

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

Version 2010.1.0

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 Content¹ via the CDN Network² (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 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 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 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 Network.

¹ “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.

² “Network” means the network of servers and other network assets 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 Service under this Schedule.

Subject to the terms of Sections 5(g) & 5(i), in the event that Service Availability 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 Credit³ (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.

b. Highwinds guarantees an average, as calculated each calendar month, of at least eight hundred kilobits per second (800 kbps) data transfer speed with respect to cached content through the Content Download Applications⁴, assuming the end-user has the proper capacity to receive such throughput. Subject to the terms of Sections 5(g) & 5(i), if the guarantee set forth in Section 5(b) is not met in any given calendar month during the Term of the Service, Highwinds shall provide Customer with one Service Credit.

c. Highwinds guarantees an average, as calculated each calendar month, “Time to First Byte” of at least 150ms for HTTP traffic within a region. For purposes of this Section 5(c), a region is either North America or Europe. No other geographic areas are covered by the guarantee set forth in this Section 5(c). “Time to First Byte” means the time elapsing from the moment the last packet of a test agent request is sent and the moment of receipt of the first packet of the test agent from the Highwinds’ point of presence. Subject to the terms of Sections 5(g) & 5(i), if the guarantee set forth in Section 5(c) is not met for any given calendar month during the Term of the Service, Highwinds shall provide Customer with one Service Credit.

d. Highwinds will maintain measurement tools for the determination of compliance with the above-mentioned guarantees (each 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.

e. 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 to generate a ticket for Highwinds’ NOC team.

³ “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.

⁴ “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 Network.

f. Notwithstanding anything to the contrary in this Schedule, an 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) 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 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; or

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

g. 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.

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

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

i. 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. Confidentiality; Use of Name. Notwithstanding any term to the contrary contained in the MSA, the General Terms and Conditions or any applicable Order, to the extent that Customer is allowed by Highwinds to resell the Service, the following terms and conditions shall apply to Customer's use and resale of the Service 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 shall be responsible and liable for any and all actions of its resale users or customers as if the acts, omissions or content of such resale users and customers were Customer's own acts, omissions and Customer Content.

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.