

## **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 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 New Wave-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 with 30 days after receipt of the invoice.

(b) One-Time Charges Customer agrees to pay Monthly 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. New Wave shall notify Customer, 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 30 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, (defined as any action or inaction by the Customer which impacts New Wave supplied equipment that has or may have an adverse effect to the Service), Equipment or Network Facilities supplied by NewWave necessitates a visit to the Customer site for inspection, correction, or repair, then New Wave shall charge Customer a site visit fee then New Wave shall charge Customer a site visit fee ( \$ 75.00 per hour, 1 hour minimum) as well as charges for an Equipment or Network repair or replacement necessary to restore service.

(e) **Invoicing Error** Customer must provide notice to New Wave of any invoice date on which the errors and/or disputed charges appear in order for Customer to receive any credit that may be due.

(f) **Late Fees** If Customer fails to pay an invoice within thirty (30) days of issuance, New Wave 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.

(g) **Non-Payment** If Services are disconnected because Customer does not pay the invoice, New Wave 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 New Wave will reconnect Services.

(h) **Returned Checks, Bankcard or Credit Card Charge-Backs and Collection Fees** New Wave may charge a reasonable service fee for all returned checks and bankcard, credit card, or other charge card charge backs.

### **3. SERVICE LOCATION ACCESS AND INSTALLATION**

(a) **Access** If Customer owns and/or controls the Service Location(s) Customer grants to New Wave 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 New Wave'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, New Wave's obligations under this Agreement and the appropriate Service Order for such site are terminated, null and void.

(b) **Installation Review** New Wave may perform an installation review of each Service Location prior to installation of the Services at the Service Location. Customer may be required to provide New Wave with accurate site and/or physical network diagrams or maps of a Service Location prior to the installation review. New Wave 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. If New Wave, in its sole discretion, determines that safe installation and/or activation of one or more of the Services will have negative consequences to New Wave's personnel or Network and/or cause technical difficulties to New Wave or its customers, New Wave 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.

In the event during the initial or any renewal Service Period, (i) proper operation of New Wave's Equipment and/or unhindered provision of the Services is no longer possible as a result of interference or obstruction caused by the acts or omissions of Customer, a third party or any Force Majeure Event, or (ii) such interference/obstruction or the cause thereof will have negative consequences to New Wave's personnel or Network and/or cause technical difficulties to New Wave or its customers, New Wave may terminate the affected Service Order(s) without liability, upon written notice to Customer.

- (c) Site Preparation Customer shall be responsible, at it's own expense, for all site preparation activities necessary for delivery and installation of 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 the Services, Customer may be required to provide electrical or other utility service, and/or maps prior to installation.
- (d) Installation New Wave will schedule one or more installation visits with Customer. Customer's authorized representative must be present during installation. During installation, New Wave 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 New Wave to install the Services. Customer shall connect any Equipment provided by New Wave to Customer's computer or network to enable access to the Services. With respect to any excavation, New Wave shall be responsible for reasonable restoration efforts necessary to address any displacement resulting from such excavation.

#### **4. EQUIPMENT AND MATERIALS**

- (a) Responsibilities and Safeguards Except as otherwise provided in this Service Agreement or any 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 limitations set forth Section 11, identification, 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 New Wave 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 New Wave-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 New Wave 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 New Wave.

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 New Wave 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 New Wave hereunder, Customer acknowledges and agrees that New Wave shall not be obligated to distribute a quality signal to the Premises better than 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 understand and agrees that notwithstanding any other provision contained herein to the contrary, all Equipment and materials installed or provided by New Wave are and shall always remain the property of New Wave, Shall not become a fixture to the Premises, and must be returned to New wave 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, Retrieval, Repair, and Replacement. Immediately upon termination of Services (" Termination" shall mean the termination of the Service Agreement and/or Service Order(s), at the discretion of New Wave, Customer will allow New Wave to retrieve, the Equipment supplied by New Wave to Customer, in good condition. Failure of Customer to return, or allow New Wave to retrieve, the Equipment supplied by New Wave to Customer, in good condition. Failure of Customer to return, or allow New Wave to Retrieve, the 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, expect such repairs or replacements as may be necessary due to normal and ordinary wear and tear or material/workmanship defects), New Wave will be responsible for any damage caused by its removal of its equipment to any

facilities or grounds, including reasonable restoration in the event excavation is necessary

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 New Wave is limited to Services provided under the applicable Service Order(s) or this Service Agreement, if such noncompliance is not so limited, provided that New Wave's diligent efforts to correct such breach are not commenced and pursued within thirty (30) days after New Wave's receipt of a written notice from the Customer describing in reasonable detail the nature, scope and extent of the vent of default/noncompliance.

II. If Termination is due to noncompliance by New Wave, New Wave shall reimburse Customer for any pre-paid, unused Monthly Service Fees attributable to such terminated Service Order(s). In addition, if Termination Charge, which the parties recognize as liquidated damages, equal to a portion of any One-Time charges that has already been paid by the Customer to New Wave relative to Service at the sites covered by the terminated Service Order. This Termination Charge New Wave 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 the denominator is twelve (12).

**9. 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, New Wave 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. NEW WAVE MAKES NO WARRANTIES, EXPRESS OR IMPLIED. AS TO ANY SERVICE PROVISIONED HERUNDER AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NONINFRINGEMENT 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, 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. New Wave'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 New Wave does not exercise and disclaims any control. New Wave neither previews content nor exercises editorial control; does not endorse any opinions or information accessed through any Service; and assumes no responsibility for content. New Wave 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 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 New Wave 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 New Wave at its sole risk. New Wave does not manufacture the Equipment, and the Services and Equipment are provided on an "as is basis" without warranties of any kind.

New Wave 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. New Wave 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 New Wave without liability for New Wave. New Wave is not responsible for and

**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. New Wave 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. New Wave assumes no liability or responsibility for the installation, maintenance, compatibility or performance of any Customer-supplied hardware or software with the Services, Customer shall remain liable for payments as agreed without recourse for credit or prorated refund for the period of impairment. New Wave has no responsibility to resolve the difficulties caused by such third-party equipment or software. If, at Customer's request, New Wave should attempt to resolve difficulties caused by such third-party equipment or software, such efforts shall be performed at New Wave's discretion and at then-current commercial rates and terms.

**6. CUSTOMER USE** Customer agrees not to re-sell or redistribute access to the Service(s) or system capacity, or any part thereof, in any manner without the express prior written consent of New Wave. 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 New Wave, 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 Equipment or Services or disrupt the New Wave 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 new wave may have hereunder.

**7. PERFORMANCE** New Wave 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 Service may be unavailable from time to time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond New Wave's reasonable control. Temporary service interruptions/outages caused by the Customer, its agents and employees, or by a Force Majeure Event, shall not constitute a failure by New Wave to perform its obligations under this Service Agreement, and Customer will not hold New Wave at fault for loss of Customer revenue or lost employee productivity due to Service outages.

**8. DEFAULT: SUSPENSION OF SERVICE; TERMINATION.** No express or implied waiver by New Wave Of any event of default shall in any way be waiver of any further subsequent event of default.

- (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) New Wave's Right to Terminate and Termination Charge. In the event Customer is in default, New Wave 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 New Wave 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

If Termination is due to noncompliance by the Customer, Customer must pay New Wave a Termination charge (a "Termination Charge"), which the parties recognize as liquidated damages. This Termination Charge shall be equal to fifty percent (50%) 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 New Wave New Wave shall be in default under this Service Agreement in the event that New Wave does one (1) or more of the following (each instance individually to be considered a separate event of default), and New Wave fails to remedy each such noncompliance or occurrence within thirty (30) days of receipt of written notice from the Customer describing reasonable detail the nature, scope and extent of the default or noncompliance.

- i. New Wave fails to comply with the terms of this Service Agreement and/or any or all of the applicable Service Order(s);
- ii. New Wave files or initiates proceeding or has proceedings filed of 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 assumes no liability for any damages resulting from the use of such applications, and Customer shall hold New Wave harmless from and indemnify New Wave against any claims, losses, or damages arising from such use. New Wave 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 New Wave harmless from and indemnify New Wave against any such claims, losses, or damages to the full extent arising from such access.
- (e) Force Majeure Event. Customer agrees that New Wave 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 New Wave'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, 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.

**10. IDEMNIFICATION.** 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 New Wave and its directors, employees, representatives, officers and agents, (the "Indemnified Parties") against any and all claims, liabilities, expenses incurred by New Wave Indemnified Parties, including but not limited to, reasonable attorneys' fees and costs incurred by New Wave 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 of all Service Orders, Customer's failure to comply with applicable law, and/or Customer's negligence or willful misconduct. New Wave 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 New Wave Indemnified Parties in such case.

New Wave agrees, at its own expense, to indemnify, defend and hold harmless Customer against any and all claims, liabilities, lawsuits, direct damages, losses, judgment, costs, fees and expenses incurred by attorneys' fees, attributable to (i) any violation of a third party's intellectual property rights not attributed to customer's independent action or (ii) personal injury, death, or physical property damage to the full extent that such arise directly from New Wave's failure to comply with applicable law, and/or New Wave's gross negligence or willful misconduct while installing, performing maintenance on, or otherwise physically entering onto Customer's property. Customer shall have the right but no the

obligation to participate in the defense of any such claims, and New Wave agrees to exercise reasonable efforts to cooperate with Customer in such case.

11. **TITLE** Title to the Network facilities shall remain with New Wave 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 interest. Upon Termination of Service or expiration of a Service Order's Service Period for a specific site, New Wave shall have the right to remove all network components and/or leave any of such components to the Customer, it being understood that no further notice or action is required to accomplish the assignment contemplated hereunder. New Wave shall have the right to remove the Network and all components within sixty (60) days after such Termination.
12. **COMPLIANCE WITH LAWS**. Customer shall not use or permit third parties to use the Services in any manner that violates applicable law or causes New Wave to violate applicable law. Both parties shall comply with all applicable laws and regulations when carrying out their respective duties hereunder.
13. **PRIVACY** New Wave 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. New Wave also maintains a Privacy Policy with respect to the Services in order to protect the privacy of its customers.
14. **GENERAL CUSTOMER REPRESENTATIONS AND OBLIGATIONS.** Customer represents to New Wave 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 New Wave of any breach of security.

New Wave 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.

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

If to New Wave:  
New Wave Communications

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

**16. 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 Agreement and the associated Service Order(s), or their rights or obligations here under to any other entity without first obtaining written consent from the other party, which consent shall not be unreasonably withheld, provided, however, that New Wave may assign this Service Agreement and the associated executed Service Order(s) to affiliates controlling, controlled by or under common control with New Wave, or to its successor-in-interest in the event New Wave sells the underlying communications system, without Customer's consent.
- (d) Servability. 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 Kentucky, without regard to its conflicts of law provision.

- (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.