

HPC Host Master Services Agreement

Legal

PLEASE READ CAREFULLY: THIS MASTER SERVICES AGREEMENT is between HPC Host. (“**HPC Host**”) and the individual or entity (“**Customer**”) for certain computer infrastructure and related services provided by HPC Host as ordered or accepted pursuant to the Terms of Service (“**Services**”). The Customer’s use of and access to Services is governed by the Master Services Agreement which includes the Terms of Services, Service Level Agreement, Privacy Agreement, IP Address Policy, HPC Host Acceptable Use Policy and relevant appendices (which may include without limitation the international-related addenda that is attached below) (“**MSA**”). **BY CLICKING OR CHECKING THE BOX PRESENTED WITH THE MSA OR INSTALLING OR USING THE SERVICES, THE CUSTOMER AGREES THAT (1) CUSTOMER HAS ACCEPTED THE MSA IN ITS ENTIRETY, (2) AGREES TO BE BOUND BY THE MSA (AS AMENDED FROM TIME TO TIME AS PROVIDED IN SECTION 19.1 OF THE TERMS OF SERVICE), (3) IF THE CUSTOMER IS AN INDIVIDUAL, THEN THE INDIVIDUAL REPRESENTS AND WARRANTS THAT HE HAS THE LEGAL RIGHT TO ENTER INTO THE MSA AND IF THE CUSTOMER IS AN ENTITY, THEN THE INDIVIDUAL WHO AGREES TO THE MSA REPRESENTS AND WARRANTS THAT HE OR SHE HAS THE AUTHORITY TO BIND SUCH ENTITY AND (4) THIS MSA CONSTITUTES A BINDING AND ENFORCEABLE OBLIGATION BETWEEN HPC Host AND CUSTOMER. IF THE CUSTOMER DOES NOT AGREE WITH ALL THE TERMS OF THIS MSA AND DOES NOT AGREE TO BE BOUND BY THIS MSA, PLEASE DO NOT CLICK OR CHECK THE BOX PRESENTED WITH THE MSA OR INSTALL OR USE THE SERVICES.**

Terms of Service (“TOS”)

1. DEFINITIONS.

“Account Information” means billing information, contact information, payment information and such other information defined as “Account Information” in the Customer Portal.

“Affiliate” means any legal entity that a party controls, that controls a party, or that is under common control with a party. For purposes of this definition, “control” shall mean beneficial ownership of the securities entitled to vote in the election of directors (or, in the case of an entity that is not a corporation, of the election of the corresponding management authority) in the entity of (i) more than fifty percent (50%) of the securities or (ii) such lesser percentage of securities as is the maximum ownership permitted in the country where the entity exists.

“Anniversary Billing Date” means the date of the month of the Effective Date except as provided in this definition. For example, if the Effective Date is May 20, 2012, then the Anniversary Billing Date is the twentieth of the calendar month. If the Anniversary Billing Date is a date in a calendar month which does not exist in each calendar month, then the Anniversary Billing Date shall be either the last day of the billing month or first date of the next month.

“AUP” means the Acceptable Use Policy which is located at www.HPCHost.com/pages-Policy-Documents.html (or such other location as HPC Host may designate from time to time).

“Customer” means the individual or entity who agrees to the terms of the MSA by clicking or checking the box presented with the MSA, installing and/or using the Services.

“Customer Content” means all data, software and information, including, without limitation, data text, software, scripts, video, sound, music, graphics and images that are created, uploaded or transferred in connection with the Services by Customer or its Affiliates.

“Customer End User” means a Third Party which is an end user of a Customer Offering.

“Customer Offering” means services created by Customer based in whole or in part on the Services which are used by Third Parties.

“Customer Portal” means the portal at <https://www.hpchost.com/clientarea.php> (or such other location as HPC Host may designate from time to time) or the HPC Host Application Programming Interface.

“Effective Date” means the date on which the Customer accepts the MSA by clicking or checking the box presented with the MSA, installing and/or using the Services.

“Feedback” means any and all suggestion, comments, improvements, or other feedback about the Services that

Customer or any Affiliate provides to HPC Host either directly or indirectly via a HPC Host-controlled web site.

“Flow-Through Provisions” mean the terms of agreements for services provided by Third Parties which are included in the MSA as required by providers of Third Party Services. The Flow-Through Provisions apply only to the relevant services provided by Third Parties. Such services provided by Third Parties are part of the Services and are subject to the terms of the MSA as well as the Flow-Through Provisions.

“Hourly Services” means the Services that HPC Host offers on an hourly basis.

“Initial Term” means the period commencing on the Effective Date until the next Anniversary Billing Date, unless terminated as provided in Section 16.

“IP Address Policy” means the policy governing the use and provision of any IP Addresses which is located at www.HPCHost.com/pages-Policy-Documents.html (or such other location as HPC Host may designate from time to time).

“MSA” has the meaning set forth in the recitals.

“Order” means an order for a Service which may include a new order for a Service or an upgrade or a downgrade of a Service. The Order must be placed through the Customer Portal or such other method designated by HPC Host from time to time. Orders do not apply to Third Party Services.

“Privacy Information” means information that can be used to identify, contact, or locate a single person or that can be used with other sources to uniquely identify a single individual.

“Privacy Agreement” means the terms governing the use of Privacy Information which is located at www.HPCHost.com/pages-Policy-Documents.html (or such other location as HPC Host may designate from time to time).

“Private Network” means the term as described in the AUP.

“Public Network” means the term as described in the AUP.

“Renewal Term” means the period commencing after the last day of the Initial Term or the Renewal Term and extending until the next Anniversary Billing Date unless terminated as provided in Section 16.

“Services” has the meaning set forth in the recitals.

“Service Level Agreement” means the Service Level Agreement which is located at www.HPCHost.com/pages-Policy-Documents.html (or such other location as HPC Host may designate from time to time).

“Site” means www.HPCHost.com (or such other location as HPC Host may designate from time to time).

“SLA Credits” mean the credits for applicable qualifying service downtime as described in the Service Level Agreement.

“HPC Host” has the meaning set forth in the recitals.

“Term” means the term as set forth in Section 16.

“Third Party” means an individual or an entity which is not a Customer, HPC Host, an Affiliate of HPC Host or an Affiliate of Customer.

“Third Party Services” mean services which are provided by Third Parties directly to Customer. The definition of Services does not include Third Party Services.

“TOS” means the terms of service for the Services.

“TPS Agreements” mean agreements for Third Party Services which are directly between the Customer and the provider of the Third Party Services. These agreements are separate and independent from the MSA and HPC Host is not a party to these agreements.

2. HPC Host’S OBLIGATIONS.

2.1 Provision of Services. Contingent on HPC Host’s acceptance of an Order and subject to the terms of the MSA, HPC Host agrees to use reasonable commercial efforts to provide the Services subject to the terms of Service Level Agreements. HPC Host retains the right to reject the request for Services by any individual or entity in its sole discretion. HPC Host may change, discontinue, add, modify, re-price or remove features or functionality from the Services upon notice to Customer provided through the Customer Portal. It is the Customer’s responsibility to review the Customer Portal for such notices on a frequent basis. If Customer continues to use the Services following any such modification, such use will be deemed acceptance of such modification by Customer. The Third Party Services are provided by the relevant Third Parties and HPC Host is not responsible for the provision of Third Party Services.

2.2 Age. Customer must be at least 18 years of age or otherwise have the legal capacity to order Services. If Customer is ordering Services on behalf of an employer, company, or other legal entity, Customer represents and warrants that it has the legal right and authority to order Services and be bound to this MSA.

3. PRIVACY.

3.1 Collection of Privacy Information. The collection and use of Privacy Information is governed by the Privacy Agreement.

4. USE OF AND ACCESS TO THE SERVICES.

4.1 Ordering and Modification of Services. Customer may order Services and all upgrades to such Services through the Customer Portal or as otherwise designated by HPC Host. HPC Host may accept such Orders in its discretion and shall give notice to Customer of acceptance of such Order through the Customer Portal. For downgrades or cancellation of Services, HPC Host requires a written cancellation notice by cancellation ticket in accordance with the procedures in the Customer Portal and through the Customer Portal a minimum of 7 days prior to the Anniversary Billing Date for downgrades or discontinuance of Services. The failure to provide the required 7 days written notice will result in the downgrade or discontinuance of Services being effective on the following Anniversary Billing Date and Customer will be charged for the Services during the relevant Renewal Term. Any Services canceled prior to such 7 day period will remain accessible to Customer until the automated process reclaims the server on the Anniversary Billing Date.

4.2 Rights to Use Services. Subject to the terms and conditions of this MSA (including the Term), HPC Host grants Customer a non-exclusive, nontransferable, non-sublicenseable (except to the extent required to exercise rights under Section 4.2(b)), revocable right in the Services solely to: (a) use and access the Services for internal purposes; and (b) use the Services to create, offer and provide the Customer Offerings.

4.3 Customer Obligations: Customer agrees to do each of the following: (i) comply with all applicable laws, rules and regulations, including, without limitation, the Foreign Corrupt Practices Act and related international anti-corruption laws and the Digital Millennium Copyright Act and related copyright laws; (ii) pay the fees for the Services when due; (iii) use reasonable security precautions for providing access to the Services by its employees or other individuals to whom it provides access; (iv) cooperate with HPC Host's investigation of outages, security problems, and any suspected breach of the MSA; (v) comply with all license terms or terms of use for any software, content, service or website (including Customer Content) which Customer uses or accesses when using the Services; (vi) give HPC Host true, accurate, current, and complete Account Information; (vii) keep Customer's Account Information up to date; (viii) be responsible for the use of the Services by Customer and Customer End Users and any other person to whom Customer has given access to the Customer Offering; (ix) comply with the TPS Agreements; (ix) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and immediately notify HPC Host of any known or suspected unauthorized use of Customer's account, the Services or any other breach of security; and (xi) where the Customer provides Customer Offering as permitted under this Agreement, Customer must enter into an agreement with Customer's End User which shall include the relevant terms of this Agreement and release HPC Host from any and all liability for damages or losses Customer's End Users may incur as a result of using the Customer Offering. Customer may not use the Services in any situation where failure or fault of the Services could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, Customer may not use, or permit any other person to use, the Services in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or Class III medical devices under the Federal Food, Drug and Cosmetic Act. Customer may not resell any of the Services alone to any Third Party without first entering into a reseller agreement with HPC Host.

4.4 Special Terms for Third Party Services. To the extent Customer orders Third Party Services under TPS Agreements, HPC Host is not responsible for such Third Party Services and the provider of the Third Party Service is solely responsible for providing such Third Party Services. However, the Customer also agrees that the following terms of the TOS apply to such Third Party Services: Sections 8, 9, 10, 11, 15 and 16.

5. PAYMENT.

5.1 Fees: All fees for the provision of Services (except as provided below for Additional Service Fees, Hourly Service Fees and One Time Fees) are due in advance of the first day of the relevant term. For example, the fees for such Services during the Initial Term shall be due on the Effective Date or before the provision of Services. The fees for the Services for Renewal Term would be due on or prior to the Anniversary Billing Date for such Renewal Term. The amount due may be adjusted by addition of Services, upgrade of Services, discontinuance of Services or downgrade of Services and through the use of SLA Credits. The fees for additional or upgraded Services for which the Order is accepted on the Anniversary Billing Date will be due on the Anniversary Billing Date. The fees for additional or upgraded Services for which the Order is accepted after an Anniversary Billing Date will be pro-rated on a calendar day basis to the next Anniversary Billing Date and billed as a one time pro-rata charge on the next Anniversary Billing Date. Such fees will be due for the following Renewal Terms until

canceled as provided in Section 4.1.

5.2 Additional Service Fees/Hourly Service Fees/One Time Fees: For fees for additional services such as CDN overages, bandwidth use overages, and backup overages, payment shall be due on the next Anniversary Billing Date. For Orders for Hourly Services, Customer shall specify the period of time for which the Hourly Services are requested in minimum increments of one hour and payment shall be due on the next Anniversary Billing Date. One time fees, such as setup fees, bandwidth, storage, administrative fees and late fees, are due and payable when invoiced, and/or as agreed by HPC Host through the Customer Portal.

5.3 Payment Methods: The payment shall be made by the credit card maintained on file with HPC Host, automatic file transfer or such other method as approved by HPC Host. For methods such as credit card, the payment of fees shall be automatic on the due date.

5.4 Taxes: All prices and fees specified in or referred to in this MSA are stated exclusive of any tax, including withholding tax, sales, use, value added, levies, import and custom duties, excise or other similar or equivalent taxes imposed on the supply of Services. Any sales, use, levies, excise, withholding taxes or similar charges, direct or indirect, applicable or to become applicable, which are levied as a result of the supply of the Services shall be paid by the Customer. Neither party shall be liable for the other party's taxes based on income. If withholding tax applies to any payments for Services made under this MSA, the Customer may deduct such taxes and shall pay such taxes to the appropriate tax authority; provided that Customer shall provide HPC Host with an official receipt for any such taxes withheld and must notify HPC Host prior to payment that withholding tax is required to be paid and Customer shall pay to HPC Host any additional amount to ensure that HPC Host receives the full amount of the invoice. If HPC Host has the legal obligation to pay or collect taxes for which Customer is responsible under this paragraph, the appropriate amount shall be charged to and paid by Customer in addition to the amount of the invoice, unless Customer provides HPC Host with a valid tax exemption certificate authorized by the appropriate taxing authority. The parties undertake to cooperate, where possible, to minimize the amount of withholding tax due by making advance clearance applications under the relevant double taxation treaties (where applicable) to the relevant tax authority to reduce the rate of withholding tax or exempt entirely this amount if applicable. In any event, the Customer undertakes to account for any tax withheld to the tax authorities on a timely basis.

5.5 SLA Credits: SLA Credits, if issued to Customer's account, shall be used only to offset future charges for certain Services as provided in the Service Level Agreement. SLA Credits may not be sold, converted to cash or transferred to Third Parties or Affiliates. SLA Credits shall expire on the termination or expiration of the MSA.

5.6 Additional Fees. The Customer's failure to pay any fees on the due date shall result in incurring a late fee of 15%. Such fees shall be due upon receipt, and HPC Host will not reconnect any Services to the Customer until full payment of such fees.

5.7 Refunds & Disputes: All fees paid for Services to HPC Host are non-refundable. If the Customer believes that the bills are in error, the Customer's sole and exclusive remedy is to seek SLA credits through the Customer Portal by opening an accounting ticket to give notice to HPC Host within 30 days of the receipt of the disputed bill. Any invoice not disputed by Customer in accordance with Section 5.7 within 30 days of receipt of the invoice shall be conclusively accepted by Customer as correct. Customer shall not chargeback any credit card payments to HPC Host and any such chargeback will result in an additional payment to HPC Host of up to \$500 which is a reasonable estimate of HPC Host's additional administrative costs. Customer is responsible for any fees and costs (including, but not limited to, reasonable attorneys' fees, court costs and collection agency fees) incurred by HPC Host in enforcing collection of fees.

6. OWNERSHIP OF SITE: Customer hereby acknowledges and agrees that HPC Host (or its licensors) own all legal right, title and interest in and to the Site and the Services provided by HPC Host, including, without limitation, any intellectual property or other proprietary rights which subsist in the Site and Services (whether such rights are registered or unregistered, and wherever in the world those rights may exist). As between Customer and HPC Host, all materials on the Site, including, but not limited to, graphics, user and visual interfaces, images, software, applications, and text, as well as the design, structure, selection, coordination, expression, "look and feel", and arrangement of the Site and its content (except for any Customer Content), and the domain names, trademarks, service marks, proprietary logos and other distinctive brand features found on the Site, are all owned by HPC Host or its licensors.

7. SECURITY: HPC Host agrees to maintain reasonable and appropriate measures related to physical security to protect Customer Content. Other than responsibility for physical security, Customer shall be solely responsible for data maintenance, integrity, retention, security, and backup of the Customer Content. If Customer transfers or

is otherwise involved in the transfer of any Customer Content (whether in connection with its business or otherwise) over the Public Network or Private Networks, then Customer is solely responsible for compliance with any applicable laws, rules and regulations in any and all applicable regions or countries regarding the security, privacy, legality and/or safe handling of such Customer Content.

8. INDEMNIFICATION BY CUSTOMER: Customer hereby agrees to indemnify, defend and hold harmless HPC Host and its parents, Affiliates, licensors and providers of Third Party Services, and their respective directors, officers, employees, contractors, agents, successors, and assigns, (collectively, the "HPC Host Parties") (HPC Host and each of the HPC Host Parties an "Indemnified Party"), from and against any and all liability (including, without limitation, attorneys' fees and costs) incurred by the Indemnified Parties in connection with any actual or alleged claim ("Claim") arising out of: (a) Customer's use of the Services or Third Party Services; (b) any breach or alleged breach by Customer of this MSA; (c) any breach or alleged breach by Customer or Customer End Users of a Third Party's rights, including, without limitation, any actual or alleged infringement or misappropriation of a Third Party's copyright, trade secret, patent, trademark, privacy, publication or other proprietary right; (d) any damage caused by or alleged to have been caused by Customer or Customer End Users to the Site or Services; or (e) any actual or alleged violation or non-compliance by Customer or Customer End Users with any applicable law, court order, rule or regulation in any jurisdiction. The counsel which Customer selects for the defense or settlement of a Claim must be approved in writing in advance by HPC Host prior to such counsel being engaged to represent the Indemnified Parties. Customer shall not in any event consent to any judgment, settlement, attachment, or lien, or any other act adverse to the interests of HPC Host or any HPC Host Party without the prior written consent of HPC Host and/or the applicable HPC Host Party(s). Customer and Customer's counsel will cooperate as fully as reasonably required, and provide such information as reasonably requested, by the HPC Host or the HPC Host Parties in the defense or settlement of any such matter.

9. DISCLAIMER OF WARRANTIES: EXCEPT AS REQUIRED BY LAW CUSTOMER'S USE OF THE SITE AND SERVICES IS ENTIRELY AT CUSTOMER'S OWN DISCRETION AND RISK. THE SITE AND SERVICES ARE FURNISHED BY HPC Host "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS, STATUTORY OR OTHERWISE, OF ANY KIND. HPC Host; (A) EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE; (B) DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THEIR OPERATION WILL BE TIMELY, UNINTERRUPTED, SECURE, OR ERROR-FREE OR THAT ANY DEFECTS WILL BE CORRECTED; AND (C) DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS OR CONDITIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SERVICES IN TERMS OF ITS ACCURACY, RELIABILITY, TIMELINESS, COMPLETENESS, OR OTHERWISE. CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR ITS AND CUSTOMER END USERS' USE OF THE SERVICES.

10. DISCLAIMER OF CONSEQUENTIAL DAMAGES. EXCEPT AS REQUIRED BY LAW IN NO EVENT WILL HPC Host BE LIABLE TO CUSTOMER, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, COMPENSATION, REIMBURSEMENT OR DAMAGES IN CONNECTION WITH, ARISING OUT OF, OR RELATING TO, THE USE, OR LOSS OF USE OF, THE SERVICES, LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF DATA OR CONTENT, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, SUBSEQUENT OR OTHER COMMERCIAL LOSS, OR FOR ANY OTHER REASON OF ANY KIND, WHETHER BASED ON CONTRACT OR TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY), EVEN IF HPC Host HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. LIMITATION OF LIABILITY. EXCEPT AS REQUIRED BY LAW HPC Host WILL NOT BE LIABLE TO CUSTOMER FOR DAMAGES FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY RELATED TO THE SITE OR SERVICES. IF, NOTWITHSTANDING THE FOREGOING, HPC Host IS FOUND TO BE LIABLE TO CUSTOMER FOR ANY DAMAGE OR LOSS WHICH ARISES UNDER OR IN CONNECTION WITH THE SERVICES, HPC Host'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY THE CUSTOMER FOR THE SERVICES FOR THE SIX MONTHS PRIOR TO THE OCCURRENCE OF THE EVENT(S) GIVING RISE TO HPC Host'S LIABILITY.

12. ALLOCATION OF LIABILITY. THE PARTIES ACKNOWLEDGE THAT THE DISCLAIMER OF WARRANTIES, DISCLAIMER OF CONSEQUENTIAL DAMAGES AND LIMITATIONS OF LIABILITY IN THE MSA AND IN THE OTHER PROVISIONS OF THIS MSA AND THE ALLOCATION OF RISK HEREIN ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH HPC Host WOULD NOT HAVE ENTERED INTO THIS MSA. HPC Host'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THESE LIMITATIONS.

13. ARBITRATION: Any controversy or claim arising from the Services or related to this MSA or breach thereof shall be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. The number of arbitrators shall be one, and such arbitrator shall be an independent third party mutually agreeable to the Parties. The venue and jurisdiction requirements set forth below apply to any arbitration proceedings. Arbitration shall be final and binding upon the parties and shall be the exclusive remedy for all claims covered by this arbitration provision. Either party may bring an action in any court of competent jurisdiction to compel arbitration under this MSA, to enforce an arbitration award or to obtain temporary injunctive relief pending a judgment based on the arbitration award. Notwithstanding the provisions of this Section 13, Customer acknowledges that Customer's breach of Sections 4.2, 4.3 or violation of any terms and conditions of the AUP would cause irreparable injury to HPC Host and agrees that in the event of any such breach, HPC Host shall be entitled to seek temporary and preliminary injunctive relief, to the extent allowed under the rules of the American Arbitration Association, without the necessity of proving actual damages or posting any bond or other security.

14. TRADEMARKS. Customer hereby grants to HPC Host a non-exclusive, worldwide, royalty-free, fully paid-up license during the Term to use Customer's trademarks, marks, logos or trade names in connection with HPC Host's provision of Services (including support of Services) to Customer and to be listed as a customer of the Services by HPC Host or its designees. The license granted in this Section 14 will include the right of HPC Host to sub-license its Affiliates and any Third Parties providing all or part of the Services on behalf of HPC Host to achieve the foregoing.

15. SUSPENSION.

15.1 **Suspension.** HPC Host may suspend provision of Services to Customer without liability if: (i) HPC Host reasonably believes that the Services are being used (or have been or will be used) by Customer in violation of the MSA or any applicable law, court order, rule or regulation in any jurisdiction; (ii) Customer does not cooperate with HPC Host's investigation of any suspected violation of the MSA or any applicable law, court order, rule or regulation in any jurisdiction; (iii) HPC Host reasonably believes that Services provided to Customer have been accessed or manipulated by a Third Party without Customer's consent or in violation of the MSA; (iv) HPC Host reasonably believes that suspension of the Services is necessary to protect HPC Host's network or other HPC Host customers; (v) a payment for the Services is not made by the Anniversary Billing Date; (vi) the continued use of the Services by the Customer may adversely impact the Services or the systems or content of any other HPC Host customer, (vii) HPC Host reasonably believes that the use of the Services by Customer may subject HPC Host, its Affiliates, or any Third Party to liability; or (viii) suspension is required by law, statute, regulation, rule or court order. HPC Host will give Customer reasonable advance notice of a suspension under this paragraph and a chance to cure the grounds on which the suspension are based, unless HPC Host determines, in HPC Host's reasonable commercial judgment, that a suspension on shorter or contemporaneous notice is necessary to protect HPC Host or its other customers from operational, security, or other risk or the suspension is ordered by a court or other judicial body. A violation of the Flow-Through Provision shall be treated the same as a violation of the MSA for this provision. If HPC Host suspends the Customer's right to access or use any portion or all of the Service: a. Customer remains responsible for all fees and charges Customer has incurred through the date of suspension; b. Customer remains responsible for any applicable fees and charges for any Services to which Customer has continued to have access, as well as applicable data storage fees and charges, and fees and charges for in-process tasks completed after the date of suspension; c. Customer will not be entitled to any SLA Credits under the Service Level Agreement for any period of suspension; and d. at HPC Host's sole discretion, HPC Host may terminate Customer's access to Customer Content stored in the Services during a suspension, and HPC Host shall not be liable to Customer for any damages or losses Customer may incur as a result of such suspension.

16. TERM.

16.1 **Term.** Except in the case of Hourly Services which are provided based on the number of hours in the Order or as otherwise agreed to by the parties in writing, the term shall commence on the Effective Date and is automatically renewed each Anniversary Billing Date.

16.2 **Termination for Convenience.** HPC Host may terminate the MSA for convenience upon providing Customer with notice of non-renewal at least 10 days prior to the expiration of the Initial Term or any Renewal Term.

16.3 **Termination for Breach.** HPC Host may terminate the MSA immediately upon notice provided through the Customer Portal if: (i) HPC Host discovers that the information Customer provided to HPC Host about Customer's proposed use of the Services or Account Information was inaccurate or incomplete; (ii) if Customer is an individual, Customer was not at least 18 years old or otherwise did not have the legal capacity to enter into the MSA, install, or accept Services at the time Customer submitted the Order, or if Customer is an entity, the individual submitting the Order for Customer did not have the legal right or authority to enter into the MSA, install or accept Services on behalf of the person represented to be the Customer; (iii) Customer payment of any invoiced amount is overdue, and Customer does not pay the undisputed overdue amount within 5 days of the due date; (iv) Customer use of the Services or Customer End Users use of the Customer Offering in violation of this MSA and fails to remedy any violation within 5 days of HPC Host's written notice; (v) Customer or Customer End User violates the AUP; (vi) Customer's account has been suspended for 30 days or more; (vii) Customer has multiple violations of the MSA; or (viii) Customer fails to comply with any other provision of this MSA and does not remedy the failure within 30 days of HPC Host notice to Customer describing the failure. HPC Host will give Customer written notice of termination under this paragraph unless HPC Host determines, in HPC Host's reasonable commercial judgment, that a termination on shorter or contemporaneous notice is necessary to protect HPC Host or its other customers from operational, security, or other risks. A breach of the Flow-Through Provision shall be deemed to be a breach of the MSA.

16.4 **Access to Customer Content.** The deletion of Customer Content is automatic upon termination or expiration of the MSA. Consequently, unless HPC Host determines otherwise, Customer will not have access to Customer Content, and HPC Host may immediately erase or delete Customer Content from its computer infrastructure after the effective date of termination or expiration of this MSA.

16.5 **Effect of Termination.** Upon expiration or termination of the MSA, Customer must discontinue use of the Services and relinquish use of the IP addresses and server names assigned to Customer by HPC Host and any other materials provided to Customer by HPC Host in connection with the Services, including pointing the DNS for Customer domain name(s) away from the Services. HPC Host will have no obligation to provide any transition services or access to data except as expressly stated in Section 16.4 above.

17. U.S. GOVERNMENT CUSTOMERS AND U.S. GOVERNMENT RIGHTS. HPC Host provides the Services for ultimate federal government end use solely in accordance with the following license rights to use, modify, reproduce, release, perform, display, or disclose: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this MSA. This customary commercial license is provided in accordance with the Federal Acquisition Regulation ("FAR") at 48 C.F.R. 12.211 (Technical Data) and FAR 12.212 (Software) for civilian agencies of the federal government, and, for Department of Defense transactions, the Defense Federal Acquisition Regulation Supplement ("DFARS") at 48 C.F.R. 252.227- 7015 (Technical Data – Commercial Items), 48 C.F.R. 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). This U.S. Government Rights clause, consistent with 48 C.F.R. 12.211, 48 C.F.R. 27.212 (federal civilian agencies) or 48 C.F.R. 227.7202-4 (DoD agencies) is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses U.S. Government rights in computer software, computer software documentation or technical data related to the HPC Host Commercial Computer Software and Commercial Computer Software Documentation licensed under this MSA or in any contract or subcontract under which this HPC Host Commercial Computer Software and Commercial Computer Software Documentation is acquired or licensed. If a government agency has a need for rights not conveyed under these terms, it must negotiate with HPC Host to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in writing and agreed to by HPC Host in any applicable contract or agreement

18. THIRD PARTIES. Unless otherwise agreed, HPC Host will provide support only to Customer, not to Customer End User, Customer Affiliate, Third Party or Third Party Affiliate to whom Customer provides access to use the Services or the Customer Offering. There are no Third Party beneficiaries to the Agreement, meaning

that Third Parties do not have any rights against either HPC Host or Customer under the MSA.

19. MISCELLANEOUS.

19.1 *Changes to the MSA.* As noted in the recitals, HPC Host may modify the terms and conditions of this MSA as provided below. HPC Host will notify its Customers through the Customer Portal of any such modifications and all modifications shall be effective upon their posting on the Customer Portal. It is the Customer's responsibility to review the Customer Portal for such modifications on a frequent basis. If Customer continues to use the Services following any such modification such use will be deemed acceptance of such modification by Customer. Any modifications requested by Customer to any of the terms of the MSA must be approved in writing by HPC Host.

19.2 *Certain Employment Issues.* If Customer's employees or third parties which have been contracted by Customer for rendering contractually agreed services that are in all material respects equivalent to the Services prior to the beginning of this Agreement assert the transfer of their employment relationship or claims thereto against HPC Host under EU Directive 2001/23/EC or similar national legislation, Customer shall use its best efforts to either prevent the transfer of the employment relationship or to hold off such claims. Customer shall hold harmless and indemnify HPC Host from all prosecution costs incurred in connection with the transfer prevention as well as from any compensation payments to the employee and fees for any external legal counsel, as well as any and all incurred costs and financial claims of the employee or third party that arise from or are due to a claim of further employment or re-employment. These expenses include costs or salary, health insurance, social security contributions, voluntary and legal pension contributions, company pension scheme, pension funds and any severance costs in line with HPC Host's standard generally-applicable policy.

19.3 *Notices.* Customer communications regarding the Services should be sent through the Customer Portal. HPC Host's communications regarding the Services and legal notices will be sent through the Customer Portal. Notices are deemed received as of the time delivered. Notices must be given in the English language.

19.4 *Export Matters.* If Customer chooses to use these Services, Customer does so on its own initiative and is responsible for compliance with applicable laws. Customer agrees to comply with all restrictions and regulations of the U.S. Department of Commerce and any other United States or foreign agencies and authorities in connection with Customer's use of these Services and to not, in violation of any laws, transfer, or authorize the transfer, of any Services (a) into any U.S. and/or U.N. embargoed countries or (b) to anyone on the U.S. Treasury Department's List of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders or Entity List of proliferation concern, or the U.S. State Department's Debarred Parties List. By using these Services, Customer represents and warrants that Customer is not located in, under the control of, or a national or resident of any such country or on any such list. In addition, Customer may not use the Services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, in a country listed in Country Groups D: 4 and D: 3, as set forth in Supplement No. 1 to the Part 740 of the United States Export Administration Regulations. Customer assumes responsibility for compliance with laws and regulations applicable to export, re-export or import of products, technology or technical data provided hereunder and for obtaining required export and import authorizations. Customer will not transfer to or through the Services any data, materials or other items controlled for export under the International Traffic in Arms Regulations ("ITAR Data") or other applicable laws unless HPC Host has agreed to the transfer and (i) Customer has provided HPC Host not less than 10 days' prior written notice that ITAR Data will be transferred to or through the Services, (ii) Customer has received prior written authorization from the U.S. Government to transfer the ITAR Data to HPC Host, and (iii) Customer agrees to provide HPC Host with all necessary assistance to enable HPC Host to obtain such U.S. Government permission. Customer is responsible, and will reimburse HPC Host, for all costs, expenses or damages incurred by HPC Host in connection with Customer transfer of ITAR Data.

19.5 *Assignment/Subcontractors.* Customer may not assign the MSA or Customer rights and/or delegate Customer obligations under the MSA without HPC Host's prior written consent. Any assignment or transfer of the MSA by Customer in violation of this section will be void. HPC Host may assign the MSA to (i) its Affiliates and (ii) any entity as a result of a merger or sale of all or substantially all of the assets of HPC Host to such entity and such entity agrees in writing to be bound by the terms of the MSA. This MSA will be binding on and inure to the benefit of Customer's and HPC Host's respective permitted successors and permitted assigns. However, HPC Host may use Third Parties or Affiliates to provide all or part of the Services. This provision does not apply to the Third Party Services which are governed by separate agreements.

19.6 *Force Majeure.* Except for its rights in Sections 15 or 16, HPC Host will not be in violation of the Agreement if the failure to perform the obligation is due to an event beyond either party's control, such as significant failure

of a part of the power grid, sabotage, denial of service attack, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry; provided however if the force majeure event continues beyond thirty (30) days, the performing party may terminate the MSA.

19.7 **Feedback.** HPC Host shall own all right, title and interest in and to Feedback. Upon providing the Feedback, Customer hereby irrevocably assigns to HPC Host all right, title, and interest in and to the intellectual property rights in the Feedback and agrees to provide HPC Host with any assistance HPC Host may require to document, perfect, and maintain HPC Host's rights in the Feedback.

19.8 **Governing Law, Lawsuits.** The MSA is governed by the laws of the State of Florida, exclusive of any Florida choice of law principle that would require the application of the law of a different jurisdiction, and the laws of the United States of America, as applicable. The application to the MSA of the United Nations Convention on the International Sale of Goods is excluded in its entirety. The exclusive venue for all disputes arising out of the MSA shall be in the state or federal courts in Broward County, Florida, and the parties each agree not to bring an action in any other venue. Customer waives all objections to this venue and agrees not to dispute personal jurisdiction or venue in these courts.

19.9 **Relationship of the Parties.** The parties' relationship is that of independent contractors and not business partners. Neither of the parties is the agent for the other, and neither party has the right to bind the other on any agreement with a Third Party.

19.10 **No Waiver.** HPC Host's failure to exercise or delay in exercising any of its rights under this MSA will not constitute a waiver, forfeiture, or modification of such rights. HPC Host's waiver of any right under this MSA will not constitute a waiver of any other right under this Agreement or of the same right on another occasion. HPC Host's waiver of any right under this MSA must be in writing.

19.11 **Survival.** All provisions that by their nature are intended to survive expiration or termination of the MSA shall survive expiration or termination of the MSA.

19.12 **Severability.** If any part of this MSA is found unenforceable by a court or other tribunal, the rest of the MSA will nonetheless continue in effect, and the parties agree that any court or other tribunal may reform the unenforceable part if it is possible to do so consistent with the material economic incentives of the parties resulting in this MSA.

Privacy Agreement ("PA")

HPC Host considers user privacy a top priority, and HPC Host utilizes great care in keeping the information of the users private and secure. To demonstrate our firm commitment to privacy, the following agreement has been created to explain our policies and procedures in relation to all data collected. In this Privacy Agreement ("PA") we describe the information that we collect; how we use, disclose, and share your information; and how we protect your information. Capitalized terms not defined in the PA are defined in the Terms of Service. This PA does not apply to Third Party Services which are governed by their own privacy policies.

Types of Data Collected

HPC Host collects data related to our users through the following methods:

Automated means such as communication protocols and cookies

Online registration and online signup forms

Sales inquiries and transactions

Online Customer communications

Offline communications and interactions

Third party sources of information

Depending upon the method of collection and use, the data collected may include information about the User from forms, registrations and transactions (such as name, title, address, company, phone number and e-mail address), financial/transaction information (such as credit card, card verification value (cvv), and payment information), information about use of Site (such as electronic communications protocols, web pages visited, and cookies) and User preferences and privileges.

The Data We Collect and How We Use It

HPC Host collects data from users for the following purposes:

To engage in transactions for service. Name, address, email, purchase details, and credit card/payment

information may be collected and stored as part of the transaction history. The majority of the data collected under this category is contact information. HPC Host may need to share some of this data (address, payment) with credit card clearing houses, banking institutions, and other similarly situated Agents, who may require the information in order to complete the transaction (as used here, "Agents" are persons or companies who act on behalf of or under the direction of HPC Host). HPC Host will not transfer information to any of its Agents unless it first either ascertains that the Agent subscribes to the Safe Harbor Principles or is subject to the EU Directive on Data Protection or another adequacy finding or enters into a written agreement with such Agent requiring that the Agent provide at least the same level of privacy protection as is required by the relevant Safe Harbor Principles. To provide future service and support. Information collected for this purpose is both contact data and information related to products and service/support requested. This information is also used to provide service, product update, and similar notices. To select content, data may be collected to help create Site content and navigation that is most relevant and user friendly. This includes data collected as a result of site navigation, as well as data provided in forms. To respond to user inquiries and requests for information. This data includes registrations for online newsletters, opt-in mailing lists and specific requests for further information. To respond to law enforcement organizations, government officials, third parties when compelled by subpoena, court order, or applicable law, or to report or prevent suspected fraudulent or illegal activity in the use of the Services. HPC Host will notify Customer of the information request or submission as, and if, allowed.

To our contractors who provide services or perform functions on our behalf.

To our Affiliates, if we do so their use and disclosure of your Information will be subject to this PA.

If we are acquired by or merged with another company, if substantially all of our assets are transferred to another company, or as part of a bankruptcy proceeding, we may transfer the information we have collected from you to another entity if applicable.

To provide various HPC Host communities, such as resellers, with relevant product alerts and updates. These updates are related to product releases, prices, terms, special offers and associated campaigns. This data is sent when the program member signs up for the relevant program or online account.

To better tailor marketing to User needs. We may use information from User purchases and User-specified requirements to provide you with timely and pertinent notices of HPC Host product releases and service developments that address your needs and specified requirements and/or which are similar to products and services previously purchased by the User from HPC Host.

To better respond to requests for service or quotes for product and equipment purchase. HPC Host will pass contact information to the appropriate HPC Host sales person, or reseller for follow-up related to HPC Host products or services.

From referral "tell a friend" function. If a User elects to use our referral service for informing a friend about our Site, we ask them for the friend's name and email address. HPC Host will automatically send the friend a one-time email inviting them to visit the Site and send a copy of said e-mail to the User. The e-mail(s) sent shall clearly identify the sender of such email(s). HPC Host uses this data for the sole purpose of sending this onetime email. Such email sent to a friend at User's request will not be stored for additional processing.

Security

HPC Host is concerned with the security of the data we have collected and utilizes commercially reasonable measures to prevent unauthorized access to that information. These measures include policies, procedures, employee training, physical access and technical elements relating to data access controls. In addition, HPC Host uses standard security protocols and mechanisms to facilitate the exchange and the transmission of sensitive data, such as credit card details. HPC Host does not process Privacy Information in a way that is incompatible with the purposes for which it has been collected or subsequently authorized by the individual. In the event that Privacy Information is acquired, or is reasonably believed to have been acquired, by an unauthorized person and applicable law requires notification, HPC Host will notify the affected individual of the breach by email or ticket on the Customer Portal or, if HPC Host is unable to contact the individual by email or ticket on the Customer Portal, then by regular mail. Notice will be given promptly, consistent with the legitimate needs of law enforcement and any measures necessary for HPC Host or law enforcement to determine the scope of the breach and to ensure or restore the integrity of the data system. HPC Host may delay notification if HPC Host or a law enforcement agency determines that the notification will impede a criminal investigation, and in such case, notification will not be provided unless and until HPC Host or the agency determines that notification will not compromise the investigation.

Enforcement

HPC Host has established internal mechanisms to verify its ongoing adherence to its privacy policy. HPC Host also encourages individuals covered by this privacy policy to raise any concerns about our processing of personal information by contacting HPC Host through the customer portal. HPC Host will seek to resolve any concerns.

Policy Updates

If we are going to use your Privacy Information in a manner different from that stated at the time of collection, we will notify you via email. In addition, if we make any material changes in our privacy practices that do not affect the Privacy Information already stored in our database, we will notify you by email or post a prominent notice on the Customer Portal notifying users of the change. In some cases, when we post the notice, we will also email users who have opted to receive communications from us, notifying them of the changes in our privacy practices.

Acceptable Use Policy (AUP)

This Acceptable Use Policy ("AUP") is incorporated by reference in your master services agreement (MSA) with HPC Host. Your services may be suspended or terminated for violation of this AUP in accordance with your MSA with HPC Host. Customer agrees to comply with the AUP and is responsible for the use of the Services and Third Party Services by all entities and individuals whom Customer permits to use the Services, Third Party Services or the Customer Offering. HPC Host has the right to change or modify the terms of the AUP at any time, effective when posted to the Customer Portal. Customer's use of the Services or Third Party Services after changes to the AUP are posted shall constitute acceptance of any changed or additional terms.

Prohibited Use

1. The Services and/or Third Party Services shall not be used in violation of any criminal, civil or administrative violation of any applicable local, state, provincial, federal, national or international law, treaty, court order, ordinance, regulation or administrative rule.
2. Monitoring data or traffic on any network or system without the express authorization of the owner of the system or network;
3. Collecting or using email addresses, screen names or other identifiers without the consent of the person identified (including, without limitation, phishing, Internet scamming, password robbery, spidering, and harvesting);
4. Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network;
5. Interference with service to any user of the HPC Host or other network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks;
6. Any conduct that is likely to result in retaliation against the HPC Host network or website, or HPC Host's employees, officers or other agents, including engaging in behavior that results in any server being the target of a denial of service attack (DoS).
7. Use of any false, misleading, or deceptive TCP-IP packet header information in an email or a newsgroup posting
8. Any activity to implement or assist in the implementation of denial of service attack

Excessive Use of System Resources

You may not use any shared system provided by HPC Host in a way that unnecessarily interferes with the normal operation of the shared system, or that consumes a disproportionate share of the resources of the system. For example, we may prohibit the automated or scripted use of HPC Host Services if it has a negative impact on the system, or we may require you to repair coding abnormalities in your Cloud-hosted code if it unnecessarily conflicts with other Cloud customers' use of the Cloud. You agree that we may quarantine or delete any data stored on a shared system if the data is infected with a virus, or is otherwise corrupted, and has the potential to infect or corrupt the system or other customers' data that is stored on the same system.

Vulnerability Testing

You may not attempt to probe, scan, penetrate or test the vulnerability of a HPC Host system or network, or to breach the HPC Host security or authentication measures, whether by passive or intrusive techniques, without the HPC Host's express written consent.

Copyrighted Material

You may not use HPC Host's network or services to download, publish, distribute, or otherwise copy or use in any manner any text, music, software, art, image or other work protected by copyright law unless: you have been expressly authorized by the owner of the copyright for the work to copy the work in that manner; or you are otherwise permitted by established copyright law to copy the work in that manner.

Additional

You may only use IP addresses assigned to you by HPC Host in connection with your HPC Host services.

You agree that if HPC Host IP numbers assigned to your account are listed on an abuse database like Spamhaus, you will be in violation of this AUP, and HPC Host may take reasonable action to protect its IP addresses, including suspension and/or termination of your service, regardless of whether the IP addresses were listed as a result of your actions;

You agree that if you register a DNS record or zone on HPC Host managed or operated DNS servers or services for a domain of which you are not the registrant or administrative contact according to the registrars WHOIS system, that, upon request from the registrant or administrative contact according to the registrars WHOIS system, HPC Host may modify, transfer, or delete such records or zones.

You may not register to use any Services under a false name, or use an invalid or unauthorized credit card in connection with any Services.

Violation of Acceptable Use Policy

HPC Host reserves the right to terminate or suspend services for any violation or repeat violation to the AUP. Also HPC Host reserves the right to seek damages for the result of any violation of the AUP.

SLA

No credit will be available under the HPC Host Service Level Agreement(s) for interruptions of service resulting from any AUP violation.