



## **MASTER SERVICES AGREEMENT**

This Master Services Agreement (MSA) with the **Highpoint Technology Group, LLC.** governs your terms, responsibilities, and use of the Highpoint Technology Group products and services. By accepting this Master Service Agreement, either by clicking a box indicating your acceptance or by executing an Order Form, Quote, or Statement of Work that references this agreement, you agree to the terms of this Master Service Agreement. If you are entering into this Master Service Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to these terms and conditions. If you do not have such authority, or if you do not agree with these terms and conditions, you must not accept this agreement and may not use Highpoint Technology Group products and services. The parties agree that this Master Service Agreement may be electronically signed. The parties agree that the electronic signatures appearing on this agreement are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.

### **ARTICLE 1 – INTRODUCTION**

1.1 *General.* This MSA sets forth the terms and conditions of Highpoint Technology Group's, delivery and Customer's receipt of any or all of the services provided by Highpoint Technology Group, including Professional Services. The specific Services to be provided under this MSA are described in detail in the Order Forms and/or Statements of Work. This MSA is intended to cover any and all Services ordered by Customer and provided by Highpoint Technology Group. Any terms set forth in this MSA which apply specifically to a service not ordered by Customer, will not apply to Customer.

1.2 *Definitions.* Capitalized terms used and not elsewhere defined in this MSA, have the meanings given them in Schedule 1.2 to this MSA.

### **ARTICLE 2 - DELIVERY OF SERVICES TERM**

#### 2.1 *Delivery of Services.*

(a) *General.* By executing an Order Form and/or Statement of Work, Customer agrees pursuant to the Order Form and/or Statement of Work terms to take and pay for, and Highpoint Technology Group agrees to provide the Services specified on the applicable Order Form or Statement of Work during the Initial Term and for any Renewal Term, as specified in Section 2.2(b).

(b) *Billing for Services.* Customer will be charged for Services in the invoice issued the month following delivery of the Services, except for normal monthly recurring Services that will be invoiced in advance of the month that such Services will be provided.

(c) *Delivery of Onsite Support Services.* Highpoint Technology Group shall provide Onsite Support Services to Customer with respect to the matters related to the Services outlined in a Statement of Work and/or Order Form. Onsite Support Services shall include 24/7 help desk and/or desktop support, as well as remote and/or onsite server and network support services. Any IT support personnel provided by Highpoint Technology Group shall be directly compensated and employed by Highpoint Technology Group and not Customer.

(d) *Delivery of Professional Services.* Highpoint Technology Group shall provide Professional

Services to the Customer with respect to matters related to the Services outlined in a Statement of Work. Highpoint Technology Group shall be engaged by the Customer as a consultant for the exchange of ideas only and under the terms of this MSA shall also direct and conduct research for or on behalf of the Customer. Upon request by the Customer and in return for compensation detailed in an applicable Statement of Work, Highpoint Technology Group shall provide overall project guidance and consultative services in support of the client initiative outlined in a Statement of Work.

(e) *Delivery of Online Hosted Services:* Highpoint Technology Group shall provide Online Hosted Services to the Customer with respect to the matters related to the Services outlined in an Order Form. Unless otherwise stated, Online Hosted Services provided by Highpoint Technology Group do not include terminal and communication equipment or devices required for communication with the computer systems used by Highpoint Technology Group, and Customer at its own expense will obtain any and all such necessary equipment and devices as compatible and suitable for communications. Any terminal equipment or communications equipment provided by Highpoint Technology Group to Customer shall remain the property of Highpoint Technology Group. All charges for Services, including installation, will be invoiced to Customer pursuant to the rate listed in the mutually executed Order Form and/or Statement of Work.

(f) *Delivery of Equipment:* Highpoint Technology Group shall provide equipment to the Customer pursuant to a mutually executed Statement of Work or Order Form between the parties. Unless otherwise agreed between the parties pursuant to an Order Form, Customer understands and agrees that the equipment purchased by the Highpoint Technology Group and identified in the Statement of Work or Order Form is the property of Highpoint Technology Group and the Customer has no ownership interest in the equipment. The parties agree that this MSA is not intended to act as a conveyance of Highpoint Technology Group's property rights in the equipment to Customer and Highpoint Technology Group's ownership in the equipment shall continue after execution of the Statement of Work or Order Form and Customer agrees that it will return all equipment to Highpoint Technology Group in the same condition that it was received by Customer, except for normal wear and tear, unless otherwise expressly agreed in an Order Form by the parties. Highpoint Technology Group shall be entitled to the values indicated in the Statement of Work or Order Form as liquidated damages for any equipment not returned to Highpoint Technology Group in accordance with the Terms and Conditions stated herein.

## 2.2 *Term of Services.*

(a) *Commencement of Initial Term.* The term for each Service will commence on the Service Commencement Date indicated in a Work Order and/or Statement of Work and continue for the Initial Term. Except for a termination for Cause by the Customer pursuant to Section 10.1, Customer is obligated to pay all fees and expenses set forth herein through the Initial Term and any Renewal Term unless expressly documented in an applicable Order Form, Change Order Form, or Statement of Work.

(b) *Renewal Terms.* Each term will continue automatically for an additional term equal to one (1) year unless either party provides notice in writing to the other party at least thirty (30) days prior to the end of the Term that it has elected to terminate the applicable Work Order or Statement of Work in which case such Service(s) shall terminate the end of the term. Except as otherwise expressly provided in this MSA, Highpoint Technology Group is obligated to provide and Customer is obligated to pay for all Services through its Initial Term and any Renewal Term.

## **ARTICLE 3 - PAYMENT TERMS FOR FEES AND EXPENSES**

3.1 *Fees and Expenses.* Customer will pay all fees and expenses due according to the terms listed in the Order Forms and/or Statements of Work. The fees and expenses listed in the Order Forms and/or Statements of Work will remain in effect during the Initial Term and will continue thereafter unless modified in accordance with Section 2.2(b).

*3.2 Payment Terms.* Upon signing of the Order Form and/or Statements of Work Customer will be billed an amount equal to all non-recurring charges indicated in the Order Form and/or Statements of Work including third party services. On the Service Commencement Date Customer will be billed for the pro rata amount due for that month's monthly recurring charges. Monthly recurring charges for all other months will be billed thereafter in advance of the provision of Services. All other charges for Services received and approved expenses incurred during a month (e.g., time and materials billing fees, report processing and reproduction, lodging, meals, telephone, postage, delivery costs, supplies, travel expenses, etc.) will be billed at the end of the month in which the Services were provided. Payment for all undisputed fees and expenses is due within thirty (30) days of receipt of each Highpoint Technology Group invoice. All payments will be made in the United States in U.S. dollars as indicated in the invoice.

*3.3 Late Payments.* Any undisputed payment not received within forty-five (45) calendar days of receipt of the invoice may accrue interest at a rate of one percent (1%) per month from the invoice date, or the highest rate allowed by applicable law, whichever is lower. Highpoint Technology Group retains the right to impose the interest charges set forth above on any invoice which is delinquent regardless of whether or not past due invoices have been sent without such interest charges included. If Customer is delinquent in its undisputed payments, Highpoint Technology Group may, upon written notice to Customer, modify the payment terms to require full payment before the provision of all Services or require other assurances to secure Customer's payment obligations under this MSA. If Customer is more than thirty (30) days delinquent in payment for Services and such payment has not been made within fifteen (15) days after Highpoint Technology Group has given written notice of non-payment, Highpoint Technology Group has the right to suspend any and all Services until such payment has been received in Highpoint Technology Group's offices. The parties agree that the prevailing party in any dispute shall be entitled to collect reasonable costs, including costs of suit and attorney's fees.

*3.4 Credit and Other Payment Conditions.* Highpoint Technology Group will perform a credit evaluation of Customer and based on such evaluation may require a deposit or a prepayment for services.

*3.5 Payment Disputes.* If Customer in good faith disputes a portion of any invoice, Customer will notify Highpoint Technology Group in writing on company letterhead within 90 days of receiving an invoice containing a disputed charge. Highpoint Technology Group will promptly work to reconcile any submitted disputes. Customer is obligated to pay currently all non-disputed items. If Customer does not dispute an invoice within ninety (90) days of receipt of such invoice, Customer forfeits any further right to dispute such invoice.

*3.6 Taxes.* All fees charged by Highpoint Technology Group for Services are exclusive of all taxes and similar fees now in force or enacted in the future imposed on the transaction or the delivery of Services, all of which Customer will be responsible for and will pay in full, except for franchise taxes and taxes based on Highpoint Technology Group's net income. If Customer is entitled to an exemption from any taxes, Customer is responsible for presenting Highpoint Technology Group with a valid exemption certificate (in a form reasonably acceptable to Highpoint Technology Group). Highpoint Technology Group will give effect to any valid exemption certificate to the extent it applies to any Service billed by Highpoint Technology Group to Customer following Highpoint Technology Group's receipt of such exemption certificate.

#### **ARTICLE 4 - CONFIDENTIAL INFORMATION; INTELLECTUAL PROPERTY OWNERSHIP; LICENSE GRANTS**

##### *4.1 Confidential Information.*

(a) *Nondisclosure of Confidential Information.* Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business,

plans, customers, technology, and products, and other information held in confidence by the other party ("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. Financial, statistical, personal, technical data and other information relating to the business of Customer that is submitted to Highpoint Technology Group by Customer in order to accomplish the objectives of this MSA or otherwise communicated to Highpoint Technology Group in its performance of this MSA, shall be treated as confidential and not be used or disclosed by Highpoint Technology Group. Confidential Information will also include, but not be limited to, Highpoint Technology Group Technology, Customer Technology, and the terms and conditions of this MSA and all documents incorporated by reference into this MSA. Highpoint Technology Group agrees to employ commercially reasonable security precautions to ensure that access to the equipment, programs and data files and other information of Customer in Highpoint Technology Group's facility, or otherwise in the possession of Highpoint Technology Group, is available only through the user identification names or codes provided to Customer by Highpoint Technology Group. 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 required to achieve the purposes of, this MSA, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information. Each party also agrees that it will take reasonable precautions to protect the confidentiality of the other party's Confidential Information, at least as stringent as it takes to protect its own Confidential Information.

(b) *Exceptions.* Information will not be deemed Confidential Information under this MSA 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 MSA by the receiving party; or (iv) is independently developed by the receiving party. The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation of law, provided that it gives the disclosing party reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure.

#### 4.2 *Intellectual Property.*

(a) *Ownership.* Except for the rights expressly granted in this MSA, this MSA does not transfer from Highpoint Technology Group to Customer any Highpoint Technology Group Technology, and all right, title and interest in and to Highpoint Technology Group will remain solely with Highpoint Technology Group. Except for the rights expressly granted in this MSA, this MSA does not transfer from Customer to Highpoint Technology Group any Customer Technology, and all right, title and interest in and to Customer Technology will remain solely with Customer. Highpoint Technology Group and Customer each agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the other party.

(b) *General Skills and Knowledge.* Notwithstanding anything to the contrary in this MSA, Highpoint Technology Group will not be prohibited or enjoined at any time by Customer from utilizing any skills or knowledge of a general nature acquired during the course of providing the Services, including, without limitation, information publicly known or available or that could reasonably be acquired in similar work performed for another customer of Highpoint Technology Group.

#### 4.3 *License Grants.*

(a) *By Highpoint Technology Group.* Highpoint Technology Group hereby grants to Client a nonexclusive, royalty-free license, during the term of this MSA, to use the Highpoint Technology Group Technology solely for purposes of using the Services. Customer shall have no right to use the Highpoint Technology Group Technology for any purpose other than using the Services.

(b) *By Customer.* Customer agrees that if, in the course of performing the Services, it is necessary for Highpoint Technology Group to use Customer Technology, Highpoint Technology Group is hereby granted and shall have a nonexclusive, royalty-free license, during the term of this MSA, to use the Customer Technology solely for the purposes of delivering the Services to Customer. Highpoint Technology Group shall have no right to use the Customer Technology for any purpose other than providing the Services.

## **ARTICLE 5 - HIGHPOINT TECHNOLOGY GROUP REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS**

### *5.1 General*

(a) *Authority and Performance of Highpoint Technology Group.* Highpoint Technology Group represents and warrants that (i) it has the legal right and authority to enter into this MSA and perform its obligations under this MSA, and (ii) the performance of its obligations and delivery of the Services to Customer will not violate any applicable U.S. laws or regulations, including OSHA requirements, or cause a breach of any agreements with any third parties. In the event of breach of the warranties set forth in this Section 5.1(a), Customer's sole remedy is termination pursuant to Article 10 of this MSA.

(b) *Date Compliance.* Highpoint Technology Group warrants that none of the computer hardware and software systems and equipment incorporated into or utilized in the delivery of the Services contains any date dependent routines or logic which will fail to operate correctly by reason of such date dependence; provided, however, that no representation or warranty is made as to the adequacy of any Customer or third-party service provider hardware or software used in connection with the Services. In the event of breach of the warranties set forth in this Section 5.1(b), Customer's Sole remedy is termination pursuant to Article 10 of this MSA.

*5.2 Service Performance Warranty.* Highpoint Technology Group warrants that it will perform the Services in a manner consistent with industry standards reasonably applicable to the performance thereof.

*5.3 No Other Warranty.* EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN ARTICLE 5, THE SERVICES AND ANY EQUIPMENT ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES AND EQUIPMENT IS AT ITS OWN RISK. HIGHPOINT TECHNOLOGY GROUP DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. HIGHPOINT TECHNOLOGY GROUP DOES NOT WARRANT THAT THE SERVICES OR EQUIPMENT WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

*5.4 Disclaimer of Actions Caused by or Under the Control of Third Parties.* HIGHPOINT TECHNOLOGY GROUP DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM HIGHPOINT TECHNOLOGY GROUP'S NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH HIGHPOINT TECHNOLOGY GROUP WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, HIGHPOINT TECHNOLOGY GROUP CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, HIGHPOINT TECHNOLOGY GROUP DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

## **ARTICLE 6 - CUSTOMER REPRESENTATIONS, WARRANTIES AND OBLIGATIONS**

### *6.1 Representations and Warranties of Customer.*

(a) *Authority and Performance.* Customer represents and warrants that (i) it has the legal right and authority to enter into this MSA and perform its obligations under this MSA, and (ii) the performance of its obligations and use of the Services (by Customer, its customers and users) will not: violate any applicable laws or regulations, cause a breach of any agreements with any third parties, or unreasonably interfere with other Highpoint Technology Group customers' use of Highpoint Technology Group services. Customer agrees to provide Highpoint Technology Group with a Customer Registration Form identifying individuals authorized to act on Customer's behalf.

(b) *Breach of Warranties.* In the event of any breach of any of the foregoing warranties, in addition to any other remedies available at law or in equity, Highpoint Technology Group will have the right, in its sole reasonable discretion, to suspend immediately any related Services if deemed reasonably necessary by Highpoint Technology Group to prevent any harm to Highpoint Technology Group and its business. Highpoint Technology Group will provide notice and opportunity to cure if practicable depending on the nature of the breach. Once cured, Highpoint Technology Group will promptly restore the Services.

(c) *Responsibility for All Charges.* Customer agrees to execute a Customer Acceptance Form once Highpoint Technology Group has delivered the Services. Customer is responsible for all charges attributable to Customer incurred respecting Service(s) even if incurred as a result of fraudulent or unauthorized use of Service(s); except Customer shall not be responsible for fraudulent or unauthorized use by, or attributable to, Highpoint Technology Group or its employees. In addition, Customer will not be responsible for charges incurred after Customer requires that Highpoint Technology Group block the fraudulent or unauthorized use of a Service.

*6.2 Compliance with Law.* Customer agrees that it will use the Services only for lawful purposes and in accordance with this MSA. Customer will comply at all times with all applicable State, Federal, and International laws and regulations, as updated from time to time. Customer acknowledges that Highpoint Technology Group exercises no control whatsoever over the content of the information passing through Customer's sites and that it is the sole responsibility of Customer to ensure that the information it and its users transmit and receive complies with all applicable laws and regulations.

*6.3 Disposition after Termination.* Upon termination of this MSA, Customer must give Highpoint Technology Group written instructions as to the disposition of any Customer-owned equipment, information and data that Customer may have stored in conjunction with Highpoint Technology Group services; otherwise, Highpoint Technology Group will retain Customer's equipment, information and data for a period of one hundred and twenty (120) days after such termination and then dispose of such in a manner it deems appropriate and Highpoint Technology Group shall have no liability whatsoever as a result of such disposition. Customer agrees to pay all reasonable expenses incurred by Highpoint Technology Group in the transfer, storage or disposal of such information or data.

## **ARTICLE 7- INSURANCE**

*7.1 Highpoint Technology Group Minimum Levels.* Highpoint Technology Group and its subcontractor(s) and/or agent(s) shall maintain in effect throughout the term of this Agreement the following types of insurance at the following minimum amounts:

(i) Commercial General Liability Insurance: including Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury with a combined single limit of not less

than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate.

(ii) Property Insurance: against all risks of physical loss or damage to any property of Customer in the care, custody, or control of Highpoint Technology Group.

(iii) Professional Liability: in the amount of Five Million Dollars (\$5,000,000) including coverage for Network Security Liability and Privacy Liability.

(v) Cyber Liability: in the amount of Five Million Dollars (\$5,000,000) each occurrence and includes 1<sup>st</sup> party Cyber liability coverage of not less than Three Million Dollars (\$3,000,000).

If any of the foregoing insurance policies are canceled or changed by Highpoint Technology Group or its insurer so as to affect the coverage required by this Agreement, Highpoint Technology Group shall notify Customer in writing within (30) days of such cancellation or change.

## **ARTICLE 8 - LIMITATIONS OF LIABILITY**

8.1 *Consequential Damages Waiver.* EXCEPT FOR A BREACH OF SECTION 4.1 (“CONFIDENTIAL INFORMATION”) OF THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER FOR ANY TYPE OF INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, OR REPLACEMENT GOODS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT STRICT LIABILITY OR OTHERWISE. FURTHER, NO CAUSE OF ACTION WHICH ACCRUED MORE THAN TWO (2) YEARS PRIOR TO THE FILING OF A SUIT ALLEGING SUCH CAUSE OF ACTION MAY BE ASSERTED AGAINST EITHER PARTY. THE MAXIMUM TOTAL LIABILITY OF HIGHPOINT TECHNOLOGY GROUP TO CUSTOMER FOR ANY CLAIMS ARISING OUT OF OR RELATING TO ANY NEGLIGENT, INTENTIONAL OR FRAUDULENT ACTS OF A PARTY SHALL BE LIMITED TO THE TOTAL FEES PAID TO HIGHPOINT TECHNOLOGY GROUP FOR SERVICE IN THE ONE-YEAR PERIOD PRECEDING THE DATE UPON WHICH ANY SUCH CLAIM IS MADE. HIGHPOINT TECHNOLOGY GROUP SHALL NOT BE RESPONSIBLE FOR FAILURES, MALFUNCTIONS, OR INADEQUACIES OF CUSTOMER AND/OR ANY THIRD PARTY’S TERMINALS OR COMMUNICATIONS SYSTEMS, INCLUDING, BUT NOT LIMITED TO, MALFUNCTIONS OR INADEQUACIES OF TELECOMMUNICATIONS CARRIERS, OR SIMILAR SYSTEMS.

8.2 *Basis of the Bargain; Failure of Essential Purpose.* The parties agree that the limitations and exclusions of liability and disclaimers specified in this MSA represent the parties' agreement as to the allocation of risk between the parties in connection with Highpoint Technology Group's obligations under this MSA, including any Order Form and/or Statement of Work and that such limitations, exclusions and disclaimers will survive and apply even if found to have failed of their essential purpose. The parties acknowledge that Highpoint Technology Group has set its prices and entered into this MSA, including any Order Form and/or Statement of Work in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth in this MSA, and that the same form an essential basis of the bargain between the parties.

## **ARTICLE 9- INDEMNIFICATION**

9.1 *Indemnification.* EACH PARTY WILL INDEMNIFY, DEFEND AND HOLD THE OTHER HARMLESS FROM AND AGAINST ANY AND ALL COSTS, LIABILITIES, LOSSES, AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES) (COLLECTIVELY, "LOSSES") RESULTING FROM ANY CLAIM, SUIT, ACTION, OR PROCEEDING (EACH, AN "ACTION") BROUGHT BY ANY THIRD PARTY AGAINST THE OTHER OR ITS AFFILIATES ALLEGING (I) THE INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT RELATING TO THE DELIVERY OR USE OF THE SERVICES (BUT EXCLUDING ANY INFRINGEMENT CONTRIBUTORILY CAUSED BY THE OTHER PARTY); AND (II) PERSONAL OR ECONOMIC INJURY CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF

THE OTHER PARTY. EACH PARTY WILL INDEMNIFY, DEFEND AND HOLD THE OTHER, ITS AFFILIATES AND CUSTOMERS HARMLESS FROM AND AGAINST ANY AND ALL LOSSES RESULTING FROM OR ARISING OUT OF ANY ACTION BROUGHT AGAINST THE INDEMNIFIED PARTY, ITS AFFILIATES OR CUSTOMERS ALLEGING ANY DAMAGE OR DESTRUCTION TO DATA CENTERS, EQUIPMENT OR OTHER CUSTOMERS' EQUIPMENT CAUSED BY THE NEGLIGENCE, IN WHOLE OR IN PART, OR WILLFUL MISCONDUCT, OF THE PARTY, ITS REPRESENTATIVES OR DESIGNEES.

9.2 *Notice.* Each party's indemnification obligations under this MSA shall be subject to (i) receiving prompt written notice of the existence of any Action; (ii) being able to, at its option, control the defense of such Action; (iii) permitting the indemnified party to participate in the defense of any Action; and (iv) receiving reasonable cooperation of the indemnified party in the defense thereof.

## **ARTICLE 10 – EVENT OF DEFAULT AND TERMINATION**

10.1 *Termination for Cause.* Either party may terminate this MSA, effective as of the date specified in written notice of termination provided to the other party, upon the occurrence of any of the following events of default: (i) the other party breaches any material term or condition of this MSA and fails to cure such breach within thirty (30) days after receipt of written notice of the same, except in the case of failure to pay undisputed fees or expenses within thirty (30) days of receipt of invoice, which must be cured within five (5) business days after receipt of written notice from Highpoint Technology Group; (ii) either party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (iii) either party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing.

10.2 *Termination on Expiration of all Services.* Either party may terminate this MSA, effective as of the date specified in written notice of termination provided to the other party, if all Services have been terminated in accordance with the procedures in Section 2.2 or if no Statements of Work or Order Forms are in effect.

10.3 *No Liability for Termination.* Neither party will be liable to the other for any termination or expiration of any Service or this MSA in accordance with its terms.

10.4 *Effect of Termination.* Upon the effective date of termination of this MSA the following remedies shall not be exclusive, but shall be cumulative and in addition to all other remedies provided in this MSA, by law and at equity:

- (a) Highpoint Technology Group will immediately cease providing the Services;
  - (b) any and all payment obligations of Customer under this MSA for Services provided through the date of termination, plus the total charges for Services then prevailing at the time of default applied for the remainder of the then term, will immediately become due;
  - (c) within ten (10) days of such termination, each party will return all Confidential Information of the other party in its possession and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement. Notwithstanding anything contained herein, the receiving party shall not be required to destroy or alter any computer archival and backup tapes and/or other media providing for archival of electronically stored information (collectively, "ESI"), provided that any Confidential Information contained in such ESI shall be kept confidential in accordance with the terms of this MSA;
- ;



(d) Customer shall return all Highpoint Technology Group equipment and software within ten (10) days of termination to Highpoint Technology Group at Highpoint Technology Group's offices.

10.5 *Termination Assistance.* Notwithstanding the provisions of Section 10.4, upon the termination of this MSA for any reason, Highpoint Technology Group will provide to Customer such termination assistance relating to the Services, at Highpoint Technology Group's then current standard rates on an applicable prorated basis, as may be reasonably requested in writing by Customer. Highpoint Technology Group's obligation to provide assistance pursuant to this Section 10.5 is limited to a period of one hundred and twenty (120) days (the "Assistance Period"). Customer will pay Highpoint Technology Group, on the first day of the Assistance Period and as a condition to Highpoint Technology Group's obligation to provide termination assistance to Customer during the Assistance Period, an amount equal to Highpoint Technology Group's reasonable estimate of the total amount payable to Highpoint Technology Group for such termination assistance for the Assistance Period.

10.6 *Continuation of Services.* Notwithstanding the provisions of Section 10.4, Customer shall have the option, exercisable upon termination, by delivery of written notice to Highpoint Technology Group, to continue the Services and this MSA on a month-to-month basis after the termination date or the expiration date, as applicable, for the then applicable fees set forth in the Statements of Work and/or Order Forms. Customer shall have the right to have this MSA continue on a monthly basis pursuant to this Section 10.6 for up to four (4) months. If this MSA is terminated by Highpoint Technology Group, the Customer will pay Highpoint Technology Group, on the first day of each month and as a condition to Highpoint Technology Group's obligation to continue to provide the Services to Customer during that month, an amount equal to Highpoint Technology Group's reasonable estimate of the total amount payable to Highpoint Technology Group for such Services for that month.

10.7 *Survival.* The following provisions will survive any expiration or termination of this MSA: Articles 3, 8, 9, 10, 11 and Sections 4.1 and 4.2.

## **ARTICLE 11-MISCELLANEOUS PROVISIONS**

11.1 *Force Majeure.* Except for the obligation to make payments, neither party will be liable for any failure or delay in its performance under this MSA due to any cause beyond its reasonable control, including, but not limited to, acts of war, Acts of God, earthquake, flood, embargo, riot, strike, lock-outs, shortage of fuel, inability to obtain material, tornadoes, hurricanes, tropical storms or depressions, unusually severe weather, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the actions or inactions of Highpoint Technology Group) (each a "Force Majeure Event"), provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses reasonable commercial efforts to promptly correct such failure or delay in performance. If Highpoint Technology Group is unable to provide Services for a period of fifteen (15) consecutive days (or twenty [20] days within a consecutive thirty [30] day period) as a result of a continuing Force Majeure Event, Customer may cancel the Services and this MSA on written notice to Highpoint Technology Group. Such termination will be effective on the date specified in the written notice.

11.2 *Marketing.* Highpoint Technology Group shall not use the names, trademarks or logos of Customer in any materials, including without limitation, press releases, advertisements and other promotional materials, without Customer's prior written consent.

11.3 *Government Regulations.* Customer will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this MSA without first complying with all export control laws and regulations which may be imposed by the U.S. Government and any country or organization of nations within whose

jurisdiction Customer operates or does business.

11.4 *No Third-Party Beneficiaries.* Highpoint Technology Group and Customer agree that, except as otherwise expressly provided in this MSA, Statement of Work and/or Order Form there shall be no third-party beneficiaries to this MSA, including but not limited to the insurance providers for either party or the customers of Customer.

11.5 *Governing Law.* This MSA and the rights and obligations of the parties created hereby will be governed by venue and construed in accordance with the laws of the State of Texas. Venue for any claim, suit or dispute between the parties, whether federal or state, shall be in Harris County, Texas. Customer irrevocably and unconditionally submits to the jurisdiction and venue of such courts and waives any defense of *forum non conveniens* and any objections it may have to the jurisdiction or venue of such courts for the purpose of carrying out this provision.

11.6 *Severability.* In the event any provision of this MSA is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of this MSA will remain in full force and effect.

11.7 *Non-Waiver.* The acceptance by Highpoint Technology Group of sums due it by Customer, the waiver of any breach or default of this MSA, or the failure to exercise any right provided for in this MSA, will not constitute a waiver of any subsequent breach, default or right, and will not act to amend or negate the rights of the waiving or non-exercising party.

11.8 *Assignment.* Customer may assign this MSA in whole or in part as part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets, or transaction or series of related transactions that results in the transfer of fifty percent (50%) or more of the outstanding voting power of Customer. Customer may not otherwise assign its rights or delegate its duties under this MSA either in whole or in part without the prior written consent of Highpoint Technology Group, and any attempted assignment or delegation without such consent will be void. Highpoint Technology Group also may delegate the performance of certain Services to third parties, including Highpoint Technology Group's wholly owned subsidiaries, provided Highpoint Technology Group controls the delivery of such Services to Customer and remains responsible to Customer for the delivery of such Services. This MSA will bind and inure to the benefit of each party's successors and permitted assigns.

11.9 *Non-Hire.* The parties agree that during the term of this Master Service Agreement, and for a period of twelve (12) months after termination of this MSA, neither party will solicit for hire, either directly or indirectly, any employee or contractor to leave the employment of the other party and/or its affiliated companies or to hire/retain such person(s). Each party agree that these provisions are necessary and reasonable to protect the legitimate business interests that the other party and its affiliated companies have in protecting substantial investments in such employees and contractors. This Section 11.9 does not apply where an employee of either party seeks employment with the other party in response to an advertisement placed into the public domain for that position.

11.10 *Relationship of Parties.* Highpoint Technology Group and Customer are independent contractors and this MSA will not establish any relationship of partnership, joint venture, franchise or agency between Highpoint Technology Group and Customer. Neither Highpoint Technology Group nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided in this MSA.

11.11 *Article and Section Headings: Pronouns; Plural and Singular.* The article and section headings in this MSA are for reference purposes only and shall not affect the meaning or interpretation of this MSA. References in this MSA to a designated "Article" or "Section" refer to an Article or Section of this MSA unless otherwise specifically indicated. All pronouns used in this MSA shall be construed as including both genders and the neuter. All capitalized defined terms used in this MSA are equally

applicable to their singular and plural forms.

11.12 *Entire Agreement.* This MSA, including schedules and all documents incorporated into this MSA by reference, constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede all of the prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter of this MSA. Any additional or different terms in any Statement of Work or Order Form or other response provided by either party and not accepted by the other party in accordance with Section 11.14 shall be deemed objected to without need of further notice of objection, and shall be of no effect or in any way binding upon the objecting party.

11.13 *Counterparts and Originals.* This MSA may be executed in counterparts, which together shall constitute a single agreement. Delivery by telephonic facsimile transmission or e-mail of a signed counterpart of this MSA shall be effective as delivery of a manually signed counterpart. Once signed, any reproduction of this MSA made by reliable means (e.g., photocopy, facsimile) is considered an original.

11.14 *Modifications.* This MSA may be amended or changed only by a written document signed by authorized representatives of Highpoint Technology Group and Customer in accordance with this Section 11.14. This MSA may be amended or changed from time to time by Order Forms, Statements of Work or any other Agreement that is executed by Highpoint Technology Group and Customer and incorporated herein and made a part of this MSA for all purposes (the "Addendums"). This MSA shall be deemed to include all Addendums. Whenever reference is made to "this MSA," it shall be deemed to include each of these various Addendums.

11.15 *Interpretation of Conflicting Terms.* In the event of a conflict between or among the terms in this MSA and the Addendums, the documents shall control in the following order: 1) Change Order Forms with the latest date; 2) the Order Form with the latest date; 3) the Statement of Work with the latest date; 4) this MSA; 5) and all other documents with the most recent date controlling over the preceding dates.

11.16 *Service Levels.* Service levels, service credits and service credit calculations are governed by accompanying Service Level Agreements. Changes to the Service Level Agreement do not change any other terms in this MSA or other relevant binding documents. Except in cases of gross negligence, SLA failure remedies are limited to the scope of remedies within the Service Level Agreement pertaining to the specific service(s) being contracted and delivered.

## HIGHPOINT TECHNOLOGY GROUP

### MASTER SERVICES AGREEMENT SCHEDULE 1.2 -- DEFINITIONS

The following defined terms are equally applicable in their singular and plural forms:

(a) "Customer Technology" means Customer's proprietary technology, including Customer's Internet operations design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by Customer or licensed to Customer from a third party) and also including any derivatives, improvements, enhancements or extensions of Customer Technology conceived, reduced to practice, or developed during the term of this MSA by Customer.

(b) "Highpoint Technology Group Technology" means Highpoint Technology Group's proprietary technology, including Highpoint Technology Group Services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by Highpoint Technology Group or licensed to Highpoint Technology Group from a third party) and also including any derivatives, improvements, enhancements or extensions of Highpoint Technology Group conceived, reduced to practice, or developed during the term of this MSA by either party that are not uniquely applicable to Customer or that have general applicability in the art.

(c) "Initial Term" means the minimum term for which Highpoint Technology Group will provide the Services to Customer, as indicated on the Order Forms and/or Statement of Work.

(d) "Online Hosted Services" means physical and virtual computer services provided to Customer as described on the Order Form.

(e) "Onsite Support Services" means the information technology support services provided to Customer by Highpoint Technology Group that are more fully described in a Statement of Work and/or Order Form.

(f) "Order Form" means any of the forms specifying the products, services, or fees to be provided by the Highpoint Technology Group and to be used or consumed by Customer or its affiliates.

(g) "Professional Services" means any non-standard professional or consulting service provided by Highpoint Technology Group to Customer and as more fully described in a Statement of Work.

(h) "Renewal Term" means any term following the Initial Term, as specified in Section 2.2 of the MSA.

(i) "Service(s)" means the specific services provided by Highpoint Technology Group as described in the Order Form(s) and Statement(s) of Work.

(j) "Service Commencement Date" means the date Highpoint Technology Group will begin providing the Services to Customer, as indicated in an Order Form or Statement of Work executed by Highpoint Technology Group and Customer.

(k) "Statement of Work" means the detailed descriptions of the Professional Services and/or Onsite Support Services provided by Highpoint Technology Group to Customer.