

**SCHEDULE TO MASTER SERVICE AGREEMENT  
ADDITIONAL TERMS AND CONDITIONS FOR CONTENT DISTRIBUTION SERVICES - RESELLERS**

This Schedule contains the service terms and service level agreement that apply to the Content Distribution Services 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.

**1. Services Provided.** Subject to the limitations and restrictions set forth in an applicable Order, during the term of this Schedule, Highwinds agrees to enable Customer or its end users to distribute Customer Content<sup>1</sup> via the CDN Network<sup>2</sup> (the “Service”).

**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, 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.** Customer shall pay such charges and fees for the Service as set forth in an applicable Order and on such terms as set forth therein.

**4. Term.** This Schedule shall be effective upon execution by both Customer and Highwinds and shall continue in full force and effect until the termination of the last Order 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.

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<sup>1</sup> “Customer Content” means any files, pages, data, works, information and/or materials on, within, displayed, linked or transmitted to, from or through the Network (as defined hereafter), 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.

<sup>2</sup> “Network” means the global network of cache servers 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 the CDN Service under this Schedule.

**5. Service Level Warranties.**

a. Highwinds guarantees that Service Availability for the CDN Network shall be greater than or equal to 99.9%. “Service Availability” shall mean the ability of Customer to transmit and receive Customer Content via the Highwinds Network.

b. Highwinds guarantees an average, as calculated each calendar month, Service Quality of less than nine (9) seconds of Total Connection Time for Streaming Applications<sup>3</sup> and greater than eight hundred kilo bits per second (800 kbps) download speed for Content Download Applications.<sup>4</sup> “Total Connection Time” shall mean the initial connection time plus buffer time, which is calculated as the time during which the streamed data is temporarily stored in the end user’s local computer’s memory.

c. Highwinds measures Service Availability and Service Quality through a measurement tool, which collects CDN Network availability and quality metrics from strategically placed nodes within major exchange points on the Internet. To measure Service Availability and Service Quality, Polls<sup>5</sup> are taken every five (5) minutes.

d. To report critical support issues, Customer should call Highwinds (24x7 NOC) at 866-872-0357 or 602-515-0931 immediately after the service performance issue arises. For all other support issues, Customer may email [cdn-support@highwinds.com](mailto:cdn-support@highwinds.com) to generate a ticket for Highwinds’ NOC team.

e. In the event that the guaranteed Service Availability or Service Quality metrics (each a “Service Level Warranty”) are not met during any one calendar month, Highwinds will, upon Customer’s request in accordance with Section 5(f) hereof, provide a service credit equal to (i) 1/30th of the MRC applicable to the failed service for each day in which the failed service does not meet the Service Level Warranty (if applicable), if Customer is subject to a MRC; or (ii) the average daily usage charge attributable to the failed service as calculated over the thirty (30) days immediately preceding the breach of the applicable Service Level Warranty for each day in which the failed service does not meet the Service Level Warranty (if applicable), if Customer is not subject to a MRC. Notwithstanding anything

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<sup>3</sup> “Streaming Applications” shall mean those services provided by Highwinds to Customer hereunder that permit Customer Content or other Customer files to be constantly received by and simultaneously displayed to an end user while being delivered by the CDN Network.

<sup>4</sup> “Content Download Applications” shall mean those services provided by Highwinds to Customer hereunder that permit Customer Content or other Customer files to be transferred from a remote compute to a local computer via the CDN Network..

<sup>5</sup> “Poll” shall mean an individual measurement of the Customer’s ability to transmit or receive Customer Content via the Highwinds Network or an individual measurement of the quality of such transmission or reception, as applicable.

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) A failure of applications or software code owned or licensed by Customer or provided to Highwinds by Customer;

(3) 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.);

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

(5) Use of media players (Windows or Flash) coded for non-standard buffering time that inhibit fast connection times;

(6) A failure of encoder servers or live-signal acquisition services owned or leased by Customer or provided to Highwinds by Customer;

(7) A failure or delay by Highwinds testing agent to report data relating to the service performance metrics set forth in the applicable order, including any failure or delay caused by false-positive data point readings;

(8) 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);

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

(10) 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 (or its agents) 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.

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

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

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

(14) Customer not opening a support ticket to report any specific service performance issue.

f. Service failure claims must be submitted not later than thirty (30) calendar days after the last day of the month in which the failure occurred.

i. Each claim must include the following information: (1) Customer name; (2) Customer contact name and contact information; (3) date and beginning/end time of outage or failed metric; (4) a report from a measurement tool verifying the failed metric; and (5) the specific Highwinds support ticket number opened in relation to the performance issue and brief description of the characteristics of the failed service.

ii. Customer must submit the required information by written electronic notice to [cdncredit@highwinds.com](mailto:cdncredit@highwinds.com) or faxed to 321-206-5950, attn: CDNCREDIT.

iii. Approved credits will be applied to the Customer's invoice within sixty (60) days of the Customer's credit request submission.

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. Confidentiality; Use of Name; End-User Support.** Notwithstanding any term to the contrary contained in the MSA, the General Terms and Conditions or any applicable Order, the following terms and conditions shall apply to Customer's use and resale of the Services described herein:

a. Customer expressly agrees and acknowledges that terms of this Agreement, including, without limitation, the MSA, General Terms and Conditions and all applicable Schedules and Orders, shall be maintained

in confidence, and Customer shall not disclose the terms of this Agreement to any third party, including, without limitation, any client or end user of Customer, without the prior written consent of Highwinds, except as required by Legal Process.

b. Customer may not use the name, logo, trademarks, service marks or other proprietary indicia of Highwinds (the "Marks") without Highwinds' prior written approval, including, without limitation, using the Marks (or any of them) to identify Highwinds as the supplier or source of the Services provided to Customer hereunder

c. Highwinds will provide "2nd Tier" support with respect to any Services resold by Customer or otherwise provided by Customer to its clients or other-end users ("End-Users"). In this regard, Customer shall be responsible for routine troubleshooting and intake of all issues and questions of such End-Users related to the Services. Customer shall then make commercially reasonable efforts to address and to correct all issues or problems of its End-Users. If, after making such reasonable efforts, Customer cannot correct an error or problem related solely to the Services, Customer shall notify Highwinds as set forth in Section 5(d) of this Schedule, and Highwinds shall assist Customer (not the End-Users) in diagnosing and correcting such error or problem in accordance with the terms of this Agreement. In no event will Highwinds be required to provide support or maintenance services directly to any End-Users of the Services, in accordance with the above terms, and Customer shall not refer any End-Users to Highwinds for such support or maintenance.

**7. 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.