



Whereas it is the desire of Customer to have NewWave Communications' enhanced high-speed cable access service available to its premises and it is the desire of NewWave Communications to install and make its enhanced high-speed cable access service available at the Customer address herein, now, therefore, the Parties agree as follows:

## 1. Definitions

"Computer" means Customer's personal computer that will be used to access NewWave Communications's On-Line Services ("Service"). A Computer will need to meet certain requirements that will be specified by NewWave Communications.

"Equipment" means the cable modem and any other equipment, if necessary, to be installed at a Customer's premises.

"Software" means the computer software licensed for the limited use described in this Agreement by NewWave Communications to Customer to enable a Computer to access the Service through the Equipment, as described in Section 4a. If "Software" is installed on more than one Computer that number must be specified in this Agreement and additional charges will apply.

## 2. General

a. This Agreement sets forth the terms and conditions which apply to the use of the Service by Customer. No representation, warranty, term or condition, other than as specifically set forth in this Agreement, shall be binding on the Parties.

b. NewWave Communications shall have the right at any time to change or discontinue any aspect or feature of the Service, including but not limited to content, hours of availability, price, help information, and equipment needed for access to and use of the Service.

c. Customer is responsible for all use of Customer's Account in all circumstances including under any screen name or Password by any person. Customer will ensure that all use of Customer's Account complies fully with this Agreement. Customer shall be responsible for protecting the confidentiality of Customer's passwords. Customer shall also be responsible for notifying NewWave Communications of any changes in Account information (e.g. address, phone, etc.).

d. Customer represents and warrants that he or she is at least 18 years of age. Customer may, at his/her discretion, permit minors to use the Service under adult supervision. Customer is solely responsible for monitoring all material that is accessed by minors using the Customer's account.

e. Either NewWave Communications or Customer may terminate Service at any time for any reason. If Customer has accepted a special pricing package, some termination charges may apply. Customers may terminate their Accounts upon sending written notice to NewWave Communications via E-mail, fax or postal service (to the address listed in this Agreement for Notice to NewWave Communications). Customer is responsible for all fees up to the date of termination of the service. Customer agrees that the obligation to pay amounts due under this Agreement will survive termination of this Agreement.

f. The provisions of this Customer Agreement may be modified and/or supplemented by NewWave Communications at any time and your continued use of the Service following any such modification or supplement shall constitute acceptance thereof.

g. Transfer of the Account or any Customer's rights or obligations, hereunder to any other person or entity, or to a new residence, is strictly prohibited without prior authorization from NewWave Communications and will most likely involve an additional installation charge.

h. Customer understands and agrees that NewWave Communications does not guarantee that any particular amount of bandwidth on the NewWave network or that any speed or throughput of customer's connection to the NewWave network will be available to the customer. Customer understands and agrees that the speed of the Service provided at Customer's site will vary depending upon a number of factors, including Customer's computer system(s) and associated equipment. Internet traffic, and other factors such as system capacity limitations, governmental actions, events beyond NewWave's control, and system failures, modifications, upgrades, and repairs.

Customer understands that NewWave may use various tools and techniques in order to effectively manage its networks and to ensure compliance with NewWave's AUP (Network Management Tools). These may include detecting malicious traffic patterns and preventing the distribution of viruses or other malicious code, and managing network resources through techniques such as limiting the number of peer-to-peer sessions Customer can conduct at the same time, limiting the aggregate bandwidth available for certain usage protocols such as peer-to-peer and newsgroups, and such other Network Management Tools as NewWave may from time to time determine appropriate.

Customer further understands and agrees that, to allocate bandwidth across all of its users, NewWave may employ traffic-management technology, including but not limited to packet-reset technology, which technology may materially slow down the uploading of certain files.

### 3. Charges

a. Customer agrees to pay for the Service to which he/she has subscribed herein, including applicable charges for installation and all applicable local, state or federal fees or taxes. Monthly charges for the Service are set forth on a separate price list, are published online, and are subject to change in the future. Service charges will be billed monthly in advance and are payable on the first of the month.

b. An administrative late charge may be charged on accounts 15 days past due. There will be only one such administrative charge for each month's charges not paid when due.

c. If Customer discontinues the Service he/she will be required, in addition to payment of all overdue balances, to pay a reconnect charge or trip charge (where applicable) before reconnection. In addition, if Customer is leasing a modem from NewWave Communications, Customer is responsible for paying a modem return charge and any previously agreed to charges, if NewWave Communications must come to the Customer's site.

d. NewWave Communications may charge a service fee for all returned checks and bank card or charge card chargebacks.

e. Customer will be responsible for all expenses (including reasonable attorneys' fees) incurred by NewWave Communications in collecting any amounts due in accordance with this Agreement and unpaid by Customer.

#### 4. Customer Conduct, Operating Policies and Conditions of Use

a. Customer shall use the Service for lawful purposes only. Customer shall not post or transmit through the Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others (including copyright), that is unlawful, threatening, abusive, obstructive, harassing, defamatory, invasive of privacy or publicity rights, vulgar, obscene, profane or otherwise objectionable, that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any law.

b. ADVERTISING, RESELLING, REUSE OR ANY SOLICITATION WITH RESPECT TO PRODUCTS OR SERVICES IS STRICTLY PROHIBITED WITHOUT EXPRESS WRITTEN APPROVAL FROM NEW-WAVE COMMUNICATIONS AND A CONTRACT FOR PAYMENT OF RELATED FEES.

c. Customer shall not Resell the Service or otherwise make available to anyone outside the Premises the ability to use the Service (i.e. wi-fi, or other methods of networking), in whole or in part, directly or indirectly, or on a bundled or unbundled basis. The Service is for personal and non-commercial use only and you agree not to use the Service for operation as an Internet service provider or for any business enterprise or purpose, or as an end-point on a non-NewWave local area network or wide area network;

If NewWave determines, in NewWave's sole discretion, that Customer is using an excessive amount of bandwidth over the NewWave network infrastructure for Internet access or other functions using public network resources, we may terminate Customer's account at any time and without notice, or require Customer to upgrade Customer's service level and pay additional fees in accordance with our then-current, applicable, published rates for such service.

d. The Service contains copyrighted material, trademarks and other proprietary information, and the entire contents of the Service are copyrighted as a collective work under the United States copyright laws. Customer may download copyrighted material solely for Customer's personal use. Except as otherwise expressly permitted under copyright law, no copying, redistribution, publication or commercial exploitation of downloaded material will be permitted without the express prior written consent of NewWave Communications and, where applicable, the third party copyright owner. In the event of any permitted copying, redistribution or publication of copyrighted material, no changes in or deletion of author attribution or copyright notice shall be made. Customer may download public domain materials for the Customer's own use or non-commercial distribution.

e. Customer shall not upload, post or otherwise make available on the Service any material protected by copyright, trademark or other proprietary right without the express permission of the owner thereof. Customer may upload public domain materials and is responsible for and assumes all risks with respect to the determination of whether materials are in the public domain. Customer hereby grants NewWave Communications the right to edit, copy, remove, publish and distribute any material made available on the Service by Customer (including postings to chat services, forums and bulletin boards on the Service) at any time for any reason.

f. Customer gives NewWave Communications consent to use, distribute, sell, transfer, loan, or otherwise share with other persons or entities user lists as well as aggregate information, but not contrary to any applicable laws. Aggregate information includes demographic data, usage patterns, preferences, survey data, or other descriptive information which does not disclose the identity of any particular user. Customer may opt out of such participation at any time by using online procedures defined by NewWave Communications.

g. The provisions of this Section 5 are for the benefit of NewWave Communications, their affiliated and third party content or information service providers and licensors and each shall have the right to assert and enforce such provision directly on its own behalf.

h. Without limiting any of the foregoing provisions of this Section 5, Additional Operating Policies and Conditions of Use for Customers

- (1) Customers must not impersonate any person on the system or communicate under a false name or a name that Customer isn't entitled or authorized to use.
- (2) Customers shall not participate or use their Accounts in any way to make fraudulent offers of products, items or services.
- (3) Customers must refrain from mass posting of the same message to many inappropriate on-line sites (junk E-mail, bombing or spamming).
- (4) Customers may not post or E-mail scams such as "make-money-fast" schemes or pyramid/chain letters.
- (5) Customers may not use the system to send unsolicited advertising, promotional material or other forms of unwanted solicitation, except in areas on-line specifically designated for such communications.
- (6) Customers may not interfere with other users use of NewWave Communications's Service.
- (7) Customers may not transfer post or transmit files which contain viruses, worms, "Trojan horses" or any other contaminating or destructive features.
- (8) Customers may not export software or technical information in violation of United States export control laws.
- (9) Customers may not perform any activity which constitutes a criminal offense.
- (10) Customers may not use NewWave Communications's Service in any manner that disrupts the NewWave Communications system for other NewWave Communications Customers, or which threatens to or actually causes damage to the NewWave Communications system, or is considered to be abuse of the system (examples include "spawning" dozens of processes, consuming excessive memory or CPU for long periods). Depending upon the extent of the abuse, Customers may receive warnings, or in some cases, have their Accounts suspended. NewWave Communications reserves the right to monitor Customer's actions when deemed necessary to troubleshoot connectivity problems or determine if there is an abuse of the NewWave Communications Internet system.
- (11) Service available at advertised rates is intended for residential use only. It is not intended to run any Web servers, FTP servers, Game Servers, etc. If customer is found to be running any of the aforementioned services, Customer's service may be immediately discontinued.
- (12) NewWave Communications reserves the right to limit or deny peer-to-peer traffic in order to maintain a consistent customer experience.
- (13) Customer acknowledges and agrees that when using the Service to access the Internet or any other online network or service, there are certain risks that may enable other Internet users to gain access to or use of Customer's equipment. Customer is responsible for taking and should take all appropriate security measures when using the Service. Customer is responsible for any misuse of the Service that occurs through Customer's account whether by a member of Customer's household or an authorized or unauthorized third party.

(14) Service is sold to a single Customer for use in a single household. Any attempt to resell or distribute service without the express written permission of NewWave Communications, will result in immediate termination of service and possible criminal prosecution.

i. Violations of the Customer Conduct, Operating Policies and Conditions of Use in this Section 5 are unethical and in some cases may be unlawful. NewWave Communications has no practical ability to restrict conduct which violates these policies and conditions and cannot ensure prompt removal of content or immediate cessation of violative conduct. Accordingly, NewWave Communications expressly denies any liability to Customers or third parties for failure to enforce these policies and conditions.

j. In its sole discretion, NewWave Communications may initiate an investigation and, in order to prevent further possible unauthorized activity, may suspend access to Service to the individual Account in question. Confirmation of violations may result in cancellation of the individual Account and/or criminal prosecution.

## 5. Service and Repairs

NewWave Communications will use its best efforts to respond to service calls related to the Service in a timely manner. NewWave Communications will attempt to correct interruptions of Service, due to technical malfunction, at NewWave Communications's expense. The cost of such correction will be billed to the Customer if the repair requires a Customer site visit that is determined in NewWave Communications's sole judgment to be a result of Customer negligence, lack of knowledge, software, Customer installed wiring, hardware or any problem not caused by NewWave Communications. Other repair or replacement will be at Customer's expense.

## 6. Service Interruptions -- Force Majeure

In the event of complete failure of Service due to technical malfunction for twenty-four (24) consecutive hours or more, Customer is entitled to a prorated credit upon request. To qualify for an adjustment, Customer must request a credit within thirty (30) days of the failure. NewWave Communications shall have no liability, including as set forth in this Section 7, for interruption of Service due to circumstances beyond its control, including without limitation, acts of God, natural disaster, regulation or government acts, fire, civil disturbance, strike or weather.

## 7. Disclaimer of Warranty -- Limitation of Liability

a. CUSTOMER EXPRESSLY AGREES THAT USE OF THE SERVICE IS AT CUSTOMER'S SOLE RISK. NEITHER NEWWAVE COMMUNICATIONS OR THEIR AFFILIATES NOR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS, THIRD PARTY CONTENT OR INFORMATION SERVICE PROVIDERS OR LICENSORS WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO THEY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICE, OR AS TO THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION, SERVICE OR MERCHANDISE PROVIDED THROUGH THE SERVICE. CERTAIN CONTENT MAY BE OBJECTIONABLE OR UNSUITABLE FOR MINORS AND CUSTOMER IS RESPONSIBLE FOR AND MUST EXERCISE HIS/HER OWN DISCRETION WHEN ALLOWING MINORS TO USE THE SERVICE.

b. NEWWAVE COMMUNICATIONS DOES NOT WARRANT, AND SHALL NOT BE RESPONSIBLE IN ANY REGARD FOR ANY MERCHANDISE OR SERVICES ORDERED THROUGH THE SERVICE FROM THIRD PARTIES OR OTHER COMMERCIAL TRANSACTIONS WITH THIRD PARTIES. CUSTOMER SHALL BE RESPONSIBLE FOR ALL SUCH CHARGES AND SHALL INDEMNIFY NEWWAVE COMMUNICATIONS FOR ALL LIABILITY IN CONNECTION THEREWITH.

c. THE SERVICE, THE EQUIPMENT AND THE SOFTWARE ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES THAT ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT.

d. THE LICENSED NEWWAVE COMMUNICATIONS PRODUCT IS DESIGNED TO BE UTILIZED FOR A HIGH SPEED CABLE MODEM-ENABLED SERVICE, AND WHEN UTILIZED VIA DIAL-UP TELEPHONE LINES THE LICENSED NEWWAVE COMMUNICATIONS PRODUCT MAY NOT EXHIBIT ALL OF THE FEATURES OR PROVIDE THE SAME LEVEL OF FUNCTIONALITY AS IT WOULD WHEN USED VIA CABLE-MODEM. NEWWAVE COMMUNICATIONS WILL HAVE NO RESPONSIBILITY TO ENHANCE, REENGINEER, REPURPOSE, OR OTHERWISE CUSTOMIZE OR MODIFY THE LICENSED NEWWAVE COMMUNICATIONS PRODUCT FOR ANY REASON WHATSOEVER, INCLUDING TO IMPROVE ITS PERFORMANCE IN A DIAL-UP SERVICE.

e. NEITHER NEWWAVE COMMUNICATIONS NOR THEIR AFFILIATES NOR ANY OF THEIR VENDORS SHALL HAVE ANY RESPONSIBILITY OR LIABILITY WITH REGARD TO THE OPERATION OR REPAIR OF CUSTOMER'S SOFTWARE OR COMPUTER, OR FOR ANY LOSS OF DATA BY CUSTOMER, HOWEVER CAUSED.

f. EXCEPT AS PROVIDED IN SECTION 7, IN NO EVENT (INCLUDING NEGLIGENCE) WILL NEWWAVE COMMUNICATIONS OR THEIR AFFILIATES, OR ANY PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING OR DISTRIBUTING THE SERVICE (INCLUDING THE CONTENT INCLUDED THEREIN OR THE INFORMATION SERVICES ACCESSED THEREBY), THE EQUIPMENT OR THE SOFTWARE, BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICE OR OUT OF THE BREACH OF ANY WARRANTY.

g. IN NO EVENT SHALL THE CUMULATIVE LIABILITY OF NEWWAVE COMMUNICATIONS UNDER THIS AGREEMENT EXCEED ONE MONTH'S TOTAL PAYMENT PAID BY CUSTOMER TO NEWWAVE COMMUNICATIONS.

h. CUSTOMER HEREBY ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION 8 SHALL APPLY TO ALL CONTENT AND THE SERVICE, AND ARE FOR THE BENEFIT OF NEWWAVE COMMUNICATIONS AND THEIR AFFILIATES, THIRD PARTY CONTENT AND INFORMATION SERVICE PROVIDERS AND SUPPLIERS AND THEIR RESPECTIVE EMPLOYEES AND AGENTS (EACH OF WHICH SHALL HAVE THE RIGHT TO ASSERT AND ENFORCE THE PROVISIONS OF THIS SECTION 8 DIRECTLY ON ITS OWN BEHALF).

## 8. Monitoring

NewWave Communications shall have the right, but not the obligation, to monitor the content of the Service and bandwidth usage with the ability to charge more if it is excessive, including chat rooms, bulletin boards and forums, in order to determine compliance with this Agreement and any operating rules established by NewWave Communications. NewWave Communications shall have the right in its sole discretion to edit, refuse to post or remove any material submitted to or posted on the Service. Without limiting the foregoing, or NewWave Communications's rights under Section 2, NewWave Communications shall have the right to remove any material that NewWave Communications, in its sole discretion, finds to be in violation of the provisions hereof or any operating rules established by NewWave Communications hereafter, or otherwise to be objectionable (including indecent or obscene words or material; obstructive or disruptive communications; epithets and the like). Under no circumstances, however, does or will NewWave Communications undertake any obligation to review or determine the acceptability or accuracy of any Customer postings. Customer shall be responsible for and shall indemnify NewWave Communications from any liability resulting from Customer's postings, including for defamation, copyright, trademark or other proprietary right infringement, or otherwise.

## 9. Indemnification

Customer agrees to defend, indemnify and hold harmless NewWave Communications, its affiliates and third party content and service providers and their respective officers, directors, employees and agents, from and against all claims and expenses, including attorneys' fees, arising out of the use of the Service by Customer or otherwise arising out of the use of the Customer's Account.

## 10. Notifications

Customer's privacy interests, including Customer's ability to limit disclosure of certain information to third parties, are safeguarded by provisions of the Cable Communication Policy Act of 1984, as amended. Customer's rights under the foregoing law, and NewWave Communications's privacy practices, are described in the Customer Privacy Notice delivered to Customer and incorporated herein by reference. Customer acknowledges by execution of this Agreement receipt of the Customer Privacy Notice.

NewWave Communications may provide Notice to Customers, from time to time about various matters, either on-line or by phone or by U.S. Mail. Any notice given to the Customer in whose name an Account is registered is deemed notice to all users of the Account. Notice by Customer to NewWave Communications must be given by electronic message or conventional mail, unless otherwise specified in this Agreement. For the purposes of delivering notice to NewWave Communications, Customer shall address its communications to: NewWave Communications, ATTN: InternetService, One Montgomery Plaza, 4th Floor, Sikeston, Missouri 63801.

## 11. Miscellaneous

This Agreement and any operating rules for the Service established by NewWave Communications now or hereafter constitute the entire agreement of the parties with respect to the subject matter hereof, and supersede all previous written or oral agreements between the parties with respect to such subject matter; provided that any other special pricing agreement or subscription or customer agreement relating to Customer's cable television service with NewWave Communications shall remain in full force and effect. Acceptance of Service or execution of this Agreement shall constitute acceptance of the terms and conditions herein. This Agreement shall be construed in accordance with the laws of the State of Missouri, without regard to its conflict of laws rules. In the event that any portion of this Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable laws as nearly as possible to reflect the original intentions of the Parties as set forth herein, and the remainder of the Agreement shall remain in full force and effect. No waiver by either Party of any breach or default shall be deemed to be a waiver of any preceding or subsequent breach or default. Monthly Broadband usage may be monitored and limited.

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Customer Agreement

High Speed Cable Modem Service