

HIGHWINDS NETWORK GROUP, INC. GENERAL TERMS AND CONDITIONS

Version 2010.1.0

These are the General Terms and Conditions (the "General Terms and Conditions") applying to the provision by Highwinds of Services over Highwinds' Network¹, 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. Network; Network Modification and Maintenance. Highwinds reserves the right to modify its Network, system configuration or routing configurations. 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, provided that this does not have a material adverse effect on the committed Service. 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 Equipment² or the Services. Service suspensions for the purposes of scheduled or emergency Network modification or preventative maintenance shall not be counted as outage time unless specifically stated otherwise in the Schedule applicable to the affected Service.

2. 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. The parties agree and acknowledge that any such date is meant to be a goal only and is not a binding obligation of Highwinds.

b. If Customer or Customer's third-party vendors or agents is/are solely responsible for any delay, including any delay caused by changes made to the Order by Customer, Highwinds may charge Customer for any additional, actual costs incurred by Highwinds due to such

¹ "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.

² "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.

delay, and Highwinds will amend the date when Services will be available as necessary. In all other cases of delay, the Project Managers for the Service will amend the date when Services will be available.

3. Customer Obligations. In addition to its obligation to accept and pay for the Services, 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, DMCA takedown notices, the Network and matters to all of the foregoing.

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 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 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 not prohibited in the Agreement) 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. Customer further agrees that it will: (i) maintain a Designated Agent for takedown notices pursuant to the terms of the Digital Millennium Copyright Act of 1998 ("DMCA"); (ii) take expeditious action to remove allegedly infringing material contained in the Customer Content and of which it actually becomes aware; and (iii) maintain and enforce a policy of terminating any repeat infringers who are Customer's end users or who access the Network through Customer. Customer will act expeditiously to Highwinds' requests with respect to Network abuse and actions needed to be undertaken for Customer's or Highwinds' compliance with the DMCA.

4. 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.

5. Grant of License; Intellectual Property Ownership.

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 Software³ solely

³ "Software" means the object code form of all software and related documentation owned by Highwinds that may be furnished to or used by Customer under this Agreement for use with the applicable Service ordered.

to support Customer's use of the applicable Service(s) 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 in and to the Services, the Software, any documentation related to or provided with the Highwinds Technology⁴ 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, Services or the Highwinds Technology. 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.

c. 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.

6. Confidential Information. (a) Each Party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, vendors, employees, customers, technology, products, and other information held in confidence by the other party (collectively, "Confidential Information"). Confidential Information will include all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should be considered confidential. Confidential Information

⁴ "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.

will also include, but not be limited to, Highwinds Technology, Customer Technology, and the terms and conditions of this Agreement, but shall not include Customer Content. Each Party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or to the limited extent required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to such party's employees, attorneys, accountants and other advisors as reasonably necessary), any Confidential Information of the other Party. Each Party will protect the confidentiality of the Confidential Information of the other party by employing the same measures (but in no event less than reasonable measures) as it takes to protect its own Confidential Information. The obligations of this Section shall last during and after the term of this Agreement.

(b) Exceptions. Notwithstanding anything contained to the contrary herein, information will not be deemed Confidential Information if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party without use of or reference to the Confidential Information of the disclosing party. The receiving party may disclose Confidential Information pursuant to the requirements of a validly issued subpoena, governmental agency or by operation of law, provided that it gives the disclosing party, when practical and permitted, reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure.

(c) Remedies. In the event of a violation or threat of violation by a party, directly or indirectly, of the terms of subsection 6(a), the party who would be harmed by such violation, will have the right, and in addition to all other remedies available to it at law, in equity or under this Agreement, to affirmative or negative injunctive relief from a court of competent jurisdiction. Each party acknowledges that a violation of this section would cause irreparable harm and that all other remedies are inadequate.

(d) Personal Data. In the event that Customer discloses personal data to Highwinds ("Personal Data"), Customer (i) agrees that Highwinds or its affiliate(s) may process such Personal Data consistent with applicable law and regulation, only for the purpose of the provision of Services by Highwinds to Customer or for purposes connected with the subject matter of the disclosure and/or business relationship between the parties; (ii) acknowledge that such processing may include the transfer of such Personal Data to Highwinds' affiliates worldwide and/or its storage in a local or foreign database; and (iii) agree that Customer will, to the extent required by applicable law,

obtain all necessary consents to such processing from the data subjects concerned.

(e) Neither party will publish or use any advertising, sales promotions, press releases or other publicity that uses the name, logo, trademarks or service marks of the other without the prior written approval of the other, provided that Highwinds may list Customer as a customer.

7. Miscellaneous. If and to the extent that any products, software or technical information provided by Highwinds to Customer under this Agreement are or may be subject to any applicable export laws and regulations, Customer agrees that it will not use, distribute, transfer or transmit such products, software or technical information (even if incorporated into other products) except in compliance with such export laws and regulations (or licenses or orders issued pursuant thereto). These General Terms and Conditions include terms that are in addition to, and not in lieu of the MSA, any Order and applicable Schedules.