

A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE URBAN COUNTY GOVERNMENT, TO EXECUTE A REVISION TO THE MASTER SERVICE AGREEMENT WITH TIME WARNER CABLE, FOR UPGRADE IN INTERNET SERVICE FROM 20M TO 50M, AT A COST NOT TO EXCEED \$8,604.60.

BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:


Section 1 - That the Mayor, on behalf of the Lexington-Fayette Urban County Government, be and hereby is authorized to execute a revision to the Master Service Agreement, which is attached hereto and incorporated herein by reference, with Time Warner Cable, for upgrade in internet service from 20M to 50M.

Section 2 - That an amount, not to exceed the sum of \$8,604.60, be and hereby is approved for payment to Time Warner Cable, from account # 1101-505502-72204, pursuant to the terms of the agreement.

Section 3 - That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: February 20, 2014

MAYOR



ATTEST:


CLERK OF URBAN COUNTY COUNCIL
68-14:MRS:X:\Cases\POLICE\14-LE0001\LEGI\00425358.DOC

R-64-2014



Master Service Agreement

Agreement #: 1

This Master Services Agreement (the "Master Agreement") is effective the day service installations are completed by and between Time Warner Cable Business Class ("TWC"), with offices at 1015 Olentangy River Rd., Columbus Ohio 43212, and the undersigned Customer.

WHEREAS, TWC, is a provider of a broad range of Voice Data and Video services and Customer desires to purchase certain of these services ("Services") from TWC, and TWC is willing to provide the Services to Customer pursuant to the rates, terms and conditions set forth in this Master Agreement, any Attachments or Addenda hereto.

NOW THEREFORE, the parties agree as follows:

CUSTOMER INFORMATION			
Company Name (Exact legal name) LEXINGTON DIVISION OF POLICE		Type of Entity (Individual, corporation, partnership, limited liability co., etc.)	
Street Address 150 EAST MAIN ST	City LEXINGTON	State KY	Zip Code 40507
Company's Main Tel. No. 859-425-2244		Fax No.	
Customer Contact Name (Technical) PAUL STEWART		Tel. No. 859-425-2244	
Federal ID No. 610858140	State ID No.	Tax-Exempt? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <small>(If yes, please attach a copy of exemption certificate.)</small>	Current Customer <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

SERVICES

Customer hereby agrees to purchase from TWC, and TWC agrees to provide to Customer, the following services (the "Services") as set forth in any Attachment, and Addenda, attached hereto and incorporated herein as if set forth in full.

TERM

The Term of this Master Service Agreement shall commence on the Effective Date and continue for as long as any Attachment hereto remains in effect or as long as TWC continues to provide the Customer with any Services hereunder, whichever is longest.

CUSTOMER AUTHORIZATION

Customer acknowledges that TWC may conduct a review of Customer's credit rating, and that TWC may require a security deposit. The amount of the deposit will be based upon the anticipated monthly billing for the Services the Customer is ordering. The unused deposit, if any, will be refunded once this Agreement is terminated or, Customer has made complete and timely payments for one year. In the event a deposit is required, Customer will be notified and will be required to execute a separate security deposit agreement.

The Services provided hereunder are subject to the rates, terms and conditions set forth in this Master Agreement and the Attachments and Addenda hereto.

Acceptance of this Agreement is contingent upon acceptance by a representative of TWC duly authorized to execute this Agreement.

AGREED AND ACCEPTED:

TIME WARNER CABLE, INC.		CUSTOMER	
By: <i>Don Kozel</i> 3/17/14	By: <i>Jim Gray</i>	By: <i>Jim Gray</i>	By: <i>Jim Gray</i>
Printed Name: Don Kozel	Printed Name: JIM C. RAY	Printed Name: JIM C. RAY	Printed Name: JIM C. RAY
Title: VP Sales	Title: MAYOR	Title: MAYOR	Title: MAYOR
Time Warner Cable Business Class	Company Name: LF000	Company Name: LF000	Company Name: LF000

Client Information

Customer Name: LEXINGTON DIVISION OF POLICE Master Service Agreement #: 1
 Service Address: 150 E MAIN ST Billing Address: 150 E MAIN ST
 City, State, Zip: LEXINGTON KY 40507 City, State, Zip: LEXINGTON KY 40507

Procurement Contact: PAUL STEWART Phone: 859-425-2244 Email: pstewar2@lexingtonky.gov
 Billing Contact: _____ Phone: _____ Email: _____
 Technical Contact: _____ Phone: _____ Email: _____

Services

Customer hereby agrees to purchase from TIME WARNER CABLE, and TIME WARNER CABLE agrees to provide to Customer, the following services (the "Services") as listed below on this order form, per the terms and conditions set forth in the Master Service Agreement identified above.

	Bandwidth	Service Location <small>Street Address, City, State Zip</small>	Monthly Fee	Installation Fee	Term
Direct Internet Access - DIA	50/50M	150 E MAIN ST LEXINGTON KY	1,484.25	0	60
HIGH SPEED INTERNET SVS	50/5M	1795 OLD FRANKFORT PK LEXINGTON KY	265.00	0	60
HIGH SPEED INTERNET SVS	10/1.5M	1165 CENTRE PKWY LEXINGTON KY	90.00	0	60
HIGH SPEED INTERNET SVS	10/1.5M	1060 GOODWIN DR LEXINGTON KY	90.00	0	60
HIGH SPEED INTERNET SVS	10/1.5m	740 NATIONAL AVE LEXINGTON KY	90.00	0	60
HIGH SPEED INTERNET SVS	10/1.5M	1313 OLD FRANKFORT PK LEXINGTON KY	90.00	0	60
Monthly Total			2,109.25	0	60

Note: The service will be terminated on a rack mountable device for Customer interface. The device will be located on the Customer premise. It will be the Customer's responsibility to provide power and security.

Property Management / Building Owner Information

Company: _____ Contact: _____ Phone: _____


Term: The Agreement shall be in effect for the Term set forth herein above (the "Initial Term") and, unless terminated earlier in accordance with this Agreement, shall thereafter automatically renew on a month-to-month basis at the then-current rate unless either party notifies the other party at least thirty (30) days prior to the expiration of the then-current period of such party's intent not to renew. In the event that Customer commits to a further Term Commitment at the end of the Initial Term, TWC will negotiate in good faith with Customer.

Service: In the event of a complete failure of the Service Package and /or breach of the attached service SLA due to technical malfunction of the Time Warner Cable Business Class Network operated by TWC, Customer will be entitled to and therefore will request a credit per the guidelines listed in said attachment.


Remarks:

BY SIGNING THIS ORDER FORM THE CUSTOMER INDICATES THAT THEY HAVE READ AND AGREE TO THE TWC MASTER SERVICE AGREEMENT TERMS AND CONDITIONS as well as the services ordered with this attachment. The fees set forth do not include applicable taxes and other similar charges which may be part of the fee charged by TWC hereunder and which shall be the responsibility of the Customer as set forth in this Agreement.

CUSTOMER:

By: 
 Name: JIM GRAY
 Title: MAJOR
 Date: 7.24.14

Time Warner Cable Business Class:

By: 
 Name: Don Kosic
 Title: VP Sales
 Date: 3/17/14

1. **SERVICE.** Subject to the terms and conditions of this Agreement, TWC shall provide Customer with service as described on agreed to Attachment(s) hereto (the "Service"). TWC shall use commercially reasonable efforts to provide the Service 7 days a week, 24 hours a day, excluding scheduled maintenance, and force majeure events. TWC's provision of the Service is subject to availability.
2. **INSTALLATION.** Customer shall use reasonable efforts to obtain and maintain throughout the Term (as defined in Section 5 below) such consents (including without limitation landlord and land owner consents) as are necessary to timely permit, and shall timely permit, TWC personnel to install, deliver, operate and maintain the Service and Equipment as contemplated herein at Customer's facilities. Customer shall use reasonable efforts to permit TWC to access the Customer or Customer's end user facilities at reasonable times as needed to install, configure, upgrade, maintain or remove the Equipment and other service components located at Customer's facilities. Customer shall make and maintain throughout the Term all site preparations necessary to permit the installation, maintenance, and operation of the Service and any Equipment (as defined below) as specified by TWC. Provided that Customer properly performs all necessary site preparation and provides TWC with all required consents, TWC shall use commercially reasonable efforts to install the Service in accordance with a mutually agreed upon schedule. TWC shall provide Customer with a completion notice ("Completion Notice") upon completion of the installation of the Service. Customer shall have five (5) days after receipt of the Completion Notice to test ("Acceptance Period") and provide TWC notice accepting or rejecting the Service. If Customer determines during the Acceptance Period that the Service is not operating in conformity with TWC's service specifications, Customer shall immediately notify TWC (specifying in reasonable detail the defect or failure of the Service). In the event that Customer notifies TWC in writing that the Service is unacceptable, TWC shall, within thirty (30) days following receipt of such notice, remedy the Service and re-deliver such Service to Customer. The foregoing process shall continue until the Service shall have been Accepted in writing by Customer or three attempts have been made by TWC without the Service complying with TWC's service specifications. If Customer fails to notify TWC of its acceptance or rejection of the Completion Notice within the Acceptance Period, Customer shall be deemed to have accepted such Service. Interconnection of the Service and Equipment with Customer's equipment will be performed by Customer. Customer's sole and exclusive remedy for TWC's failure to provide Service as set forth above shall be to terminate this Agreement without liability to either party.
3. **SUPPORT & MAINTENANCE.** TWC shall use commercially reasonable efforts to maintain the TWC provided and installed cabling, routers and other TWC-installed- equipment, if any, (collectively, the "Equipment") used by TWC to provide the Service. TWC shall provide a 24x7x365 toll-free telephone number and email address for inquiries and remote problem support for the Service. All such Customer support shall be provided to Customer's help desk personnel only. Customer is responsible for interfacing with its employees and end users. In no event shall TWC be responsible for providing support for any network, equipment or software not provided and installed by TWC under this Agreement or for issues or problems beyond its direct control.
4. **CUSTOMER OBLIGATIONS.** Customer's use of the Service (including all content transmitted via the Service) shall comply with all applicable laws and regulations, the terms of this Agreement, and any Terms of Use (which are incorporated herein by this reference). "Terms of Use" means all Service policies, including without limitation acceptable use policies, and other terms and conditions established by TWC and available on the TWC web site, www.twcbc.com/legal, as may be modified from time to time by TWC. Customer shall maintain the Equipment free and clear of all liens and encumbrances and shall be responsible for loss or damage to the Equipment while at Customer's facilities. As between the parties, Customer is solely responsible for (a) all use (whether or not authorized) of the Service, which use shall be deemed Customer's use for purposes of this Agreement; and (b) all content that is stored or transmitted via the Service. Customer shall not upload, post, transmit or otherwise make available on or via the Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others, that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law or regulation. TWC may remove, or demand the removal of, content that in its judgment violates these standards. Customer agrees to conform its equipment and software to TWC's then-current network specifications and system requirements for the Service.
5. **PAYMENT.** Customer agrees to pay TWC the one-time Service installation fee and monthly recurring Service fees (collectively the "Service Charges") set forth on Attachment in accordance with the following payment terms: Service Charges will be billed to Customer monthly in accordance with TWC's regular billing schedule and are payable within thirty (30) days after the date of invoice. Customer shall pay all federal, state and local taxes, fees, charges, surcharges or similar exactions imposed on the Services that are the subject of this Agreement including but not limited to state and local sales and use taxes, telecommunications taxes, federal and state universal service fund fees and state and local regulatory fees to the extent applicable. Further, TWC shall have the right to recover from Customer the amount of any state or local fees or taxes imposed directly on TWC, TWC's services, or tax or fees measured on TWC's receipts, in the form of a surcharge included on Customer's invoice. TWC shall be responsible for and shall pay all taxes measured by TWC's net income. To the extent that a dispute arises as to which party is liable for taxes under this Agreement, Customer shall bear the burden of proof in showing that the tax is imposed upon TWC's net income. This burden may be satisfied by Customer producing written documentation from the jurisdiction imposing the tax indicating that the tax is based on TWC's net income. Customer shall be responsible for providing TWC any and all documentation substantiating a claim for exemption from taxes or fees prior to the date that Services are first provided under this Agreement. To the extent such documentation is held invalid for any reason, Customer agrees to reimburse TWC for any tax liability including without limitation related interest and penalties arising from such invalid documentation. TWC shall have the right to increase Service Charges after the Term upon thirty (30) days advance written notice to Customer. TWC may charge a late fee for all overdue amounts. The late fee will be the lesser of 1½% per month assessed in full in the first month of the billing period or the highest rate chargeable by law. Customer shall also be responsible for all costs of collection (including reasonable attorneys' fees) to collect overdue amounts. In addition to the foregoing, and all other available remedies, following ten (10) business days notice, TWC may discontinue Customer's access to the Service in whole or in part, until such overdue amounts, together with interest, are paid. TWC may require a security deposit, letter of credit, advance payment for Service or other reasonable assurances of payment from Customer.

6. **TAXES.** Customer shall pay all federal, state, and local taxes, fees, charges, surcharges or similar exactions imposed on the Services and/or products that are the subject of this Agreement including but not limited to state and local sales and use taxes, telecommunications taxes, federal and state universal service fund fees and/or state and local regulatory fees to the extent applicable. TWC shall have the right to recover from Customer the amount of any state or local fees or taxes arising as a result of this Agreement, which are imposed on TWC or TWC's services, or measured on TWC's receipts. Such fees or taxes shall be invoiced to Customer in the form of a surcharge included on Customer's invoice. TWC shall be responsible for and shall pay all taxes measured by TWC's net income. To the extent that a dispute arises as to which Party is liable for fees or taxes under this Agreement, Customer shall bear the burden of proof in showing that the fee or tax is imposed upon TWC's net income. This burden may be satisfied by Customer producing written documentation from the jurisdiction imposing the fee or tax indicating that the fee or tax is based on TWC's net income. Customer shall be responsible for providing TWC any and all documentation substantiating a claim for exemption from taxes or fees prior to the date that Services are first provided under this Agreement. To the extent such documentation is held invalid for any reason, Customer agrees to reimburse TWC for any tax or fee liability including without limitation related interest and penalties arising from such invalid documentation.
- 6.1 Customer represents and warrants that Customer's use of the Services shall be such that the Service shall be deemed jurisdictionally interstate, pursuant to the Federal Communications Commission's mixed use "10% Rule" (47 C.F.R. 36.154, 4 FCC Red. 1352), and shall notify TWC in the event of breach or threatened breach of the foregoing. If, as a result of Customer's use of the Service, the Service is deemed not to be jurisdictionally interstate pursuant to the 10% Rule, then Customer will be liable for any resulting fees, fines, penalties and costs incurred by TWC. In addition, if TWC determines that Customer's use of the Service is likely to be deemed not to be jurisdictionally interstate, and therefore that TWC's provision of the Services is likely to put TWC's franchises, licenses, permits or business at risk, or otherwise cause regulatory problems for TWC, then TWC may immediately suspend the provision of Services under all affected Service Orders until such time as either (a) Customer provides TWC with satisfactory assurances that Customer's use of the Services shall be deemed to be jurisdictionally interstate or (b) TWC is otherwise brought into full compliance with any applicable laws and regulations.
- 6.2 Customer acknowledges that currently, and from time to time, there is uncertainty about the regulatory classification of some of the Services TWC provides and, consequently, uncertainty about what fees, taxes and surcharges are due from TWC and/or its customers. Customer agrees that TWC has the right to determine, in its sole discretion, what fees, taxes and surcharges are due and to collect and remit them to the relevant governmental authorities, and/or to pay and pass them through to Customer. Customer hereby waives any claims it may have regarding TWC's collection or remittance of such fees, taxes and surcharges. Customer understands that it may obtain a list of the fees, taxes and surcharges that TWC currently collects or passes through by writing to TWC at the following address and requesting same: Time Warner Cable, 7800 Crescent Executive Drive, Charlotte, North Carolina, 28217; Attention: Subscriber Tax Inquiries.
7. **PROPRIETARY RIGHTS AND CONFIDENTIALITY.** (a) TWC's Proprietary Rights. All materials, including, but not limited to, any Equipment (including related firmware), software, data or information developed or provided by TWC, any identifiers or passwords used to access the Service or otherwise provided by TWC, and any know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, patents, trade secrets, any other proprietary rights inherent therein and appurtenant thereto, used by TWC to provide the Service (collectively "TWC Materials") shall remain the sole and exclusive property of TWC or its suppliers. Customer shall acquire no interest in the TWC Materials by virtue of the payments provided for herein. Customer may use the TWC Materials solely for Customer's use of the Service during the Term. Customer may not reproduce, modify or distribute the TWC Materials, or use them for the benefit of any third party. All rights in the TWC Materials not expressly granted to Customer are reserved to TWC. Customer will not open, alter, misuse, tamper with or remove the Equipment as and where installed by TWC, and will not remove any markings or labels from the Equipment indicating TWC (or its suppliers) ownership or serial numbers. (b) Confidentiality. Both Parties agree to maintain in confidence, and not to disclose to third parties or use, except for such use as is expressly permitted herein, any materials or any other information and materials provided by either party in connection with this Agreement that are identified or marked as confidential or are otherwise reasonably understood to be confidential. Notwithstanding the foregoing, Customer may disclose the content of the Master Service Agreement to the extent required by applicable law, rule or regulation. (c) Software. If software is provided to Customer hereunder, TWC grants Customer a limited, non-exclusive and non-transferable license to use such software, in object code form only, solely for the purpose of using the Service for Customer's internal business purposes during the Term.
8. **MONITORING, EQUIPMENT UPGRADES AND MODIFICATIONS.** TWC shall have the right, but not the obligation, to upgrade, modify and enhance the TWC Equipment (including related firmware) and the Service and take any action that TWC deems appropriate to protect the Service and its facilities. TWC also shall have the right to add to, modify or delete any provision of this Agreement (including the Terms of Use). TWC will notify Customer of any material adverse change in this Agreement (including the Terms of Use) or Service descriptions by posting notice of such change on the TWC web site or by email, or, if applicable, in the appropriate TWC tariff. In any event, if TWC modifies this Agreement (including the Terms of Use) and such modification has a material adverse impact on Customer's ability to use the Service, Customer may, within the thirty (30) day period following the date of such modification, terminate without penalty the Order relating to the affected Service.
9. **TERMINATION.** Either party may terminate this Agreement upon thirty (30) days written notice of the other party's material breach, provided that such material breach is not cured within such thirty (30) day period. In addition, in the event that Customer fails to comply with any applicable laws or regulations, the terms of this Agreement, or the Terms of Use, TWC may suspend or discontinue Customer's Service in whole or in part without advance notice. In addition, TWC may immediately suspend Customer's or its End User's use of the Service if such use is determined by TWC, at its sole discretion, to be resulting in a material degradation of the TWC network, until such time as such degradation has been remedied. In the event of a suspension, TWC may require a reconnect charge to restart the suspended Service. Upon the termination or expiration of this Agreement: (a) TWC's obligations hereunder shall cease; (b) Customer promptly shall pay all amounts due and owing to TWC for Service delivered prior to the date of termination or expiration and any applicable deinstallation fee, if any; (c) Customer promptly shall cease all use of any software provided by TWC hereunder, and shall return such software to TWC; and (d) Customer shall return to TWC or permit TWC to remove, in TWC's sole

discretion, the Equipment in the same condition as when received, ordinary wear and tear excepted. Customer shall be responsible for reimbursing TWC for the repair or replacement, at TWC's discretion, of any Equipment not returned in accordance with this section. In addition, notwithstanding anything to the contrary herein, upon early termination of an Order by Customer for any reason other than as set forth in Section 9(a) or 9(b) above or by TWC for any reason set forth in Section 9(a) or 9(b) above, Customer shall, at TWC's discretion, (1) promptly pay TWC a termination fee equal to the Service Charges that would have been due for the remainder of the Initial Term or the then-current renewal term (exclusive of any discount previously received by Customer) or (2) reimburse TWC for all volume, term or other discounts and credits provided in anticipation of full performance of Customer's obligations, as applicable, and any unpaid portion of the installation fee set forth in the applicable Order(s). The foregoing shall be in addition to any other rights and remedies that TWC may have under this Agreement or at law or equity relating to Customer's material breach.

10. **INDEMNIFICATION.** Except to the extent prohibited by applicable law, rule or regulation, Customer agrees to defend, indemnify and hold harmless TWC, its affiliates, its service providers and suppliers and their respective officers, directors, employees and agents, from and against all claims, liabilities, damages and expenses, including attorneys' and other professionals' fees, arising out of or relating to (i) the use of the Service, including but not limited to a breach of Section 4 herein; (ii) any fees, fines or penalties incurred by TWC as set forth in Section 6.1 herein; (iii) breach of the terms governing any use of music service provided as part of the Service or (iv) personal injury or property damage caused by the negligence or willful misconduct of Customer or its employees or agents. Without limiting the foregoing, this shall not be deemed to be a waiver of sovereign immunity or any other third party defense available to Customer. TWC agrees to defend, indemnify and hold harmless Customer, its affiliates, its service providers and suppliers and their respective officers, directors, employees and agents, from and against all claims, liabilities, damages and expenses, including attorneys' and other professionals' fees, arising out of or relating to personal injury or tangible property damage caused by the negligence or willful misconduct of TWC or its employees or agents.
11. **DISCLAIMER OF WARRANTY.** CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE AND THE INTERNET AND ACCESSES THE SAME AT ITS OWN RISK. TWC EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY WHATSOEVER FOR THE CONTENT TRANSMITTED OR ACCESSIBLE THROUGH THE SERVICE OR THE INTERNET OR ACTIONS TAKEN ON THE INTERNET AND TWC EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH CONTENT OR ACTIONS. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE SERVICE AND RELATED EQUIPMENT AND/OR OTHER MATERIALS USED IN CONNECTION WITH THE SERVICE, IF ANY, ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NONINFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY TWC, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE ANY WARRANTY. TWC DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES, WILL BE UNINTERRUPTED, SECURE OR ERROR FREE OR THAT ANY MINIMUM TRANSMISSION SPEED IS GUARANTEED AT ANY TIME. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TRANSMISSIONS OVER THE INTERNET MAY NOT BE SECURE. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT ANY MATERIAL AND/OR DATA UPLOADED, DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE UPLOADING, DOWNLOADING OR OTHER TRANSMISSION OF SUCH MATERIALS AND/OR DATA. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TWC'S THIRD PARTY SERVICE PROVIDERS DO NOT MAKE ANY WARRANTIES TO CUSTOMER UNDER THIS AGREEMENT, AND TWC DOES NOT MAKE ANY WARRANTIES ON BEHALF OF SUCH SERVICE PROVIDERS UNDER THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY OR QUIET ENJOYMENT.
12. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL TWC BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER OR NOT TWC HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF TWC TO CUSTOMER FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY) SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT IN THE SIX (6) MONTHS PRECEDING THE DATE THE CLAIM ARISES. NOTWITHSTANDING THE FOREGOING, THE AGREGTE LIABILITY OF TWC FOR PERSONAL INJURY OR TANGIBLE PROPERTY DAMAGE CAUSED BY THE NEGLIGENCE OR WILLUL MISCONDUCT OF ITS EMPLOYEES OR AGENTS SHALL BE LIMITED TO TWC'S INSURANCE COVERAGE FOR SUCH CLAIMS. IN NO EVENT SHALL TWC'S AFFILIATES, THIRD PARTY SERVICE PROVIDERS OR SUPPLIERS HAVE ANY LIABILITY TO CUSTOMER HEREUNDER.
13. **FORCE MAJEURE.** TWC shall have no liability to Customer hereunder due to circumstances beyond its control, including, but not limited to, acts of God, terrorism, flood, fiber cuts, acts or omissions of other carriers, natural disaster, regulation or governmental acts, fire, civil disturbance, strike, weather, any unauthorized access to or destruction or modification of the Service, in whole or in part, any failure of heat, air conditioning, or power supply, or act or failure to act of Customer or any third party using the Service.
14. **DISCLOSURE OF CUSTOMER INFORMATION.** Customer's privacy interests, including Customer's ability to limit disclosure of certain information to third parties, are addressed by, among other laws, the Federal Cable Communications Act (the "Cable Act") and the Electronic Communications Privacy Act. Personally identifiable information that may be collected, used or disclosed in accordance with applicable laws is described in the Subscriber Privacy Notice provided by TWC in writing, which is incorporated herein by reference. Customer acknowledges receipt of the Subscriber Privacy Notice. In addition to the foregoing, Customer hereby acknowledges and agrees that TWC may disclose Customer's and its employees' personally identifiable information as required by law or regulation or by the American Registry for Internet Numbers ("ARIN") or any similar agency. In addition to actions and disclosures specifically authorized by law or statute or authorized elsewhere in this Agreement, TWC shall

have the right (except where prohibited by law notwithstanding Customer's consent), but not the obligation, to disclose any information to protect its rights, property and/or operations, or where circumstances suggest that individual or public safety is in peril. Customer hereby consents to such actions or disclosures.

15. **REGULATORY AND LEGAL CHANGES, POLE ATTACHMENT AND CONDUIT CHARGES, TARIFFS.** In the event of any change in applicable law, regulation, decision, rule or order, including without limitation any new application of or increase in universal service fees or other government or quasi-government-imposed charges that increases the costs or other terms of TWC's delivery of Service to Customer, or, in the event of any increase in pole attachment or conduit charges applicable to any facilities used by TWC in providing the Service, Customer acknowledges and agrees that TWC may pass through to Customer any such increased fees or costs, but only to the extent of the actual increase, provided TWC notifies Customer at least thirty (30) days in advance of the increase. In such case, and if such increase materially increases the fees or charges due by Customer hereunder for the applicable Service, Customer may, within thirty (30) days after notification of such increase, terminate the affected Service without incurring termination liability, provided Customer notifies TWC at least fifteen (15) days in advance of Customer's requested termination date. Further, in the event that TWC is required to file tariffs or rate schedules with a regulatory agency or otherwise publish its rates in accordance with regulatory agency rules or policies respecting the delivery of the Service or any portion thereof, and TWC is required under applicable law to apply those rates to Customer's purchase of Service under this Agreement, then the terms set forth in the applicable tariff or rate schedule shall govern TWC's delivery of, and Customer's use or consumption of the Service. In addition, if TWC determines that offering or providing the Service, or any part thereof, has become impracticable for legal or regulatory reasons or circumstances, then TWC may terminate this Agreement as to any or all of the Service and may terminate any affected Orders, without liability by giving Customer thirty (30) days prior written notice or any such notice as is required by law or regulation applicable to such determination.
- 15.1 This Agreement, its Attachments and the Order(s) are subject to all applicable federal, state or local laws and regulations in effect in the relevant jurisdiction(s) in which TWC provides the Services. If any provision of this Agreement, its Attachments, or the Order(s) contravene or are in conflict with any such law or regulation, then the terms of such law or regulation shall take priority over the relevant provision of this Agreement, its Attachments, and/or the Order(s). If the relevant law or regulation applies to some but not all of the Service(s) being provided hereunder, then such law or regulation will take priority over the relevant provision of this Agreement, its Attachments, and the Order(s) only for purposes of those Service(s) to which the law or regulation applies. Except as explicitly stated in this Agreement, nothing contained in this Agreement shall constitute a waiver by TWC of any rights under applicable laws or regulations pertaining to the installation, operation, maintenance or removal of the Services, facilities or equipment.
16. **ENTIRE AGREEMENT.** This Agreement, including without limitation all Attachments that are attached hereto and incorporated herein by this reference, sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous written or oral agreements or representations between the Parties with respect to such subject matter.
17. **ORDER OF PRECEDENCE.** Each Service shall be provisioned pursuant to the terms and conditions of this Agreement. In the event that TWC permits a Customer to use its own standard purchase order form to order the Service, the Parties hereby acknowledge and agree that the terms and conditions hereof shall prevail notwithstanding any variance with the terms and conditions of any purchase order submitted by Customer, and any different or additional terms contained in such purchase order shall have no force or effect. To the extent that the terms of any Attachment or Order are inconsistent with the terms of this Agreement, the terms of this Agreement shall control.
18. **COMPLIANCE WITH LAWS.** As between the Parties, TWC will obtain and maintain at its own expense all licenses, approvals and regulatory authority required by law with respect to TWC's operation and provision of the Services as contemplated herein, and Customer will obtain and maintain at its own expense all license, approvals and regulatory authority required by law with respect to Customer's use of the Services as contemplated herein. Unless specified otherwise in this Agreement, each Party will give all notices, pay all fees and comply with all laws, ordinances, rules and regulations relating to its performance obligations specified herein.
19. **MISCELLANEOUS.** This AGREEMENT SHALL be governed and construed in accordance with the laws of the Commonwealth of Kentucky, excluding its conflicts of law principles. Each party hereto consents to the personal jurisdiction of the Commonwealth of Kentucky and voluntarily submits to the jurisdiction of the courts sitting in the County of Fayette in any action or proceeding with respect to this agreement, including Federal District courts of such state. 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 law as nearly as possible to reflect the original intentions of the parties set forth herein, and the remainder of this Agreement shall remain in full force and effect. No waiver of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. Neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, and any assignment in violation of this Section shall be null and void. TWC may assign its rights and obligations under this Agreement, including without limitation, in whole or in part, to any Time Warner Cable Inc. affiliated party without the prior written approval of or notice to Customer. Neither party shall make a press release, public announcement or other public statements regarding this Agreement without the other party's prior written consent. All claims under this Agreement must be initiated not later than two years after the claim arose. There are no third party beneficiaries to this Agreement. Customer understands and agrees that, regardless of any such assignment, the rights and obligations of TWC herein may accrue to, or be fulfilled by, any TWC affiliate, as well as by TWC and/or its subcontractors. The parties to this Agreement are independent contractors. Any notice under this Agreement shall be given in writing and shall be deemed to have been given when actually received by the other party. Notices shall be delivered to Customer and TWC at the respective addresses set forth above, or to such other address as is provided by one party to the other in writing. The provisions of Sections 4, 7, 8, 9 and 13 shall survive the termination or expiration of this Agreement. No modification of any provision of this Agreement shall be valid unless set forth in a written instrument signed by both parties. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one

and the same instrument. Notwithstanding anything herein to the contrary, any party to this Agreement (and each employee, representative, or other agent of such party) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions and other tax analyses) that are provided to the party relating to such tax treatment and tax structure.

D. H. M.