

**SCHEDULE TO MASTER SERVICE AGREEMENT**  
**ADDITIONAL TERMS AND CONDITIONS FOR LAYER 2 VC POINT TO POINT SERVICE**  
Version 2010.1.0

This Schedule contains the service terms and service level agreement that apply to the Layer 2 VC Point to Point 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. Service Provided.** The Service is a data networking service that supports traditional private data networking services, like Ethernet over a Multiprotocol Label Switching (MPLS)-enabled IP backbone. If service is purchased with failover and in the event of a failover scenario, the Service will utilize fast re-route circuit protection. The Service provides point-to-point connectivity over a dedicated circuit between city pairs on Highwinds network, which enables end-to-end transportation of a high capacity signal between two specified sites. The Service is available as the Highwinds POP to the Highwinds POP<sup>1</sup> service ("POP to POP") and Customer premises to Customer premises service ("End to End"). POP to POP service includes all of the Highwinds' network elements, excluding local access. If local access is provided by a Highwinds owned or leased city ring or metro network to the Customer's premises at both ends of the Service, the Service will also be classified as POP to POP. End to End service includes all the Highwinds network elements plus the provision of local access circuits ordered from Highwinds by the Customer from the Customer premises to the Highwinds POP over facilities that may be provided by third party suppliers. For each Service Point to Point segment ordered, the selected type of service (either POP to POP or End to End), pricing and length of term shall be set out in an Order executed by Customer. Point to Point segments are sold as circuits; Customer will receive a minimum of two ports between point A and point Z. Highwinds will provision available bandwidth on each port in accordance with the committed information rate or "Cap" agreed to by both parties and executed in the applicable Order. Highwinds may provide certain colocation or other access services to enable Customer to access the Service. If the Customer purchases such other services from Highwinds, such services shall be referenced under a separate Schedule. Except as specifically set forth in any agreement for equipment colocation between the Highwinds and Customer, Highwinds shall have no obligation with respect to any installation, maintenance, repair or servicing of the

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<sup>1</sup> "Highwinds POP" or "POP" means any location on the Network at which Highwinds permits access or interconnection to the Network.

Customer's electronic or optronic equipment to be used in connection with the Service.

**2. Digital Millennium Copyright Act Compliance.** Customer 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 Service through Customer. Customer will act expeditiously to Highwinds' requests with respect to Service abuse and actions needed to be undertaken for Customer's or Highwinds' compliance with the DMCA and any safe-harbor requirements thereunder.

**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 and in the MSA.

**4. Term.** This Schedule shall be effective upon the beginning of the first Order for the Service ordered pursuant to this Schedule and shall terminate upon the last Service in effect under the terms of this Schedule.

**5. Service Level Warranties.**

a. Highwinds guarantees that Service Availability for the Network shall be greater than or equal to 99.9%. "Service Availability" means the ability of Customer to exchange IP packets with the Service via the Customer's router port. 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 available. Subject to the terms of Sections 5(e) & 5(g), in the event that Service Availability averaged over a calendar month falls below 99.9% for any given month, then: (i) for every outage lasting for at least 30 minutes but less than 60 minutes, Highwinds will provide Customer with one Service Credit<sup>2</sup> (as defined hereafter); and (ii) for every outage lasting for 60 minutes or more, then Highwinds will provide Customer with one Service Credit per 60 minute period of such outage. Customer may elect to terminate a Service prior to the end of the applicable term

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<sup>2</sup> "Service Credit" means an amount equal to equal to the product of (i) 1/30th of the "Monthly Charge" (as defined hereafter) under the Order for which the Service is provided; and (ii) the proportion by which the fees paid for the Service in the previous month bears to the total fees paid in the previous month for all services included in the Order under which the Service was ordered (such proportion being the "Service Proportion"). If Customer is subject to a MRC, then the "Monthly Charge" shall mean the MRC for the month in which a service level warranty is breached. If Customer is not subject to a MRC, then the "Monthly Charge" shall mean the fees paid to Highwinds in the month in which the breach of the applicable service level warranty occurred.

without termination liability if, for reasons other than as set forth in Section 5(d) hereof, such Service is unavailable (as defined above) for three (3) or more separate occasions of more than twelve (12) hours each in any calendar month OR for more than forty two (42) hours in the aggregate in any calendar month. Customer may only terminate such Service that is unavailable as described above, and must exercise its right to terminate the affected Service under this Section, in writing, within thirty (30) days after the event giving rise to a right of termination hereunder, which termination will be effective after such notice and as set forth by Customer in such notice of termination.

b. Highwinds will maintain measurement tools for the determination of compliance with the above-mentioned guarantee (an "SLA"), and while Customer may also maintain such, Highwinds' measurements, except in the case of manifest error, shall be the singular basis for determining compliance or non-compliance with the guarantees set forth herein.

c. 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 [support@hwng.net](mailto:support@hwng.net) to generate a ticket for Highwinds' NOC team.

d. Notwithstanding anything to the contrary in this Schedule, the SLA 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 SLA 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) Customer's connection terminating at an inactive Highwinds POP;

(5) Customer's connection terminating at a non-Hiwinds POP;

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

(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 SLA, 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;

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

(15) Such SLA failure occurred within the first five business days after Service began or was reconfigured; or

(16) An SLA failure caused in whole or in part by a failure in local access facilities connecting the Customer to Highwinds' network, to the extent that such local access facilities are not provided by Highwinds.

e. Claims for Service Credits must be submitted not later than thirty (30) calendar days after the last day of the month in which the applicable failure of the SLA 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 SLA; (4) a report from a measurement tool stating the basis for the failed SLA; and (5) the specific Highwinds support ticket number opened in relation

to the performance issue and brief description of the characteristics of the failed SLA.

ii. Customer must submit the required information by written electronic notice to [creditrequest@highwinds.com](mailto:creditrequest@highwinds.com).

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

f. Highwinds reserves the right to change, amend, or revise this policy at any time upon notice to Customer.

g. THE SLAS SET FORTH IN THIS SCHEDULE SHALL APPLY ONLY TO THE SERVICE 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 SERVICE DESCRIBED HEREIN AND ANY BREACH BY HIGHWINDS OF ANY OF THE SLAS SET FORTH HEREIN. NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY HEREIN OR ANYWHERE ELSE IN THE AGREEMENT, THE MAXIMUM AMOUNT OF SERVICE CREDITS HIGHWINDS WILL HAVE TO GRANT FOR THIS SERVICE IN ANY ONE MONTH SHALL BE THE PRODUCT OF THE SERVICE PROPORTION AND THE MONTHLY CHARGE UNDER THE ORDER FOR WHICH SERVICE IS PROVIDED HEREUNDER.

**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.