

**EXHIBIT A**



## Master Services Agreement

Customer Information	
Customer Name:	Kapila & Co.
Contact Name:	Joseph Wiendorfer
Address:	1000 South Federal Highway, Suite 200, Ft. Lauderdale, FL 33316
Telephone:	954-235-2831
Email Address:	jweindorfer@kapilaco.com

Peak 10 Information	
Address:	9417 Corporate Lake Drive Tampa, FL 33634
Telephone:	(813) 675-1010
Email:	Cheryl.kleiman@peak10.com

Contract Information	
Initial Term:	24 months
Today's Date:	February 14, 2014

This **MASTER SERVICES AGREEMENT** (the "**MSA**") is entered into by and between Peak 10, Inc. for itself and on behalf of its subsidiaries ("**Peak 10**") and the entity shown as customer above ("**Customer**"). In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### Agreement

**1. DEFINITIONS.** Capitalized terms shall have the meaning set forth below or elsewhere in the MSA.

- a. "**Change Order**" means an order, signed by both parties, modifying the Services to be provided pursuant to Exhibit A.
- b. "**Customer Equipment**" means any equipment provided by Customer in connection with this MSA, whether or not owned by Customer.
- c. "**Dispute**" means any controversy or claim arising out of or relating to the interpretation of the terms, conditions or provisions of this MSA.
- d. "**Facility**" means the Peak 10 data center(s) where the Customer Equipment is located.
- e. "**Equipment Space**" means the area within the Peak 10 facility that Customer may occupy and use.
- f. "**Peak 10 Equipment**" means any equipment used by Peak 10 to provide the products and services pursuant to this MSA. Such equipment may be located inside or outside the Equipment Space.
- g. "**Term**" means the Initial Term and any Renewal Terms as defined below.

**2. SCOPE OF SERVICES AND CONFLICT.**

- a. **Services.** Peak 10 will provide Customer the services and products set forth on Exhibit A, a statement of work (if any) or a Change Order (collectively, the "**Services**"), on the terms and conditions set forth in this MSA and any referenced documents. The parties may add additional Services to this MSA by executing a Change Order covering such Services, which will become a part of this MSA on the date it is signed by Peak 10.
- b. **Conflict.** Except for billing start dates, in the event of any conflict between this MSA and the terms and conditions of any other referenced document, the terms of this MSA shall control. Any Exhibits (including Exhibits A and B), statements of work (if any) and any Change Orders are incorporated into this MSA.

**3. TERM AND RENEWAL.**

- a. **Initial Term.** The Initial Term of this MSA shall be for the period of time specified above commencing on the day Customer starts to be billed for recurring Services (the “**Effective Date**”) in accordance with Section 11. Customer may terminate contract after initial 12 month period without cause or penalty, upon a written sixty (60) day notice.
- b. **Extension.** After the expiration of the Initial Term, this MSA shall automatically renew for successive thirty (30) day periods (each, a “**Renewal Term**”) unless either party informs the other party in writing of its intent to terminate the MSA at least thirty (30) days prior to the expiration of the then-current Term..

**4. EQUIPMENT SPACE.**

- a. **Use.** Customer will be entitled to occupy and use the Equipment Space only for placement and maintenance of computer equipment, telecommunications or Internet access equipment. Peak 10 shall have the right to access the Equipment Space for any business purpose at all times. Such placement shall be subject to this MSA and Peak 10's installation and maintenance specifications, which Peak 10 shall provide to Customer from time to time.
  - b. **Peak 10 Equipment.** Peak 10 will provide Peak 10 Equipment pursuant to this MSA. Peak 10 shall use reasonable efforts to provide and maintain the Peak 10 Equipment in good working order. Peak 10 shall be entitled to remove all Peak 10 Equipment for repair, replacement, or otherwise as Peak 10 may determine is necessary, but Peak 10 shall use reasonable efforts to minimize disruptions to the service provided to Customer caused thereby. Customer shall not and shall not permit others to rearrange, disconnect, remove, and attempt to repair or otherwise tamper with any Peak 10 Equipment.
  - c. **Installation and Operation.** Peak 10 shall not be responsible for the operation or maintenance of any Customer Equipment unless specified in Exhibit A or an approved Change Order.
  - d. **Content of Transmissions.** Customer is solely responsible for the content of any transmissions utilizing Customer's facilities or Peak 10's facilities. The use of another organization's network or computing resources is subject to its respective permission and usage policies. Customer agrees to comply with all applicable laws with regard to the transmission and use of information and content. Customer further agrees not to use the services provided hereunder for illegal purposes, to interfere with or disrupt other network users, network services or network equipment.
  - e. **Hazards or Interference.** Upon notice from Peak 10, Customer promptly shall eliminate any hazard, interference or service obstruction that any hardware or software used by Customer, whether or not provided by Peak 10, is causing, or is likely to cause. If Customer requests Peak 10's assistance in removing any such hazard, interference or service, Peak 10 may, but is not required to assist in such removal.
  - f. **Subject to Lease.** Peak 10 agrees to allow Customer to place Customer Equipment in the Equipment Space subject and subordinate to the terms and provisions of Peak 10's lease with its landlord.
  - g. **Condition of Equipment Space.** Customer shall maintain the Equipment Space in an orderly and safe condition. Failure to do so may result in Peak 10 cleaning Customer area and passing the cost on to Customer.
- 5. MAINTENANCE.** Peak 10 shall perform such janitorial services, environmental systems maintenance, power plant maintenance and other actions as are reasonably required to maintain the data center and Customer supporting infrastructure in a condition which is suitable for the placement of computer, telecommunications and Internet access equipment.
- 6. SECURITY.** Peak 10 will take reasonable responsible measures to protect the security of Customer Equipment. In the event of any losses or damages to Customer Equipment caused by a third party, Peak 10 will provide reasonable assistance to resolve any disputes regarding such losses or damages
- 7. ACCESS DEVICES AND PASSWORDS.** Peak 10 will provide Customer with an account and password to access the Pathfinder Portal. Customer is responsible for maintaining the confidentiality of its account and password and Customer is responsible for all activities that occur under Customer's account. Peak 10 may also provide Customer with access cards, keys or other access devices (“Devices”) to permit Customer entry to the Equipment Space. In the event that unauthorized parties gain access to the

Equipment Space through Devices provided to Customer, Customer shall be responsible for any damages incurred as a result thereof. Customer shall be responsible for the cost of replacing any Devices lost or stolen after delivery thereof to Customer

#### 8. EQUIPMENT AND SOFTWARE.

- a. **Rights To.** Customer represents, warrants and covenants that it owns or has the legal right and authority, and will continue to own or secure the legal right and authority, during the Term, to use Customer Equipment and any software provided by Customer.
- b. **Software Terms.** With respect to any software provided for Customer's use in connection with the Services, including any Microsoft software, (collectively "**Software**") Customer agrees to abide by the Additional Software Terms located on Peak 10's website as may be updated from time to time. The Additional Software Terms are incorporated into this MSA. Peak 10 will provide Customer with prior notice (e-mail acceptable) of any material modifications to the Additional Software Terms.

#### 9. ACCEPTABLE USE POLICY.

Customer represents, warrants and covenants that it will abide by Peak 10's Acceptable Use Policy ("**AUP**") which is on Peak 10's website as may be updated from time to time and is and is incorporated by reference into this MSA. It is Customer's responsibility to periodically review the AUP.

#### 10. SERVICE LEVEL AGREEMENTS.

In the event Peak 10 fails to meet the service level criteria outlined in the attached Exhibit B Customer shall be entitled to one credit of 1/30th of the monthly recurring charges per day associated with the related service. The total amount of credits for related issues may not exceed the amount of one month's recurring charges for the service. Refunds must be requested within ten (10) business days of a service interruption and will be reflected as a credit on the next month's invoice. No credits will be issued to Customer with an undisputed balance in accounts receivable over sixty (60) days past due. The credits provided under this Section are the sole remedy for any violation of Exhibit B.

#### 11. PAYMENTS.

- a. **Billing Start.** Billing for all services will begin upon the date or dates specified in an Exhibit A, Change Order or renewal. If no date is specified, billing will begin upon the earlier of the actual installation date or the install date specified in this MSA.
- b. **Invoices.** All recurring charges for Services as set forth on Exhibit A or subsequent Change Orders will be invoiced by Peak 10 on a monthly basis in advance, except for charges that are dependent upon the level of usage, which will be billed a month in arrears. Overages for any Services dependent upon the level of usage will be billed at 130% of the monthly subscription rate unless otherwise specified in Exhibit A or the applicable Change Order. Invoicing for partial months will be prorated based on a calendar month and setup fees will be invoiced when this MSA is signed.
- c. **Due Date.** All undisputed invoices are due within thirty (30) days of invoice date. All payment for Services shall be paid in US dollars. Any undisputed payment not made when due will be subject to late charges of 1.5% per month (prorated on a daily basis beginning on the past due date), or the highest rate allowed by law, whichever is less.
- d. **Restricted Access.** Peak 10 reserves the right to limit or restrict Customer's access to the facility and Customer Equipment if undisputed balances are past due. Customer will be notified of any such restriction, in writing, via e-mail. Customer will be liable for any attorneys' fees or other costs associated with collecting late payments.
- e. **Taxes.** Except for taxes based on Peak 10's income, Customer shall be responsible for payment of all sales, use, gross receipts, excise, access, bypass, franchise or other local, state and federal taxes, fees, charges or surcharges, however designated, imposed on or based upon the provision, sale or use of the Services provided hereunder.
- f. **Invoice Disagreements.** Disagreements with invoices must be registered in writing within thirty (30) days of the invoice date and the undisputed portion paid in full. Disputes registered after thirty (30) days must be paid in full first. Customer waives the right to dispute an invoice amount after sixty (60) days past the invoice date including all rights to otherwise claim it does not owe such disputed amount or to seek any set-offs or reimbursements or other amounts of any kind based upon or relating to such disputed amount. Any disputed amounts resolved in favor of Customer will be credited to Customer's account and amounts payable to Peak 10 shall be paid within ten (10) days of dispute resolution.

**12. COST INCREASES.** Except for the price adjustments as described in Section 3, in the event of any change in applicable law, regulation, rule, or order or any other change that materially increases the costs or other terms of delivery of Services under this MSA, including but not limited to electrical rate increases, Peak 10 may pass such increased costs through to Customer and Customer may terminate the specific product or service in question or all services without termination penalty upon sixty (60) days prior written notice, so long as such notice is given within ninety (90) days of the first invoice reflecting the pass through of such increased costs.

**13. INTENTIONALLY OMITTED.**

**14. TERMINATION AND REDUCTION IN SERVICES.**

- a. Termination for Breach.** Either party may terminate this MSA without liability if the other party materially breaches any representation, warranty or obligation and the breaching party fails to cure the breach within thirty (30) days of receipt of such notice. There is no cure period for breach of Sections 4(a), 8, 23(b)(ii)-(iv), 30 or any other breach which is not capable of cure and the non-breaching party may terminate this MSA upon written notice in the event of a breach by the other party of these Sections. Either party shall have the right to immediately terminate this MSA without liability if the other party files bankruptcy, becomes insolvent, or is liquidated. For clarification purposes, "insolvent" shall mean a party's inability to pay its debts as they become due.
- b. Peak 10 Termination Rights.** In addition to the termination rights in Section 14(a), Peak 10 may terminate the use of the Equipment Space or this MSA if Customer: (i) fails to pay an undisputed past due invoice within thirty (30) days after written notice thereof; (ii) violates any law, rule, regulation or policy of any governmental authority; or (iii) makes a material misrepresentation in any information provided to Peak 10; or (iv) Peak 10's rights to use the Facility terminates or expires for any reason.
- c. Termination for Convenience.** Either party may terminate this MSA without penalty upon thirty (30) days prior written notice for any reason or no reason.
- d. Further Assurances.** If Peak 10 reasonably believes that Customer will not be able to perform its payment obligations hereunder, and Customer is unable to provide reasonable written assurances of due performance within 15 days after written demand from Peak 10, Peak 10 may suspend Services or terminate this MSA.
- e. Service Reductions.** Customer may not reduce or terminate the Services without Peak 10's prior written consent. Notwithstanding the foregoing, provided the total fees set forth in Exhibit A or the applicable Change Order remain the same, Customer may request a modification of the Services in writing. Upon receipt of such notice, the parties will work together in good faith to discuss the modifications and a reasonable implementation timetable. Any modifications are subject to the availability of Peak 10 resources. By way of example and not limitation, if Customer receives Service X for \$1,000 per month, Customer may request that it instead receive Service Y and Z totaling \$1,000 per month.
- f. Termination Fee.** In the event that Customer terminates this MSA other than as explicitly permitted in this MSA Customer agrees to pay Peak 10 an amount equal to one hundred percent (100%) of the monthly recurring charges for all Services billed or to be billed to Customer as set forth in Exhibit A or the applicable Change Order, for the remaining term of this MSA. Such amount will be billed to Customer in one lump sum.

**15. REMOVAL OF PROPERTY; ABANDONED PROPERTY.**

- a. Removal of Customer Equipment.** Upon termination of this MSA for any reason: (i) Customer will promptly remove all Customer Equipment from the data center; (ii) Peak 10 shall be entitled to immediately remove all Customer Equipment from the Equipment Space to another location in the Facility. To the extent Customer does not remove Customer Equipment, Customer will continued to be billed as set forth in Exhibit A until the date such Customer Equipment is removed. At Customer's written request Peak 10 will provide transition services to another provider at the standard rates of Peak 10, plus expenses, payable in advance; provided, however that amounts due to Peak 10 are paid in full.
- b. Removal of Peak 10 Equipment.** Following termination or expiration of this MSA for any reason Peak 10 shall be entitled to remove all Peak 10 Equipment from the Equipment Space and to repair any damage to the Equipment Space. The Equipment Space shall be in the same condition as when Customer occupied the space, normal wear and tear accepted.

Customer shall reimburse Peak 10 promptly for the reasonable cost of any repairs required to restore the Equipment Space to its original condition.

- c. **Failure to Remove.** In the event Customer does not work in good faith with Peak 10 to coordinate the removal of Customer Equipment or other Customer property from the Peak 10 facility within ninety (90) days of the termination or expiration date, subject to any applicable laws, Peak 10 shall be entitled to dispose of any Customer Equipment or other Customer property as Peak 10 sees fit, including, without limitation, destruction or sale of the property in question, all at Customer's risk and expense. Peak 10 will not be liable to Customer or any third party as a result of such disposal. Customer will pay Peak 10 all reasonable costs incurred in connection with the storage and disposal of any Customer Equipment or Customer property.

**16. SUSPENSION OF SERVICES.** Peak 10 reserves the right to suspend all Services in the event (a) any undisputed invoices are past due or (b) Peak 10 reasonably believes: (i) Customer is in violation of this MSA, including the AUP, provided, however, that Peak 10 will make reasonable efforts under the circumstances to provide Customer an opportunity to cure such breach; (ii) Customer is in violation of any applicable law; (iii) it is required to suspend services under applicable law; or (iv) continuing to provide the Services would result in significant damage to Peak 10, the Peak 10 network or other Peak 10 customers. No credit as described in Section 10 will be available for interruptions of service resulting from a suspension of Services under this Section.

**17. INSURANCE.** Prior to use of the Equipment Space and during the Term, Customer shall require any contractor, including, without limitation, any trustee, entering the Equipment Space on its behalf to procure and maintain Commercial General Liability insurance with combined single limits of \$1,000,000 each occurrence. Prior to the Effective Date and upon Peak 10's reasonable request, Customer, or any Customer contractor, will provide Peak 10 with evidence of compliance with this Section. None of the foregoing requirements as to the type and limits of insurance to be maintained by Customer are intended to and shall not in any manner limit or qualify the liabilities and obligations for which Customer is responsible under this MSA or by law. Customer acknowledges that Peak 10 does not maintain any property insurance on Customer Equipment.

**18. NOTICES.** Notices hereunder shall be deemed properly given when delivered, if delivered in person, or when transferred via facsimile, overnight courier, or when deposited with the U.S. Postal Service or via e-mail. Notices shall be delivered to the addresses shown above until such time as either party informs the other of a change in accordance with this Section.

**19. CASUALTY OR EMINENT DOMAIN.** In the event of taking eminent domain or damage by fire or other casualty to the facility, Customer shall acquiesce and be bound by any action taken by or agreement entered into between Peak 10 and its landlord with respect thereto.

**20. NOT A LEASE.** This MSA is a service agreement and is not intended to and will not constitute a lease of real property. Customer acknowledges and agrees that it has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations or ordinances.

**21. ABILITY TO CHANGE EQUIPMENT SPACE.** Peak 10 reserves the right to change the location or configuration of the Equipment Space; provided, however, that Peak 10 shall not arbitrarily or discriminatorily require such changes. Peak 10 and Customer shall work in good faith to minimize any disruption in Customer's services that may be caused by such changes in location or configuration of the Equipment Space and the cost will be borne by Peak 10.

**22. Intentionally omitted.**

**23. REPRESENTATIONS AND WARRANTIES.**

- a. **Peak 10.** Peak 10 represents and warrants as follows: (i) it will perform the Services in a professional and workmanlike manner; (ii) the execution of this MSA does not violate any applicable law or agreement to which Peak 10 is a party; and (iii) Peak 10 will comply with all applicable federal, state and local laws.
- b. **Customer.** Customer represents and warrants as follows: (i) the execution of this MSA does not violate any applicable law or agreement to which Customer is a party; (ii) Customer will not make any material alterations to the Equipment Space without first obtaining the written consent of Peak 10; (iii) Customer will not allow personnel or contractors to enter the Equipment Space who have not been approved by Peak 10 in advance; or (iv) Customer will comply with any posted or otherwise communicated rules relating to use of or access to the Equipment Space; and (v) Customer will comply with all applicable

federal, state and local laws.

- 24. DISCLAIMERS.** EXCEPT AS EXPRESSLY STATED IN THIS MSA, THE SERVICES, INCLUDING THE EQUIPMENT SPACE, SHALL BE DELIVERED BY PEAK 10 AND ACCEPTED BY CUSTOMER "AS IS" AND "AS AVAILABLE" AND PEAK 10 DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY FITNESS FOR A PARTICULAR USE, WARRANTIES THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. CUSTOMER ACKNOWLEDGES THERE ARE INHERENT RISKS IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER PRIVACY AND PROPERTY, INCLUDING CONFIDENTIAL INFORMATION. PEAK 10 ASSUMES NO LIABILITY FOR ANY DAMAGE, THEFT OR LOSS TO CUSTOMER'S PROPERTY (INCLUDING, WITHOUT LIMITATION, CUSTOMER EQUIPMENT AND DATA) RESULTING FROM THE ACTS OR OMISSIONS OF ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY UNAUTHORIZED PHYSICAL OR NON-PHYSICAL ACCESS (SUCH AS HACKING). ANY SUCH DAMAGE OR LOSS WILL BE THE EXCLUSIVE RESPONSIBILITY OF THE OTHER CUSTOMER OR THIRD PARTY WHO CAUSED SUCH LOSS OR DAMAGE.
- 25. LIMITATION ON LIABILITY.** THE ENTIRE LIABILITY OF PEAK 10 OF WHATEVER NATURE ARISING OUT OF THE FURNISHING OF, OR THE FAILURE TO FURNISH, PRODUCTS OR SERVICES DESCRIBED IN THIS MSA, INCLUDING BUT NOT LIMITED TO MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, TORTIOUS CONDUCT, REPRESENTATIONS, ERRORS, OR OTHER DEFECTS, WHETHER CAUSED BY ACTS OF COMMISSION OR OMISSION, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE PRICE OF SERVICES PURCHASED BY CUSTOMER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT WHICH CAUSED THE DAMAGES OR INJURY. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, PEAK 10 SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS OR LOST REVENUES), WHETHER OR NOT CAUSED BY THE ACTS OR OMISSIONS OR NEGLIGENCE OF ITS EMPLOYEES OR AGENTS, AND REGARDLESS OF WHETHER CUSTOMER HAS BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. CUSTOMER ACKNOWLEDGES THAT THIS LIMITATION FORMS AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND THAT THIS LIMITATION ON LIABILITY SURVIVES ANY REMEDY'S FAILURE OF ESSENTIAL PURPOSE.
- 26. PROPRIETARY RIGHTS.** This MSA shall not be construed to grant to Customer any ownership right, title or interest in any intellectual property rights embodied in or associated with the products and services provided by Peak 10 hereunder. All intellectual property rights, title and interest in the methodology, technology and know-how that Peak 10 uses to provide the products and services shall remain exclusively with Peak 10 and its licensors, as applicable.
- 27. ASSIGNMENT OR TRANSFER.** Neither party may assign this MSA in whole or in part without the prior written consent of the other party, which consent shall not be unreasonably conditioned, delayed or withheld. Notwithstanding the foregoing, Peak 10 may assign this MSA to an affiliate or division so long as Peak 10 exercises management control over or owns a controlling interest in or is under common control with such affiliate or division. In addition, both Peak 10 and Customer may assign its rights and obligations under this MSA to any individual, corporation or other business entity which acquires all or substantially all of its shares or assets, and upon such assignment, the assigning party shall be released of all its obligations under this MSA arising from and after the date of such assignment, provided that any such assignee entity delivers to the other party a signed writing evidencing its agreement to be bound by the terms and conditions of this MSA. Subject to the foregoing, this MSA will bind and inure to the benefit of the parties and their respective permitted successors and assigns only.
- 28. ENTIRE UNDERSTANDING.** This MSA, together with any exhibits hereto and the AUP, constitutes the entire understanding of the parties related to the subject matter hereof and supersedes all prior or contemporaneous oral or written agreements or other communications between the parties with respect to the subject matter hereof.
- 29. GOVERNING LAW AND VENUE.** This MSA shall be governed and construed in accordance with the laws of the state of Florida without regard to any conflict of laws provisions. Should a dispute arise under or in relation to this MSA, jurisdiction over and venue of any such suit shall be exclusively in the Federal Bankruptcy Court in the Middle District of Florida, Tampa Division. The parties hereby waive any jurisdictional venue or inconvenient forum objections to such court.
- 30. CONFIDENTIALITY.**

- a. **Confidential Information.** The parties acknowledge that each party (the “**Recipient**”) will receive in connection with this MSA confidential information relating to the other party’s (the “**Disclosing Party**”) business, including without limitation, information regarding the Disclosing Party’s products, services or offerings; the Disclosing Party’s business strategies, policies or practices; information received from others that Disclosing Party is obligated to treat as confidential; and, in the case of Peak 10, data center designs and pricing information (collectively, “**Confidential Information**”). Except as otherwise set forth herein, each party agrees to protect and maintain the secrecy of the Disclosing Party’s Confidential Information by, among other things: (i) treating such information with at least the same standard of care and protection which such party accords its own confidential and proprietary information but in any event with no less than a reasonable degree of care; (ii) using care in the assignment of personnel who receive or have access to such information, and instructing and obtaining the prior written agreement of such personnel to take all reasonable precautions to prevent unauthorized use or disclosure thereof; and (iii) not using, disclosing or exploiting such information except as necessary to perform any services or obligations hereunder or as otherwise pre-authorized by the Disclosing Party in writing.
- b. **Exceptions.** Confidential Information does not include any information that the Recipient can demonstrate: (i) was in the public domain at the time it was received; (ii) enters the public domain through no fault of the Recipient; (iii) is independently developed by Recipient without use of or reference to the Disclosing Party’s Confidential Information; or (iv) is disclosed as required by law (including disclosures necessary or appropriate in filings with the Securities and Exchange Commission or other governmental body). Recipient may disclose the Disclosing Party’s Confidential Information to a legal, judicial or governmental entity, or as required by the rules or orders of a court or governmental entity, provided that, before such disclosure, Recipient shall give reasonable advance written notice of such so that the Disclosing Party can seek a protective order or the appropriate protection for the Confidential Information and the Recipient uses reasonable efforts to have such information treated as confidential and under seal.
- c. **Breach.** Each party acknowledges that all of the Disclosing Party’s Confidential Information is owned solely by the Disclosing Party (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury to the Disclosing Party, the degree of which would be difficult to ascertain. Accordingly, notwithstanding Sections 13 and 29 of this MSA, each party agrees that the Disclosing Party will have the right to seek an immediate injunction enjoining any breach or alleged breach of this Section, wherever it deems appropriate, as well as the right to pursue any and all other rights and remedies available at law or in equity in the event of such a breach or alleged breach.

### 31. COMPLIANCE.

- a. **Business Associate Agreements.** The parties agree that if Peak 10, in the course of providing the Services will access, use, or disclose Customer’s “Protected Health Information” as defined in regulations established in accordance with the Health Insurance Portability and Accountability Act (“**HIPAA**”) they will execute a Business Associate Agreement (“**BAA**”) or Sub-Business Associate Agreement (“**Sub-BAA**”) contemporaneously with the execution of this MSA. If after the execution of this MSA, either party determines that a BAA or Sub-BAA is necessary, such party will notify the other in writing and the parties will promptly work together in good faith to ensure an appropriate BAA or Sub-BAA is executed. If the parties are unable to execute a BAA or Sub-BAA within a reasonable period of time, the requesting party may terminate this MSA without liability upon thirty (30) days prior written notice.
- b. **Responsibility.** Customer acknowledges and agrees that Peak 10 is neither responsible for knowing what type of information may be created, stored, used or managed by Customer in connection with the Services nor for knowing or investigating which laws may or may not apply to such information. If any state or federal law requires any specific agreement about such information, it is Customer’s responsibility to notify Peak 10 and, in such event, the parties will work together in good faith to modify this MSA as may be required.
- c. **Risk Assessment.** Customer acknowledges and agrees that it: (i) has conducted an assessment of the potential risks and vulnerabilities to the confidentiality, integrity and availability of Customer information to be created, transmitted, stored, used or maintained in connection with the Services; (ii) has determined that the Services are sufficient for Customer’s purposes and Customer’s compliance with applicable law; and (iii) Peak 10 is not responsible for determining whether any Services are sufficient for Customer’s compliance with any applicable law.

### 32. MISCELLANEOUS.

- a. **Counterparts.** This MSA may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. In the event any signature is delivered by facsimile or by electronic signature, such signature shall create a valid and binding obligation on the executing party with the same force and effect as if such facsimile or electronic signature were an original thereof.
- b. **Tariffs.** Customer understands that Internet use, and related products and services provided under this MSA, may require registration and related administrative reports which are public in nature. Peak 10 may elect or be required to file with the appropriate regulatory agency tariffs respecting the delivery of certain services by Peak 10 to Customer. In the event that such tariffs are filed respecting services ordered by Customer, then the terms set forth in the applicable tariff shall govern Peak 10's delivery of, and Customer's consumption or use of, such services.
- c. **Publicity.** Neither party will use the other party's name, trademarks or logos without the prior written consent of the other party unless otherwise required by applicable law.
- d. **Severability.** If any provision of this MSA shall be found by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be severed and shall be inoperable, and, provided that the fundamental terms and conditions of this MSA remain legal and enforceable, such finding shall not affect the validity or enforceability of this MSA as a whole or of any other provision of this MSA.
- e. **Modifications.** This MSA may not be modified except by a writing signed by an authorized signatory of each party. No waiver, modification or amendment of this MSA shall be effective unless made in a writing signed by the party to be bound.
- f. **Waiver.** No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default.
- g. **Independent Contractors.** Nothing in this MSA or in the course of dealing between Peak 10 and Customer pursuant hereto shall be deemed to create between Peak 10 and Customer (including their respective directors, officers, employees and agents) a partnership, joint venture, association, employment relationship or any other relationship other than that of independent contractors with respect to each other.
- h. **No Brokers.** Customer covenants and represents that it has negotiated this MSA directly with Peak 10, and has not authorized any broker, salesperson or finder to act for it in the negotiation and execution of this MSA. Customer agrees to indemnify and hold harmless Peak 10 from any and all claims by any such broker, salesperson or finder for a commission or finder's fee as a result of Customer having entered into this MSA.
- i. **Third Party Beneficiaries.** Except as otherwise explicitly agreed, there shall be no third party beneficiaries to this MSA.
- j. **Force Majeure.** Notwithstanding Section 10, Peak 10 shall not be liable for any failure of performance or equipment due to causes beyond its reasonable control, including but not limited to: acts of God, fire, flood or other catastrophes; any law, order, regulation, direction, action, or request of any governmental entity or agency, or any civil or military authority; national emergencies, insurrections, riots, terrorist attack or wars.
- k. **Non-Solicitation.** Unless otherwise approved in writing, during the Term and for one (1) year thereafter, Customer shall not hire any person who is or was an employee of Peak 10 during the Term, provided, however, that this provision shall not apply to general advertising solicitations or similar efforts not targeted towards current or former Peak 10 employees.
- l. **Survival.** The provisions of Sections 10, 11, 22, 24, 25, 26, 29 30 and 32(j) shall survive the expiration or earlier termination of this MSA.

IN WITNESS WHEREOF, the parties hereto have caused this Master Services Agreement to be executed by their duly authorized representatives as of the day and year set forth above.

Peak 10, Inc.

Customer Name

Signature: \_\_\_\_\_

Name: Cheryl L. Kleiman

Title: Vice President / General Manager

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

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

**Exhibit A**

(Attached)

### Exhibit B

The Service Level Agreement does not cover downtime caused either directly or indirectly by:

- 1) Custom application coding error
- 2) Software configuration changes not made or approved by Peak 10
- 3) Hardware configuration changes not made or approved by Peak 10
- 4) Regular scheduled or emergency system maintenance
- 5) Failure of any components or services not managed by Peak 10, including but not limited to hardware, network access, and third party vendor support.

### Co-location Services

Service Level	Non-compliance
Power will be available to Customer computer infrastructure 100% of the time if dual power circuits are installed and utilized by Customer in a redundant manner. (Peak 10 is not responsible for outages associated with overloaded power strips or	Any failure

circuits).	
Daily data center temperature at designated cold aisles will meet or exceed the recommended limits set by ASHRAE TC9.9 for a class 1 data center (64.4°F to 80.6°F) at the designated cold aisle. Peak 10 does not guarantee temperatures within Customer cabinet(s).	Any failure
Daily data center humidity at designated cold aisles will meet or exceed the recommended limits set by ASHRAE TC9.9 for a class 1 data center (41.9° F dew point to 49° F dew point) at the designated cold aisle. Peak 10 does not guarantee humidity within Customer cabinet(s).	Any failure

#### Internet Access and Virtual Private Line Services

Service Level	Non-compliance
Network availability when subscribed to a single network connection	< 99.9%
Network availability when subscribed to redundant network connections	< 99.99%
Packet loss between Peak 10 data centers	> 1%
Latency between Peak 10 data centers	> 80 ms

#### Cloud Services

Service Level	Non-compliance
Enterprise Cloud – Basic Server availability	< 99%
Enterprise Cloud – Standard Server availability	< 99.99%
Enterprise Cloud – Advanced Server availability	Any failure
Shared firewall availability	< 99.99%
Virtual Private Data Center – Production Resource Pool availability	< 99.99%
Virtual Private Data Center – Production Resource Pool CPU availability	< 1 GHz per subscribed 8GB of RAM
Storage availability when subscribed to a single connection	<99.9%
Storage availability when subscribed to redundant connections	<99.99%
DR Management – Recovery Point Objective when subscribed to Peak 10 managed cloud services as the source and target and when subscribing to sufficient bandwidth	> 30 minutes
DR Management – Beginning the recovery process, the Recovery Time Objective, when subscribed to Peak 10 managed cloud services as the DR target	> 60 minutes
SQL as a Service – availability	Any failure

#### Patch Management and Anti-Virus Management Services

Service Level	Non-compliance
Management platform availability	< 99.5%
Customer requested patches applied within one business day	Any failure

**Server and Network Device Monitoring and Management Services**

Service Level	Non-Compliance
Monitoring platform availability	< 99.5%
Ticket created within 15 minutes of service fault	Any failure
Network device configuration files backed up upon configuration modification	Any failure
Network device configuration restores occur within 4 hours of request.	Any failure
Network device configuration changes occur within 48 business hours of request.	Any failure

**Data Protection Services**

Service Level	Non-compliance
Backups initiated with 4 hours of agreed upon schedule	Any failure
Restores initiated within 30 minutes of receiving the request	Any failure
Restores of off-site data initiated within 30 minutes of receipt of tape or media	Any failure

**Offsite Tape Storage Services**

Service Level	Non-compliance
2 hour return request - Media delivered to Peak 10 within 2 hours of receiving authorized request including acceptance of additional fees	Any failure
24 hour return request - Media delivered to Peak 10 within 24 hours of receiving authorized request including acceptance of additional fees	Any failure

**ProtectPoint Managed Security Services**

Service Level	Non-compliance
Customer requests are responded to within 30 minutes.	Any failure
Monitoring center will be available 99.99% of the time during any given month.	Any failure
IDS signatures and firewall software will be updated daily.	Any failure
Security incidents are addressed within 10 minutes of detection.	Any failure