

## Time Warner Cable Business Class Commercial Service Order Agreement

This Service Order and Lease Agreement is made by and between Time Warner Cable, TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP DOING BUSINESS AS RALEIGH DIVISION ("TWC") and the Customer set forth below ("Customer"). The pricing and other terms set forth below are valid for 30 days from the date sent, and subject to change thereafter. Contract # \_\_\_\_\_

ACCOUNT NAME: <b>City of Durham</b>	TWC CONTACT: <b>Ken Bearden</b>
CONTACT: <b>Director Technology Solutions</b>	ADDRESS: <b>101 Innovation Ave. Morrisville, NC 27560</b>
ADDRESS: <b>101 City Hall Plaza, Durham, NC 27701</b>	TELEPHONE NUMBER: <b>(919) 654-7647</b>
TELEPHONE NUMBER: <b>919-560-4697</b>	FAX NUMBER: <b>1-919-882-8024</b>
FAX NUMBER:	EMAIL: <b>kenneth.bearden@twcable.com</b>
Dun & Bradstreet Number:	

**Services:** Subject to the terms and conditions of this Agreement, TWC shall provide Customer with high speed Internet access delivered via DOCSIS cable modems as detailed in Exhibit A. Customer must purchase any additional capacity separately.

**Service Charges:**

Product Type	Product Name	Number Units	Total MRP	Installation Fee		Contract Term
<b>DOCSIS Internet Access</b>	<b>7M X 768K</b>	<b>8</b>	<b>\$ 639.60</b>	<b>NA</b>		<b>36 months</b>

Note: MRP is the abbreviation for "monthly recurring price".

BY SIGNING THIS ORDER FORM TWC AND THE CUSTOMER INDICATE THAT THEY HAVE READ AND AGREE TO THE TERMS AND CONDITIONS OF THIS SERVICE ORDER AGREEMENT, AS WELL AS THE DIRECT CONNECT SERVICE AGREEMENT ATTACHED HERETO.

**CUSTOMER:**  
City of Durham

Print Name:

Signature:

Title:

Date:

Time Warner Cable

David Lynch

Print Name:

Signature:  
Vice President Sales, Carolinas Region

Title:

Date:

3/30/11

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## Exhibit A

### Service Summary

	Site	Address	BW	Monthly
1	Lyon Park	1309 HALLEY ST	7M x 768k	\$ 79.95
2	Birchwood	416 WALTON ST	7M x 768k	\$ 79.95
3	Walltown	1308 W CLUB BLVD	7M x 768k	\$ 79.95
4	East Durham	2615 HARVARD AVE	7M x 768k	\$ 79.95
5	Edison Johnson	600 W MURRAY AVE	7M x 768k	\$ 79.95
6	WD Hill	1308 FAYETTEVILLE ST	7M x 768k	\$ 79.95
7	Weaver St	3000 E WEAVER ST	7M x 768k	\$ 79.95
8	TA Grady	531 LAKELAND ST	7M x 768k	\$ 79.95
				\$639.60

*Customer must purchase any additional capacity separately.*

## Time Warner Cable Business Class Service Agreement

This Optical Access Service Agreement (the "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2011 (the "Effective Date"), by and between City of Durham, with offices located at 101 City Hall Plaza, Durham NC 27701 ("Customer") and Time Warner Cable, **TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP DOING BUSINESS AS RALEIGH DIVISION**, with offices located at 2450 Perimeter Park Dr. Suite 105, Morrisville, NC 27560 ("TWC"). In consideration of the mutual promises and agreements made herein and intending to be legally bound, the parties agree as follows:

1. **SERVICE.** Subject to the terms and conditions of this Agreement, TWC shall provide Customer with a managed virtual private network (VPN) over the Time Warner Cable hybrid fiber coax DOCSIS network to the locations described on Exhibit B The "Service". TWC shall use commercially reasonable efforts to provide the Service 7 days a week, 24 hours a day, excluding scheduled maintenance, required repair and events beyond TWC's reasonable control. TWC's provision of the Service is subject to availability.

2. **INSTALLATION.** Customer shall 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 permit TWC to access the Customer facilities at any time as needed to install, configure, upgrade, maintain or remove the Equipment and other service components collocated 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. Interconnection of the Service and Equipment with Customer's equipment will be performed by Customer.

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 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 such 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. Customer agrees to provide routine operational Service support for Equipment and service components collocated at Customer's facility, including without limitation by performing reboots, as requested by TWC.

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.TWCBroadband.com, as may be modified from time to time by TWC. Customer agrees not to resell or make any use of the Service other than for Customer's internal business purposes. Customer agrees to use the Service solely for data services. Customer shall maintain the Equipment free and clear of all liens and encumbrances and shall be responsible for loss or damage to the Equipment due to customer negligence 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. **TERM.** The Agreement shall be in effect for the Initial Term of Service set forth on Exhibit A, and unless terminated earlier in accordance with this Agreement, shall thereafter automatically renew on an annual basis unless either party notifies the other party at least thirty (30) days prior to the expiration of the then-current term of such party's intent not to renew (the Initial Term and any renewal term collectively referred to as the "Term").

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6. **PAYMENT.** Customer agrees to pay TWC the one-time Service installation fee and monthly recurring Service fees (collectively the "Service Charges") set forth on Exhibit A 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 be responsible for all use, sales and other taxes and governmental charges applicable to the Service (which taxes and charges are not included in the Service Charges), except for taxes payable on TWC's net income. TWC may charge a late fee for all overdue amounts. The late fee will be the lesser of 1½% 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, except for amounts disputed by Customer in good faith, which shall not be considered overdue. In addition to the foregoing, and all other available remedies, 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.

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. 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. Customer agrees to maintain in confidence, and not to disclose to third parties or use, except for such use as is expressly permitted herein or as may be required by law, the TWC Materials and any other information and materials provided by TWC in connection with this Agreement that are identified or marked as confidential or are otherwise reasonably understood to be confidential. (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 AND MODIFICATIONS.** TWC shall have the right, but not the obligation, to monitor traffic and content on its network, in its sole discretion, including through the use of automatic content filters (including without limitation spam, virus, and adult language sniffers and filters). TWC shall have the right, but not the obligation, to upgrade, modify and enhance the 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 the Terms of Use or any Service descriptions. TWC will notify Customer of any material adverse change in the Terms of Use or Service descriptions by posting notice of such change on the TWC web site or by email. Customer's continued use of the Service after such notice shall constitute Customer's acceptance of such change.

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 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 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. 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.** 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; or (ii) personal injury or property damage caused by the negligence or willful misconduct of Customer 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. 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

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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.

**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 TWC HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**13. NOTIFICATIONS.** 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.

**14. 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.

**15. REGULATORY AND LEGAL CHANGES; TARIFFS.** In the event of any change in applicable law, regulation, decision, rule or order, including without limitation any increase in universal service fees or other government imposed charges, that increases the costs or other terms of delivery of Service to Customer, Customer acknowledges and agrees that TWC may pass through to Customer any such increased costs. Further, in the event that TWC is required to file tariffs with the appropriate regulatory agency or otherwise publish rates in accordance with regulatory agency rules or policies respecting the delivery of the Service or any portion thereof, then the terms set forth in the applicable tariff or published rates shall govern TWC's delivery of, and Customer's consumption or use 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 without liability by giving Customer thirty (30) days prior written notice (or such shorter notice as is required by law or regulation) of such determination.

**16. ENTIRE AGREEMENT.** This Agreement, including without limitation all exhibits 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 hereto. 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.

**17. MISCELLANEOUS.** This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina excluding its conflicts of law principles. 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. Customer may not assign this Agreement without the prior written consent of TWC, 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. Customer shall make no press release, public announcement or other public statements regarding this Agreement without TWC'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, including without limitation Road Runner HoldCo LLC, as well as by TWC and/or its subcontractors. 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 6, 7, 9, 10, 11, 12 and 17 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.

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CITY OF DURHAM

ATTEST:

\_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
City Manager

**TIME WARNER ENTERTAINMENT-  
ADVANCE/NEWHOUSE PARTNERSHIP**  
through its Raleigh Division, d/b/a  
Time Warner Cable Carolinas Region

By: \_\_\_\_\_  
David Lynch Vice President Sales, Carolinas Region

NORTH CAROLINA  
COUNTY of \_\_\_\_\_

ACKNOWLEDGMENT BY CITY OF DURHAM

I, a Notary Public in and for the aforesaid County and State certify that \_\_\_\_\_  
personally appeared before me this day, and acknowledged that he or she is the \_\_\_\_\_ City Clerk of the City of Durham, a  
municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract or agreement was signed in its  
corporate name by its \_\_\_\_\_ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City  
Clerk. This the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF Mecklenburg

ACKNOWLEDGEMENT BY  
TIME WARNER CABLE  
CAROLINAS REGION

I, Karen Reid Sims, a Notary Public of County and State aforementioned, do hereby certify that **David Lynch**, known to me to  
be the **Vice President Sales of Time Warner Cable Carolinas Region**, personally appeared before me this day and acknowledged  
the due execution of the foregoing instrument.

Witness my hand and seal this 30<sup>th</sup> day of March, 2011.

Notary Public: Karen Y. Reid Sims

My Commission Expires: 4-20-2015

