

**Master Service Agreement for**

**Stearns County (MN)**

This Master Service Agreement (this “Agreement”), made and entered into as of this 1st day of March 2020 (the “Effective Date”), between Stearns County (MN). (the “County”) and HomeWAV, LLC, a Delaware limited liability company (“HomeWAV”).

**RECITALS**

**Services of HomeWAV**

All work shall be in accordance with the County’s Request for Proposal (RFP) and HomeWAV’s response to the RFP attached hereto as Exhibit D and incorporated herein by reference. Should there be any discrepancy between Exhibit D and this Agreement the terms and conditions of the RFP and RFP response shall prevail.

**Whereas**, the County and HomeWAV desire to enter into this Agreement which provides, among other terms and conditions, that the County will license HomeWAV to install certain equipment, as set forth on Exhibit A hereto (the “Equipment”) in the County’s detention facility, which HomeWAV will use to operate HomeWAV’s proprietary and patented software program (the “Software” and, together with the Equipment, the “System”) and certain other permitted uses, as set forth on Exhibit B attached hereto (the “Other Permitted Uses”);

**Whereas**, the System will be installed and operated in the County’s detention facilities hereto (each, a “Facility” and collectively, the “Facilities”) and will provide inmate telephone, video visitation, and telephone and video messaging; and

**Whereas**, HomeWAV will deliver and install the Equipment and provide the County with a limited license to use the Software, and the County will make use of the Software and the System, in each case, pursuant to the terms and subject to the conditions set forth herein.

**Now, therefore**, in consideration of the mutual covenants and promises contained herein, the parties, desiring to be contractually bound, agree as follows:

- 1. License; Exclusivity.** The County hereby agrees to license HomeWAV to deliver and install the Equipment described in Exhibit A in the County’s detention facility(ies). For the duration of this Agreement (which includes any extensions hereto), the County agrees to use HomeWAV as the exclusive provider of inmate telephone, video visitation, and telephone and video messaging services for the Facility(ies).
- 2. Term of this Agreement.** Term of this Agreement shall commence ninety (90) days after the “Effective Date.” The Agreement shall continue for five (5) years unless terminated earlier pursuant to Section 13. This Agreement may be renewed provided both parties mutually agree in writing, for two (2) consecutive additional one (1) year. Notice to extend under this provision shall be provided to HomeWAV no less than 60 days prior to the end of the then current term.
- 3. No Charge.** HomeWAV will: (i) arrange for the delivery of the Equipment to the Facilities, (ii) load the Software onto the Equipment, (iii) coordinate the installation of the Equipment in designated wall mount locations within the Facilities, (iv) provide system testing and acceptance on all kiosks, (v) provide reasonable authorization and assistance to permit the use of the Equipment in connection with the Other Permitted Use and (vi) provide staff and inmate training on platform features and functionality, (vii) arrange for high speed Internet service at

minimum of 0.5MB up/0.5MB down per kiosk, and any equipment associated therewith to service the System, (viii) and arrange for cat 6 or greater cable to be installed (if necessary) to each location within the Facility where Equipment is to be installed, all at no charge to the County.

4. **No Charge for Service and Maintenance.** HomeWAV will service and maintain the Equipment in the Facility pursuant to HomeWAV's Software and Hardware Service Level Agreement as set forth on Exhibit C attached hereto, to be entered into between HomeWAV and the County contemporaneously with the execution of this Agreement. The Service Agreement may only be amended as mutually agreed to in writing, signed by both parties. The Service Agreement shall automatically terminate upon termination of this Agreement.

5. **Title to the Equipment.** HomeWAV shall retain title to the Equipment and the System, and solely responsible for insuring the Equipment and the System. The County agrees to execute any such additional instruments and to permit any filing or recording as may be requested by HomeWAV to indicate ownership of the Equipment. The County will not, and will not permit any other person to, remove, alter, disfigure or cover up any numbering, lettering, insignia or any owner's tag(s) displayed upon the Equipment.

6. **License for Use of System.** HomeWAV hereby grants to the County a non-assignable and nonexclusive license to use the Software for the limited purpose of providing telephone, Internet video visitation, and video and phone messaging to inmates in each detention Facility and to view or monitor the records of such visitations, in each case in accordance with the Software's End User Licensing Agreement and Terms of Use and Privacy Policy, as each is set forth in the Software, as such items may be updated, amended and modified in accordance with their respective terms (collectively, the "**Software Terms and Conditions**"), and pursuant to the terms and subject to the conditions of this Agreement. The County shall have no right to sublicense the Software and may not copy or modify the Software, or any adaptation, transcription or merged portion thereof, except as expressly authorized in writing by HomeWAV. Any modifications, improvement or alterations to the Software, whether authorized or not, made by the County or any third party shall be the sole and exclusive property of HomeWAV, and the County hereby assigns all of its right, title and interest in and to such modifications, improvements or alterations to HomeWAV. For the avoidance of doubt, this license shall expire immediately upon the termination of this Agreement.

7. **The County's Agreements.**

- a. The County covenants that it will not sublease or assign the Equipment, the Software, or the System.
- b. The County agrees that the County shall keep the Equipment free and clear of all liens and encumbrances.
- c. The County hereby agrees to use the Equipment for limited purposes of use of the Software and the Other Permitted Uses, in each case, at the Facilities and pursuant to the terms and subject to the conditions of this Agreement.
- d. The County agrees to use its best efforts to ensure that none of the Equipment or Software is damaged by misuse or neglect, including, without limitation, by misuse by the inmates.
- e. The County will work with HomeWAV to ensure that all users of the System will agree to the Software Terms and Conditions.
- f. The County will agree that HomeWAV will be the sole provider of inmate phone, video visitation and phone and video messaging services in the Facility.

- g. The County will not move the Equipment without the advance written consent of HomeWAV.
- h. The County will not remove, alter, disfigure, or cover up any numbering, lettering, insignia, or any owner's tag(s) displayed upon the Equipment.
- i. The County will provide a data file from the Jail Management Software, via secure FTP or web services integration, at a minimum of every fifteen (15) minutes. Any initial synchronization cost will be paid by HomeWAV.

8. **Access to the Facility.** The County will grant HomeWAV and its subcontractors' reasonable access to the Facilities in connection with HomeWAV's rights and obligations hereunder and under the Service Agreement. HomeWAV shall have the right, upon reasonable notice, to enter into each Facility to inspect the System.

9. **System Usage Fee.** The Facility's inmates shall be charged the following fees for using the System, or such other prices as may be agreed to by the County and HomeWAV (such amounts, the "Usage Fees"). Usage Fee shall be defined as the cost per minute for phone calls, video calls, and video and phone messaging.

System Usage Fees	
Domestic Phone Calls	\$0.10 per minute
International Phone Calls	\$0.10 + International Rate per minute
Lobby (Onsite) Video Visits	Free
Remote (Offsite) Video Visits	\$0.20 per minute
Video Message	\$0.50 per message
Deposit Fee	\$2.00

Revenues from using the System shall be deposited into a dedicated account established and maintained by HomeWAV and HomeWAV is authorized to disburse such funds in accordance with Section 10 of this Agreement. The Usage Fees may only be changed by signed agreement of both parties as a result of any one or combination of the following: (a) inflation, (b) a change in taxes, or any (c) rule, regulation, or other action by any government or regulatory entity resulting in increased costs to HomeWAV.

10. **Revenue Sharing.** As defined in the tables below, HomeWAV shall pay to the County a **Minimum Monthly Guarantee ("MMG")** or **percentage of the Adjusted Gross Revenue ("AGR")**, whichever is greater, from the usage of the Equipment and the System installed in the Facility. AGR shall be defined as Gross Revenue of the Usage Fees minus Internet fees, international calling fees, and Federal, State, and Local taxes. In the event the average inmate population falls below 140 for a given month, the County's revenue share shall automatically default to the commission, as denoted below, until the average inmate population meets or exceeds 140. The MMG will take effect in the proceeding calendar month after the incumbent service provider's system has been deactivated for the entire month. HomeWAV shall pay to the County, on a monthly basis, its share of the revenues not later than the 10th of following month.

Inmate Telephone System		
Commission	50%	The County will receive 50% on Adjusted Gross Revenue (AGR).  <i>*AGR is defined as Gross Revenue of Usage Fees minus Federal, State, and Local taxes.</i>

Minimum Monthly Guarantee (MMG)	\$7,000.00	On a monthly basis, the greater of these two amounts (50% or the MMG of \$7,000.00) will be the applicable revenue-share.  <i>*The County's MMG requires a monthly ADP of 140+.</i>
Service Performance Guarantee	\$100 per day	HomeWAV will pay to the County for every day we fail to meet the standards set forth in the Hardware and Software Service Level Agreement.

Inmate Video Visitation System		
Commission	25%	The County will receive 25% on Adjusted Gross Revenue (AGR).  <i>*AGR is defined as Gross Revenue of Usage Fees minus Federal, State, and Local taxes.</i>
Minimum Monthly Guarantee (MMG)	\$700.00	On a monthly basis, the greater of these two amounts (25% or the MMG of \$700.00) will be the applicable revenue-share.  <i>*The County's MMG requires a monthly ADP of 140+.</i>
Service Performance Guarantee	\$100 per day	HomeWAV will pay to the County for every day we fail to meet the standards set forth in the Hardware and Software Service Level Agreement.

11. **Call Monitoring and Recording.** HomeWAV will permit the County to monitor and record the calls in accordance with HomeWAV's practices. This shall include all functionality of the Argus Investigative Platform. The County hereby agrees that HomeWAV shall have no obligation to review or monitor the contents of any call made or received using the Software or the System and shall have no obligation to notify the County in connection with any use or misuse of the Software or the System or any call made or received on the System. The County hereby agrees that HomeWAV shall have no obligation to verify the users of the Software and the System, and shall not be liable for use of the Software which is licensed to Stearns County that is in violation of the Software Terms and Conditions by the County. HomeWAV will make certain recordings available to the County for seven (7) years post termination/expiration of the contract. The County agrees that HomeWAV has no liability to the County or any third party for any failure to record, store, transmit, relay, review or monitor any call.

12. **Financial Reporting Requirements.** HomeWAV shall maintain an accounting program that accurately reflects the revenues generated by the System in the Facilities and provide that information to the County monthly during the term of this Agreement. HomeWAV shall retain its share of the revenues as payment for its obligations hereunder, and shall remit the County's share of revenues, along with such monthly financial reports, to the County. HomeWAV shall issue call data, revenue, and expense information by the 10<sup>th</sup> day of each month with respect to call activity that occurred in the Facilities during the preceding month. HomeWAV shall maintain all books, documents, accounting records and other evidence pertaining to the services and payments under this Agreement and make such materials available for inspection at all reasonable times during the term of this Agreement, and for six (6) years after the date of the final payment under the Agreement. Pursuant to Minn. Stat. §16C.05, subd. 5, or subsequent statute, the books, records, documents, and accounting procedures and practices of Provider relative to this Agreement shall be subject to examination by the County and State Auditor.

13. **Termination.** The County may terminate this Agreement if HomeWAV breaches any provision of this Agreement and such breach remains unremedied thirty (30) days after notice thereof. The County may terminate this Agreement for any or for no reason upon thirty (30) days written notice to HomeWAV. HomeWAV may terminate this Agreement if the County breaches any provision of this Agreement and such breach remains unremedied ninety (90) days after notice thereof. This Agreement shall automatically terminate upon the end of

the term, as such term may be extended pursuant to Section 2. Sections 10, 12, 14-17, 20-30 shall survive termination of this Agreement.

14. **Return of the Equipment.** The County shall grant HomeWAV access to recover the Equipment and System upon reasonable notice by HomeWAV and agreed upon schedule, which shall occur within thirty (30) days of termination or expiration of this Agreement. HomeWAV agrees to recover the Equipment and System within thirty (30) days, after which the Equipment and System are deemed abandoned.

15. **Agreement Documents.** The attached Exhibit A, describing the Equipment; the attached Exhibit B, describing the Other Permitted Uses, the Service Agreement; the attached Exhibit C, the Software Terms and Conditions; and the attached Exhibit D, the County's Request for Proposal with HomeWAV's responses; are each made part of this Agreement and are each incorporated herein by this reference. This Agreement represents the entire agreement and understanding between HomeWAV and the County with respect to the subject matter hereof, and supersedes any other agreement or understanding, written or oral, that the parties hereto may have had with respect thereto. No statements, representations, promises or inducements with respect to the subject matter by either party or by any agent or representative of either party which is not contained in this Agreement shall be valid or binding between the parties.

16. **Force Majeure.** To the extent allowable by law, any delays or failures by either party hereto in the performance of the obligations hereunder shall be excused if and to the extent such delays or failures are caused by occurrences beyond such party's control (a "Force Majeure"), including, without limitation, acts of God, strikes or other labor disturbances, war, whether declared or not, sabotage, failure of the Internet, or any part or element thereof and/or any other cause or causes, whether similar or dissimilar to those herein specified, which cannot reasonably be controlled by such party.

17. **Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed by the laws of the State of Minnesota, both as to interpretation and performance. Jurisdiction and venue shall be within the State of Minnesota.

18. **Independent Contractor.** HomeWAV acknowledges that HomeWAV and its employees serve as independent contractors and that the County shall not be in any manner responsible for any payment, insurance, or incurred liability. Nothing in this Agreement will create an employer-employee relationship, association, joint venture, partnership, or other form of legal entity or business enterprise between the parties, their agents, employees or affiliates.

19. **Subcontractors.** HomeWAV shall have the right to use subcontractors to perform its obligations and exercise its right hereunder and under the Service Agreement. HomeWAV shall be liable for all acts and omissions of its subcontractors as if such acts or omissions were performed by HomeWAV.

20. **Insurance.** The following insurance requirements shall be met by HomeWAV and HomeWAV shall require the same insurance coverage of its subcontractors:

Commercial General Liability Coverage

Minimum Limits: \$1.5 million each occurrence

\$3 million general aggregate

\$3 million products and completed operations aggregate

The policy shall be written on an occurrence basis, not claims made basis. Stearns County shall be included as an additional insured and HomeWAV shall provide a copy of the Certificate of Insurance showing the endorsement to Stearns County.

An excess or umbrella liability policy may be used in conjunction with primary coverage limits to meet the minimum limit requirements.

#### Auto Liability Coverage

Minimum Limits: \$1.5 million on a combined single limit basis

Auto coverage should include any auto, including hired and non-owned. Stearns County shall be included as an additional insured and HomeWAV shall provide a copy of the Certificate of Insurance showing the endorsement to Stearns County.

#### Excess or Umbrella Liability Coverage

An excess or umbrella liability policy may be used in conjunction with primary coverage limits to meet the minimum limit requirements for each line of coverage. The policy should be written on an occurrence basis, not a claims-made basis. Stearns County shall be included as an additional insured and HomeWAV shall provide a copy of the Certificate of Insurance showing the endorsement to Stearns County.

#### Workers' Compensation

Workers' Compensation limits are to be statutory per applicable state and federal laws.

#### Employer's Liability Coverage

Minimum Limits: \$500,000 each accident - bodily injury by accident

\$500,000 each employee – bodily injury by disease

\$1.5 million policy limit – bodily injury by disease

#### Professional Liability Coverage

Minimum Limits: \$2 million per wrongful act or occurrence

\$4 million annual aggregate

#### Cyber-liability Coverage

Minimum Limits \$2 million per occurrence

Stearns County shall be included as an additional insured and HomeWAV shall provide a copy of the Certificate of Insurance showing the endorsement to Stearns County.

21. **Data Privacy.** Pursuant to Minnesota Statute Chapter 13, HomeWAV agrees to maintain and protect the data on individuals received, or to which HomeWAV has access, according to the statutory provisions applicable to the data. No private, public, or confidential data developed, maintained or reviewed by HomeWAV under this Agreement may be released to the public by HomeWAV or HomeWAV employees, representatives or

subcontractors. HomeWAV agrees to indemnify and save and hold the County, its agents and employees, harmless from any and all claims arising from or attributable to any violation of the Minnesota Data Practices Act by HomeWAV or its agents or employees.

22. **Indemnification and Hold Harmless.** HomeWAV agrees it will defend, indemnify and hold harmless the County, its officers and employees against any and all liability, loss, costs, damages and expenses which the County, its officers or employees may hereafter sustain, incur, or be required to pay arising out of HomeWAV's performance or failure to adequately perform its obligations pursuant to this Agreement.

23. **Notices.** All notices under this Agreement must be in writing and must be given by either party by prepaid mail, overnight courier service, or hand delivery to the other party as set forth below. Either party may change its address and/or addressee for notices at any time with fifteen (15) days' prior notice to the other party in accordance with the foregoing.

HomeWAV: HomeWAV, LLC  
2020 Westport Center Dr.  
St. Louis, MO 63146

County: Stearns County Sheriff  
Attn: Jail Administration  
807 Courthouse Square  
St Cloud, MN 56303

And a copy to:

Stearns County Administration  
Rm. 121 705 Courthouse Square  
St. Cloud, MN 56303-4701

24. **Nondiscrimination and Non-Conflict Statements.** HomeWAV agrees that no person on the grounds of handicap, age, race, color, religion, sex or national origin, shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement, or in the employment practices of HomeWAV. HomeWAV shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination.

25. **Warranty Disclaimer.** THE SYSTEM, THE SOFTWARE, THE EQUIPMENT AND SERVICES DELIVERED PURSUANT TO THIS AGREEMENT AND THE SERVICE AGREEMENT ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE BUT EXCLUDING ALL WARRANTIES EXPRESSLY PROVIDED IN THE SERVICE AGREEMENT. HOMEWAV DOES NOT WARRANT THAT THE SOFTWARE WILL RUN PROPERLY ON THE EQUIPMENT OR ANY OTHER HARDWARE, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR COMPLETELY ERROR FREE, OR THAT ALL SOFTWARE ERRORS OR DEFECTS WILL BE CORRECTED.

26. **Compliance with all Federal, State, and Municipal Laws.** HomeWAV is familiar with, and agrees to observe and comply with, all applicable federal, state, and local laws, statutes, ordinances, and regulations in any manner affecting the provision of inmate communication, and shall ensure that its third-party subcontract installers, if applicable, obtain any necessary permits prior to installation of the Equipment in the Facilities.

27. **Assignment.** No party hereto may assign this Agreement or any or all of its rights or obligations hereunder without the prior written consent of the other party. None of the provisions of this Agreement shall be construed to be for the benefit of or enforceable by any person or entity other than the parties hereto and their successors and assigns.
28. **Severability.** If any provision of this Agreement is declared illegal, void, or unenforceable the remaining provisions shall not be affected but shall remain in force and in effect.
29. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original hereof and all of which, when taken together, will be deemed to constitute one and the same agreement. Signatures transmitted by facsimile or other electronic means will be deemed originals.
30. **Authorization; Third Party Beneficiaries.** Each person signing below warrants and represents that he/she has full power and authority to execute this Agreement on behalf of the party he/she represents. There are no third-party beneficiaries to this Agreement.

*(signature page follows)*

In witness whereof, the parties hereto have caused this Agreement to be executed on the day and year first above written, to be effective as of the Effective Date.

HomeWAV, LLC

By: John Best

Name: John Best

Title: CEO/President

Stearns County (MN)

By: Jennifer Butkowsky  
Name: Jennifer Butkowsky  
Title: Buyer

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

## EXHIBIT A

### The Equipment

- \_\_\_ HomePAS Kiosks
- \_\_\_ PoE Adaptor Sets
- One (1) Router/Firewall
- Two (2) 24-port PoE Switches

**EXHIBIT B****Other Permitted Uses**

- Inmate paperless forms/documents such as grievances, medical requests
- The Argus Investigative Platform for inmate phone and video visitation calls
- Background Filtering of inmate stations

## Exhibit C

### HomeWAV's Software and Hardware Service Level Agreement

#### Support and Maintenance

- Support and maintenance will be provided by phone support, remote access or testing, and on-site support. Phone support is available (24) hours a day, (7) days a week, and (365) days a year. Remote access or testing and on-site support are available between 8:00 a.m. and 6:00 p.m. on business days. To the extent that any service window described herein is not practicable given the security protocols at the applicable facility, the parties will work together to address the problem in a timely manner.
- Maintenance/repair calls from the facility will be resolved in the manner outlined in this section (subject to the limitations set forth above):
  - "Major Emergency" shall be defined as an occurrence of any one of the following conditions:
    - A failure of the system processor, its common equipment or power supplies which render the system incapable of performing its normal functions;
    - A failure of the recording function or any of its components that affect the full recording operation;
    - A failure of any of the kiosks functions that result in the ability of inmates to place visitation sessions without the use of assigned PINs; or
    - A failure of the system "kill switches" or similar disabling function.

For a "Major Emergency", HomeWAV will attempt to respond to the service problem within thirty (30) minutes of the initial trouble report by the facility through the use of remote testing or access. If the system is not accessible for remote access, HomeWAV will have a qualified technician on-site at the facility within two (2) hours from the time of initial trouble report.

- "Routine Service" shall be defined as a system failure or problem other than a "Major Emergency" item as listed above.

For a "Routine Service" HomeWAV will attempt to respond to the service problem within two (2) hours of the initial trouble report using remote testing or access or, if the Routine Service is an issue/defect, the issue/defect will be resolved using the Service Ticket Process described below. If needed, HomeWAV will send a qualified technician on site at the facility.

#### Service Ticket Process

- For issues or defects such as common "bugs" or similar problems, a service ticket is created for the issue/defect and sent to HomeWAV's product development team.
- HomeWAV's product development team will take the issue/defect and have it documented for analysis.
- Once analyzed, a scale is used to prioritize the service ticket and a number is placed on the issue/defect. A combination of importance, cost effectiveness, and resolution time will determine the number.
- This service ticket is then placed on the revolving "to do" list for our programmers who deploy the fixes, based on priority.

#### Request for Product Enhancement (Upgrade) Process

- The staff fills out a work order request for an upgrade.
- The work order request is analyzed by the product development team to determine whether it is a necessary universal upgrade to the system or specific to the County.
- If it is determined to be a necessary universal upgrade, it will be sent through the service ticket process and developed at no charge to the County. If it is determined to be specific to the County, a quote will be presented to the county for approval.
- If the work order request is approved by the County, the work order request will be sent to the service ticket process.

- HomeWAV retains the right to invoice any amounts due to the County that were incurred in connection with upgrades requested by the County.

**Exhibit D**

**RFP Response Documents Attached as Exhibit D.**