



## **DEDICATED MASTER SERVICE AGREEMENT**

This is a Dedicated Master Service Agreement (the "Agreement") effective from the date on the Dedicated Service Order Form. It's between La Harpe Communications, Inc. (doing business as New Wave Broadband), a Kansas corporation ("New Wave"), and the customer named on the Dedicated Service Order Form ("Customer"). We'll refer to New Wave and the Customer collectively as the "Parties" and individually as a "Party". Both Parties agree to the terms in this Agreement.

### **1. DEFINITIONS**

This Agreement defines words, abbreviations, and expressions as follows:

- a) **Activation Charge(s)** – The first-time charge for New Wave to set up and start the Services. The Activation Charges are the amount listed in the Service Order.
- b) **Availability** – The time in any month when the network and service equipment are free from service faults and therefore available.
- c) **Business Day** – Every day except Saturdays, Sundays, and national holidays in the USA.
- d) **Critical Infrastructure** – Includes all power and HVAC infrastructure like UPSs, PDUs, and cabling, part of the co-location facility.
- e) **Fault** – A significant defect or failure in a service causing a service disruption.
- f) **Hardware** – The Processor(s), RAM, hard disk(s), motherboard, NIC card and other necessary hardware for the Services provided by New Wave to Customer for rent.
- g) **Infrastructure** – All physical structures of any network used to provide the Services.
- h) **Service(s)** – The specific Services Customer ordered on the Service Order Form. Services may include Dedicated Internet Access, Ethernet Virtual Private Line, Layer 2 VPN, Managed Wavelength Services, Dark Fiber, or similar Internet service, selected by the Customer and agreed to be provided by New Wave.
- i) **Service Affecting** – Causes full or partial loss of data transmission.
- j) **Service Commencement Date** – The date New Wave will start providing Services to Customer, specified in the Service Order.
- k) **Service Order Form** – The “DEDICATED SERVICE ORDER FORM” where the Customer specifies which Services they want to buy, and which sets the Service terms, in addition to this Agreement.
- l) **Standard Monthly Service Charge** – The monthly charge to the Customer for the Services, outlined in the Service Order.
- m) **Third Party System** – A telecommunication system that New Wave neither owns nor operates.

### **2. GENERAL TERMS**

This Agreement defines the service levels offered by New Wave (“Service Level(s)”). It also establishes the general terms that guide the relationship between New Wave and Customer.

**2.1 Policies.** This Agreement supplements New Wave’s policies located on its website <https://www.Newwave.com>. Both parties agree to follow these Policies and the Agreement. If the Agreement doesn't cover an issue, the Policies rule. New Wave reserves the right to implement the Policies in any conflict.

**2.2 References.** In this Agreement, a paragraph reference, unless otherwise specified, points to a paragraph in this Agreement.



- 2.3 **Scope.** This Agreement applies only to Services provided by New Wave systems and equipment. Any mentions of network and service equipment relate to these.
- 2.4 **Force Majeure.** New Wave is not liable for compensation under this Agreement if it can't meet obligations due to a force majeure event, Customer's equipment failure, or actions by the Customer or a third party. Force majeure includes government actions, market conditions, acts of God, material shortages, transport delays, natural disasters, epidemics, labor disturbances, riots, or wars.
- 2.5 **Payable Credits.** Credits under this Agreement are only payable by New Wave upon receiving a written claim from the Customer and written consent by New Wave. Credits will be added to the customer's account.
- 2.6 **Maximum Credits.** The maximum monthly credit under this Agreement is restricted to one month's fees. Unused credits will not carry over to the following 12-month periods. The service credit is the customer's sole remedy for any New Wave service outage or failure to meet service objectives.
- 2.7 **Amendments.** New Wave can modify this Agreement anytime by uploading the revised Agreement on its website. New Wave can inform the Customer of any changes in various ways. Continued use of Services after changes are uploaded means Customer's consent to the changes.

### 3. **SERVICE PROVISIONING**

- 3.1 **Services.** New Wave will deliver the Services as outlined in the Customer's Service Order. This includes the specific Services requested, their prices, term commitments, Service Commencement Date, and Activation Charges. The Customer will pay the quoted monthly price and any additional Activation Charges or Fees.
- 3.2 **Access to Premises.** For New Wave to deliver and maintain Services, the Customer must allow access to their premises for installation, inspection, and maintenance purposes. If non-emergency access is required, New Wave will give two business days' notice. The Customer must provide a safe working environment and keep the contact information up to date.
- 3.3 **Customer Environment.** The Customer must provide, at their own expense, the necessary space, racks, power, security, and other equipment for the installation. They are responsible for maintaining a suitable environment for all New Wave's supplied equipment.
- 3.4 **Customer Supplied Equipment.** New Wave may use Customer-provided equipment for installation but is not responsible for its maintenance or operation. Any issues relating to this equipment are not the liability of New Wave.

### 4. **TERM**

- 4.1 **Term.** This Agreement starts on the Effective Date and lasts as long as any Service Order is active (the "Service Term"). The Service Order's term begins when an authorized New Wave representative signs it.
- 4.2 **Renewal.** The Term automatically renews for the periods specified in the Service Order when the Service Term ends, unless either Party ends it according to this Agreement. Either Party can stop the renewal by giving the other Party written notice at least thirty (30) days before the renewal date.
- 4.3 **Early Termination.** If the Customer finishes the Services before the Service Term ends within the first year, they must pay New Wave an early termination fee. This fee is 100% of



the remaining balance of all unpaid Monthly Service Charges for the Service Term. If the Customer ends the Services after receiving a year of Services but before the Service Term ends, the fee is 50% of the remaining balance of unpaid Monthly Service Charges for the Service Term.

## 5. **BILLING & PAYMENT**

- 5.1 **Starting Date.** The service's start date is the installation date unless other arrangements are made. New Wave will send a complimentary paper bill for the first month, after which bills will be emailed. If you opt to continue receiving paper bills, there will be a monthly fee of \$2.00. It's important to pay all bills by the due date.
- 5.2 **Unpaid Bills.** If a bill isn't paid within 10 days of the due date, New Wave will impose a late fee of \$10.00. If a bill remains unpaid for 15 days, your account will be automatically suspended until payment is made. After 60 days of non-payment, your account balance will be sent to collections.
- 5.3 **Proration.** You'll be charged one month in advance, due ten days after activation. Your next bill will be generated one month after installation.
- 5.4 **Disputed Charges.** If you wish to contest a charge on your bill, please inform New Wave in writing within sixty days of the bill date. Send your dispute notice to: New Wave Broadband, P.O. Box 100, La Harpe, Kansas 66751.

## 6. **SERVICE RESPONSE TIME AGREEMENTS**

- 6.1 **Service During Business Hours.** New Wave provides a 2-hour response time agreement during business hours (8:00am-12pm & 1pm-5:00pm, 5 days a week – Central Time).
- 6.2 **Service Outside Business Hours.** Our Technical Support Department can be reached at 1-800-310-6625 after business hours or through a message at 620-496-1000. New Wave will respond promptly. After account setup, a Welcome Letter containing Network Support information is sent to customers via email. A network engineer will typically contact customers immediately, but always within a 2-hour timeframe. This includes an initial response to any reported service interruptions within two hours.
- 6.3 **Third-Party Connections** Services supplied by third parties follow their own agreements. New Wave picks suppliers based on their demonstrated reliability and performance. If a service uses a third-party system, New Wave will apply any Service Levels it gets from the third-party, when feasible. However, New Wave is not responsible to fulfill the Service Levels outlined in this Agreement for those services.

## 7. **NETWORK AND SERVICE EQUIPMENT MAINTENANCE**

- 7.1. **Maintenance Suspension.** New Wave can pause Services for routine maintenance or upgrades to the network or Service Equipment, typically done during the maintenance periods outlined in 7.4.
- 7.2. **Notice for Maintenance.** Unless it's an emergency, New Wave will inform the Customer 3 business days in advance of any planned Service pause under section 10.1.
- 7.3. **Limiting Disruptions.** New Wave aims to keep service interruptions minimal and won't suspend Service for planned work more than 12 times a year, if possible. For additional suspensions beyond the 12th instance, Customers get a day's Service credit for each extra day. Maintenance or upgrade work won't exceed 24 hours a year typically, and any additional hour will grant Customers a day's Service credit.



- 7.4. **Maintenance Timing.** The usual maintenance window for New Wave is 11pm-7am, local time at the node location. While New Wave tries to accommodate customer preferences for outage timings, it might not always be feasible. Outage timings are communicated in Central Time to avoid confusion over time zones.
- 7.5. **System Breakdown.** If a hard disk crashes or there's a serious operating system failure, New Wave will reinstall standard OS distributions and supported preinstalled software.

## 8. **UTILITY LINE IDENTIFICATION**

- 8.1 **Call 811.** The customer is fully responsible for identifying all buried utility lines such as sewer, pipe, gas, existing internet, and others on their property. This identification can be done by calling 811 and following all instructions given, at least two business days before the Service installation date, as agreed upon in the Service Order. The customer must be aware that they are solely responsible for identifying utility lines on their property. New Wave will NOT call 811 on the customer's behalf before installing any necessary lines for the Services.

## 9. **REPORTING**

- 9.1. **Status Reports:** Upon request, New Wave will provide near real-time reports on service availability, customer port utilization, and New Wave performance.

## 10. **CUSTOMER USE OF SERVICES**

- 10.1 **Use Policies.** The customer must not use New Wave's Services illegally or for unlawful purposes. The customer must also follow New Wave's Terms of Service and all other Policies which can be found at <https://www.newwavebb.com/> (or successor URL) where applicable.
- 10.2 **Customer Responsibility.** The customer is fully responsible for any losses arising from the misuse of the Services that go against the policies in Section 13.1. New Wave can take action to prevent unauthorized uses of the Services (like blocking access) but is not obliged to do so.
- 10.3 **Customer Security Obligations.** The customer alone is responsible for the security of the Services and their data. The customer should perform necessary backups and maintenance on the Service's software to ensure its integrity. While New Wave will upgrade software as needed to maintain service, it is not responsible for data damage or service loss caused by any reason, such as hardware failure or malicious "hacking".

## 11. **DEFAULT**

- 11.1 **Definition.** A default happens when either Party doesn't fulfill or comply with any crucial term or obligation under this Agreement and doesn't correct the failure within thirty (30) days of receiving a written notice from the non-defaulting party. If a default happens, the non-defaulting Party can terminate this Agreement.
- 11.2 **Payment After Default and Fees.** The customer must still pay all amounts due and owed to New Wave for the Services provided. The customer is also required to pay New Wave's reasonable costs (including reasonable attorney's fees and collection agency fees) if New Wave needs to enforce its rights under this Agreement.
- 11.3 **Service Suspension.** If the customer defaults under this Agreement, New Wave can suspend the Service. If New Wave defaults under this Agreement, the customer can stop



paying for the Services without penalty after providing appropriate notice as required in paragraph 14.1

## 12 **INSURANCE**

12.1 **New Wave Insurance.** New Wave confirms it has commercial general liability insurance that covers all its operations and work. This insurance is worth at least one million dollars (\$1,000,000) per incident, covering bodily injury and property damage liability.

12.2 **Customer Insurance.** If the customer's equipment or personnel enter a New Wave facility, the customer must also have a similar level of insurance. Their insurance policy must also cover any liability under the indemnity provisions of this Agreement's paragraph 16.

## 13 **INDEMNIFICATION**

13.1 **Indemnification.** By using the Services, the Customer agrees to protect New Wave (including its officers, directors, employees, agents, shareholders, licensors, suppliers, and any third-party information providers) from any claims, demands, actions, losses, expenses, damages and costs, including reasonable attorneys' fees. This applies if these arise from:

- (1) the Customer breaking this Agreement or any law.
- (2) the Customer infringing on a third party's rights; or
- (3) any information or content the Customer provides or makes available through the Services.

## 14 **LIABILITY LIMITS**

14.1 **New Wave's Non-Liability.** New Wave and its affiliates won't be held responsible under any contract, negligence, or other legal theory for services or the terms of this agreement. If this liability limit is found invalid or unenforceable, New Wave's total liability can't exceed the total Service Charges paid by the Customer.

14.2 **Utility Lines.** New Wave isn't liable for damage due to the Customer's failure to call 811 before installation to identify buried utility lines.

## 15 **KEEPING THINGS PRIVATE**

15.1 **Not Sharing Information.** The Customer and New Wave won't share non-public business information provided by the other party.

## 16 **RESOLVING DISPUTES**

16.1 **Process** - Most concerns can be resolved quickly by contacting New Wave customer service. If not, the Parties agree to resolve disputes through arbitration or small claims court.

## 17 **EXTRA CHARGES AND FEES**

17.1 **Charges** - New Wave may impose additional charges on the Customer, including cancellation charges, taxes, regulatory charges, and fees listed in New Wave's Additional Fees and Payment Terms Disclosure Statement.



## 18 OTHER ITEMS

- 18.1 **Laws** - This Agreement follows the laws of the State of Kansas. The customer must comply with all applicable laws.
- 18.2 **Waiver** - New Wave's failure to enforce any provision of this Agreement isn't a waiver of the right to enforce it in any other or subsequent breach.
- 18.3 **Counterparts** - This Agreement can be executed in counterparts, all of which constitute the same instrument.
- 18.4 **Severance** - If any term in this Agreement is invalid or unenforceable, that term will be severed, and the rest of the Agreement remains valid.
- 18.5 **No Agency Relationship** - This Agreement doesn't create a partnership, joint venture, or agency relationship between the Parties.
- 18.6 **Successors** - This Agreement applies to either Party's heirs, successors, or assigns.
- 18.7 **Fees** - If New Wave enforces any term of this Agreement, then New Wave is entitled to payment of its reasonable fees by Customer.
- 18.8 **Headings** - Descriptive headings of this Agreement are for convenience only and don't affect the Agreement's meaning.
- 18.9 **Jury Trial** - THE PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ANY ACTION RELATED TO THIS AGREEMENT. EACH PARTY MAKES THIS WAIVER KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY. By submitting a signed Service Order Form, the Customer agrees to the Agreement's terms.