shall only apply if High Speed Internet Services are included in a Service Order Agreement; however, continued use of the Internet Service shall be subject to the provisions of this Agreement. Customer shall (i) maintain certain minimum equipment and software to receive the Service; (ii) ensure that any person who has access to the Internet Services through Customer's computer(s), Site, facilities or account shall comply with the terms of this Agreement, (iii) 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. NewWave shall use commercially reasonable efforts to achieve the Internet speed selected by Customer on the Service Agreement, however, actual Internet speeds may vary. Many factors affect speed including, without limitation, the number of workstations using a single connection. All e-mail addresses, e-mail account names, and IP addresses ("Electronic Addresses") provided by NewWave are the property of NewWave. Customer may not alter, modify, sell, lease, assign, encumber or otherwise tamper with the Electronic Addresses. NewWave may change addressing schemes, including e-mail and IP addresses. The Service, NewWave's network and the Internet are not secure, and others may access or monitor traffic. Customer shall be solely liable and responsible for all fees or charges for online services, products or information. NewWave shall have no responsibility to resolve disputes with other vendors. 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 others will be unable to gain access to Customer's computer(s) and/or data even if Customer utilizes blocking and filtering technologies, nor does NewWave warrant 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. Customer shall comply with the terms of NewWave's Internet Acceptable Use Policy ("AUP"). AUP and other policies concerning Internet service are posted on www.newwavecom.com/internet/customeragreement. CUSTOMER AGREES THAT THE TERMS OF THE AUP AND ANY OTHER APPLICABLE NEWWAVE POLICIES MAY BE PUT INTO EFFECT OR REVISED FROM TIME TO TIME WITHOUT NOTICE BY POSTING A NEW VERSION OF THE AUP OR POLICY TO SUCH WEBSITE. CUSTOMER AND OTHER USERS OF THE SERVICE SHOULD CONSULT THE AUP AND ALL POSTED POLICIES REGULARLY TO CONFORM TO THE MOST RECENT VERSION. The AUP is incorporated by reference into this Agreement. Customer represents and warrants that Customer has read the AUP and shall be bound by its terms as they may be amended, revised, replaced, supplemented or otherwise changed from time-to-time by NewWave with or without notice to Customer. NewWave may suspend Service immediately for any violation of the AUP.

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 third party software, 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 (if any) 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.

SUPPLEMENTAL SERVICES. The following Subsections shall only apply in the event the referenced supplemental service has been selected in the Service Agreement and is being delivered to Customer. The supplemental services (also "Services") may be made up of software and hardware components. NewWave makes no warranties of any kind (express or implied) regarding the supplemental services and hereby disclaims any and all warranties pertaining thereto (including implied warranties of title, non-infringement, merchantability, and fitness for a particular purpose). NewWave does not have title to and is not the manufacturer of any software or hardware components of the supplemental services nor is NewWave the supplier of any components of such software or hardware. Customer shall return or destroy all software components provided to Customer upon the termination of the applicable Service Agreement, and in the case of the destruction thereof, shall, upon request, provide NewWave with certification that such components have been destroyed. IN NO EVENT SHALL NEWWAVE BE LIABLE FOR ANY DAMAGES ARISING FROM THE PERFORMANCE OR NONPERFORMANCE OF ANY OF THE FOLLOWING SUPPLEMENTAL SERVICES:

Hosting. This subsection shall only apply if hosting service ("Hosting") is included as part of the Service in a Service Agreement. NewWave will provide Hosting in accordance with the specifications associated with the plan Customer has selected on the Service Agreement. Hosting will permit access to a variety of resources available from selected third parties, including developer tools, communication forums and product information (collectively, "Hosting Software"). The Hosting Software, including any updates, enhancements, new features, and/or the addition of any new Web properties, may be subject to and Customer shall comply with applicable product use rights/end user license agreements between such third parties and Customer. Without limiting anything set forth in applicable Sections of this Agreement, NewWave (not the manufacturer) shall provide technical support for Hosting Service, but version changes of any such software compatibility and/or suitability with any other Customer provided software shall be Customer's responsibility. Customer hereby consents to the disclosure to the provider of third party Software, of Customer's name and any other necessary information for the limited purpose of licensing rights. Customer shall not use Hosting for or in connection with any high risk use or activity. **COPYING OR REPRODUCTION OF THE HOSTING SOFTWARE TO ANY OTHER SERVER OR LOCATION FOR FURTHER REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PROHIBITED, UNLESS APPROVED IN WRITING BY NEWWAVE.** Customer shall be solely responsible for registering for or renewing a desired domain name. NewWave does not guarantee that Customer will be able to register or renew a desired domain name. Individual websites may not at any time exceed the Hosting specifications identified on the applicable Service Agreement. If Customer's Hosting account exceeds the applicable specifications or is adversely impacting NewWave's network or server(s), NewWave may (i) contact Customer to resolve the issues; or (ii) if Customer has exceeded the then-applicable specifications in any given month, upgrade account on the next available billing cycle to the next service level tier or suspend or terminate Hosting. Notwithstanding anything to the contrary, if Customer's use of Hosting is causing an adverse impact on NewWave, NewWave may suspend or terminate the Hosting Service without notice. Certain services are not provided as part of the Hosting (e.g., webpage creation, development, design or content services). The applicable Service Agreement sets forth the MRCs for Hosting. Customer is responsible for payment whether or not the Hosting platform is used and whether or not it functions properly. NewWave exercises no control over the content of the information passing through Customer's site(s) and it is Customer's sole responsibility to ensure that Customer and Customer's use of Hosting complies at all times with all applicable laws and regulations and the AUP. NewWave shall have the right to disclose any and all available information collected from Customer to law enforcement authorities upon written request by such authorities. Information that may be disclosed includes IP addresses, account history, and files stored on servers used to provide Hosting. If Customer engages in any of the following prohibited activities, NewWave shall have the right to suspend or terminate Hosting and/or this Agreement: 1. The hosting of unlicensed software; 2. Use of software or files that contain computer viruses or files that may harm user's computers; 3. Any attempt or actual unauthorized access by Customer to any NewWave website or the website of any other customer; 4. The collection or any attempt to collect personally identifiable information of any person or entity without his, her or its express written consent. Customer shall maintain records of any such written consent throughout the term of this Agreement and for three years thereafter; 5. Any action or inaction which is harmful or potentially harmful to the NewWave Network; 6. Running a banner exchange, free adult thumbnail gallery post and/or free adult image galleries on your website; or 7. Inclusion of sites with material, links, or resources for hacking, phreaking, viruses, or any type of site that promotes or participates in willful harm to Internet sites, users or providers. Customer is responsible for charging and collecting from its end users any and all applicable taxes. If Customer fails to impose and/or collect any tax from its end users then, as between NewWave and Customer, Customer shall be liable for such uncollected tax and any interest and penalty assessed thereon with respect to the uncollected tax. Customer shall indemnify and hold the NewWave Indemnified Parties (defined below) harmless for any costs incurred or taxes or fees paid due to actions taken by the applicable taxing authority to collect any such tax from NewWave due to Customer's failure to comply with this Section.

Security Service. NewWave's managed security service and/or desktop security service (collectively, "Security Service") are made up of software and hardware components. NewWave shall ensure that the selected Security Service(s) is/are operational and updated from time-to-time based on manufacturer-sent updates. NewWave is not the manufacturer of any software or hardware components of either Security Service nor is NewWave the supplier of any components of such software or hardware.

Back-Up Service. For data storage service ("Back-up"), Customer shall be assessed applicable OTCs and MRCs which shall be based upon Customer's selection of retention quantity and storage tier. Monthly storage overage fees may apply each month Customer exceeds the respective subscribed storage level. Additional OTCs and MRCs also apply to Customer-requested media and/or professional services. NewWave is not the manufacturer or supplier of any Back-Up software components. Customer shall be responsible for updating Back-Up from time-to-time based on updates provided by the software manufacturer, and any failure of Customer to perform such updates shall relieve NewWave from any responsibility to ensure that Back-Up remains operational. Customer shall not be relieved of its responsibility to continue to pay for Back-Up in the event Back-Up does not function properly as a result of Customer's failure to install and configure the software, activate the service or install manufacturer-provided updates. **CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT (1) IT IS CUSTOMER'S SOLE RESPONSIBILITY TO CREATE AND RETAIN THE BACK-UP PASSWORD THAT IS NECESSARY FOR ACCESS TO ANY DATA STORED VIA THE BACK-UP SERVICE AND (2) NEWWAVE HAS NO ACCESS TO AND DOES NOT KNOW NOR KEEP ANY RECORD OF THE PASSWORD CREATED BY CUSTOMER. FAILURE BY CUSTOMER TO RETAIN CUSTOMER'S BACK-UP PASSWORD SHALL RESULT IN COMPLETE LOSS OF ACCESSABILITY TO DATA STORED VIA BACK-UP.**

DATA TRANSPORT. NewWave will provide data networking services ("Data Transport") for Customer Sites connected over coaxial and/or fiber-optic cable, where connectivity is established directly between two or more Sites. NewWave will install the coaxial or fiber-optic cable into each Site as listed in the Service Agreement. NewWave will also supply an edge device at each Site that will be capable of receiving the Service as specified in the Service Agreement. NewWave will terminate fiber-optic cable on a patch panel or provide a coaxial outlet at an agreed upon minimum point of penetration up to 50 feet within each Site (unless otherwise specified in the Service Order). If the hand-off point of the Data Transport at the Site exceeds this distance, Customer may be responsible for any additional costs for internal wiring. Customer will make available to NewWave a building ground connection at each Site that meets current electrical codes for the placement of a fiber-optic patch panel and/or coaxial outlet. Unless otherwise specified in the applicable Service Agreement, is recommended that Customer provide a separate 20 Amp 110V AC circuit for the edge electronics, which is powered by a UPS system. Customer-supplied routing will be necessary for communication between each Site. If Customer has selected monitoring for a Service, NewWave shall monitor the Services 24 hours a day, seven days a week. Customer shall contact NewWave to report Data Transport problems. Additional fees may apply for monitoring.

ADMINISTRATIVE WEB SITE. NewWave may, at its sole option, make one or more administrative web sites available to Customer in connection with Customer's use of the Services (each an "Administrative Web Site"). NewWave may furnish Customer with one or more user identifications and/or passwords for use on the Administrative Web Site. Customer shall be responsible for the confidentiality and use of such user identifications and/or passwords and shall immediately notify NewWave if there has been an unauthorized release, use or other compromise of any user identification or password. In addition, Customer agrees that its authorized users shall keep confidential and not

distribute any information or other materials made available by the Administrative Web Site. Customer shall be solely responsible for all use of the Administrative Web Site, and NewWave shall only be entitled to rely on all Customer uses of and submission to the Administrative Web Site as authorized by Customer. NewWave shall not be liable for any loss, cost, expense of other liability arising out of any Customer use of the Administrative Web Site, NewWave may change or discontinue the Administrative Web Site, or Customer's right to use the Administrative Web Site, at any time. Additional terms and policies may apply to Customer's use of the Administrative Web Site and will be posted on the site.

PERFORMANCE. NewWave will use commercially reasonable efforts consistent with industry standards to ensure that Service is available to Customer 24 hours per day, seven days per week. It is possible, however, that there will be interruptions of Service. 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 Customer, its agents and employees, or by a force majeure Event, shall not constitute a failure by NewWave to perform its obligations under this Agreement, and Customer will not hold NewWave at fault for loss of Customer revenue or lost employee productivity due to Service outages.

CUSTOMER REPRESENTATIONS AND OBLIGATIONS. Customer represents to NewWave that Customer has the authority to execute, deliver and carry out the terms of this Agreement and associated Service Agreement, and that any person who accesses any Services through Customer's equipment or through the Network at each Site will be an authorized user, will use the Service, Network and/ Equipment in an appropriate and legal manner, and will be subject to the terms of this Agreement. 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 and shall comply with all applicable laws and regulations when carrying out its duties hereunder. Customer is responsible for ensuring its users of the Service comply with the terms of this Agreement. Customer shall be responsible for all access to and use of the Service by means of Customer's equipment, whether or not Customer has knowledge of or authorizes such access or use. Customer shall be solely liable and responsible for all charges incurred and all conduct through either authorized or unauthorized use of the Service, until informs NewWave of any breach of security. Customer shall not re-sell or re-distribute access to the Service(s) or system capacity, or any part thereof, in any manner. Customer shall not use or permit third parties to use the Service(s), including 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 shall not interfere with other customers' use of the Equipment or Services or disrupt the Network, backbone, nodes or other Services. Violation of any part of this Section is grounds for immediate termination of this Agreement and/or all Service Agreements in addition to any other rights or remedies NewWave may have.

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 maintains a Privacy Policy with respect to the Services in order to protect the privacy of its customers. The Privacy Policy may be found on NewWave's website at www.newwavecom.com. The Privacy Policy may be updated or modified from time-to-time by NewWave, with or without notice to Customer.

LIMITATION OF LIABILITY. THIS SECTION CONTAINS DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY.

Limited Warranty. At all times during the Term, NewWave warrants that it will use commercially reasonable efforts consistent with industry standards to cause the Services to be available to Customer. NewWave does not warrant that Services will be error free. THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL EXPRESS AND IMPLIED WARRANTIES WHATSOEVER. EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, NEWWAVE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. WITHOUT LIMITING ANY EXPRESS PROVISIONS OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL RELIANCE OR PUNITIVE DAMAGES (INCLUDING LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES, 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. NEWWAVE'S MAXIMUM LIABILITY TO CUSTOMER WITH REGARD TO ANY SERVICE SHALL NOT EXCEED THE AMOUNT, EXCLUDING OTCS, PAID OR PAYABLE BY CUSTOMER TO NEWWAVE FOR THE APPLICABLE SERVICE IN THE THREE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLIES TO ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS. Any warranty claim by Customer must be made within 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.

Content. 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 programs or content of an infringing, abusive, profane or sexually offensive nature. Customer and its 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.

Loss or Destruction of Software or Data. 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 Equipment. 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.

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 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 harmless and indemnify the NewWave Indemnified Parties from and 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 Customer's computers, its internal network and/or the Network through Customer's equipment.

Force Majeure Event. NewWave shall not be liable for any delay, inconvenience, loss, liability or damage resulting from any failure or

interruption of Services, directly or indirectly caused by circumstances beyond its 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.

INDEMNIFICATION. In addition to its specific indemnification responsibilities set forth elsewhere in this Agreement and as permissible under applicable law, Customer at its own expense, shall 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 reasonable attorney fees and court costs incurred by NewWave Indemnified Parties under this Agreement, to the full extent that such arise from Customer's misrepresentation with regard to or noncompliance with the terms of this Agreement and any or all Service Agreement, 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 shall cooperate with NewWave Indemnified Parties in such case.

DEFAULT; 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 termination, shall relieve Customer of its obligation to pay all amounts due.

Default by Customer. Customer shall be in default under this Agreement if Customer does one or more of the following things (each individually to be considered a separate event of default) and Customer fails to correct each such noncompliance within 30 days of receipt of written notice: i. Customer is more than 30 days past due with respect to any payment required hereunder; ii. Customer otherwise has failed to comply with the terms of this Agreement or any other Service Agreement incorporated herein.

Termination for Convenience. Notwithstanding any other term or provision in this Agreement, Customer shall have the right to terminate a Service Agreement in whole or part, at any time during the Term upon thirty (30) days prior written notice to NewWave, and subject to payment of all outstanding amounts due through the end of the Term, any applicable Termination Charges, and the return of any Equipment. In the event Customer wishes to terminate a Service without cause, Customer shall be liable for the Liquidated Damages included in the Service Agreement.

NewWave's Right to Suspend or Terminate and Termination Charge. If Customer is in default, NewWave shall have the right, at its option, without prior notice, and in addition to any other rights of NewWave expressly set forth in this Agreement and any other remedies it may have under applicable law to: i. Immediately suspend Services to Customer until such time as the underlying noncompliance has been corrected without affecting Customer's on-going obligation to pay any amounts due under this Agreement as if such suspension of Services had not taken place; ii. Terminate the Service and Service Agreement.

Default by NewWave. Customer shall have the right, at its option and in addition to any other remedies it may have, to terminate any applicable Service Agreements, if the underlying event of default and/or noncompliance by NewWave is limited to Services provided under the applicable 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 30 days, after NewWave's receipt of a written notice from Customer describing in reasonable detail the nature, scope and extent of the event of default/noncompliance. If termination is due to noncompliance by NewWave, NewWave may reimburse Customer for any pre-paid, unused MRCs and if termination is within the first year of service a portion of any OTC that has already been paid by Customer relative to Service at the Sites.

MISCELLANEOUS.

Notices. Any notices to be given under this 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 Customer address on the Service Agreement and to the following address for New Wave: NewWave Communications, Attn: Director Business Services, One Montgomery Plaza, Fourth Floor, Sikeston, Missouri 63801. Each party may change its respective address for legal notice by providing notice to the other party.

Entire Agreement; Signatures. This Agreement and any related, executed Agreement constitute the entire Agreement with respect to the Services, Network and Equipment. This 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 Agreement. This Agreement may be executed in one or more counterparts, each of which is an original, but together constituting one and the same instrument. Execution of a facsimile copy will have the same force and effect as execution of an original, and a facsimile signature will be deemed an original and valid signature. Except for pricing terms as set forth in this Agreement, this Agreement and the associated executed Service Agreement may not be amended, supplemented or changed without both parties' prior written consent.

No Assignment or Transfer. Customer may not assign or transfer (directly or indirectly by any means, by operation of law or otherwise) this Agreement and the associated Service Agreement or its rights or obligations hereunder to any other entity without first obtaining written consent from NewWave. NewWave may assign this Agreement and the associated executed Service Agreement freely, including but not limited to affiliates controlling, controlled by or under common control, or to its successor-in-interest.

Severability. If any term, covenant, condition or portion of this Agreement or any related, executed Service Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or any related, executed Service Agreement shall not be affected and each remaining term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law.

Governing Law. The law of the state in which the Services are provided (excluding its conflicts of law provisions) shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by federal law.

Both parties had the opportunity to review and participate in the negotiation of the terms of this Agreement and the Service Agreement and, accordingly, no court construing this Agreement and any Service Agreement shall construe it more stringently against one party than against the other. 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.

No Third Party Beneficiaries. The terms of this Agreement and the parties' respective performance of obligations as described are not intended to benefit any person or entity not a party to this Agreement, and the consideration provided by each party hereunder only runs to the respective parties hereto, and that no person or entity not a party to this Agreement shall have any rights hereunder nor the right to require performance of obligations by either of the parties hereto.