

## HIGHWINDS NETWORK GROUP, INC. GENERAL TERMS AND CONDITIONS

These are the General Terms and Conditions (the “General Terms and Conditions”) applying to the provision by Highwinds of Services over Highwinds’ Network<sup>1</sup>, in addition to, and incorporated into, the terms of any Master Services Agreement (“MSA”) executed by the Customer and Highwinds, any Schedule to the MSA applicable to the Services ordered by Customer from Highwinds and all Orders executed pursuant thereto. Reference herein to the “Agreement” shall mean the MSA, these General Terms and Conditions, all applicable Schedules and all Orders executed thereunder. Capitalized terms used but not otherwise defined herein shall have the same meanings given for such terms in the MSA.

### 1. Charges and Payment.

a. Customer shall pay to Highwinds for the Services the amounts set forth on the applicable Schedules and at such times as provided by the applicable Schedule. Billing for all amounts due under an applicable Schedule shall be as set forth in that Schedule. Notwithstanding any contrary provision in the applicable Schedule: (i) Highwinds reserves the right to change, upon thirty (30) days’ prior written notice to Customer, any of the fees it charges Customer for any Service received by Customer during a Renewal Term; and (ii) Customer’s continued use of the Service provided under the applicable Schedule as of the first date of the Renewal Term shall constitute its acceptance of the changed fee; or (ii) alternatively, Customer may terminate the applicable Schedule by providing written notice to Highwinds within fifteen (15) days of receiving notice of the changed fee.

b. All fees charged by Highwinds for Services are exclusive of any tax, duty or other charges, of whatever nature (including, without limitation, any regulatory fees, surcharges, assessments, real property, ad valorem, consumption, value added taxes or other sales, use, excise, privileged gross receipts or other similar taxes, duties or charges) imposed by any taxing or governmental authority (collectively, “Taxes”) now in force or enacted in the future and imposed on the transactions contemplated hereunder, except for taxes based solely on Highwinds’ net income. Where applicable, Highwinds will invoice Customer for such Taxes and all such Taxes are payable by Customer unless Customer produces to Highwinds documentation legally sufficient to establish an exemption. Customer will be responsible for and will pay all such Taxes in addition to the payment of any other fees or charges due under this Agreement attached hereto.

c. Customer will be responsible for and will pay any other regulatory surcharges that Highwinds is

required or permitted to invoice to Customer in connection with any Service provided hereunder, including, without limitation, permanent or temporary surcharges to meet government obligations, governmental fees or assessments (including surcharges and fees established or caused by a government, a support or subsidy program administrator or by Highwinds and intended to address costs of governmental programs), in addition to any program-related costs or administrative cost requirements of Highwinds. To the extent known at the time of execution thereof, the nature of the then-current surcharges shall be identified on the applicable Order or Schedule.

d. All payments made by Customer under this Agreement shall be made in United States dollars without offset or deduction. Customer shall notify Highwinds of any disputed charge or fee within thirty (30) days of receipt of the invoice on which the disputed charge appears. Invoiced amounts not disputed within thirty (30) days are conclusively deemed undisputed and accepted by Customer. A dispute as to any portion of an invoice does not relieve Customer from timely payment of the undisputed portion.

e. Any invoiced charge not received within thirty (30) days of the invoice date will accrue interest at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower. If Customer is delinquent in Customer’s payments, Highwinds may, at Highwinds’ sole discretion, do any one or more of the following: (i) terminate this Agreement pursuant to the terms of this Agreement; (ii) suspend its provision to Customer of all of the Services or the Service(s) for which Customer failed to pay until payment in full has been made to Highwinds; (iii) suspend its provision to Customer of all of the Services or the Service(s) for which Customer failed to pay until Highwinds and Customer have agreed, in writing, to modified payment terms that include a payment schedule for all delinquent amounts; and/or (iv) require other assurances to secure Customer’s payment obligations hereunder. Customer will be responsible for reasonable attorney’s fees and other costs of collection, if any, incurred by Highwinds in the event Highwinds initiates litigation against Customer to collect invoiced amounts, unless Customer prevails in such litigation by order or judgment.

### 2. Network; Network Modification and Maintenance.

a. Highwinds reserves the right to modify its Network, system configuration or routing configurations. Nothing in this Agreement shall create or vest in Customer any right, title or interest in a Service, its configuration or associated telephone numbers or addresses. Highwinds may, at its sole discretion and without liability, change or modify the features and functionalities of a Service or modify or replace any hardware or software in the Network or in equipment used to deliver any Service over the Network,

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<sup>1</sup> “Network” means the telecommunications network and undersea or terrestrial fiber optic systems owned, operated or otherwise licensed for use by Highwinds from time to time and is offered to Customer from time to time by Highwinds for carriage of Customer’s traffic or for other Services under this Agreement.

provided that this does not have a material adverse effect on the committed Service.

b. Highwinds may, upon such notice as is reasonably practicable under the circumstances, perform scheduled or emergency maintenance (including temporary suspension of a Service as necessary) to maintain or modify the Network, the Highwinds Supplied Equipment<sup>2</sup> or the Services. Service suspensions for the purposes of scheduled or emergency Network modification or preventative maintenance shall be counted as outage time only as specified in the Schedule applicable to the affected Service.

### 3. Provision of Services by Highwinds

a. For each Service ordered, the parties will agree upon a target date on which that Service is intended to be operational at the location(s) where Services are to be provided ("Ready for Service Date" or "RSD"), which date shall be set forth in the applicable Order. The parties agree and acknowledge that any such RSD is meant to be a goal only and is not a binding obligation of Highwinds. On or before the RSD, as may be amended, Highwinds will test the Service at each site and declare its availability for Customer use.

b. If Customer or Customer's third-party vendors or agents is/are solely responsible for such delay, including any delay caused by changes made to the Order by Customer, Customer will be liable to Highwinds for any additional costs incurred by Highwinds due to such delay, and Highwinds will amend the RSD as necessary. If third parties not acting under the direction of Customer or any force majeure conditions are solely responsible for the delay, or if Customer, Highwinds and/or third parties not acting under the direction of Customer are jointly responsible for the delay, the Project Managers for the Service will amend the RSD.

c. If Customer cancels an order for a Service for any reason prior to the RSD, as amended, except as set forth in an applicable Schedule, Customer agrees to: (i) pay Highwinds fifty percent (50%) of any non-recurring installation charge(s) for that Service, if any; (ii) to reimburse Highwinds for those costs incurred by Highwinds in preparing for or arranging for installation and provision of the ordered Service; and (iii) to reimburse Highwinds for all reasonable costs incurred by Highwinds relating to Customer's cancellation, including any early termination or cancellation charges levied on Highwinds by any underlying supplier or vendor of services or equipment relevant to the ordered Services.

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<sup>2</sup> "Highwinds Supplied Equipment" means, if any, the hardware, software and other tangible equipment and intangible computer code contained therein provided by Highwinds for use by Customer pursuant to the Agreement.

### 4. Provision of Equipment by Highwinds.

a. Any Highwinds Supplied Equipment that Highwinds agrees to provide to Customer at the Customer location designated in the applicable Order, shall be delivered, installed and maintained by Highwinds, subject to Customer's maintenance responsibilities pursuant to Section 4(c) of these General Terms and Conditions. Customer will be responsible for preparing its site for installation, for providing adequate space, foundations, heating and cooling, and electrical power, and for affording Highwinds or its agent reasonable access to the premises for installation and maintenance. Except as provided for in a Schedule, Customer is responsible for any special interface equipment or facilities necessary to ensure compatibility between the Highwinds Supplied Equipment and Customer Equipment<sup>3</sup>.

b. Title to the Highwinds Supplied Equipment shall remain with Highwinds or its suppliers. Customer shall have no right or interest in or to the Highwinds Supplied Equipment except as expressly provided in this Agreement and shall possess the Highwinds Supplied Equipment subject and subordinate to the rights of Highwinds. Customer will, at its own expense, keep the Highwinds Supplied Equipment free and clear from any liens or encumbrances of any kind (except any caused by Highwinds) and will indemnify and hold Highwinds harmless from and against any loss or expense caused by Customer's failure to do so. Customer shall give Highwinds immediate written notice of any attachment or judicial process affecting the Highwinds Supplied Equipment or Highwinds' ownership thereof.

c. Customer shall have the right to use the Highwinds Supplied Equipment in a commercially reasonable manner for the term set forth in the applicable Schedule. Customer shall not remove or alter in any way any Highwinds Supplied Equipment without the prior written consent of Highwinds. Customer will not remove, alter or destroy any labels on the Highwinds Supplied Equipment. Customer may not affix or install any accessory, addition, upgrade, equipment or device on to the Highwinds Supplied Equipment (other than electronic data) unless expressly approved in writing by Highwinds. Customer will, at its own expense, keep the Highwinds Supplied Equipment in good repair, appearance and condition, subject to normal wear and tear. Customer will be liable for the costs of repair or replacement of Highwinds Supplied Equipment if damaged or lost due to theft, negligence, intentional acts, unauthorized acts or other causes within the reasonable control of Customer, its agents or employees; provided, however, that Customer shall not be liable for any repair of the Highwinds Supplied Equipment resulting from normal wear and tear.

d. Within fifteen (15) days of the effective date of termination or expiration of the MSA or any applicable Schedule thereof, or both, Customer will remove,

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<sup>3</sup> "Customer Equipment" means any computer hardware, not including stored data, and other tangible equipment owned or otherwise controlled by Customer.

package and ship, at Highwinds' expense, in a commercially reasonable manner, all Highwinds Supplied Equipment back to Highwinds. If Customer fails to do so, Highwinds will have the right to: (i) charge Customer and Customer will pay the fair market value of the Highwinds Supplied Equipment; and (ii) recover and take possession of such Highwinds Supplied Equipment, and for this purpose may enter any premises of Customer where such equipment is located during normal working hours to remove such Highwinds Supplied Equipment. Customer will promptly surrender the Highwinds Supplied Equipment to Highwinds in as good order and condition as originally delivered, normal wear and tear excepted.

**5. Customer Obligations.** In addition to its obligation to accept and pay for the Services set forth in each Schedule or Order, Customer shall:

a. Provide Highwinds with the name of a Customer representative who can be reached, in person, at all times, regarding technical support, the Services, the Network and related matters.

b. Provide to Highwinds, its agents or suppliers reasonable access to the Customer Equipment, facilities and locations as necessary to install, provide and maintain the Services, Network, Highwinds Supplied Equipment and Customer Equipment, as applicable.

c. Provide network multiplexing functionality and any other equipment and facilities required to support the Services' configurations and to connect Customer to the Services.

d. Ensure that all of the Customer Equipment used in connection with the Services performs according to the applicable manufacturer's published technical specifications and applicable interface specifications as defined for the Services. Highwinds may disconnect any Customer Equipment from the Highwinds Supplied Equipment and/or the Network if, in Highwinds' reasonable opinion, such equipment poses a danger of death, personal injury or damage to Highwinds' employees, agents, subcontractors or property or will materially impair the Service(s) or the Network. Except as may be specifically provided in an Order or Schedule, Highwinds shall have no obligation to install, maintain or repair any Customer Equipment.

e. Participate as requested in any testing procedures and provide technician support services and a secure and safe environment to any of Highwinds' employees, agents or subcontractors working on Customer's premises for installation, testing or maintenance of the Services.

f. Obtain, as required by law or in accordance with the terms of this Agreement, any necessary permission or cooperation of a telecommunications network provider or other relevant person for the connection or maintenance of Customer Equipment.

g. Use the Services only in accordance with the terms of this Agreement.

h. Take reasonable steps to ensure that Customer, its clients and other third party authorized end users do not interfere with or disrupt other users of the Services or the Network.

i. Obtain any and all required licenses and permits relating to Customer's use of the Services, the resale (if permitted hereunder) of the Services, and/or their use by Customer's clients or other third party authorized end users.

j. Comply with any and all laws, directives, regulations and conventions, and with any public policy related laws, that may be applicable to the use of the Services by Customer and/or its clients or other third party authorized end users and/or relating to the provision of those Services by Customer to its clients or other third party authorized end users, including, without limitation, all laws and regulations relating to the use of the Services to distribute any unlawful or infringing material and registration and compliance with the Digital Millennium Copyright Act of 1998.

**6. Acceptable Use Policy.** Customer acknowledges that Highwinds exercises no control over the content of the information available on the Internet or accessed through the Network. Customer agrees that it is the sole responsibility of Customer to ensure that the information it and third parties (including, without limitation, Customer's users) accessing the Internet through Customer's use of a Highwinds Service complies with all applicable laws and regulations and the Highwinds Acceptable Use Policy (the "AUP"), which policy may be updated by Highwinds from time to time. The AUP is incorporated into this Agreement and made a part hereof by this reference. The current, complete AUP is available for review at <http://www.highwinds.com/legal>. Highwinds may change the web site address at any time via electronic notice. Customer agrees that it has received, read and understands the current version of the AUP. Customer's or Customer's users' failure to comply with the AUP shall be a material breach of this Agreement subject to immediate termination or suspension of the Service(s) pursuant to the terms of this Agreement. Notwithstanding any suspension or termination of the Service(s) due to violation of this Section 6, Customer shall continue to pay all charges set forth on all Orders.

**7. Grant of License.**

a. Subject to the terms and conditions of this Agreement, Highwinds hereby grants to Customer a limited, nonexclusive, nontransferable, revocable license during the term of this Agreement to use the Software<sup>4</sup> solely to support Customer's use of the applicable Service(s) ordered.

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<sup>4</sup> "Software" means the object code form of all software and related documentation owned by Highwinds that may be furnished to Customer under this Agreement for use with the applicable Service ordered.

b. Highwinds and its suppliers expressly retain, and Customer hereby waives any claim that it may have had or has to, title and ownership in and to all worldwide intellectual property rights, including, without limitation, design, trade secrets, know-how, patent rights, trademarks, service marks and copyrights in and to the Services, the Software, any documentation related to or provided with the Highwinds Technology<sup>5</sup> and Network and any modifications, adaptations, derivative works, and enhancements made thereto. Except as expressly set forth in this Agreement, no express or implied license, moral rights, or other rights of any kind are granted to Customer regarding the Software or other Highwinds Technology, and Customer shall not, without the prior written consent of Highwinds: (i) reverse engineer, disassemble, decompile, recompile, update or modify the Software, or any part thereof; (ii) create derivative works based on the Software; (iii) reproduce or make copies of the Software or any portion thereof; (iv) sublicense, provide access to, distribute or otherwise transfer the Software to any other person or entity; (v) remove any identification or notices of any proprietary or copyright restrictions from any Software, related documentation or support or training material; or (vi) compile or use the Software or any part thereof for the purpose of any activities that violate any laws or regulations, including, without limitation, any anti-spamming laws and regulations. Customer agrees that Highwinds may crawl or otherwise monitor the external interfaces of the Software for the purpose of verifying Customer's compliance with this Agreement. Customer may not attempt to block or otherwise interfere with such crawling or monitoring.

## **8. Insurance.**

a. If Customer receives Highwinds Supplied Equipment and maintains such at a customer location, then:

i. Customer agrees to keep in full force and effect during the term of this Agreement: (1) comprehensive general liability insurance in an amount not less than \$1 million per occurrence for bodily injury and property damage and \$2,000,000 aggregate (or equivalent coverage under an "umbrella" policy), including comprehensive form premises and operations, independent contractors, products and completed operations, personal injury, contractual, and broad form property damage liability coverage; and (2) workers compensation insurance in an amount not less than that required by applicable law; and

ii. Customer agrees that it will ensure and be solely responsible for ensuring that its agents (including contractors and subcontractors) obtain and maintain the same types and amount of coverages as required of Customer herein. Customer shall maintain property and casualty insurance (all risks) covering the customer location and Customer Equipment. All such policies shall be written by licensed insurance carriers rated A+ or better by A.M. Best.

b. Prior to installation of any Highwinds Supplied Equipment at the customer location, Customer will deliver to Highwinds certificates of insurance that evidence the minimum levels of insurance set forth above and cause its insurance provider(s) to name Highwinds as an additional insured and notify Highwinds in writing of the effective date thereof. Upon request, Customer shall give Highwinds at least thirty (30) days prior written notice of any termination, expiration or change in the coverages provided thereunder. Customer will cause and ensure that each insurance policy of Customer required under this Agreement provides that the underwriters waive all claims and rights of recovery by subrogation against Highwinds' in connection with any liability or damage covered by the insurance policies.

**9. Miscellaneous.** These General Terms and Conditions, together with the MSA, any Schedule to the MSA applicable to the Services ordered by Customer from Highwinds and all applicable Orders executed thereunder, constitute the complete and exclusive statement of all mutual understandings between the parties with respect to the subject matter hereof, superseding all prior or contemporaneous proposals, communications and understandings, oral or written. These General Terms and Conditions include terms that are in addition to, and not in lieu of the MSA and applicable Schedules.

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<sup>5</sup> "Highwinds Technology" means Highwinds' proprietary technology, including the Services, the Software (in source and object forms), software tools, hardware designs, algorithms, user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, trade secrets and any related intellectual property rights throughout the world (whether owned by Highwinds or licensed to Highwinds from a third party) and also including any derivatives, improvements, enhancements or extensions of Highwinds Technology conceived, reduced to practice, or developed during the term of this Agreement by either party.