



## Data Center CO-Location Master Service Agreement (“MSA”)

**1. Definitions.** Capitalized terms shall have the meaning set forth below or elsewhere in the MSA as referenced:

- (a) “Change Order” means an order, signed by both parties, modifying the Services to be provided pursuant to “Purchase Agreement”.
- (b) “Customer Equipment” means any equipment provided by Customer in connection with this MSA.
- (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) “Equipment Space” means the area within the ProActive Information Management facility that Customer may occupy and use.
- (e) “ProActive Information Management Equipment” means any equipment used by ProActive Information Management to provide the products and services pursuant to this MSA. Such equipment may be located inside or outside the Equipment Space.
- (f) “Term” means the Initial Term and any Renewal Terms as defined below.

**2. Scope of Services.** ProActive Information Management, LLC, a Virginia corporation, will provide Customer the services and products set forth on the “Purchase Agreement”, including a Statement of Work (if any) or a Change Order (collectively, the “Services”), on the terms and conditions set forth in this MSA, the general “ProActive Information Terms and Conditions” and any other 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 ProActive Information Management.

**3. Term and Renewal.** The Initial Term of this MSA shall be no less than 36 months commencing on the day Customer starts to be billed for recurring Services (the “Effective Date”) in accordance with Section 10. Should a new contract not be entered into prior to the expiration of the Initial Term, the customer may continue on a month-to-month basis at a rate of 120% of the existing service billing rates until thirty (30) days’ written notice to cancel is given. Otherwise, Customer may have the option to renew this contract for a period of one year, at the then current rates, or negotiate a new contract with Proactive Information Management to continue services.

**4. Use of Equipment Space.**

- (a) Customer will be entitled to occupy and use the Equipment Space only for placement and maintenance of computer equipment, telecommunications or Internet access equipment. ProActive Information Management shall have the right to access the Equipment Space for any business purpose at all times.
- (b) ProActive Information Management will provide ProActive Information Management Equipment pursuant to this MSA. ProActive Information Management shall use reasonable efforts to provide and maintain the ProActive Information Management Equipment in good working order. ProActive Information Management shall be entitled to remove all ProActive Information Management Equipment for repair, replacement, or otherwise as ProActive Information Management may determine is necessary, but ProActive Information Management 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 ProActive Information Management Equipment.
- (c) ProActive Information Management shall not be responsible for the operation or maintenance of any Customer Equipment unless 1) specified in “Purchase Agreement” or an approved Change Order. 2) Customer has a current service and maintenance contract agreement with ProActive Information Management for such equipment.
- (d) Customer is solely responsible for the content of any transmissions utilizing Customer’s facilities or ProActive Information Management’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) Upon notice from ProActive Information Management, Customer promptly shall eliminate any hazard, interference or service obstruction that any hardware or software used by Customer, whether or not provided by ProActive Information Management, is causing, or is likely to cause. If Customer requests ProActive Information Management’s assistance in removing any such hazard, interference or service, ProActive Information Management may, but is not required to assist in such removal.

(f) ProActive Information Management agrees to allow Customer to place Customer Equipment in the Equipment Space subject and subordinate to the terms and provision of ProActive Information Management’s lease with its landlord. Such placement shall be subject to this MSA and ProActive Information Management’s installation and maintenance specifications, which ProActive Information Management shall provide to Customer from time to time.

**5. Maintenance.** ProActive Information Management 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.** ProActive Information Management 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, ProActive Information Management will provide reasonable assistance to resolve any disputes regarding such losses or damages.

**7. Access.** In the event that unauthorized parties gain access to the Equipment Space through access cards, keys or other access 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 security devices lost or stolen after delivery thereof to Customer. In addition to the rights set forth elsewhere in the MSA, ProActive Information Management shall have the right to terminate Customer’s use of the Equipment Space or the Services in the event that: (a) ProActive Information Management’s rights to use the facility within which the Equipment Space is located terminates or expires for any reason; (b) Customer makes any material alterations to the Equipment Space without first obtaining the written consent of ProActive Information Management; (c) Customer allows personnel or contractors to enter the Equipment Space who have not been approved by ProActive Information Management in advance; or (d) Customer violates any posted or otherwise communicated rules relating to use of or access to the Equipment Space. Customer represents and warrants every individual who has access to the Equipment Space has been the subject of a background investigation which, at a minimum, includes a national criminal check and a hiring references check. Customer will provide reasonable proof or written certification of such background checks upon request. Customer or their agent(s) that requires access to the Equipment Space must have a ProActive Information Management representative present. The representative will be billable at a standard rate of \$125 per man hour, unless 1) otherwise specified in “Purchase Agreement” or an approved Change Order. 2) the customer has a current service and maintenance contract agreement with ProActive Information Management.

**8. Rights to Equipment and Software.** 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 of this MSA, to use Customer Equipment and software located in the Equipment Space.

**9. Service Level Agreements.** In the event ProActive Information Management 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.

**10. Payments.**

- (a) Billing for all services will begin upon the earlier of the actual installation date or the install date specified in this MSA, "Purchase Agreement", Change Order or renewal.
- (b) All recurring charges for Services as set forth on the "Purchase Agreement" or subsequent Change Orders will be invoiced by ProActive Information Management on a monthly basis 15 calendar days 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 the "Purchase Agreement" 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) All undisputed invoices are due upon receipt, and become past due thirty (30) days later. 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) ProActive Information Management 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 of 35% and other costs and fees associated with collecting late payments.
- (e) 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) 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. Any disputed amounts resolved in favor of Customer will be credited to Customer's account and amounts payable to ProActive Information Management shall be paid within ten (10) days of dispute resolution.

**11. Cost Increases.** 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, ProActive Information Management 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.

**12. Binding Arbitration.** The parties will attempt in good faith to resolve any Dispute within thirty (30) days of notice of a Dispute through discussions between themselves at the operational level. After

thirty (30) days either party can elect to have the Dispute settled by arbitration by informing the other party in writing. Any Dispute, except for those involving willful misconduct or negligence, shall be finally settled by arbitration in Richmond, VA and shall be resolved under the laws of Virginia without the use of court systems. The arbitration shall be conducted before a single arbitrator in accordance with the then in effect commercial rules and practices of the American Arbitration Association. The arbitrator shall have the power to order specific performance of any term or provision of this MSA if requested by either party to the Dispute. Any award, order, or judgment pursuant to such arbitration shall be deemed final and binding and may be enforced in any court of competent jurisdiction. The parties agree that the arbitrator shall have no power of authority to make award or issue orders of any kind except as expressly permitted by this MSA, and in no event shall the arbitrator have the authority to make any award that provides for punitive or exemplary damages. All such arbitration proceedings shall be conducted on a confidential basis. The arbitrator may, as part of the arbitration award, permit the substantially prevailing party to recover all or part of its reasonable attorneys' fees and other out-of-pocket costs incurred in connection with such arbitration.

**13. Termination & Reduction in Services.**

- (a) Either party may terminate this MSA without liability if the other party materially breaches any obligation and the party in breach fails to cure the breach within thirty (30) days of receipt of such notice. There is no cure period for breach of license, ownership rights, confidentiality or unauthorized use. Either party shall have the right to immediately terminate this MSA without liability if the other party files bankruptcy, becomes insolvent, or is liquidated or otherwise ceases to provide Data Center Service. Should they wish to continue service with Peak 10, any clients of ProActive Information Management will have the right to enter into a direct contract with Peak 10 at the then current rates of the contract for the remainder of the current contract term.
- (b) ProActive Information Management may terminate 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 ProActive Information Management.
- (c) A reduction in Services of up to forty percent (40%) a line item is allowed during the Term. A reduction in Services in excess of forty percent (40%) will be treated as a line item termination and the terms of this section will apply to the line item reduction.
- (d) In the event that Customer terminates this MSA other than as explicitly set forth in this Section 13, Customer agrees to pay ProActive Information Management an amount equal to one hundred percent (100%) of the monthly recurring charges, for all Services billed to the Customer in the month prior to the date of termination, for the remaining term of this MSA.

**14. Removal of Property; Abandoned Property.**

(a) Upon termination of this MSA for any reason, ProActive Information Management shall be entitled to immediately remove all Customer Equipment from the Equipment Space and ProActive Information Management will return all Customer Property to Customer or, at Customer's written request, provide transition services to another provider at the standard rates of \$125 per man hour, plus expenses, payable in advance; provided, however that amounts due to ProActive Information Management are paid in full. In addition, following termination ProActive Information Management shall be entitled to immediately remove all ProActive Information Management 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 ProActive Information Management promptly for the reasonable cost of any repairs required to restore the Equipment Space to its original condition.



(b) In the event Customer does not work in good faith with ProActive Information Management to coordinate the removal of Customer Equipment or other Customer property within thirty (30) days of the termination date, subject to any applicable unclaimed or abandoned property or other similar laws, ProActive Information Management shall be entitled to dispose of any Customer Equipment or other Customer property as ProActive Information Management sees fit, including, without limitation, destruction or sale of the property in question. ProActive Information Management will not be liable to Customer or any third party as a result of such disposal. Customer will pay ProActive Information Management all reasonable costs incurred in connection with the storage and disposal of any Customer Equipment or Customer property.

**15. Suspension of Services.** ProActive Information Management reserves the right to suspend all Services in the event (a) any undisputed invoices are past due or (b) ProActive Information Management reasonably believes: (i) Customer is in violation of this MSA; (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 ProActive Information Management, the ProActive Information Management network or other ProActive Information Management customers.

**16. Insurance.** Prior to use of the Equipment Space and during the Term, Customer shall procure and maintain the following minimum insurance coverage: Workers' Compensation in an amount not less than that prescribed by statutory limits; Employer's Liability with limits of \$500,000 each accident; Commercial General Liability with combined single limits of \$1,000,000 each occurrence; and "All Risk" Property insurance covering all of Customer's Equipment.

Customer's Commercial General Liability policy shall be endorsed to show ProActive Information Management (and any underlying property owner, as requested by ProActive Information Management) as an additional insured. Customer shall require any contractor entering the Equipment Space on its behalf to procure and maintain the same types, amounts and coverage extensions as required of Customer.

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.

**17. 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. Notices to shall be delivered to the addresses indicated below until such time as either party informs the other in writing of a change:

Address for ProActive Information Management Notices  ProActive Information Management, LLC. <hr/> 5309 Commonwealth Centre Parkway: Suite 403 <hr/> Chesterfield, VA 23112 <hr/> <hr/>	Address for Customer Notices  As listed on Purchase Agreement <hr/> <hr/> <hr/> <hr/>
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With an email copy to: sales@proactive-info.com

**18. 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 ProActive Information Management and its landlord with respect thereto.

**19. 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.

**20. Ability to Change Equipment Space.** ProActive Information Management reserves the right to change the location or configuration of the Equipment Space; provided, however, that ProActive Information Management shall not arbitrarily or discriminatorily require such changes. ProActive Information Management 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 ProActive Information Management.

**21. Indemnity.**

(a) Each party shall indemnify, defend and hold harmless the other party against any claim, loss, damage, expense or liability (including reasonable attorneys' fees and court costs (collectively, "Claims")) to the extent that such Claims are caused by the gross negligence or willful misconduct of the indemnifying party. This includes, but is not limited to Claims in any way arising from or related to the alleged infringement of patent, trademark, design, copyright or any other intellectual property rights and use or inclusion of any information, photographs, art work or other content (including without limitation claims based on invasion of privacy, right of publicity, the Communications Decency Act of 1996, obscenity or pornography, and the violation of any states or ordinances or other laws). This Section 22 shall survive any termination of this MSA.

(b) The indemnified party shall: (i) promptly notify the indemnifying party in writing of any losses for which the indemnified party seeks indemnification, *provided, however*, that failure to give such notice shall not relieve the indemnifying party of any liability hereunder (except to the extent the indemnifying party has suffered actual material prejudice by such failure); (ii) cooperate with the indemnifying party in the defense; and (iii) permit the Indemnifying party full control over the defense and settlement of any matter subject to indemnification; *provided that* the indemnifying party shall not enter into any settlement that affects the indemnified party's right or interests without the indemnified party's prior written consent which shall not be unreasonably withheld, conditioned or delayed. The indemnified party shall have the right to participate in the defense at its expense.

**22. Disclaimers and Liability.**

(A) EXCEPT AS EXPRESSLY STATED HEREIN (INCLUDING "PURCHASE AGREEMENT") OR IN ANY CUSTOMER OR CHANGE ORDER THE SERVICES, INCLUDING THE EQUIPMENT SPACE, SHALL BE DELIVERED BY PROACTIVE INFORMATION MANAGEMENT AND ACCEPTED BY CUSTOMER "AS IS". PROACTIVE INFORMATION MANAGEMENT HAS NOT MADE, AND DOES NOT MAKE, ANY REPRESENTATION OR WARRANTY AS TO THE FITNESS OF THE EQUIPMENT SPACE FOR CUSTOMER'S INTENDED PURPOSE. EXCEPT AS OTHERWISE SET FORTH IN SECTIONS 5, 6 AND 10 OF THIS MSA, PROACTIVE INFORMATION MANAGEMENT MAKES NO WARRANTIES OR REPRESENTATIONS, 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. PROACTIVE INFORMATION MANAGEMENT ASSUMES NO LIABILITY FOR ANY DAMAGE OR LOSS TO CUSTOMER'S PROPERTY (INCLUDING, WITHOUT LIMITATION, CUSTOMER EQUIPMENT AND DATA) RESULTING FROM: (i) ANY OTHER CUSTOMER'S ACCESS TO THE PROACTIVE INFORMATION MANAGEMENT FACILITY; OR (ii) ANY THIRD PARTY'S UNAUTHORIZED ACCESS, EITHER PHYSICAL OR LOGICAL. ANY SUCH DAMAGE OR LOSS WILL BE THE EXCLUSIVE RESPONSIBILITY OF THE OTHER CUSTOMER OR THIRD PARTY WHO CAUSED SUCH LOSS OR DAMAGE.

(B) The entire liability of ProActive Information Management 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. In no event shall ProActive Information Management be liable for unauthorized non-physical access, such as hacking, to Customer's transmission facilities or Customer Equipment or for unauthorized access to or alteration, theft or destruction of Customer's data files, programs, procedure or information through accident, fraudulent means or devices, or any other method. Notwithstanding any other provision hereof, ProActive Information Management 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.

**23. 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 ProActive Information Management hereunder. All intellectual property rights, title and interest in the methodology, technology and know-how that ProActive Information Management uses to provide the products and services shall remain exclusively with ProActive Information Management and its licensors, as applicable.

**24. 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, ProActive Information Management may assign this MSA to an affiliate or division so long as ProActive Information Management exercises management control over or owns a controlling interest in or is under common control with such affiliate or division. In addition, both ProActive Information Management 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.

**25. Entire Understanding.** This MSA, together with any exhibits hereto and the "purchase agreement", 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. 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.

**26. Governing Law and Venue.** This MSA shall be governed and construed in accordance with the laws of the state of Virginia 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 state and federal courts of Richmond, Virginia. The parties hereby waive any jurisdictional venue or inconvenient forum objections to such courts.

**27. Confidentiality.**

(a) 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 ProActive Information Management, 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) 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) 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 26 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.

**28. Compliance.**

(a) Each party represents and warrants it will comply with all applicable federal, state and local laws.

(b) The parties agree that if ProActive Information Management, 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.

(c) Customer acknowledges and agrees that ProActive Information Management 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 ProActive Information Management and, in such event, the parties will work together in good faith to modify this MSA as may be required.

(d) 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) ProActive Information Management is not responsible for determining whether any Services are sufficient for Customer's compliance with any applicable law.

**29. General.**

(a) This MSA may be executed simultaneously in two or more counterparts, each of which shall be deemed an original.

(b) 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. ProActive Information Management may elect or be required to file with the appropriate regulatory agency tariffs respecting the delivery of certain services by ProActive Information Management 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 ProActive Information Management's delivery of, and Customer's consumption or use of, such services.

(c) 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) If any provision of this MSA shall be found by a court of competent jurisdiction to be invalid or unenforceable, such finding shall not affect the validity or enforceability of this MSA as a whole or of any other provision of this MSA.

(e) 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) 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) Nothing in this MSA or in the course of dealing between ProActive Information Management and Customer pursuant hereto shall be deemed to create between ProActive Information Management 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) Customer covenants and represents that it has negotiated this MSA directly with ProActive Information Management, 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 ProActive Information Management 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) ProActive Information Management 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 or terrorist attack, wars

(j) The provisions of Sections 11, 22, 23, 24, 27 and 28 shall survive the expiration or earlier termination of this MSA.



## Exhibit B

### Service Level Agreements

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 ProActive Information Management
- 3) Hardware configuration changes not made or approved by ProActive Information Management
- 4) Regular scheduled or emergency system maintenance
- 5) Failure of any components or services not managed by ProActive Information Management, including but not limited to hardware, network access, and third party vendor support.
- 6) Product or Services not purchased in the "Purchased Agreement" or Changed Order.

#### 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. (ProActive Information Management is not responsible for outages associated with overloaded power strips or circuits).	Any failure
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. ProActive Information Management 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. ProActive Information Management 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 ProActive Information Management data centers	> 1%
Latency between ProActive Information Management 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
Enterprise Cloud – Resource Pool availability	< 99.99%
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



**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 ProActive Information Management within 2 hours of receiving authorized request including acceptance of additional fees	Any failure
24 hour return request - Media delivered to ProActive Information Management 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