

**SCHEDULE TO MASTER SERVICE AGREEMENT  
ADDITIONAL TERMS AND CONDITIONS FOR ADAPTIVIP INTERNET TRANSIT SERVICE**

This Schedule contains the service terms and service level agreement that apply to the AdaptivIP Internet Transit Service (the "Service") provided by Highwinds Network Group, Inc. ("Highwinds"), in addition to the terms of any Master Services Agreement ("MSA") executed by the Customer and Highwinds, the Highwinds General Terms and Conditions and all Orders executed hereunder. Reference herein to the "Agreement" shall mean the MSA, the General Terms and Conditions, this Schedule and all Orders executed hereunder. In the event of a conflict between or among the terms of this Schedule and those of any Orders placed hereunder, the terms of such Order shall control with respect to the subject matter of the Order. Capitalized terms used but not otherwise defined herein shall have the same meanings given for such terms in the MSA and General Terms and Conditions.

**1. Services Provided.** During the term of this Schedule, Highwinds agrees to perform and provide to Customer an Internet Protocol ("IP") transit service including dedicated IP access ports providing access to the Network<sup>1</sup> and the global Internet. To enable Customer to utilize the Service and access the Network, Highwinds may provide certain colocation or other access services to enable Customer to access the Network. If the Customer purchases such other services from Highwinds, such services shall be referenced under separate Schedule. The demarcation for the Service, at which point the Customer is responsible for all service, support costs, is at the point of the Customer's connection to the Network at the applicable Internet port on the Highwinds router (the "Customer Interface").

**2. Digital Millennium Copyright Act Compliance.** Each party shall maintain procedures, policies and designated agents necessary to comply with applicable safe harbors offered by the Digital Millennium Copyright Act of 1998 ("DMCA") and shall reasonably cooperate with each other in complying with any notices received thereunder with respect to Customer Content<sup>2</sup> or other content transmitted by Customer or its clients or users via the Network, including, without limitation, removing or blocking access to infringing material, consenting to remove infringing content (to the extent such is necessary) or providing counter notifications as

necessary. Customer acknowledges that, to the extent Highwinds is able, Highwinds shall remove or block access to Customer Content if Highwinds receives a proper notice pursuant to the DMCA.

**3. Charges.**

a. The Service includes the following billing components: (i) non-recurring installation charges; (ii) a monthly recurring port charge for the Commitment<sup>3</sup>, if applicable ("Monthly Recurring Charge" or "MRC"); (iii) a monthly charge for usage within available port bandwidth, above the Commitment, as calculated pursuant to Section 3(b) (the "Usage Charge"); and (iv) Telco Fees<sup>4</sup>, as applicable.

b. The Commitment, and therefore the Usage Charge, shall apply to either a particular Service port or in total to multiple service ports provided to Customer by Highwinds, as specified in the applicable Order. The Customer's port usage (both pull/receive and push/send) across such port(s) will be sampled every 5 minutes for the previous five minute period. At the end of each calendar month, the top five percent (5%) of pull and push traffic samples for such port shall be discarded. The higher of the remaining 95<sup>th</sup> percentile value for pull or push traffic for such port will then constitute the bandwidth usage amount for that particular month for that port (the "Specific Port Usage Amount"). If the MRC is based on separate Commitments for individual ports, then the Usage Charge for each billing cycle shall be calculated for each port individually by multiplying the Specific Port Usage Amount by the rate applicable to the port (the "Specific Port Charge"), determined by the ratio of pull to push as shown in the applicable pricing matrix, and then subtracting the MRC applicable to that port. If the MRC is based on a total Commitment applicable to more than one port, then the Usage Charge shall be the sum of the Specific Port Charges less the MRC applicable to those ports.

c. Invoicing for the Service is (i) monthly in advance for the MRC, beginning on the Service Commencement Date<sup>5</sup>, and (ii) monthly in arrears for Usage

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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.

<sup>2</sup> "Customer Content" means any files, pages, data, works, information and/or materials on, within, displayed, linked or transmitted to, from or through the Highwinds Network, including, without limitation, trade or service marks, images, photographs, illustrations, graphics, audio clips, video clips, e-mail or other messages, metatags, domain names (including those registered by Highwinds on Customer's behalf in connection with Highwinds provision of Service(s) hereunder) and text as provided by Customer or Customer's user.

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<sup>3</sup> "Commitment" means the monthly dedicated amount of bandwidth connectivity set forth on an applicable Order.

<sup>4</sup> "Telco Fees" means the monthly fees for any local access circuit, cross connections or other similar charges.

<sup>5</sup> "Service Commencement Date" means the date on which Highwinds notifies the Customer (by writing or electronic transmission) that the Service is available for Customer use, unless Customer notifies Highwinds within forty-eight (48) hours of its non-acceptance on the basis that agreed technical specifications for the Service have not been met. In that event, further tests of the Service will be conducted and a new RSD will be agreed upon; provided, however, that if Highwinds fails to find a defect in the Service after re-testing, the Service Commencement Date as set by the original date of notice by Highwinds shall remain unchanged.

Charges, if applicable. If the Service Commencement Date for any port falls on any other day other than the first day of any billing cycle, the Customer will be charged a pro-rata portion of the applicable charges covering the period from the Service Commencement Date to the first day of the subsequent billing cycle.

**4. Term.** This Schedule shall be effective upon execution of an initial Order for the Services described herein by both Customer and Highwinds and shall continue in full force and effect until the termination of the last Order in effect for the provision of the Service described herein. The term for each Order will commence on the date set forth on each applicable Order, shall continue for the term set forth on such Order and is subject to renewal as set forth in the MSA.

#### **5. Service Level Warranties.**

a. Highwinds guarantees 99.9% Service Availability per calendar month. "Service Availability" means the ability of Customer to exchange IP packets with Network via the Customer's router port. If a Customer site is unavailable as a result of a failure of any component of a Network service interruption, Highwinds will issue a credit based on the length of the period of the unavailability (each such period an "Outage").

i. Service Availability is measured by sending ICMP "ping" bursts to the Customer router at regular intervals. The response of the Customer router to the ping burst confirms that the connection is still in place and the Service is still available.

ii. Service Availability credits are determined as follows: (a) any Outage greater than thirty (30) minutes but less than sixty (60) minutes equals one (1) Service Credit (as defined hereafter); and (b) any Outage continuing for greater than sixty (60) minutes equals a credit of one (1) Service Credit per sixty (60) minute period.

b. Highwinds guarantees that the average monthly Network Latency between North American Highwinds POPs<sup>6</sup> shall not exceed one hundred (100) ms. "Network Latency" means the average time taken for an IP packet to traverse a pair of backbone Highwinds POPs on the Network. In the event that guaranteed Network Latency metrics are not met during any one calendar-month period, Highwinds will provide one (1) Service Credit.

c. Highwinds guarantees that the average packet loss will not exceed one percent (1%) during any calendar month. Packet loss is defined as the percentage of packets that are dropped between routers that are part of the Highwinds Network. In the event that packet loss metrics

are not met during any one-calendar month period, Highwinds will provide one (1) Service Credit.

d. If Customer experiences any of the service performance issues described in this Section 5 as a result of Highwinds' failure to provide the Service, then Highwinds will, upon Customer's request in accordance with Section 5(f), credit Customer's account as described below (the "Service Level Warranty"). Notwithstanding anything to the contrary in this Schedule, a Service Level Warranty shall not be deemed to be breached and no remedy shall be available to Customer hereunder as to a particular Order:

i. if Customer has not paid any undisputed amounts due under the MSA (the parties agreeing not to unreasonably dispute any amounts due); or

ii. to the extent the breach of the Service Level Warranty is caused by any of the following:

(1) A failure of Customer Equipment or equipment of a Customer's vendor not covered under the Agreement;

(2) Failure of Customer-controlled actions and environment at the Customer's premises (e.g. power failure, temperature increases, firewall blocking, disconnecting Highwinds Supplied Equipment, etc.);

(3) Failure in local access circuits or cross connects connecting the Customer to the Highwinds Network, unless otherwise specified;

(4) A failure of any service or product not provided to Customer by Highwinds pursuant to this Schedule (including the failure of any other service or product provided to Customer by Highwinds pursuant to the MSA, which failure shall be governed any service level warranty set forth in the Schedule applicable to such service or product);

(5) Force majeure events as defined under the Agreement;

(6) Any act or omission of Customer or any third party, including, without limitation, Customer's agents, contractors or vendors, that causes Highwinds to be unable to meet any of the Service Level Warranties, including, without limitation: (a) failing to provide Highwinds adequate access to facilities for testing; (b) failing to provide access to Customer premises as reasonably required by Highwinds (or its agents) to enable Highwinds to comply with its obligations regarding the Service; or (c) failing to take any remedial action in relation to a Service as recommended by Highwinds, or otherwise preventing Highwinds from doing so.

(7) Customer's negligence or willful misconduct, which may include Customer's failure to follow agreed-upon procedures;

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Notwithstanding any contrary term contained in the Agreement, any Customer use of the Service for other than testing purposes following notice of non-acceptance will be deemed to constitute acceptance of the Service.

<sup>6</sup> "Highwinds POP" or "POP" means any location on the Network at which Highwinds permits access or interconnection to the Network.

(8) Any scheduled maintenance periods when Customer has been informed of such maintenance and any emergency maintenance;

(9) Customer's account, during the period in question, violating the AUP;

(10) Customer not opening a support ticket to report any specific service performance issue;

(11) Customer's connection terminating at an inactive Highwinds POP; or

(12) Customer's connection terminating at a non-Highwinds POP.

e. One (1) Service Credit shall be equal to 1/30th of the Service Charges<sup>7</sup> of Customer; provided, however, that a maximum of seven (7) Service Credits may be provided during any single calendar month.

f. Service Availability claims must be submitted to Highwinds within seven (7) calendar days of the occurrence of the event. Network Latency and Packet Loss claims must be submitted not later than thirty (30) calendar days after the last day of the month in which the failed metric occurred.

i. Each claim must be filed by Customer's administrative contact and must include the following information: (1) Customer name and site name; (2) contact's name and contact information; (3) date and beginning/end time of outage or failed metric; and (4) the specific Highwinds support ticket number opened in relation to the performance issue and brief description of the characteristics of the Outage or failed metric.

ii. Customer must submit the required information by written notice specified in the Agreement. Highwinds will acknowledge all claims within five (5) business days and will review all claims within ten (10) business days of receipt. Customer will be informed by electronic mail whether the appropriate service credit claim will be granted or rejected. If rejected, the notification will specify the basis for rejection.

iii. Approved credits will be applied to the Customer's invoice during the billing cycle following the month in which the claim was approved.

g. Highwinds reserves the right to change, amend, or revise this policy at any time with or without notice to Customer.

THE SERVICE LEVEL WARRANTY SET FORTH IN THIS SCHEDULE SHALL APPLY ONLY TO THE SERVICES DESCRIBED HEREIN AND DOES NOT APPLY TO ANY OTHER SERVICE. THIS SCHEDULE STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE BY HIGHWINDS TO PROVIDE THE SERVICES DESCRIBED HEREIN.

**6. Miscellaneous.** This Schedule, together with the MSA, the General Terms and Conditions and all applicable Orders executed hereunder, 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. This Schedule includes terms that are in addition to, and not in lieu of the MSA and General Terms and Conditions.

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<sup>7</sup> "Service Charges" means the MRC charged by Highwinds for the Service, excluding any non-recurring fees, Highwinds Provided Equipment charges, Telco Fees or other similar charges.