

## **DEDICATED MASTER SERVICE AGREEMENT**

*(Updated 3/17/2022)*

This **Dedicated Master Service Agreement** (the “Agreement”) is entered into as of the date of the Dedicated Service Order Form between JMZ Corporation d/b/a KwiKom Communications, a Kansas corporation (“KwiKom”) and the customer named on the Dedicated Service Order Form (“Customer”). KwiKom and Customer are hereinafter collectively referred to as the “Parties” and individually as a “Party”.

In consideration of the mutual promises and covenants set forth in this Agreement, the Parties agree as follows:

### **1. DEFINITIONS**

In this Agreement words, abbreviations and expressions have the meanings as set out below:

- (a) **Activation Charge(s)** – Means the initial, one-time charge for KwiKom to install and activate the Services. The Activation Charges are set at the amount stated in the accompanying Service Order.
- (b) **Availability** – All the time in any calendar month for which the network and any service equipment is not subject to any service affecting faults and is therefore Available.
- (c) **Business Day** – Means every day excluding Saturdays and Sundays and national holidays in the USA.
- (d) **Critical Infrastructure** – Includes the functioning of all power and HVAC infrastructure including UPSs, PDUs and cabling, which form part of the co-location facility.
- (e) **Fault** – Means a material defect, fault or impairment in a service, which causes an interruption in the provision of the service.
- (f) **Hardware** – Hardware is defined as the Processor(s), RAM, hard disk(s), motherboard, NIC card and other related hardware required to provision the Services provided by KwiKom to Customer on a RENTAL BASIS.
- (g) **Infrastructure** – Means all physical structures of any network by which the Services are provided.
- (h) **Service(s)** – Means the specific Services Customer ordered on the accompanying Service Order Form. Services may mean Dedicated Internet Access, Ethernet Virtual Private Line, Layer 2 VPN, Managed Wavelength Services, Dark Fiber, or any similar Internet service, as Customer selected on the Service Order Form and of which KwiKom has agreed to provide.

- (i) Service Affecting – Means causing full or partial loss of the ability to transmit or convey data.
- (j) Service Commencement Date – Means the date KwiKom will commence provisioning Services to Customer. The Service Commencement Date is specified in the accompanying Service Order.
- (k) Service Order Form – Means the “DEDICATED SERVICE ORDER FORM” in which the Customer specifies which Services it wishes to purchase, and which sets forth the terms of the Service, in addition to this Agreement.
- (l) Standard Monthly Service Charge – Means the monthly charge to the Customer for the Services, as set forth in the Service Order.
- (m) Third Party System – Means a telecommunication system that is neither owned nor operated on behalf of KwiKom.

## **2. GENERAL PROVISIONS**

2.1. Purpose. This Agreement describes and provides for the levels of services to be provided by KwiKom (“Service Level(s)”). This Agreement also sets forth general terms that will govern the relationship between KwiKom and Customer throughout and in some cases, beyond, the term of this Agreement.

2.2. Policies. This Agreement supplements KwiKom’s Broadband Internet Acceptable Use Policy, Internet Terms and Conditions of Service, Additional Fees and Payment Terms Disclosure, Electronic Payment and Online Payment Terms and Conditions, and any other policy KwiKom institutes and makes available on its website (collectively, the “Policies”), all of which may be found on KwiKom’s website at <https://www.kwikom.com/legal/> (and successor URLs). The Parties hereby agree that they are bound by the terms of the Policies in addition to the terms of this Agreement. If this Agreement is silent on an issue, the Policies govern. If this Agreement and the Policies conflict, the Policies govern. KwiKom reserves its right to enforce the terms of the Policies in any dispute arising out of this Agreement. Any failure by KwiKom to include a provision in this Agreement does not constitute a waiver of the right.

2.3. References. In this Agreement, a reference to a paragraph, unless stated otherwise, is a reference to a paragraph of this Agreement.

2.4. Scope. This Agreement only applies to the Services to the extent that it is provided by means of systems and equipment that are either owned or operated by or on behalf of KwiKom. All references in this Agreement to network and service equipment will be construed as references to such systems and equipment.

2.5. Force Majeure. KwiKom is not liable to pay compensation under this Agreement where its failure to meet any of its obligations under this Agreement is caused by a force

majeure event, by a failure in the Customer's equipment, or by any act or omission of the Customer, or third party acting on its behalf. Force majeure means acts or omissions of government or military authority, government restrictions, exchange or market rulings, extreme market volumes or volatility, suspension of trading, acts of God, shortages of materials, transportation delays, fires, floods, storms, diseases, epidemics, pandemics, labor disturbances, riots, or wars provided that KwiKom gives prompt notice to the Customer of its invocation of this provision and makes diligent efforts to resume its performance despite such force majeure.

2.6 Payable Credits. Credits or other compensation under this Agreement will only be payable by KwiKom where: (a) the Customer has submitted to KwiKom a claim in writing identifying the circumstances in which the customer claims that the credit or compensation arose, and (b) KwiKom has agreed in writing, acting reasonably and without undue delay, to that claim. All credits so payable will be applied to the customer's account to be reconciled at an agreed time following KwiKom's agreement to the claim. All claims for credits or compensation must be submitted promptly, and in any event within 10 business days, after the circumstances giving rise to the claim.

2.7. Maximum Credits. The maximum monthly credit available under this Agreement is limited to an amount not greater than one month's fees; furthermore, residual credits will not be carried over to subsequent 12-month periods. The service credit is the customer's sole and exclusive remedy for any KwiKom service outage or any failure to meet the service objectives.

2.8. Amendments. KwiKom reserves the right to change or modify this Agreement at any time by posting the revised and updated Agreement on KwiKom's website. KwiKom may notify Customer of any change by: posting notice of changes on KwiKom's website; notifying Customer by email or us mail; and/or notifying Customer on Customer's monthly billing statement. Customer should regularly review information posted on KwiKom's website to obtain timely notice of such changes. Customer's non-termination or continued use of Services after changes are posted constitutes Customer's acceptance of this Agreement as modified by the posted changes.

### **3. SERVICE PROVISIONING**

3.1. Services. KwiKom will provide Services to Customer as set forth in the Service Order submitted by Customer, the terms of which are incorporated into this Agreement, and verified in writing by KwiKom. The Service Order will specify: (a) the specific Services requested by Customer, (b) prices for these Services, (c) term commitments for these Services, (d) the Service Commencement Date, and (e) applicable Activation Charges. The Customer agrees to pay the monthly price quoted to Customer by KwiKom, whether that price was quoted over the phone, via email, through the distribution of a Price Sheet, or written on the Service Order Form. The Customer further agrees to pay all related Activation Charges or other Fees, as applicable.

3.2. Access to Customer's Premises. As a condition to KwiKom's obligation to provide and maintain the Services hereunder, Customer will provide KwiKom with access to the

Customer's premises for the installation of Services, for inspection, and to perform routine, scheduled, or emergency maintenance. If KwiKom requires access to the Customer's premises for a non-emergency event, KwiKom will provide Customer with two (2) business days' notice. Customer will provide a safe place to work and comply with all laws and regulations regarding conditions at Customer's premises. To facilitate KwiKom for regular and emergency service, Customer will provide KwiKom with the contact's name and telephone number(s) where the contact may be reached at any time. It is Customer's obligation to keep this information up to date.

3.3. Customer Environment. It is the Customer's obligation, at its sole expense, to provide for space, racks, electricity, back-up power, security, heating and air conditioning, or any other equipment necessary for KwiKom to install the equipment. Customer is responsible for providing and maintaining, at its own expense, the proper environment for all KwiKom's supplied equipment.

3.4. Use of Customer Supplied Equipment. KwiKom may install certain Customer-provided communications equipment upon installation of the Services, but KwiKom is not responsible for the maintenance or operation of any Customer-provided equipment. Customer will not hold KwiKom liable for any issues relating to the configuration, management, performance, or other issues relating to the Customer supplied equipment.

#### **4. TERM.**

4.1. Term. This Agreement becomes effective on the Effective Date and will remain in full force and effect for as long as any Service Order remains in effect (the "Service Term"). The term of the Service Order becomes effective on the date an authorized KwiKom representative signs the Service Order.

4.2. Renewal. At the end of the Service Term for the Service Order, the Term will automatically renew for successive Term periods as specified in the Service Order until terminated by either Party pursuant to this Agreement. Either Party may prevent the renewal of this Agreement by providing the other Party with written notice at least thirty (30) days prior to the date of the renewal of this Agreement.

4.3. Early Termination. If Customer terminates the Services prior to the completion of the Service Term within the first year of the Services, then customer must pay KwiKom an early termination fee equal to 100% of the remaining balance of all unpaid Monthly Service Charges for the Service Term. If Customer terminates the Services prior to the completion of the Service Term, but after receiving one year of Services, the Customer must pay KwiKom an early termination fee of 50% of the remaining balance unpaid Monthly Service Charges for the Service Term.

#### **5. BILLING & PAYMENT**

5.1. Commencement. Billing for the Services begins on the Service Commencement Date. KwiKom will bill monthly in advance for the following month's Services on the

Customer's billing date. Customer agrees to pay all billing statements by the due date on the billing statement.

5.2. Unpaid Billing Statements. In accordance with KwiKom's Policies, Customer billing statements that are not paid within seven (7) days from the due date as specified on the billing statement will be subject to a late fee in the amount of 1.5% of the billing statement amount or \$5.00, whichever is greater. If Customer fails to pay the billing statement within sixty (60) days from the due date, the account balance will be submitted to collections.

5.3. Proration. If the Service Commencement Date falls on a date other than the Customer's billing date, KwiKom will pro-rate that month's Services by calculating a daily Service rate and multiplying that rate by the number of days left in the monthly billing period. Regular billing at the full Standard Monthly Service Charge rate will commence upon the first full monthly billing period in which the Customer receives Services.

5.4. Notice of Dispute. Should Customer decide to dispute a charge on their billing statement, it must do so by written notice to KwiKom within sixty (60) days after the billing statement date. Such notice of dispute may be sent to: KwiKom Communications, 800 W. Miller Rd., Iola, KS 66749.

## **6. FAULT HANDLING/RESPONSE TIME AGREEMENTS**

6.1. Customer Service During Business Hours. KwiKom offers response time agreements, during the business day (7:00am to 7:00pm, 7 days a week – Central Time) as follows: Customer may call KwiKom at 1 (800) 379-7292 to speak to a member of the Technical Support Department. When Customer contacts the Technical Support Department, Customer can expect a response within 2 hours. Customer may also expect an initial response within two hours of a logged service interruption call.

6.2. Customer Service Outside Business Hours. KwiKom offers response time agreements, outside of the business day 24x7 as follows: After your account has been processed you will receive a Welcome Letter via email that will contain your Network Support information. You will receive a Support and After Hours Escalation letter. A network engineer will call you normally straight away and always within 2 hours. You can expect an initial response within two hours of a logged service interruption call.

6.3. Third-Party Interconnects. Any connections provided by a third-party supplier in order to complete the solution will be governed by the Agreement offered by that supplier. KwiKom has carefully chosen its preferred suppliers based on their ability and record of performance, in order to provide a good quality, reliable solution. Where the whole or any part of any Service is provided by means of a third-party system, KwiKom will, to the extent that it is able to do so, pass on the benefit of any Service Levels to which it is entitled from that provider of that third party system but will not otherwise be liable to meet the Service Levels set out in this Agreement in respect of that Service (or the relevant part thereof).

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

7.1 Suspension for Maintenance. KwiKom may suspend Services to carry out periodic maintenance or upgrade work on the network or Service Equipment, will be conducted during the maintenance windows as defined in paragraph 7.4.

7.2 Maintenance Notice. Except in the case of an emergency, KwiKom will provide the Customer with 3 business days' notice of any planned suspension of Service under paragraph 10.1.

7.3 Minimum Disruptions. To the extent commercially reasonable, any disruption or interruption to Service will be kept to a minimum. To the extent commercially reasonable, KwiKom will not suspend Service for planned maintenance or upgrade work more than 12 times in any calendar year. For each Service suspension for maintenance or upgrade work beyond the 12<sup>th</sup> time referenced in the preceding sentence, Customer will be entitled to receive credit for one day's Service for each day of additional service suspension for such work. To the extent commercially reasonable, planned maintenance or upgrade work will not exceed a total of 24 hours in any calendar year and Customers will receive a credit of one day's Service for each additional hour of service suspension for such work.

7.4 Maintenance Window. The standard for the KwiKom maintenance window for planned outages is between 11pm and 7am, local time as at node location in question. KwiKom will try to accommodate the customer requirements in terms of outage times, however, depending on the circumstances this may not always be possible. Outage times will be quoted using the Central Time zone to prevent mistakes being made over the various time zones.

7.5 System Failure. If a hard disk or fatal operating system failure occurs, KwiKom will perform initial install of standard OS distributions and supported preinstalled software.

## **8. UTILITY LINE IDENTIFICATION**

8.1 Call 811. Customer agrees that it is solely responsible for identifying buried utility lines, including but not limited to, sewer, pipe, gas, existing internet, and other utility lines, on Customer's property by calling 811 and following all of 811's directives at least two business days before the Service installation date, as agreed upon by the parties in the Service Order. Customer expressly acknowledges it is solely responsible for identifying utility lines on its property and that KwiKom will NOT call 811 on Customer's behalf prior to the installation of any lines necessary for the provisioning of the Services.

## **9. REPORTING**

9.1. Status Reports. KwiKom will provide the Customer upon Customer's request with near real-time performance and status reports. The items reported upon are:

- Availability of the Service;

- Throughput and utilization of the Customer's ports; and
- KwiKom performance and status.

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

10.1. Use Policies. Customer agrees not to use KwiKom's Services in any unlawful way or for any unlawful purpose. Customer also agrees to comply with KwiKom's Terms of Service and all other Policies available at <https://www.kwikom.com/legal> (or successor URL) where applicable.

10.2. Customer Responsibility. Customer bears the entire responsibility for, and risk of loss arising from, uses of the Services that violate the policies set forth in Section 13.1. KwiKom reserves the right, but is not obligated to, take any action it deems necessary to prevent unauthorized uses of the Services (including blocking access to the Services).

10.3. Customer Security Obligations. The security of the Services and customer data remain the sole responsibility of the customer, who should perform such backups and maintenance to software running on the Service to maintain its integrity. While KwiKom will perform upgrades of software as it deems necessary to provide continued service, KwiKom accepts no responsibility for damage to data or loss of service however caused (for instance, as a result of hardware failure or malicious "hacking").

## **11. DEFAULT**

11.1. Definition. A default occurs when either Party fails to materially perform or observe any material term or obligation under this Agreement, and any such failure remains uncorrected for thirty (30) days after the non-defaulting party's written notice of such failure. Upon default, the non-defaulting Party may terminate this Agreement.

11.2. Payment After Default and Fees. Customer remains obligated to pay all amounts due and owed to KwiKom for Services rendered. Customer is obligated to pay KwiKom's reasonable expenses (including reasonable attorney's fees and collection agency fees) incurred in enforcing its rights under this Agreement.

11.3. Service Suspension. KwiKom may suspend Service to Customer if Customer defaults under this Agreement. Customer, after providing proper notice as required in paragraph 14.1, may stop paying for the Services without penalty if KwiKom defaults under this Agreement.

## **12. INSURANCE**

12.1. KwiKom Insurance. KwiKom represents that it is insured with adequate commercial general liability insurance covering all operations and work hereunder equal to or greater than one million dollars (\$1,000,000) per occurrence for bodily injury and property damage liability.

12.2. Customer Insurance. If Customer equipment or personnel enters a KwiKom facility, Customer must also be insured by adequate commercial general liability insurance covering all operations and work hereunder equal to or greater than One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage liability. Customer's insurance policy must also cover any liability under the indemnification provisions in paragraph 16 of this Agreement.

### **13. INDEMNIFICATION**

13.1 Indemnification. Customer agrees to indemnify, defend and hold harmless KwiKom, its officers, directors, employees, agents, shareholders, licensors, suppliers and any third party information providers from and against all claims, demands, actions, losses, expenses, damages and costs, including reasonable attorneys' fees, that arise from: (1) any violation of this Agreement or applicable law by Customer; (2) any violation of any rights of a third party by Customer; and (3) any information or content that Customer submits, posts, transmits, or made available by use of the Services.

### **14. LIMITATION OF LIABILITY**

14.1. No KwiKom Liability. In no event will KwiKom or its affiliates or their respective members, officers, directors, employees, shareholders, representatives, contractors, or agents or any of their successors or assigns be liable to the Customer or any third party with respect to the Services or terms of this Agreement under any contract, negligence, tort, strict liability or other legal or equitable theory. If any part of this limitation on liability is found to be invalid or unenforceable for any reason, then the aggregate liability of KwiKom under such circumstances for liabilities that otherwise would have been limited may not exceed the total Service Charges paid by Customer with respect to the Term of this Agreement.

14.2. Utility Lines. KwiKom is not liable for injuries or property damage arising out of the Customer's failure to call 811 prior to the installation of the Services to identify buried utility lines as agreed upon by KwiKom and the Customer in the Service Order as set forth in paragraph 11. KwiKom is not liable for any injury or damage caused to Customer's property if the Customer calls 811 but fails to fully identify any buried utility lines on Customer's property.

### **15. CONFIDENTIALITY**

15.1. Non-Disclosure. Customer and KwiKom agree not to disclose any non-public information relating to the others' business that has been provided to the receiving party and deemed confidential or propriety by the sending party. Each Party should treat confidential information in the same manner as it would treat its own confidential information.

### **16. DISPUTE RESOLUTION**

16.1. Process. Most concerns can be resolved quickly and to Customer satisfaction by contacting KwiKom customer service. If KwiKom customer service is unable to resolve a complaint Customer may have to Customer's satisfaction or if KwiKom has not been able to



resolve a dispute it has with Customer after attempting to do so informally, then the Parties agree to resolve those disputes through binding arbitration or small claims court, instead of in courts of general jurisdiction.

## **17. ADDITIONAL CHARGES AND FEES**

17.1. Charges. KwiKom reserves, but is not obligated to exercise, the right to impose additional charges on the Customer as the case may be, including, but not limited to cancellation charges, applicable taxes, regulatory charges, and charges listed in KwiKom's Additional Fees and Payment Terms Disclosure Statement schedule, found at <https://www.kwikom.com/legal> (successor URLs included).

## **18. MISCELLANEOUS.**

18.1. Choice of Law. This Agreement is governed by and its provisions construed and enforced in accordance with the laws of the State of Kansas without regard to conflict of laws principles. The federal courts within the State of Kansas and the state courts of Kansas have exclusive jurisdiction over and venue of any suit that relates to this Agreement. Customer is responsible for ensuring that its conduct is at all times in compliance with all applicable laws, rules, and regulations.

18.2. Waiver. No failure by KwiKom to enforce any provision of this Agreement in response to a breach is a waiver of the right to enforce this Agreement in any other or subsequent breach.

18.3. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, and all of which taken together constitute one and the same instrument.

18.4. Severance. If any term in this Agreement is held invalid or unenforceable, that term will be severed and have no effect on the rest of the Agreement which will remain valid and enforceable.

18.5. No Agency Relationship. Nothing in this Agreement creates a partnership, joint venture, or agency relationship between the Parties, and neither party has the authority to act on the other's behalf.

18.6. Successors. This Agreement is intended to be binding upon and inure to the benefit of either Party's heirs, successors, or assigns.

18.7. Fees. If KwiKom seeks to enforce any term or condition relating to this Agreement, then KwiKom is entitled to payment of its reasonable attorneys' fees, collection agency fees, investigative fees, arbitration fees, court fees, and other related costs and fees by Customer.

18.8. Headings. Descriptive headings of this Agreement are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

18.9. Jury Trial. THE PARTIES HEREBY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THIS AGREEMENT. EACH PARTY MAKES THIS WAIVER KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY.

**By submitting a signed Service Order Form, Customer agrees to be bound by the terms of this Agreement.**