

# NewTek ProTek<sup>SM</sup> Program Customer Agreement

This Agreement is between the undersigned (Customer) and NewTek, Inc. (NewTek) and defines the terms of the ProTek Program.

**1. General.** ProTek Care<sup>SM</sup> is NewTek's customer care program allowing customers to acquire additional maintenance and protection provided by NewTek beyond the standard warranty for eligible NewTek Products. The agreement is with, and the services are provided by, NewTek or its designee. Customers may buy into ProTek Care through any of NewTek's authorized sales channels during the original 12-month Warranty Period for eligible products. The ProTek Elite coverage, if purchased, provides additional localized support through an Elite Service Provider. This ProTek Program agreement, with Exhibits, defines the basic terms for both programs.

**2. Definitions.** The following Definitions apply:

**Customer** is the purchaser of the Product, or the Qualified Transferee of the Product, in Qualified Territories.

**Elite Service Provider** (also ESP) refers to the Reseller to provide additional local services as set forth in Paragraph 7.

**Ending Date** is the last date for which the Product is covered by this Agreement (also referred to as the Coverage Expiration date).

**Invoiced Contract Price** refers to the amount invoiced by NewTek to ProTek Elite Customers as payment for ProTek Elite Coverage.

**Product** refers to the NewTek product that is covered under this agreement, identified specifically in Exhibit A.

**Product Delivery Date** is the date that the Product was delivered to the Customer. Product Delivery Date is deemed to be:

For Products already owned by Customer the Delivery Date is deemed to be the date the Product was registered with NewTek, provided the Product was registered within ten (10) days of the date the Product was delivered to Customer. For Products registered or believed to be registered later than said ten (10) days, or registered within the ninety (90) day period prior to the date Customer signs this Agreement, customer may be required to provide evidence of delivery before the Order is accepted. For all Customers, NewTek may request at any time during the Term,

evidence of the actual delivery date. Evidence of delivery includes shipping documents, Purchase Orders, or cancelled checks showing payment for the Product, and delivery will be deemed to be fifteen (15) days after the date of the Purchase Order or cancelled check if no shipping document is provided.

For new Products purchased concurrently with ProTek, the Delivery Date shall be presumed to be fifteen (15) days after the date NewTek receives the ProTek Order. The Term will be extended to the extent customer can show the Product was delivered later than said date, provided Customer has registered the Product with NewTek within ten (10) days of the date of actual delivery and notifies NewTek of the correct delivery date.

**ProTek Elite Customers** are those Customers who have purchased ProTek Elite Coverage for Services under paragraph 7.

**Qualified Territories** are those Countries or other Territories which NewTek from time to time designates as eligible for Customers therein to participate in the ProTek Program.

**Qualified Transferee** is the person or entity to which the Customer transfers the Product and who is qualified as an Assignee below.

**Starting Coverage Date** is the date that coverage commences under ProTek, and unless otherwise expressly agreed by NewTek, is the Product Delivery Date. No coverage commences or is available for Products delivered to Customer more than twelve months prior to the date Customer signs this Agreement unless expressly agreed by NewTek in promotions or otherwise in writing.

**Services** refer to the services outlined below in paragraph 4 that are to be provided by NewTek relating to the Product.

**3. Price, Payment Terms.** Price and payment terms, are set forth in Exhibit A. The Price is a lump sum for the agreement Term, and any agreement to pay the price over time does not relieve Customer of the obligation to pay the full price. If any part of the Price includes provisions for periodic payments towards the Price, Customer agrees to make said payments timely, and failure to do so will constitute a breach of the agreement. NewTek is not obligated to provide any Services under this Agreement if Customer is in default on payments. NewTek is not obligated to provide Notice of Default in payment, and may withhold providing Services until payments are brought current without affect on the Ending Date. NewTek does not waive its rights under this provision by providing services, or by having previously provided services, while Customer is in default. All past due charges shall incur interest at the rate of 1.5% per month. If Customer is more than ten (10) days late in any payment, a late fee of not to exceed \$US 75.00 shall be charged with respect to said late payment.

**4. NewTek Obligations, Terms of Coverage.** During the Term, NewTek will provide Services as follows.

- a. **Services:** NewTek will provide the Services outlined in this paragraph 4 and as more detailed in Exhibit A.
- b. **Response Time.** In addition to priority access, ProTek customers will have extended access to telephone support, with extended weekday and weekend hours.
- c. **Telephone Support.** ProTek Care Customers' calls will be answered ahead of non-ProTek Care customers, but still in the order they are received amongst ProTek Customers. ProTek Care calls, taken as a whole, will conform to the Average Speed of Answer indicated in Exhibit A.
- d. **Email Support.** NewTek will provide four (4) business-hour online response time for all messages received via the ProTek online support form. Online response time is the time from which the email is received by NewTek to the time that NewTek responds by phone or email to the first online inquiry about the nature of the problem. Auto responses are not considered as a response for this purpose. Business hours shall be construed as 9am to 6pm, Monday through Friday Central Time.
- e. **Repair.** Repair and Testing will be performed free of charge within the time frame specified in Exhibit A, excluding return shipping time. NewTek will provide customer specific procedures to follow, which Customer agrees to comply with. These procedures include the express requirement to first obtain an RMA (Returned Material Authorization) number before sending the Product to NewTek. NewTek may implement additional reasonable restrictions. Equipment received at NewTek and determined not to fall under these restrictions, or where Customer is currently in breach of the Agreement, will not be serviced under the ProTek Care program and NewTek will not be liable for ProTek return shipment. NewTek will receive RMA'd product for Repair under ProTek Care, screen the product for completeness and for compliance with ProTek requirements and any restrictions to coverage, and notify the Customer should there be any problems found with the shipment. Shipping insurance is the responsibility of the customer and any claims for shipping damage will be Customer responsibility. NewTek will cooperate with any claim made by the Customer against the shipper. NewTek will return the product following Repair using a 3<sup>rd</sup> party Next Day service, insuring the Product at Customer cost. All risk of loss during shipment to and from NewTek is that of Customer.

- f. **Advance Exchange.** Upon determination of the need for Repair and product RMA, ProTek Care customers may, for the fee indicated in Exhibit A, elect to use NewTek's Advance Exchange program. This program provides a factory-reconditioned replacement product in lieu of returning the customer's original malfunctioning unit following repair service.
- g. **Replacement.** Should the product be unable to be repaired it may be replaced, at NewTek's sole discretion, with a factory-reconditioned product, either a like model or one with similar or improved features. Such replacement shall be the final determination of any needed Repair after which it shall be deemed that the original Product is functioning as designed and the fault necessitating the Repair lies within the customer's own equipment, use model, or configuration.
- h. **Third Party Servicing.** NewTek may provide the services through third parties at its discretion.
- i. **No obligation to Repair:** NewTek will have no responsibility to repair, replace, or service a Product:
  - 1) where the asserted defect or problem:
    - a. is not present
    - b. cannot reasonably be fixed because of damage that occurred to the Product when the Product was in the possession of someone other than NewTek or its designee.
    - c. is attributable to misuse, improper installation, alteration (including removing or obliterating labels and serial numbers and opening or removing external covers unless authorized to do so by NewTek), accident or mishandling while in the possession of someone other than NewTek or its designee.
    - d. was due in whole or in part to the Product not being used in accordance with NewTek specifications or instructions or the Product was used with third party products not intended to be used with the Product.
    - e. is due to the product not used for its intended function.
  - 2) if any payments due from Customer are past due.
  - 3) where there is a breach of the agreement that is a basis for suspension and/or termination of the Agreement by NewTek in paragraph 10.

**5. Customer Obligations.** Customer agrees to:

- a. For new Products purchased concurrently with ProTek, register the Products with accurate information with NewTek within ten (10) days of delivery of Product to Customer.
- b. Keep all Registration information current and accurate.
- c. Provide all Customer Care for the Product that is reasonably requested by NewTek from time to time.
- d. Keep the product protected from the elements, including rain, snow, excessive heat, excessive cold
- e. Exposing the Product to only normal wear and tear.
- f. Not abuse, mistreat, intentionally damage, or improperly use the Product. NewTek will not be responsible to provide Services in such case.
- g. Use required electric spike and other overload protectors as requested by NewTek
- h. Keep a complete backup at all times of all data stored on the Products, both during use should the equipment fail, and before sending the Product to NewTek to be serviced. NewTek will not be responsible for any loss of data before, during, or after servicing the unit, and it is Customer's obligation to protect its data.
- i. Comply with all reasonable shipping, packing, and other Product return requests when returning the Product for servicing.
- j. Cooperate with NewTek as set forth in Paragraph 4, including in trouble shooting the problem, and including making available necessary Customer personnel to work with NewTek in addressing any servicing problems.
- k. Carefully pack the Product for shipment; risk of loss while the Product is in transit to or from NewTek shall be with Customer.
- l. Ensure the product is disassembled and/or serviced only by NewTek or a technician specifically authorized, in writing or email, by NewTek to provide specific service.
- m. Comply with all maintenance requirements accompanying the Product or as updated from time to time by NewTek.

**6. Term, Renewal.** The Term is as set forth in Exhibit A, and if not stated therein, is twelve (12) months. Customer may renew for an additional period equal to the length of the initial Term (Renewal Term) by providing, no earlier than seventy five (75) days prior to the end of the Term, a written request to renew, paying any appropriate renewal or other fees due, and complying with any other reasonable requests of NewTek. NewTek is not obligated to notify Customer of the approaching Term end, and it is Customer's responsibility to renew. Any notice that NewTek provides at or near the end of any Term or Renewal Term is a matter of courtesy and does not obligate NewTek to provide additional Notices. If the term has expired without a written request to renew, this

Agreement shall terminate. Termination does not relieve the Customer to pay any amounts that may be due under the agreement. Certain provisions, as described herein or are apparent from the context, survive termination. If the term has expired, Customer has a grace period of thirty (30) days thereafter in which to request renewal, and pay the fee for the applicable Renewal Term, and if accepted and agreed by NewTek, the Agreement shall be considered renewed for the Renewal Term. The renewal option is not available for any product with a planned End of Service date within fifteen months of renewal, or if the ProTek Care program is no longer available for the full Renewal Term, or if Customer has breached the terms, including payment terms, of this Agreement.

**7. Additional Terms applicable to ProTek Elite Customers.** Where Customer has purchased ProTek Elite coverage the following additional terms apply:

- a. The ESP (Elite Service Provider) from which Customer purchased the ProTek Elite Coverage will provide the following First Level Support to Customers:
  - i. Level 1 Telephone Support. ESP will field all support calls from their Customers in the Response time set forth in paragraph 4(b), and determine in ESP's discretion whether to escalate directly to access NewTek Level 2 Support.
  - ii. Level 1 Repair. ESP will be able to provide simple troubleshooting at its location and make initial determinations in ESP's sole discretion as to whether to escalate the service needed to Level 2 Support provided by NewTek, either by telephone support from NewTek, or to ship the Product to NewTek.
  - iii. Loaner. ESP will have on hand loaners for Customers on a first come basis as needed. Certain Products as determined by NewTek from time to time will be available as Loaners, according to availability, in NewTek's discretion.
  - iv. Advance Exchange Access. Customer can, if a Loaner is unavailable, request and obtain from the ESP a unit under the Advance Exchange Access Program at no cost to Customer.
- b. ESP is not an agent of NewTek, and has no authority to bind or represent NewTek. ESP as an independent contractor is authorized to perform certain first level in store services only for the Customer. ESP is not authorized to provide any services at Customer location or sites. NewTek does not warrant the services of the ESP beyond returning the cost of any coverage to Customer if Customer is dissatisfied. Customer agrees to keep complete backups of any data that is stored on the Product, and agrees to backup any data before delivering the Product to ESP or to NewTek for servicing, troubleshooting, and/or repair.

- c. NewTek may, at its discretion, at any time, designate another Reseller to be the ESP to service the Customer under ProTek Elite.
- d. Upon the occurrence of any of the following events, unless expressly agreed otherwise by NewTek in writing, the ProTek Elite Program is automatically terminated and converts to ProTek Care and any additional costs for the additional ProTek Elite coverage that have been paid are forfeited:
  - i. Transfer of the Product to any third party. If the coverage is converted to ProTek Care, any payments made for ProTek Elite coverage over and above the applicable costs for ProTek Care for coverage period after the date of transfer of the Product shall be credited to the Transferee towards the renewal costs. If the Transferee does not renew, such credits shall be forfeited.
  - ii. Transfer of the Product to another location. Any payments made for ProTek Elite coverage over and above the applicable costs for ProTek Care for a coverage period after the date of transfer of the Product shall be credited towards the renewal costs. If Customer does not renew, such credits shall be forfeited.
- e. Upon the occurrence of any of the following events not in Customer control, then unless expressly agreed otherwise by NewTek in writing, the ProTek Elite Program is automatically terminated and converts to ProTek Care, and Customer's only remedy shall be for a credit for amounts paid under ProTek Elite for coverage after the event, with said credit to be credited towards the renewal costs. If Customer does not renew, such credits shall be forfeited. The events are:
  - i. Bankruptcy of the ESP
  - ii. Cessation of business of the ESP
  - iii. Failure of the ESP to be qualified by NewTek as an ESP
- f. Customer understands that any payment obligations to NewTek, not the ESP, that are due under the Agreement remain in full force and effect and to timely make said payments to NewTek, if any, and to comply with all obligations under the Agreement.

**8. Force Majeure.** NewTek shall not be liable for any delay in, or lack of, performance directly or indirectly caused by or resulting from acts of nature, fire, flood, accident, riot, war, government intervention, embargoes, strikes, labor difficulties, equipment failure, late deliveries by suppliers or other difficulties which are beyond the control, and without the fault of NewTek.

**9. Warranties, Licenses, Limitations on Warranties Remedies and Damages.** Nothing herein shall affect, expand, or limit the terms of the Warranty, Disclaimers of Warranty, or Licenses delivered with the Product. **THERE ARE NO OTHER WARRANTIES PERTAINING TO THIS SERVICE AGREEMENT WHICH EXTEND BEYOND THE FACE HEREOF. NEWTEK DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES INCLUDING ANY IMPLIED WARRANTIES OF ANY KIND. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE EXCLUSION MAY NOT APPLY TO YOU.**

**NEWTEK'S ENTIRE LIABILITY FOR ANY BREACH OF THIS AGREEMENT, INCLUDING FAILURE TO PROVIDE SERVICES IN THE MANNER, TIME OR METHOD AGREED TO, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE ACTUALLY PAID BY CUSTOMER FOR PROTEK FOR THE YEAR IN WHICH THE ALLEGED BREACH OCCURRED.**

**NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, NEWTEK WILL NOT BE LIABLE WITH RESPECT TO THE SERVICES HEREUNDER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY AMOUNT IN EXCESS OF THE PURCHASE PRICE FOR THE COVERAGE REFERRED TO IN THE PRECEDING PARAGRAPH(II) FOR ANY GENERAL, CONSEQUENTIAL, PUNITIVE, INCIDENTAL OR SPECIAL DAMAGES. THESE INCLUDE LOSS OF RECORDED DATA, INTERRUPTION OF USE, THE COST OF RECOVERY OF LOST DATA, LOST PROFITS AND THE COST OF THE INSTALLATION OR REMOVAL OF ANY PRODUCTS, THE INSTALLATION OF REPLACEMENT PRODUCTS, AND ANY INSPECTION, TESTING, OR REDESIGN CAUSED BY ANY OR BREACH OF THIS AGREEMENT OR ANY FAILURE TO PROVIDE SERVICES AGREED TO BY THIS AGREEMENT. SOME STATES DO NOT ALLOW EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE LIMITATIONS ABOVE MAY NOT APPLY TO YOU. YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.**

**10. Termination, Suspension.**

This Agreement may be terminated by either party should a breach occur. If the breach is for other than nonpayment by Customer, the breaching party shall provide first a Notice of Breach outlining the breach(es), and if the breach is not cured within fifteen (15) days of providing the Notice, the Agreement shall terminate. Any breach for nonpayment shall result in an immediate suspension of any right to Services until payment is brought current with any late charges or other fees due. If payment becomes more than ten (10) days past due, NewTek may terminate the Agreement by providing fifteen (15) days written Notice of Default for Non Payment, and if all past due payments and charges are not made within said ten days, the Agreement shall terminate unless NewTek expressly provides otherwise in the Notice of Default for Non Payment. NewTek's acceptance of a late payment shall not



constitute a waiver of the right to timely payment in the future. This agreement shall be deemed terminated automatically upon the filing of bankruptcy by Customer under any chapter of the Bankruptcy code or if the Customer ceases operations for any reason.

NewTek may, at its option, terminate the agreement immediately, without obligation to repair, with all fees paid by Customer forfeited, if the Product is found to have been intentionally abused, mistreated, or Customer exposes the Product to use materially beyond normal wear and tear, or uses the Product in an unsafe and harsh environment or conditions without reasonable protection, and/or the serial number is altered or removed by Customer or other third party, or any information provided by Customer to NewTek relating to the purchase of ProTek is materially false (including providing false information pertaining to the purchase date, delivery date, conditions of use of the Product, or circumstances surrounding the need for servicing).

**11. Notice.** Notices herein may be by overnight mail, or by email. In either case the date of notice shall be the date the Notice was sent.

**12. Applicable Law.** This Agreement is governed by and interpreted according to the laws of Texas, including conflicts of laws, and both parties agree to exclusive jurisdiction there for all actions and proceedings pertaining to this Agreement.

**13. Transfer of Product, Assignment.** This agreement is assignable by either party on the following terms, and provided the Assignee agrees to be bound by the obligations. Customer may assign this Agreement only upon transferring product ownership to a transferee in a Qualified Territory, in compliance with any reasonable Assignment requirements then in effect by NewTek. In such case, ProTek Care coverage will be assigned to the new owner for the duration of the Term, with the new owner acquiring the same benefits and renewal rights, provided the Transferee accepts and undertakes all obligations of this Agreement, and provided NewTek accepts the Transferee as meeting to NewTek's satisfaction that the Transferee can comply with the terms hereof pertaining to care of the Product and credit. Any transfer of the Product may convert ProTek Elite Coverage as set forth in Paragraph 7.

**14. Mediation.** The parties agree to submit any disputes to one day of mediation in San Antonio, Texas, prior to filing suit. This provision shall not apply to those disputes where time is of the essence and immediate injunctive relief is sought. If the injunctive relief is sought and not obtained, any such case shall be dismissed to allow the mediation.

**15. Non Waiver.** Any conduct by the parties that varies the terms of this Agreement shall not constitute a waiver of the terms.

**16. Amendments.** No amendment shall be effective to this Agreement unless in writing and signed by both parties.

**Exhibit A  
Additional Terms To NewTek  
ProTek<sup>SM</sup> Program Agreement**

1. Products with serial numbers:

TRACER 300      1 AFS2450946324

2. Starting Coverage Date: For new Products purchased concurrently with ProTek, the Delivery Date is presumed to be fifteen (15) days after the date NewTek receives the ProTek Order. See Definition in Agreement for precise starting date terms, and as to those Products currently owned not purchased concurrently with ProTek. Customer may be required to provide purchase/delivery information before acceptance of this ProTek Order.

3. Extended ProTek Care Telephone Support Hours:

- a. Weekday 08:30am to 11pm Central Time
- b. Weekend 10am to 11 pm Central Time

4. Average Speed of Answer: 5 minutes or less

5. Repair Service Turn-Around-Time: within 5 days

6. Advance Exchange Availability and Fee: Before 1PM CT business days, \$295

7. Term. The term of coverage is 12 months from the Starting Coverage Date unless otherwise agreed by NewTek through public promotion or in writing.

**NewTek, Inc.**

**Customer:**

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

Vidcoles, Inc

By: *[Signature]*

Title \_\_\_\_\_

Michael Skigel

Title PRESIDENT

Date \_\_\_\_\_

Date 4/30/12

17. **No other agreements, No assignment.** There are no other agreements between the parties, except as referenced herein and in Exhibits hereto, and except for those Licenses, Warranties, and other Agreements provided with the Products. The Agreement may not be assigned by Customer except as expressly authorized herein.

18. **Commercial Transaction, No Extended Warranty. CUSTOMER AGREES AND ACKNOWLEDGES THAT THE PRODUCT IS USED FOR BUSINESS AND COMMERCIAL PURPOSES, AND THAT THE CUSTOMER IS AN INDIVIDUAL AND/OR COMPANY ENGAGED IN A COMMERCIAL ENTERPRISE AND THAT THIS TRANSACTION IS NOT A CONSUMER TRANSACTION. THIS IS NOT AN EXTENDED WARRANTY.**

NewTek, Inc.

Customer:

VideoFiles, Inc

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

By: [Signature]

Michael Skibon

Title \_\_\_\_\_

Title PRESIDENT

Date \_\_\_\_\_

Date 4/30/12

ADDRESS:

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San Antonio, TX 78249  
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