

MASTER SERVICES AGREEMENT

This is the Master Services Agreement for **High Point Solutions, Inc.**, a New Jersey corporation with a principal place of business at 5 Gail Court, Sparta, New Jersey 07871 (“HighPoint”). This Agreement sometimes refers to Client and HighPoint individually as a “Party” and collectively as the “Parties.”

Client, on the terms in this Agreement, desires that HighPoint perform certain services for Client’s benefit. HighPoint, on the terms in this Agreement, desires to provide the services to Client.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth, and intending to be legally bound, HighPoint and Client agree as follows.

1. **DEFINITIONS.** In this Agreement:

“Business Day” means any day other than (a) a Saturday or Sunday; or (b) a day on which banking institutions are permitted or required by law to remain closed in the state of Client’s address in the preamble to this Agreement.

“Client Data” means data pertaining to financial, operational, marketing, human resources and billing information provided to HighPoint by Client in the performance of this Agreement.

“Commencement Date” means the effective date of the applicable SOW.

“Confidential Information” will have the meaning given in Section 7.

“Expenses” means the out-of-pocket expenses incurred by HighPoint, its employees or contractors (including travel costs) in connection with the Services.

“Intellectual Property” means all (a) patents, patent applications, patent disclosures and inventions (whether patentable or not); (b) copyrights and copyrightable works (including computer programs and mask works) and registrations and applications thereof; (c) trade secrets, know-how and other confidential information; (d) waivable or assignable rights of publicity, and waivable or assignable moral rights; and (e) all other forms of intellectual property, such as data and databases.

“Product” means any equipment, hardware, cabling, software, maintenance and support services contract, or other product or service the SOW identifies as manufactured or supplied by a third party.

“Services” has the meaning given by Section 2. Services will in no event include any Product.

“Statement of Work” or “SOW” means (a) a statement of work that may be in the form attached to this Agreement as Attachment A; or (b) a paper or electronic purchase order or other similar record submitted by Client and accepted by HighPoint during the Term.

“Term” has the meaning given by Section 5.1.

2. **SCOPE OF AGREEMENT.**

2.1. Services. HighPoint, subject to the terms of this Agreement, will provide to Client the services specified by the SOW attached as Attachment A and each additional SOW the Parties execute from time to time during the Term (the “Services”). Each SOW will constitute a separate contract

between the Parties, each of which will be governed by the terms of this Agreement. This Agreement and each SOW, to the greatest extent reasonably practicable, will be construed as consistent with each other; provided, that if this Agreement and any SOW cannot reasonably be construed as consistent with each other, the SOW will control regarding its subject matter.

2.2. Change Requests. Either Party may propose changes to an SOW, and any change may cause either increases or decreases to the fees, scope, or project duration, etc. Unless otherwise provided in an SOW, the Party initiating any material change will provide the other Party with a written change request/amendment (each, a “Change Request”) for review and acceptance. Unless the Change Request is accepted by the other Party, HighPoint will continue to provide the Services as previously agreed.

3. **CLIENT RESPONSIBILITIES.**

3.1. Contact. Client for each SOW will appoint a liaison (the “Client Liaison”) responsible for directing and overseeing the delivery of Services and providing HighPoint with required information in a timely and accurate manner. Client may replace Client Liaison with another, similarly qualified individual by written notice to HighPoint. Client represents that the Client Liaison has authority to act for Client regarding all matters relating to the SOW.

3.2. Other Responsibilities. Client will perform the responsibilities assigned to it by each SOW, in each case on the schedule and other terms established by the SOW.

4. **FEES AND EXPENSES; PAYMENT.**

4.1. Fees and Expenses. Client, in consideration for the Services provided under each SOW, will pay HighPoint the fees specified by the SOW on the payment terms established by the SOW, or in absence of such terms, within thirty (30) calendar days of HighPoint’s invoice. In addition, Client will reimburse HighPoint for reasonable and expected Expenses within thirty (30) calendar days of HighPoint’s invoice..

4.2. Taxes. All amounts described in this Agreement or in any SOW are exclusive of any sales taxes, use taxes and similar taxes and levies, excluding without limitation taxes based on HighPoint’s net income, all of which will be the responsibility of Client.

4.3. Late Payments. Any late payment by Client will be subject to HighPoint’s costs of collection (including reasonable legal fees and costs) and will bear interest at the

lesser of 1½% per month or partial month and the maximum rate permitted by law.

4.4. Disputes. Notwithstanding the foregoing, Client may withhold payment of any amount it disputes in good faith and will not be deemed late or in default, if Client (a) by the invoice due date provides HighPoint with notice describing in reasonable detail the basis for the dispute; (b) timely pays all undisputed amounts; and (c) cooperates in good faith with HighPoint's efforts to resolve the dispute. Client's payment of an invoice does not waive Client's right subsequently to dispute the invoice.

5. TERM; TERMINATION.

5.1. Term.

5.1.1. This Agreement will become effective as of the Effective Date and will continue in full force and effect until the later of (a) the third (3rd) anniversary of the Effective Date; or (b) the completion or termination of the last-to-complete SOW (the "Term").

5.1.2. Each SOW will take effect on the Commencement Date and remain effective for the initial period specified in that SOW or, if the SOW specifies no period, for two years from the date of the SOW (the "SOW Initial Term"). The SOW will renew for consecutive two-year periods (each an "SOW Renewal Term") unless either Party, at least one hundred twenty (120) days before the beginning of the SOW Renewal Term, gives written notice to the other Party of nonrenewal. The SOW Initial Term and all SOW Renewal Terms are collectively referred to as the "SOW Term."

5.2. Termination for Cause. Either Party may terminate a SOW by written notice if the other Party commits a material breach of the SOW or this Agreement as it applies to the SOW and fails to cure the breach within thirty (30) calendar days after receiving written notice of the breach. HighPoint may suspend any or all Services if Client fails to pay any invoice it has not disputed under Section 4.4 and the failure continues for ten (10) calendar days after Client's receipt of notice.

5.3. Effect of Termination. The expiration or termination of this Agreement will not affect any SOW then in force. The termination of any SOW will not affect this Agreement or any other SOW. Sections 5, 7, 8 and 9 will survive termination or expiration of this Agreement and remain in full force and effect. Termination of this Agreement or any SOW will not relieve either Party from any payment and other obligations the Party incurred prior to termination.

6. INTELLECTUAL PROPERTY.

6.1. Work Product. "Work Product" means all works, materials, software, documentation, methods, systems and anything else prepared, developed, conceived, or delivered as part of the Services and expressly identified by the SOW as "Work Product."

6.2. Ownership of Work Product. Subject to the remainder of this Section 5, Client will have exclusive title and ownership rights, including all Intellectual Property rights throughout the world in all Work Product. All copyrightable

materials of the Work Product will be deemed a "work made for hire" for the purposes of U.S. Copyright Act, 17 U.S.C. §101 et seq., as amended. If any right, title or interest in and to any of the Work Product (including any Intellectual Property rights in the Work Product) will not vest automatically in and with Client, HighPoint will and hereby does irrevocably assign, convey, and otherwise transfer to Client, and Client's successors and assigns, all such right, title and interest in and to the Work Product with no requirement of further consideration from or action by HighPoint or Client. HighPoint will execute and deliver all documents requested by Client regarding or related to the ownership and/or other Intellectual Property rights and registrations specified by this Section 6.2.

6.3. Reserved Materials. Notwithstanding the other provisions of this Agreement, HighPoint (as between HighPoint and Client) will have exclusive title and ownership rights, including Intellectual Property rights throughout the world, all works materials, software, documentation, methods, apparatus, systems, and other materials (a) owned or possessed by HighPoint or HighPoint's third party supplier prior to the execution of this Agreement; (b) developed by HighPoint independently of its work under this Agreement; or (c) prepared, developed, conceived, or delivered as part of or in connection with the Services but not comprising Work Product (collectively, "Reserved Materials"), without regard to whether they were specifically adapted by HighPoint in providing the Services. On Client's payment in full for the Services, HighPoint will be deemed to have granted Client a perpetual, irrevocable, paid up license under HighPoint's Intellectual Property rights to use the Reserved Materials solely to make complete and unrestricted use and enjoyment of the Work Product and other deliverables provided to Client under any SOW.

7. CONFIDENTIALITY.

7.1. "Confidential Information" means all information and know-how (whether or not patentable and whether or not copyrightable) owned, possessed or used by one Party ("Owner") that Owner discloses or has disclosed to the other Party ("Recipient") or to which Recipient gains or has gained access because of the Parties' relationship, in each case prior to or after the execution of this Agreement, including any invention, product, formula, method, technique, algorithm, project, development, plan, vendor or customer information, equipment, trade secret, process, research, reports, laboratory, financial or technical data, marketing or operational information, computer program, software, software documentation, hardware design, technology, marketing or business plan, forecast, unpublished financial statement, budget, license, price, cost and personnel data and human resources information; provided, that Confidential Information will not include information which (1) is or becomes available to the public other than because of disclosure by Recipient or its employees in violation of this Agreement; (2) was known to Recipient prior to Recipient's receiving the same under this Agreement and not otherwise restricted by contract or law; or (3) becomes available to

Recipient on a non-confidential basis from a third person or source not restricted by contract or law regarding the information. For avoidance of doubt, HighPoint Confidential Information will include all algorithms, data and other content (excluding Client Data) delivered to Client while providing Services under this Agreement.

7.2. Protection. Recipient will safeguard Owner's Confidential Information and prevent the unauthorized, negligent or inadvertent use, copying or disclosure thereof in a manner not less than that Recipient employs to protect its own proprietary information and always with at least a reasonable care.

7.3. Non-Use; Nondisclosure. Recipient will use Owner's Confidential Information only in performing or exercising its rights under this Agreement and for no other purpose. Recipient may disclose Owner's Confidential Information only (a) to those of its employees, representatives, agents and contractors who need to know the same and who have executed a confidentiality agreement in favor of Recipient or otherwise owe Recipient a duty of confidentiality; and (b) as required by the order or requirement of a court, administrative agency, or other governmental body; provided, that Recipient as soon as reasonably practicable will provide notice to Owner and, at Owner's reasonable request and expense, assist Owner in obtaining a protective order or otherwise prevent public disclosure of the information. Recipient as soon as reasonably practicable will notify Owner of any unauthorized use or disclosure of Owner's Confidential Information by Recipient or any Recipient employees, representatives, agents or contractors. Following the expiration or termination of Recipient's rights to use Owner's Confidential Information under this Agreement, Recipient at Owner's request will return to Owner all of the Confidential Information Owner delivered or disclosed, including with all copies made by Recipient.

7.4. General Know-How. Notwithstanding anything to the contrary in this Agreement, HighPoint and its personnel will be free to use and employ its and their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during any assignment, so long as HighPoint or its personnel acquire and apply the information without disclosure of any Confidential Information of Client.

8. MUTUAL HIRING PROTECTION. Neither Party (the "Employing Party") during an SOW Term or within two (2) years thereafter, will directly or indirectly (including through the use of any third Party) employ or otherwise engage, or solicit or offer to employ or engage, any employee, consultant or contractor of the other Party with whom the Employing Party became acquainted with in connection with this Agreement or the SOW (each, a "Restricted Individual"), nor shall either Party enter or propose or offer to enter into any business relationship with any Restricted Individual, without the prior written consent of the other Party. Each Party acknowledges that injury resulting from any breach of this

provision would be significant and irreparable and that it would be difficult to ascertain the actual damages resulting from the breach. The Employing Party violating this will pay to the other Party an amount equal to 150% of the affected Restricted Individual's total annual compensation as liquidated damages. The amount of liquidated damages is not intended as a penalty and is reasonably calculated based on the projected costs the injured Party would incur to identify, recruit, hire and train suitable replacements for the Restricted Individual.

9. WARRANTY; LIABILITY LIMITATIONS.

9.1. HighPoint's Warranty. HighPoint represents and warrants that HighPoint, subject to Client's performance of the obligations imposed by Section 3, will perform its Services in a professional and workmanlike manner. HighPoint's sole obligation regarding Products will be to make commercially reasonable efforts to pass through to Client the warranties its third party suppliers may grant regarding the Products, and will make commercially reasonable efforts to assist Client to enforce those warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 9.1, HIGHPOINT MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY SERVICES, WHETHER ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, AND DISCLAIMS ANY LIABILITY IN CONNECTION WITH ANY SUCH WARRANTIES, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, IMPLIED WARRANTY OF NON-INFRINGEMENT OR ANY WARRANTY EXPRESS OR IMPLIED THAT THE SERVICES WILL YIELD ANY PARTICULAR RESULTS OR BENEFITS FOR CLIENT. ALTHOUGH HIGHPOINT'S SERVICES WILL REFLECT HIGHPOINT'S BEST JUDGMENT, KNOWLEDGE AND EXPERTISE, HIGHPOINT DISCLAIMS ANY REPRESENTATION, WARRANTY, PROMISE OR GUARANTEE AS TO THE OUTCOME OF ANY ACTION BY HIGHPOINT OR CLIENT BASED ON THE RESULTS OF THE SERVICES OR OTHERWISE.

9.2. Limitation of Liability. IN NO EVENT WILL HIGHPOINT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF HIGHPOINT IS FOUND LIABLE FOR ANY REASON UNDER THIS AGREEMENT, IN NO CASE WILL HIGHPOINT'S LIABILITY FOR ACTUAL DIRECT DAMAGES IN THE AGGREGATE EXCEED FEES PAID BY CLIENT PURSUANT TO THE APPLICABLE SOW IN THE SIX (6) MONTHS PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM. THIS SECTION STATES CLIENT'S SOLE REMEDY AND HIGHPOINT'S EXCLUSIVE LIABILITY

FOR ALL DAMAGES WHATSOEVER, IN CONTRACT OR TORT OR OTHERWISE.

10. MISCELLANEOUS.

10.1. No Other Beneficiaries. This Agreement is being made and entered into solely for the benefit of the Parties, and neither Party intends to create any rights for any other person as a third party beneficiary of this Agreement or otherwise.

10.2. Assignment. Neither Party may assign this Agreement or any SOW in whole or part without the prior consent of the other Party, such consent not unreasonably to be withheld. Notwithstanding the foregoing, no consent will be required for either Party to assign this Agreement and all SOWs in whole, but not in part, to an entity (a) controlling, controlled by or under common control with the assigning Party; (b) purchasing substantially all of the assigning Party's outstanding equity; or (c) purchasing substantially all of the assigning Party's assets to which this Agreement relates, provided, that the assignee agrees in writing to be bound by this Agreement and all SOWs.

10.3. Subcontractors. HighPoint may subcontract the performance of Services to third party consultants or contractors, provided, that HighPoint remains responsible to Client for the performance of the Services, and any breach of this Agreement by a subcontractor will be deemed a breach by HighPoint.

10.4. Force Majeure. Neither Party will be liable for any failure or delay in performance due in whole or in part to any cause beyond the reasonable control of the Party or its contractors, agents or suppliers, including Acts of God, acts of civil or military authority, government regulations, embargoes, epidemic, public health emergency, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts affecting facilities other than facilities of a kind commonly protected by redundant power systems, unless the redundant power systems are also affected by any force majeure condition, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of transportation common carriers to utility or transmission failures, failure of phone lines or phone equipment, power failure, strikes or other labor disturbances (including a strike or other labor disturbance arising regarding the work force of the Party taking advantage of this Section 10.4), Acts of God, acts of war or terror, floods, sabotage, fire, natural or other disasters.

10.5. Relationship of Parties. The Parties, in making and performing this Agreement, act and will act as independent contractors, and nothing in this Agreement will be construed or implied to create an agency, association, partnership or joint venture between the Parties. At no time will either Party make commitments or incur any charges or expenses for or in the name of the other Party. Neither HighPoint nor its employees and contractors will be entitled to any privileges or benefits that Client may provide to its employees, and HighPoint (as between HighPoint and Client)

will remain responsible for payment of all unemployment, social security, federal income (state and local income where applicable) and other payroll taxes or mandatory assessments imposed by any governmental body on employers regarding those of its employees engaged in performing the Services.

10.6. Notices. All notices, demands and other communications will be in writing and will be hand-delivered, overnight couriered or mailed by certified mail, return receipt requested in an envelope conspicuously marked "Legal Notice," to the attention of the other Party's Chief Financial Officer at the address for the Party in the preamble to this Agreement as modified periodically in writing. Notice will be deemed given upon receipt.

10.7. Informal Dispute Resolution. At the written request of either Party, the Parties will attempt to resolve any dispute arising under or relating to this Agreement through the informal means described in this Section 10.7. Each Party will appoint a senior management representative who does not devote substantially all of his or her time to performing this Agreement. The representatives will furnish to each other all non-privileged information regarding the dispute that the Parties believe to be appropriate and germane. The representatives will use commercially reasonable efforts to resolve the dispute without the necessity of any formal proceeding. Formal proceedings for resolving the dispute may not be commenced until the earlier of date: (a) on which the designated representatives conclude that resolution through continued negotiation does not appear likely; or (b) thirty (30) days have passed since the initial request to negotiate the dispute was made, except that either Party may file earlier to avoid the expiration of any limitations period, to preserve a superior position regarding other creditors, or to apply for interim or equitable relief.

10.8. Governing Law and Jurisdiction. This Agreement will be governed by and construed under the substantive laws of the state of New Jersey without regard to conflict of laws principles. The Parties will submit to the exclusive jurisdiction and venue in the state and federal courts sitting in the New Jersey. Any award made by a court in conjunction with litigation between the Parties regarding this Agreement will include an award of all reasonable attorneys' fees and legal costs incurred by the Party in whose favor the final decision is rendered.

10.9. Complete Agreement. This Agreement, including the SOWs, constitutes the complete Agreement between the Parties and supersedes all previous communications and representations or agreements, whether oral or written, regarding its subject matter. This Agreement may not be modified or changed in whole or in part in any manner other than by an Agreement in writing duly signed by both Parties.

10.10. Severability. If any provision of this Agreement, or the application of a provision to any person or circumstances, will to any extent be invalid or unenforceable, the remainder of this Agreement, or its application to any person or circumstances other than those as to which it is

invalid or unenforceable, will not be affected, and the unaffected portions of this Agreement will be valid and enforced to the fullest extent of the law.

10.11. Waiver and Amendment. This Agreement may be amended, modified, superseded, canceled, renewed or extended, and the terms may be waived, only by a written instrument signed by the Parties or, in the case of a waiver, by the Party waiving compliance. The waiver by either Party of a breach of any provision of this Agreement will not operate or be construed as a waiver of any later breach.

10.12. Publicity; Reference. HighPoint may include Client in its general customer and reference lists. HighPoint will make no other use of Client's name without Client's prior written consent.

10.13. Interpretation. In this Agreement and each SOW, (a) any terms defined in this Agreement may, unless

the context otherwise requires, be used in the singular or the plural; (b) any use of the masculine, feminine or neuter will be deemed to include a reference to each of the other genders; (c) the words "includes" or "including" will be construed as followed by the words "without limitation;" and (d) references to section numbers or exhibits are to sections of and schedules to this Agreement unless the context otherwise requires.

10.14. Counterparts; Electronic Transactions. This Agreement and any SOW may be executed in one or more counterparts, each of which will be deemed an original, but all of which will constitute the same instrument. A Party's acceptance or approval of an SOW by electronic mail or other electronic means will bind the Party as if the Party had executed the SOW in writing.