



## MASTER SERVICES AGREEMENT

**THIS MASTER SERVICES AGREEMENT** ("Agreement") is made this \_\_\_ day of \_\_\_\_\_, 201\_\_ (the "Commencement Date") between \_\_\_\_\_, with offices located at \_\_\_\_\_,

\_\_\_\_\_ ("Customer") and **Peak Web LLC** ("**Peak**") a California Limited Liability Company doing business as Peak Web Hosting (hereinafter known as "Peak Web Hosting") on behalf of itself and its affiliates, with offices located at 8400 N. Maple Place, Suite 108, Rancho Cucamonga, CA 91730 ("Peak Web Hosting").

### RECITALS

**WHEREAS**, Customer and Peak Web Hosting wish to enter into this Agreement to set forth the general terms and conditions under which Peak Web Hosting will provide Customer with services and Customer will purchase services from Peak Web Hosting.

In consideration of the mutual covenants and agreements contained herein the parties agree as follows:

#### 1. DEFINITIONS

A. "**Service(s)**" shall mean the services particularly described in each Service Order.

B. "**Service Order(s)**" shall mean orders for specific Services on Peak Web Hosting's standard Service Order forms, including attachments thereto. Each Service Order shall be issued and accepted by the parties in accordance with the provisions of this Agreement. Each Service Order will contain specific provisions with respect to prices, features, locations, descriptions of service, duration and other terms as appropriate.

C. "**Service Level Agreement**" shall mean guidelines, instructions, and escalation procedures which govern Service-specific operating and performance requirements of each party. Customer acknowledges receipt of a copy of the **Service Level Agreement**, which are incorporated herein by reference, and which Peak Web Hosting may change on notice to the Customer as further provided herein.

#### 2. SCOPE AND STRUCTURE/ORDER OF PRECEDENCE

A. Each Service Order issued and accepted and all Services provided hereunder shall be subject to all of the terms of this Agreement and the **Service Level Agreement**.

B. In the event of conflict or inconsistency between the general provisions of this Agreement and those of an individual Service Order, or the Service-specific portions of the **Service Level Agreement**, the conflict or inconsistency shall be resolved in the following order of precedence: first, in favor of the Service Order, next in favor of the **Service Level Agreement**, and last, in favor of the provisions in this Agreement. Any conflict or inconsistency between the provisions of any applicable **Service Level Agreement** and those of any Service Order shall be resolved in favor of the provisions of the Service Order.

#### 3. TERM and RENEWAL

A. This Agreement shall begin on the Commencement Date and shall continue until the expiration of the last Service Order issued and accepted hereunder. Provided that if Customer is not then in default, and if, at the time of expiration or termination of the existing Service Order Term, the parties are in active discussions for additional Services under one or more Service Orders, the term of this Agreement shall extend for an additional period as may be reasonably necessary for the parties to conclude their discussions and execute implementing Service Order(s).

B. The term of each Service Order shall be specifically stated in the Service Order, the ("Term"). The Term shall renew automatically at Peak Web Hosting's then current prices for additional terms equal in length to the initial Term specified in the Service Order unless and until one of the parties gives written notice to the other at least thirty (30) calendar days prior to the end of the

then current Term of its election not to automatically renew the Service Order. If Customer cancels any Service Order before its expiration date, Customer will pay Peak Web Hosting a termination charge determined as specifically provided in Section 8 (D) hereof.

#### 4. PAYMENT

A. **Monthly Recurring Charges.** Installation and all other non-recurring charges, and monthly recurring charges for the Services will be at the rates set forth by Service type; or as otherwise agreed by the parties for the specific Service Order. Except for usage-based Services, which are billed in arrears, the Services are billed one (1) month in advance and the first billing cycle may include a partial month Service and a full month Service charge, if the Service is installed and activated during a partial month of Service. All fees and charges are payable for the duration of the Term, regardless of whether Customer actually uses the Services or occupies space in Peak Web Hosting facilities.

B. **Taxes and Other Fees.** Prices established in this Agreement and the applicable Service Order are exclusive of taxes and other fees (including FCC fees like universal service fees, TRS, etc.) which may be imposed on Peak Web Hosting or Customer for the provision or use of the Services. Customer will pay such taxes and other fees, except for Peak Web Hosting's U.S. federal and state income tax. Tax exempt status will be granted to Customer upon presentation of a certificate of exemption reasonably satisfactory to Peak Web Hosting.

C. **Non-Recurring Charges.** One hundred percent (100%) of non-recurring charges will be due from Customer upon signing of the applicable Service Order. Any non-recurring charges incurred by Customer in excess of the amount defined in the applicable Service Order will be included in the first invoice to Customer for monthly services.

D. **Assurance of Payment.** As a standard, Peak Web Hosting requires an advance payment equal to one time the monthly reoccurring cost. This advance payment will be applied to the last month's bill if client fails to renew. If Customer's payments are received late for two (2) consecutive months, Customer shall, within five (5) calendar days after Peak Web Hosting's request, deposit an additional amount equal to two (2) month's monthly recurring charges. Upon expiration or termination of this Agreement and Customer's compliance with its financial obligations hereunder, all amounts on deposit will be returned to Customer.

E. **Invoicing and Payment.** Billing will commence for each Service on the date set forth as the Billing Commencement date on the Service Order or, if there is no Billing Commencement date, then when the Customer is notified of order completion. Customer will pay all amounts owed under each Service Order within fifteen (15) calendar days after the invoice date (the "Due Date"). Peak Web Hosting reserves the right to charge interest on undisputed delinquent amounts at the lower of one and one-half percent (1.5%) per month or such other rate or rates as may be permitted under applicable law.

F. **Disputed Payments.** In the event Customer in good faith disputes any charges invoiced by Peak Web Hosting, Customer shall promptly pay all undisputed charges, and shall notify Peak Web Hosting in writing of any such disputed amounts on or before the Due Date, identifying in reasonable detail its reasons for the dispute and the nature and amount of the dispute. All amounts not timely (by the Due Date) and appropriately disputed shall be deemed final and not subject to further dispute. Peak Web Hosting will review the amounts in dispute within ten (10) business calendar days after its receipt of notice of dispute. If Peak Web Hosting determines that Customer was billed in error, a credit for the amount billed incorrectly will be made to the next invoice. If Peak Web Hosting determines that the amount was billed correctly, Customer will pay the amount by the Due Date of the next invoice.

G. **Suspension or Termination of the Services.** If payment in full for Services performed under any Service Order (other than for payments validly disputed by Customer in good faith) is not received by Peak Web Hosting on or before the Due Date, Peak Web Hosting shall have the right, upon giving Customer ten (10) calendar days advance notice, to suspend Services until such time as Customer has paid such charges in full, including any late fees. Immediately

upon supplying written (including email) notice, Peak Web Hosting shall have the right to suspend both physical and network Customer management access to all datacenter facilities and equipment. Following such payment, Peak Web Hosting shall immediately reinstate the Services, and/or access to services, provided that Customer furnishes to Peak Web Hosting satisfactory assurance of its ability to pay for the Services. Failure by Customer to pay for such Services within ten (10) calendar days after any suspension shall be deemed to constitute a termination of the Services. No cancellation or termination under this provision shall relieve Customer from its obligations to pay for Services under any Service Order not so canceled or terminated. Amounts owed may be recouped through a collections process.

5. **SERVICE LEVEL COMMITMENTS** Peak Web Hosting warrants and represents to Customer that the Services shall comply with the Service Level Agreements ("SLA's") for each Service as more specifically described in the applicable section of the **Service Level Agreement**. Customer acknowledges that the service level credits applicable to the specific Services are its exclusive remedy in the event of Service interruption or outage.

6. **INTERNET USAGE** To the extent the Services are used in connection with Customer's use of the Internet, Customer warrants and represents to Peak Web Hosting (i) that the Services will be used only for lawful purposes, and Customer shall not transmit, retransmit or store material in violation of any federal or state laws or regulations and (ii) that Customer will at no time use any Service to distribute unsolicited commercial e-mail (commonly known as "spam").

7. **INDEMNIFICATION AND WAIVER**

A. Except to the extent attributable to the gross negligence or willful misconduct of Peak Web Hosting, Customer shall indemnify and hold Peak Web Hosting harmless from and against any and all loss, liability, damage and expense (including consequential damages and reasonable attorneys' fees) arising out of any demand, claim, suit or judgment for damages to any property or injury to or death of any person which may arise out of or be caused by any act or omission of Customer.

B. Customer agrees that Peak Web Hosting will not have any responsibility or liability for damage to Customer's equipment or interruption of Customer's operations that is caused by any other Peak Web Hosting customer, any other tenant or occupant of the datacenter, the building, the property or the employees, agents, contractors, technicians, representatives, customers, co-locators or invitees of any such tenant or occupant.

8. **TERMINATION** Either party in accordance with the following may terminate this Agreement and any Service Order (s):

A. **Default.** If either party is in breach of this Agreement or any Service Order, (other than for failure by Customer to pay any undisputed amounts due under any Service Order which are covered under Section 4 (G) above), the non-breaching party shall give the breaching party thirty (30) calendar days' notice in writing of such breach. If the breach has not been cured to the non-breaching party's reasonable satisfaction within the thirty (30) day period, then the non-breaching party may terminate the applicable Service Order, without penalty, effective at the end of said thirty (30) day period immediately upon written notice to the breaching party. No termination for breach pursuant to this Section shall constitute or permit termination of any portions of this Agreement or any Service Order not breached or affected by such breach.

B. **Cause.** This Agreement may be terminated for cause by either party in the event that the other party: (i) shall become insolvent; (ii) admits in writing its inability to pay its debts; (iii) ceases to function as a going concern or to conduct its operations in the normal course of business; (iv) breaches Section 6 hereof; or (v) breaches Section 9 hereof.

C. **Remedies.** In the event of termination for breach or cause, the non-breaching party shall have the right to pursue any or all remedies available to it at law or in equity.

D. **Early Termination.** If Customer terminates or cancels service under any Service Order for reason other than Peak Web Hosting's breach prior to its agreed expiration date, Customer will pay Peak Web Hosting a termination charge (as liquidated damages and not as a penalty) including all non-recurring, disconnection or termination charges reasonably incurred by Peak Web Hosting on Customer's behalf, and the full amount of the remaining monthly charges for the remainder of the Term. All termination charges shall be due and payable within five (5) calendar days after the effective date of termination of the Service Order.

E. Customer further agrees that, upon termination, it will, at its expense, immediately vacate and surrender the space and remove all of its equipment. If Customer has not removed its equipment from the space within thirty (30) calendar days following the effective date of any termination of this Agreement

or the Service Order(s), Customer will be deemed to have abandoned its claim to the equipment and have conveyed its right, title and interest therein to Peak Web Hosting. If not conveyable, Peak Web Hosting shall charge a storage fee for such equipment.

No termination pursuant to this Section shall relieve either party of any of its obligations under this Agreement or any Service Order, including, without limitation, the obligation to pay for Services prior to such termination.

9. **CONFIDENTIALITY** "Confidential Information" shall include: (i) all requests for quotations and proposals for Services, including resulting Service Orders, (ii) all prices, rates and other financial information related to the Services, (iii) all information relating to the customers of either party, including customer lists, and (iv) all information one party provides to the other which is clearly identified as confidential or proprietary. Confidential Information disclosed by either party to the other shall be held by the recipient in confidence and not: (a) used by the recipient for personal advantage of any kind, or (b) made available for third parties to use. Each party will direct its employees, contractors, consultants and representatives who have access to any Confidential Information to comply with all of the terms of this Section. The foregoing information shall not be Confidential Information if: (i) it is or becomes available to the public through no wrongful act of the receiving party; (ii) it is already in the possession of the receiving party and not subject to any agreement of confidence between the parties; (iii) it is received from a third party without restriction for the benefit of the disclosing party and without breach of this Agreement; (iv) it is independently developed by the receiving party; (v) it is disclosed pursuant to a requirement of a duly empowered government agency or a court of competent jurisdiction after due notice and an adequate opportunity to intervene is given to the disclosing party unless such notice is prohibited. Upon termination or expiration of this Agreement, the receiving party shall at the disclosing party's direction, either return or destroy all of the disclosing party's Confidential Information and so certify to disclosing party in writing. The obligations of this provision will survive for three (3) years after any termination or expiration of this Agreement.

10. **INTELLECTUAL PROPERTY RIGHTS** Neither party shall use any copyrights, patents, trade secrets, software, trade marks, trade names, service marks, license rights or other intellectual property rights (collectively "Intellectual Property") owned, licensed or used by the other party. Notwithstanding the foregoing, each party may use the other party's name and logo in any and all media, whether now known or hereafter developed (including Internet pages) for the sole purpose of listing one or more representative customers or vendors or to issue press releases (each, a "Permitted Use"). Upon expiration or termination of this Agreement, or any affected Service Order, all Permitted Uses shall be discontinued, and any Intellectual Property, including all copies thereof, shall be returned to the other party. Each party hereby disclaims any right, title and interest in any Intellectual Property, owned, used or licensed by the other party.

11. **FORCE MAJEURE** Neither party shall have any claim or right against the other for any failure of or delay in performance by such other party if the failure or delay is caused by or the result of causes beyond the reasonable control of such other party, including, but not limited to, acts of God, fire, flood, hurricane, or other natural catastrophe; terrorist actions, laws, orders, Policies, regulations, directions or actions of governmental authorities having jurisdiction over the subject matter hereof; or any civil or military authority, national emergency, insurrection, riot or war; inability to obtain circuits or equipment, material or other supplies, default of or failure to perform by subcontractors, or other similar occurrence beyond the control and without the fault or negligence of the affected party. Any such delay or failure shall suspend the affected Service Order until the delay or failure ceases, and the Service Order shall be deemed extended accordingly. Notwithstanding the foregoing, either party may terminate any affected Service Order immediately upon written notice if the datacenter co-location facility provides notification to Peak Web Hosting that the excusable delay or failure will exceed more than ninety (90) days. Such notification will be provided by the datacenter co-location facility within a time period as soon as practicable after the event.

12. **LEGAL NOTICES**

A. Notices and communications concerning this Agreement shall be addressed to:

\_\_\_\_\_ [Customer, Inc.]

\_\_\_\_\_

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_ (required)

Fax: \_\_\_\_\_ (required)  
e-mail: \_\_\_\_\_ (required)

Peak Web LLC.  
P.O. Box 917  
Rancho Cucamonga, CA 91729-0917  
Attn: Legal Department  
Phone: 909-945-4826  
Fax: 866-563-9800  
e-mail: [legal@peakwebhosting.com](mailto:legal@peakwebhosting.com)

or at such other address as either party may designate to the other in writing.

B. Notices shall be sent by registered or certified US Mail, postage prepaid, or by commercial overnight delivery service, by facsimile, or electronic transmission, and shall be deemed delivered either on the date of return receipt acknowledgment (in the case of US Mail), or on the next day after the sending of the notice (in the case of facsimile or overnight delivery service). Notwithstanding the foregoing, in the event of facsimile or electronic transmission notice, the confirming original must be sent by regular mail or overnight delivery service for notice to be deemed effective.

13. **DISCLAIMER OF WARRANTIES**

A. CUSTOMER ASSUMES TOTAL RESPONSIBILITY AND RISK FOR CUSTOMER'S USE AND ITS END USERS' USE OF THE SERVICES PROVIDED BY PEAK WEB HOSTING. CUSTOMER ACKNOWLEDGES THAT THE INTERNET (1) CONTAINS MATERIALS SOME OF WHICH ARE SEXUALLY EXPLICIT OR MAY BE OFFENSIVE TO SOME PEOPLE AND (2) IS ACCESSIBLE BY PERSONS WHO MAY ATTEMPT TO BREACH THE SECURITY OF PEAK WEB HOSTING'S AND/OR CUSTOMER'S NETWORK FACILITIES. PEAK WEB HOSTING HAS NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY OR RESPONSIBILITY WHATSOEVER FOR THE CONTENT OF MATERIALS TRANSMITTED OVER THE INTERNET, SERVICE INTERRUPTIONS ATTRIBUTABLE TO CUSTOMER'S NETWORK, ANY CUSTOMER EQUIPMENT FAILURES, OR ANY OTHER SUCH CAUSES, AND CUSTOMER AND CUSTOMER'S END USERS ACCESS THE SERVICES AT THEIR OWN RISK.

B. EXCEPT AS SPECIFICALLY SET FORTH HEREIN OR IN ANY SERVICE ORDER, THE SERVICES PROVIDED BY PEAK WEB HOSTING ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NONINFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY PEAK WEB HOSTING, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE A WARRANTY OF ANY TYPE OR NATURE.

14. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL CUSTOMER SEEK RECOURSE AGAINST PEAK WEB HOSTING, OR ITS INDIVIDUAL PARTNERS, DIRECTORS, OFFICERS, MEMBERS, INVESTORS OR SHAREHOLDERS, OR ANY OF THEIR PERSONAL ASSETS FOR SATISFACTION. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PEAK WEB HOSTING, ITS AFFILIATES, SUBSIDIARIES, EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS, AGENTS AND OTHER REPRESENTATIVES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOST OR IMPUTED PROFITS OR ROYALTIES, LOST DATA OR COST OF PROCUREMENT OF SUBSTITUTE SERVICES ARISING FROM OR RELATED TO THE SERVICES OR PERFORMANCE OF ITS OBLIGATIONS HEREUNDER, WHETHER FOR, AMONG OTHER THINGS, BREACH OF WARRANTY OR ANY OBLIGATION ARISING THEREFROM, AND WHETHER LIABILITY IS ASSERTED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT PRODUCT LIABILITY) IRRESPECTIVE OF WHETHER THE OTHER PARTY HAS ADVISED OR HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. PEAK WEB HOSTING'S LIABILITY HEREUNDER TO CUSTOMER SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE MONTHLY RECURRING CHARGE PAID BY CUSTOMER FOR THE PARTICULAR SERVICE, OR SERVICE ORDER TO WHICH THE CLAIM PERTAINS. THE PARTIES HEREBY WAIVE ANY CLAIM THAT THESE EXCLUSIONS DEPRIVE THEM OF AN ADEQUATE REMEDY OR CAUSE THIS AGREEMENT TO FAIL OF ITS ESSENTIAL PURPOSE.

15. **ASSIGNMENT** Customer may not assign this Agreement or any Service Order without the prior written consent of Peak Web Hosting, which consent will not be unreasonably withheld or denied. "Assignment" within the meaning of this Section shall not include any transfer to any entity controlling, controlled by, or under common control with a party (hereafter collectively, "Affiliate(s)"), or any sale of all or substantially all of the assets of either party, or pursuant to any merger, reorganization or consolidation, provided that the transferee agrees to be bound by all of the terms and conditions of this Agreement and the Service Orders. Peak Web Hosting may assign or transfer this Agreement to an affiliate, successor or third party without consent.

16. **COMPLIANCE WITH LAWS.** Each party agrees to conduct its business in a reputable manner and agrees to comply with all federal, state and municipal laws, rules, regulations, and codes of ethics that are binding upon or applicable to the parties or their business, equipment or personnel under or related by this Agreement

17. **GOVERNING LAW** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its principles of conflict of laws.

18. **WAIVER OF JURY TRIAL.** THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN THE PARTIES ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS RELATED HERETO.

19. **PASSWORD SECURITY.** It is Customer's sole responsibility to monitor use of its user ID and password ("access codes") for all purposes. Customer accepts all responsibility for the security of Customer's access codes and utilization of the secure areas of Peak Web Hosting's website.

20. **INSURANCE.** Customer is required under the terms of this Agreement to hold a Commercial General Liability Insurance policy in the amount of at least \$1,000,000 single limit and \$2,000,000 aggregate limit. All companies providing insurance required under this Agreement shall be authorized to do business in the state in which the co-location facility is located. Customers shall provide such certificate(s) of insurance to Peak prior to their move in or no later than ten (10) calendar days of executed contract. Customer will provide Peak Web Hosting with evidence of sufficient insurance bond held by any contractor engaged by Customer to provide services to Customer in the co-location facility.

21. **GENERAL PROVISIONS**

A. Each party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement and to execute it and any Service Orders or other attachments hereto on behalf of such party and any of its Affiliates. The parties agree that the United Nations Convention for Contracts for the International Sale of Goods shall not apply to this Agreement.

B. The relationship of the parties hereunder shall always and only be that of independent contractors. No provision of this Agreement shall be construed to create a joint venture or partnership between the parties.

C. In the event any provision in this Agreement shall be held invalid, illegal or unenforceable, the unaffected provisions shall remain in full force and effect.

D. This Agreement, the **Service Level Agreement**, Service Order(s) and the attachments and Exhibits to each Service Order constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede any and all prior or contemporaneous agreements, written or oral. This Agreement and any Service Order may be modified at any time only by written agreement of the parties. The **Service Level Agreement** may be modified unilaterally by Peak Web Hosting from time to time, provided that: (a) no modification(s) shall adversely impact Customer's rights and obligations thereunder, and (b) Customer shall be provided with notice and copies of any such modifications. Customer's failure to object within thirty (30) calendar days' notice of receipt of changes shall be deemed acceptance.

E. No waiver of any breach of this Agreement or any Service Order shall be deemed to be a waiver of any other or subsequent breach.

F. Each party agrees that the delivery by facsimile/pdf format of this Agreement and any Service Orders issued hereunder shall have the same force and effect as delivery of original signatures and that each party may use such facsimile/pdf format signatures as evidence of the execution and delivery of the Agreement and Service Orders to the same extent that an original signature could be used. Customer shall forward to Peak Web Hosting the original executed versions in each case as soon as reasonably practicable.

G. This Agreement shall not be effective until and unless the attached Contact List and Authorization Form attached hereto is completed and delivered to Peak Web Hosting.

H. Customer acknowledges that if Customer authorizes datacenter technical support requested that is not described as a non-recurring charge or monthly recurring charge in any Service Order, Customer will be charged then current Remote Hands support rates for any work performed that is found not to be caused by Peak Web Hosting.

I. Power Rates on Breakered Power. Customer acknowledges that Peak does not set baseline rates for power. As such, Customer will be subject to the pass through of any increase in rates on breakered power that Peak receives from its power vendor.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**CUSTOMER:**

**Customer Name:** \_\_\_\_\_

**Place of Incorporation:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**PEAK WEB:**

**Peak Web LLC**, a California Limited Liability Company, on behalf of itself and its affiliates

**By:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_ **Date:** \_\_\_\_\_