

CARAHSOFT RIDER

Please review and approve the Carahsoft Rider (“Rider”).


The Carahsoft Rider contains mandatory terms for all public sector contracts (i.e. GSA, SEWP, NASPO, Open Market orders, etc.). By signing this document, you agree to the incorporation of these terms into all purchase orders placed by Carahsoft on behalf of Public Sector Entities who buy through Carahsoft and/or Carahsoft’s prime contractors.

These terms will take precedence over any conflicting terms in your Commercial Supplier Agreement (i.e. End User License Agreement, EULA, Master Service Agreement, or similar document) with Public Sector Entities. These terms will also take precedence over any conflicting terms contained within the Manufacturer Agreement (i.e. Channel Agreement, Distributor Agreement, Aggregator Agreement, Reseller Agreement, VAD Agreement, VAR agreement, or similar document) you may have in place with Carahsoft Technology Corp., if applicable. Lastly, these terms will take precedence over any conflicting terms in any Statement of Work (or similar document) you may have in place with Carahsoft Technology Corp.

A Public Sector Entity (“Licensee”) is defined as one of the following:

- A member of the U.S. government’s legislative, judicial or executive branches. This includes the department of defense, civilian agencies, intelligence agencies, independent agencies, special inspector general offices, and quasi-official agencies (i.e. National Gallery of Art, National Park Foundation, etc.).
- U.S. state or local government entity. This includes all applicable state agencies, counties, cities, municipalities, and similar entities within a state, the District of Columbia, or one of the territories of the United States.
- An Academic Institution is defined as an accredited institution, and must be organized and operated for educational purposes. The institution must receive funding (partial or full) from a federal, state, or local agency, and must meet one of the following criteria:
 - Public or private elementary, secondary, vocational school, correspondence school, junior college, university, post-graduate school such as a medical college, law school, or business school, management school board, school for disabled, scientific, research, or technical institutions accredited by U.S. Department of Education and State Board of Education, or, by associations recognized by U.S. Department of Education, including the district, regional, and State Administrative offices.
 - Administrative Offices or Board of Education for academic institutions as defined as:
 - A district, regional or state administrative office of public educational institution
 - Administrative entities organized and operated exclusively for private academic institutions
 - Other state or local government entities whose activities consist of administrative support or services for the advancement of public academic institutions.
 - Full-time or part-time faculty, staff, or, matriculated students in good academic standing at an accredited academic institution. Libraries associated with an accredited academic institution
 - Hospitals and teaching hospitals that are wholly owned and operated by an academic institution.
 - Higher Education Research laboratories that are associated with an academic institution, recognized by the U.S. Department of Education, and teach students as part of their research mission.

Manufacturer Name: Opus Interactive

Signature: 7C20E82C40AD463...

Print Name: Shannon Hulbert

Title: CEO

Date: 9/9/2020 | 12:12 PM PDT

By signing above, I have read and agreed with all info regarding the RIDER.

Carahsoft Rider for Public Sector Agencies

1. **Applicability.** The terms and conditions in the Manufacturer Agreement and Commercial Supplier Agreement are hereby incorporated by reference to the extent that they are consistent with applicable public sector law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's Agreements or Commercial Supplier Agreement are inconsistent with applicable public sector law (i.e. See FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders or contracts with Carahsoft.
2. **Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Commercial Supplier Agreement must be signed by a duly warranted contracting officer, in writing. The same requirement applies to Commercial Supplier Agreement modifications affecting the rights of the parties. All terms and conditions intended to bind the Public Sector Entity must be included within the contract signed by the Public Sector Entity
3. **Termination.** If a Public Sector Entity cancels or terminates its corresponding order with Carahsoft, Carahsoft's reseller partner or a higher tier prime or subcontractor, as applicable, then Carahsoft will have the right to cancel the related order with Manufacturer in the same manner as the cancellation or termination is presented by the Public Sector Entity. In such a cancellation event, Carahsoft will notify Manufacturer as soon as reasonably possible on the specific details of the order cancellation.
 - Carahsoft may request cancellation or termination of the Commercial Supplier Agreement and applicable Public Sector Entity purchase order on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions (or applicable dispute resolutions process) or if such remedy is otherwise ordered by applicable jurisdictional court.
4. **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109), Federal Tort Claims Act (28 U.S.C. §1346(b)), or applicable dispute resolution process.
5. **Dispute Resolution and Venue.** Any disputes relating to the Commercial Supplier Agreement shall be resolved in accordance with the FAR, the Contract Disputes Act, 41 U.S.C. §§ 7101-7109, or applicable dispute resolutions process.
6. **Customer Indemnities.** All Commercial Supplier Agreement clauses referencing Customer Indemnities are hereby deemed to be deleted.
7. **Contractor Indemnities.** All Commercial Supplier Agreement clauses that (1) violate applicable judicial department's right (i.e. 28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
8. **Renewals.** All Manufacturer Agreement and Commercial Supplier Agreement clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban (or similar/applicable ban) on automatic renewal are hereby deemed to be deleted.

9. Future Fees or Penalties. All Commercial Supplier Agreement clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.

10. Travel and Expenses. Out-of-pocket expenses identified in a quote, statement of work, professional services agreement (or similar agreement) must be submitted for payment no more than sixty (60) days after completion of Services or such payment may be denied. Manufacturer shall ensure that travel expenses are incurred in accordance with the limitations set forth in FAR 31.205-46. Manufacturer will provide budgetary estimates for all travel and expense fees on its quotes (or Statement of Works/Professional Service Agreements) to Carahsoft.

11. Limitation of Liability: Subject to the following:

- Public Sector Entity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Public Sector Entity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the Public Sector Entity's right to recover for fraud or crimes under applicable fraud statute, such as the False Claims Act, 31 U.S.C. §§ 3729-3733.

12. Public Access to Information. Manufacturer agrees that the Commercial Supplier Agreement contains no confidential or proprietary information and acknowledges the Commercial Supplier Agreement will be available to the public.

13. Confidentiality. Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court.

MASTER CUSTOMER AGREEMENT

This Master Customer Agreement ("**MCA**") is entered into between Opus Interactive, Inc., an Oregon corporation, with a principal address at 8135 NE Evergreen Parkway, Suite 1220, Hillsboro, OR 97124 ("**Opus**") and the individual or entity specified as "Customer" in a Service Order ("**Customer**").

Customer and Opus have entered into a Service Order that incorporates this MCA by reference. This MCA, together with the Service Level Agreement, Service Order(s), Acceptable Use Policy, Billing Policy and any other Exhibits attached hereto, or incorporated herein by reference, constitutes the "Agreement."

1. Services.

- 1.1 **Services and Service Features.** Opus will provide to Customer the services identified in one or more Service Orders, which are incorporated herein by reference. The services specified in the Service Order(s) ("**Services**") shall be provided in a professional manner consistent with industry standards. The Agreement is made effective on the date provided in the Service Order (the "**Effective Date**"). If applicable, each Service Order will specify the Opus data center location or locations at or from which the Services will be provided to Customer ("**Premises**").
- 1.2 **Changes and Additional Services.** From time to time, Customer may request changes or add new Services. The confirmation of such changes or additional services constitutes a Service Order amending this Agreement ("**Service Order**"). Unless either party requests otherwise, Service Orders may be exchanged and approved electronically or in written form.
- 1.3 The Fee Schedule is provided with the selection of Services in a Service Order. Customer may add new services at any time. If Customer requests any changes to the initial configuration or any additional Services, any charges for such changes or Services will be reflected on monthly billings and Customer agrees to pay such charges, including any overage charges as of the Billing Commencement Date for the applicable change or Service. Services may be added or removed by Customer at any time so long as the monthly recurring charge is greater than or equal to the initial monthly recurring charge.
- 1.4 All changes or requests for additional Services shall be confirmed in advance with Customer, either electronically or in writing, prior to initiating the change or Service; provided that Opus may waive the requirement at the request of the Customer if more immediate action is required. In the event of such waiver, Customer agrees to confirm the request electronically or in writing as soon as reasonably possible and to pay the applicable charges, provided the charges are consistent with the Customer's request.
- 1.5 **Service Level Agreements.** The service levels ("**Service Levels**") applicable to the Services are set forth in Exhibit B – Service Level Agreement (the "SLA") and is hereby incorporated herein by reference.

Customer may be entitled to a credit for Opus's failure to meet a Service Level ("**Service Level Credit**") only as expressly set forth in the SLA for such Service (and no other Services) subject to all terms and conditions in the SLA. Customer acknowledges and agrees that the Service Level Credits will be Customer's sole and exclusive remedy and Opus's sole liability for not meeting the applicable Service Level.

- 1.6 **Acceptable Use.** Customer will use the Services in accordance with Opus's Acceptable Use Policy (the "**AUP**"), which can be found at <https://www.opusinteractive.com/aup.html> and is hereby incorporated to this Agreement by reference.
- 1.7 **Access to Premises by Customer.** For co-location Services, only those individuals designated by Customer to Opus as persons with authorized access to the Premises (each an "**Authorized Contact**") will be authorized to enter the Premises. Customer will have the sole responsibility for maintaining the accuracy of the Authorized Contact list and communicating any changes to the Authorized Contact list to Opus. Opus may refuse access to the Premises to any person not designated as an Authorized Contact or to any Authorized Contact who violates any rules or regulations of Opus or, in Opus's sole opinion, behaves inappropriately or creates a hazard of any kind. Customer will not provide access to any person not designated as an Authorized Contact or to any previously designated Authorized Contact who is subsequently refused by Opus, unless agreed to by Opus. All Authorized Contacts will be required to present photo identification and to sign-in at Opus's main entrance before entering the Premises. Authorized Contacts will remain on the Premises only so long as necessary, and are required to agree to any and all Opus rules and/or regulations while on-site at the Premises.

2. **Customer Integration.** Upon the Effective Date of this Agreement, Opus and Customer will commence good faith discussions and cooperate in a timely manner to agree to an integration plan that provides the details for initiation of the Services. In the event the integration plan is not completed due to Customer's sole actions or inaction within sixty (60) days after the Effective Date, Customer acknowledges and agrees that Opus has the right to terminate this Agreement and collect termination fees in the amount of one (1) month of monthly recurring

fees plus any purchased services or goods (which the parties acknowledge as liquidated damages reflecting a reasonable measure of actual damages and not a penalty). Billing of monthly fees will commence on the date that Opus makes Customer's configuration available to Customer for staging or testing purposes or otherwise begins performing Services ("**Billing Commencement Date**").

3. Pricing; Taxes.

- 3.1 **Prices.** Prices for the Services are set forth in the fee schedule provided in a Service Order ("**Fee Schedule**"). Unless stated otherwise in the Fee Schedule, Opus may increase any and all pricing by up to five percent (5%) one (1) time during each calendar year with at least thirty (30) prior days' notice to Customer. All pricing for rented Microsoft, RedHat, Cisco, VMware, Veeam, Trend Micro Licensing and any other rented software will be increased by the same % as is increased by each software vendor at the time such increase is communicated to Opus. Opus will use commercially reasonable efforts to provide thirty (30) prior days' notice to Customer of any such increase.
- 3.2 **Taxes.** Customer is responsible for tariffs, telecommunications surcharges or other governmental charges due in connection with Opus's provision of Services to Customer. To the extent this Agreement includes the provision of Services which are determined to be subject to transaction taxes or which become taxable at some future point in time, and if Opus is required by law to pay or collect any local, value-added, goods and services, or any other similar taxes or duties based on the Services provided, then Opus shall separately state such taxes in addition to the prices for Services, and Customer agrees to pay such amounts. In no event shall Customer be responsible for any taxes related to Opus's net income. Opus will not collect sales taxes from Customer within jurisdictions in which Opus is not required to be licensed to collect such taxes or when Opus receives a properly executed exemption certificate from Customer, nor will Opus assume liability for any uncollected taxes, in such circumstances.

4. Payment and Credit Approval.

- 4.1 **Payment.** Opus will invoice Customer monthly. Invoices may be delivered electronically or by any means acceptable under the notice provision of this Agreement. Customer agrees to pay Opus within thirty (30) days from date of invoice. For overdue invoices, Customer will pay Opus interest on the overdue amount at a rate of one and one-half percent (1.5%) for each month or pro-rated part of a month (or the maximum rate allowed by law, whichever is less) that the payment is overdue.
- 4.2 **Refunds.** Set-up fees and monthly recurring charges are non-refundable.

- 4.3 **Credit Approval.** Customer agrees that Opus's commencement of integration to initiate the Services and any expansion of Services following Customer's initial integration shall be subject to prior credit approval. Customer agrees to submit reasonable financial information upon request from Opus, including current financial statements and other information sufficient to allow Opus to assess Customer's ability to meet financial obligations under this Agreement. Customer represents and warrants to Opus that all such information is true and correct to the best of Customer's knowledge and belief. In the event that Customer refuses to provide reasonably requested financial information, or if Opus determines that Customer's financial condition does not warrant credit approval, Opus reserves the right to delay or terminate completion of integration or expansion of Services following initial integration. In the alternative, Opus may proceed with integration or expansion of Services upon such altered payment or other terms as the parties agree. Opus may decline to offer or later withdraw offering credit to Customer, as Opus deems fit in its sole and absolute discretion.

5. Term.

- 5.1 **Agreement.** This Agreement shall commence as of the Effective Date and shall remain in effect through the termination of all Service Orders ("**Term**"), unless earlier terminated in accordance with the terms of this Agreement.
- 5.2 **Service Orders.** Each Service Order commences on the date provided in the Service Order and continues for the time period specified in the Service Order ("**Service Order Term**"). Thereafter, each Service Order will automatically renew for successive periods equal to the applicable Service Order Term, unless either party gives the other written notice of its intent to terminate and not renew at least thirty (30) days' prior to the end of the initial Service Order Term or any renewal Service Order Term.

6. Termination.

- 6.1 **Termination for Material Breach.** Either party may terminate this Agreement for material breach by the other party upon written notice of not less than thirty (30) days and failure to cure the material breach within the notice period, except that such notice period shall be shortened to ten (10) days for Customer's failure to pay invoices when due.
- 6.2 **Customer's Discretionary Termination.** Customer may terminate this Agreement upon written notice of not less than thirty (30) days in the event of any of the following:
- (a) Opus makes changes to its AUP, which materially and adversely impair Customer's use of the Services and which are objectionable to Customer;

- (b) Opus modifies the Services in a manner which materially and adversely impairs the function or performance of the Services;

Such notice of termination must be delivered to Opus, if at all, within thirty (30) days of the event giving rise to the termination right. Other than as expressly set forth in this Section, Customer shall not have the discretionary right to terminate this Agreement or any Service Order prior to the expiration of the applicable Service Order Term. If this Agreement (or any applicable Service Order) is terminated prior to expiration of the Term, or Service Order Term, as applicable, for any reason other than as set forth in Section 6.1 and 6.2 or for an uncured material breach by Opus, then, in addition to any other rights and remedies Opus may have, Customer shall pay a termination fee equal to all monthly recurring fees under each Service Order for the remainder of the initial or then-current renewal Service Order Term (which the parties acknowledge reflect a reasonable measure of actual damages suffered by Opus as a result of the termination, which amounts are impossible or extremely difficult to ascertain and that such termination fee is not intended as a penalty but as liquidated damages). Prepaid Services are not refundable.

6.3 Opus's Additional Rights to Terminate or Restrict Services. Opus reserves the right (but shall have no obligation) to take additional action, including suspension of the Services, suspension of access to the Premises, and termination of any Service Order and/or this Agreement, in the following limited circumstances:

- (a) With or without notice, Opus may modify or terminate any or all Services or restrict Customer's use in whole or in part if, in Opus's sole judgment, use of the Services by Customer or its end users (i) presents a material security risk or will interfere materially with the proper continued operation of a data center or related services, or (ii) is subject to an order from a court or governmental entity stating that such use generally or for certain activities must stop. Where permitted under the relevant court or governmental order, Opus will notify Customer of such order promptly so that Customer will have an opportunity to respond to the order. Opus also will notify Customer promptly of any security risks identified under subsection (i) above and any action taken by Opus with respect to such security risks.
- (b) Upon notice of not less than seven (7) days and failure to cure within the notice period, Opus may modify or terminate any or all Services or restrict Customer's use in whole or in part if, in Opus's reasonable judgment, use of the Services by Customer or its end users (i) violates applicable laws or governmental regulations, including, without limitation, consumer protection, securities regulation, child pornography, obscenity, data

privacy, data transfer and telecommunications laws; (ii) violates or infringes any intellectual property right of Opus or a third party; (iii) violates export control regulations of the United States or other applicable countries; or (iv) otherwise violates Opus's AUP.

Notwithstanding anything to the contrary in this Agreement, Opus reserves the right to take whatever steps are necessary to comply with the shorter notice periods or other requirements of the Digital Millennium Copyright Act or any other applicable law or regulation.

6.4 Effect of Termination. Upon termination, all rights granted to Customer under this Agreement will terminate immediately. Customer shall deliver to Opus written instructions for disposition of all data files in Opus's possession within thirty (30) days of the notice of termination. Return, transfer, or back up of data files shall be at Customer's sole cost and expense. If written instructions are not received within thirty (30) days of the notice of termination, Opus will be authorized to destroy all Customer files and shall have no further obligation with respect thereto. Any such return, transfer, back up, or destruction is subject to any applicable law or governmental regulation. Customer remains liable to pay Opus for all Services received through the effective date of termination of this Agreement and for any periods during which Customer is still receiving all or some portion of the Services. The following sections will survive any expiration or termination of this Agreement: Section 7 (Customer Responsibilities), Section 9 (Confidentiality; Data Use; Privacy), Section 10 (Warranties and Warranty Disclaimers), Section 11 (Limitation of Liability; Remedies), Section 12 (Dispute Resolution; Governing Law), and Section 13 (Miscellaneous). Upon termination of this Agreement or any applicable portion of the Services, Customer shall relinquish use of any internet protocol addresses or address blocks assigned to it by Opus in connection with the applicable Services.

6.5 Removal of Equipment and Property. If Customer has equipment or property at the Premises at the end of a Service Order Term, Customer will remove all such equipment and property at the Premises within ten (10) days of the last day of the Service Order Term, provided that all fees have been paid in full. If Customer does not remove such equipment or property or cannot remove such equipment or property because of unpaid fees within such ten (10) day period, Opus may move any or all such equipment or property to storage and charge Customer for the cost of such removal and storage, without any cost, obligation, or liability of Opus to Customer. If Customer does not pay all fees due to Opus or has paid all fees but failed to remove such property from the Premises or storage facility within thirty (30) days of last day of a Service Order Term, Opus may liquidate and sell the equipment or property in any reasonable manner and apply any proceeds

against unpaid fees without Opus having any obligation or liability to Customer.

7. Customer Responsibilities

7.1 Customer's Responsibility for Use of the Services.

As between Customer and Opus, Customer agrees it is solely responsible for and assumes all liability relating to the following:

- (a) All aspects of Customer's business, including Customer's obligations to end users or other third parties and all business or financial results obtained by Customer from using the Services;
- (b) All technology, equipment, content and data provided by or through Customer for use with the Services, including performance of software applications provided by Customer;
- (c) Decisions about Customer's computer and communications systems needed to access the Services;
- (d) Decisions made by Customer with respect to maintenance, remote assistance, or other actions taken by Opus at the direction of Customer or according to configuration scripts or specifications provided by Customer;
- (e) Compliance with all applicable laws and governmental regulations regarding Customer's business or use of the Services;
- (f) Use of the Services by Customer's customers or end users;
- (g) Compliance with Opus's AUP by Customer and its customers and end users.

- 7.2 **Customer's Indemnity of Opus.** Customer will defend or settle any suit or proceeding brought against Opus by any end user or third party arising from (i) matters for which Customer has responsibility under this Section 7; (ii) violation by Customer of any obligations under this Section 7 or Section 9.1; (iii) claims that any content of Customer or its customers or end users, including but not limited to data, text, multimedia images (e.g. graphics, audio and video files), software, applications, or other materials (collectively "**Content**"), or the manner in which Customer or its customers or end users make use of the Services, infringes any patent, copyright, trademark, trade secret, publicity, privacy, or other right of any third party, or (iv) any civil or criminal violations of law or governmental regulations occurring as a result of actions or omissions of Customer or its customers or end users. Customer will pay all damages and costs finally awarded or reached through settlement against Opus (including any indirect or consequential damages awarded as a result of such proceeding). Opus will (x) promptly notify Customer in writing of any such suit or proceeding (provided that, in the event of a delay, Customer will not be relieved of its obligation to indemnify Opus unless Customer has been materially

prejudiced by the delay), (y) provide Customer with sole control over the defense or settlement of any such action (provided Customer may not settle any claim in any manner without Opus's prior written consent, not to be unreasonably withheld); and (z) provide reasonable information and assistance, at Customer's expense, in the defense or settlement of any such action. Opus may participate in any such suit or proceeding through counsel of its choice at Opus's own expense; provided, that the costs associated with Opus's counsel shall not be deemed damages or costs for purposes of Customer's indemnity hereunder. Notwithstanding the foregoing remedies, upon notice of not less than seven (7) days, Opus reserves the right (but shall have no obligation) to delete any Content installed on an Opus server and to modify or terminate any or all Services or restrict Customer's use in whole or in part in the event of any suit or proceeding, or threatened suit or proceeding, which may be subject to an indemnity obligation under this Section.

- 7.3 **Opus's Indemnity of Customer.** Opus will defend or settle any suit or proceeding brought against Customer based upon a claim that the Services alone and not in combination with any other product or service constitutes an infringement of any patent, copyright, or trade secret of any third party, and will pay all damages and costs (including any indirect or consequential damages awarded as a result of such proceeding) finally awarded or reached through settlement against Customer up to the liability limits of this Agreement; provided that the Customer (i) promptly notifies Opus in writing of any such suit or proceeding, (ii) provides Opus with sole control over the defense or settlement of any such claim or action; and (iii) provides reasonable information and assistance in the defense or settlement of any such claim or action. Customer may participate in any such suit or proceeding through counsel of its choice at Customer's own expense; provided, that the costs associated with Customer's counsel shall not be deemed damages or costs for purposes of Opus's indemnity hereunder. Upon notice of not less than seven (7) days, Opus reserves the right (but shall have no obligation) to modify or terminate any or all Services or restrict Customer's use in whole or in part in the event of any suit or proceeding, or threatened suit or proceeding, which may be subject to an indemnity obligation under this Section.

8. **Announcements and Promotion.** Neither party will issue any press releases or use the logo of the other party in an advertisement or other public announcement relating to this Agreement or the relationship between the parties without the prior written approval of the other. Customer agrees that Opus may include Customer's name in listings of Opus's customers.

9. Confidentiality; Restrictions on Data Use; Privacy.

- 9.1 **General Non-Disclosure.** In connection with this Agreement each party may have access to confidential and proprietary information of the other ("**Confidential**

Information"). Confidential Information includes information either marked as confidential or information known by the receiving party as being treated by the disclosing party as confidential. Each party agrees to keep Confidential Information confidential, not to use such information except as authorized by the disclosing party, and to accord to such information the same safeguards and protections which it accords to its own confidential business information. Confidential Information shall not include information: (i) that is now or becomes generally available to the public through no fault or breach of the receiving party; (ii) that the receiving party can document was already known to it prior to disclosure by the disclosing party; (iii) that is independently developed by the receiving party without use of any of the other party's Confidential Information, as can be shown by competent written evidence; and (iv) that the receiving party rightfully obtains from a third party who has the right to transfer or disclose it. If the receiving party is subpoenaed or ordered by any court or governmental agency to disclose Confidential Information, it will provide prompt written notice to the other party so as to allow such party to seek a protective order or confidential treatment for such information. Except as otherwise provided under this Agreement, neither party may disclose the terms and conditions of this Agreement other than with the express written consent of the other party.

10. Warranty Disclaimers.

- 10.1 **General Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THE SLA, THE SERVICES ARE PROVIDED "AS IS" AND OPUS MAKES NO WARRANTIES OR REPRESENTATIONS CONCERNING THE SERVICES OR ANY RESULTS TO BE ACHIEVED THROUGH USE OF THE SERVICES; OPUS DISCLAIMS ALL OTHER WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ALL IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.
- 10.2 **No Security Warranty.** OPUS DOES NOT GUARANTEE THAT ITS PROCEDURES AND SERVICES WILL PREVENT LOSS, ALTERATIONS OR UNAUTHORIZED ACCESS TO CUSTOMER DATA HOSTED BY OPUS.
- 10.3 **Disclaimer of Third Party Products and Services.** OPUS DOES NOT AND CANNOT CONTROL THE PERFORMANCE OF ANY DATA, PRODUCTS, OR SERVICES CONTROLLED BY THIRD PARTIES. AT TIMES, ACTION OR INACTION BY THIRD PARTIES CAN IMPAIR OR DISRUPT OPUS'S SERVICES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, OPUS MAKES NO REPRESENTATIONS, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING ANY THIRD PARTY HARDWARE,

SOFTWARE, PRODUCT, DATA, OR SERVICE INCLUDED WITH ANY OF THE SERVICES UNDER A SERVICE ORDER, INCLUDING TELECOMMUNICATIONS PRODUCTS OR SERVICES. SUCH HARDWARE, SOFTWARE, DATA, PRODUCTS, AND SERVICES ARE NOT PROMISED TO BE FREE OF ERROR OR INTERRUPTION, AND OPUS EXPRESSLY DISCLAIMS ALL LIABILITIES ARISING FROM ANY SUCH ERROR, INTERRUPTION, OR OTHER FAILURE. CUSTOMER ACKNOWLEDGES THAT AN INTERRUPTION IN SERVICES DUE TO CIRCUMSTANCES BEYOND THE REASONABLE CONTROL OF OPUS, SUCH AS A FAILURE OF TELECOMMUNICATIONS SYSTEMS NOT CONTROLLED BY OPUS, SHALL NOT BE CONSIDERED A SERVICE OUTAGE FOR PURPOSES OF ANY SERVICE LEVEL PROVIDED IN THIS AGREEMENT.

11. Limitation of Liability; Remedies.

- 11.1 **DAMAGES LIMITATION.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY'S LIABILITY ARISING UNDER THIS AGREEMENT, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), SHALL BE LIMITED TO DIRECT, OBJECTIVELY MEASURABLE DAMAGES AND NEITHER PARTY OR THEIR SUPPLIERS, INCLUDING SUPPLIERS OF TELECOMMUNICATIONS SERVICES, SHALL HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY THIRD PARTY, FOR ANY INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY OR OTHERWISE.
- 11.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE AGGREGATE LIABILITY OF OPUS AND ITS SUPPLIERS UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNTS PAID BY CUSTOMER TO OPUS HEREUNDER DURING THE ONE-YEAR PERIOD IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIMS.
- 11.3 **SOLE REMEDIES; MATERIALITY.** CUSTOMER AND OPUS AND ITS SUPPLIERS DISCLAIM ANY AND ALL LIABILITIES OR DAMAGES OTHER THOSE EXPRESSLY PROVIDED IN THIS AGREEMENT OR THE SLA. CUSTOMER AND OPUS ACKNOWLEDGES AND AGREES THAT THE LIABILITY OF CUSTOMER, OPUS AND ITS SUPPLIERS ARISING UNDER THIS AGREEMENT OR IN CONNECTION WITH THE SERVICES SHALL BE EXPRESSLY LIMITED TO THE LIABILITY AND

DAMAGES PROVIDED HEREIN. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS REFERENCED IN THIS SECTION ARE MATERIAL TERMS TO THIS AGREEMENT.

- 11.4 **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement because of any event beyond the reasonable control of that party, including, but not limited to, natural disaster, acts of God, actions or decrees of governmental bodies or failure of communication lines (a "**Force Majeure Event**"), the party who has been so affected shall promptly give notice to the other party and shall use commercially reasonable efforts to resume performance. Upon receipt of such notice, all affected obligations under this Agreement shall be immediately suspended for the duration of such Force Majeure Event. If any Force Majeure Event substantially prevents or hinders performance of the Services for more than fifteen (15) consecutive days, then Customer may terminate this Agreement without penalty to Customer or Opus upon written notice of not less than thirty (30) days. Such notice must be delivered to Opus, if at all, no later than thirty (30) days following such fifteenth (15th) consecutive day of the Force Majeure Event.

12. Dispute Resolution; Governing Law.

- 12.1 **Arbitration.** The rights and liabilities of the parties arising out of or relating to this Agreement will be governed by the laws of the state of Oregon, and any dispute arising out of or relating to this agreement will be submitted to binding arbitration in Portland, Oregon, pursuant to the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award may be entered in a court of competent jurisdiction; provided, however, that either party may seek preliminary injunctive or other equitable relief pending arbitration to prevent irreparable harm.
- 12.2 **Jurisdiction and Venue.** Any action to enforce an arbitrator's decision, award, order, or judgment, or any claim which is beyond the scope of this arbitration provision, shall be submitted by any affected party to a court of competent jurisdiction located in Washington or Multnomah County, Oregon, U.S.A., and each party hereby agrees to exclusive jurisdiction and venue in the courts of the State of Oregon for all such disputes and litigation arising under or relating to this Agreement.
- 12.3 **Governing Law.** Any claim arising under or relating to this Agreement shall be governed by the internal substantive laws of the State of Oregon and the federal courts located in Oregon, without regard to principles of conflict of laws. The parties agree that no action, regardless of form, arising out of the Services of the terms of this Agreement may be brought by either party more than two (2) years after the cause of action has arisen.

- 12.4 **Attorneys' Fees.** In the event of any dispute or arbitration hereunder, the prevailing party shall be entitled to recover its costs and disbursements incurred, together with reasonable attorneys' fees to be fixed by the arbitrator or court at trial or on appeal.

13. Miscellaneous.

- 13.1 **Notice.** Unless otherwise stated herein, all notices under this Agreement shall be written and shall be delivered by hand, post, or email to the persons and at the addresses as set forth below and shall be deemed given upon transmission in the case of email, and otherwise upon delivery.

To Opus:

Opus Interactive, Inc.
8135 NE Evergreen Parkway, Suite 1220
Hillsboro, OR 97124
legal@opusinteractive.com

To Customer:

To the address specified in the Service Order.

- 13.2 **Invalidity.** The invalidity or unenforceability for any reason of any provision of this Agreement shall not prejudice or affect the validity or enforceability of its other provisions.
- 13.3 **Cumulative Remedies.** Except as otherwise expressly provided in this Agreement or an attachment, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.
- 13.4 **Non-Solicitation.** Customer agrees not to hire or solicit for employment any of Opus's employees during the Term of this Agreement and for a period of 180 days after the termination of this Agreement. The parties acknowledge that any violation of this Section 13.4 would cause irreparable harm. Accordingly, in an addition to any other remedies available to Opus, Opus shall be entitled to preliminary and permanent injunctive relief for any violation of this Section 13.4.
- 13.5 **Assignment.** Neither party may assign any of its rights, obligations, or privileges (by operation of law or otherwise) hereunder without the prior written consent of the other. Notwithstanding the foregoing, upon notice to the other party, either party may assign all of its rights and obligations under this Agreement to a successor entity as part of a merger, sale, or consolidation involving transfer of all or substantially all of the party's stock or assets, provided that the assignee or successor entity agrees to be bound by the terms of this Agreement. Subject to the foregoing, this Agreement shall be binding upon and inure to the

benefit of the parties and their respective officers, directors, employees, successors, and assigns.

- 13.6 **Interpretation.** The headings to the Agreement provisions are for reference only and shall not affect their interpretation. In the event that any term of this Master Customer Agreement conflicts or is inconsistent with the terms of any exhibit, schedule, or other attachment, the terms of this Master Customer Agreement shall control.
- 13.7 **Independent Contractor.** The parties hereto are independent contractors. Nothing in this Agreement will be construed to make the parties partners or joint venturers or to make either party liable for the obligations, acts or activities of the other.
- 13.8 **No Third-Party Beneficiaries.** The provisions of this Agreement are intended solely for the benefit of Customer and Opus and its suppliers and shall create no rights or obligations enforceable by any other party unless such beneficiaries are expressly set forth in a Schedule hereto.
- 13.9 **Entire Agreement; Amendment.** This Agreement, including all Service Orders, the Service Level Agreement, the AUP and all Exhibits and Schedules constitutes the entire agreement between the parties with respect to matters contained herein, and all prior or contemporaneous agreements and negotiations with respect to those matters are superseded by this Agreement. No waiver of any breach or default shall constitute a waiver of any subsequent breach or default. Any changes to this Agreement, or any additional or different terms in Customer's purchase orders, acknowledgments, or other documents, will not be effective unless expressly agreed to in writing by the party against whom enforcement is sought.

SERVICE LEVEL AGREEMENT AND ESCALATION PROCEDURE & CONTACTS

This Service Level Agreement (“**SLA**”) is incorporated by reference into the Service Order signed by Customer and Opus and is subject to all terms and conditions set forth in the Master Customer Agreement (“**MCA**”) referred to therein. Each Service Level and the corresponding Service Level Credit described in this SLA are applicable only to the Services indicated. Customer will only be eligible for Service Level Credits for Services specified in a Service Order. Capitalized terms used and not defined herein shall have the meanings given them in the MCA.

1. TERMS AND DEFINITIONS

- 1.1 **“Availability”** means the percentage of time in a month that a Service could be utilized by Customer, subject to the terms of the MCA and this SLA.
- 1.2 **“Measurement Time Period” or “Month”** means the calendar month for which all Availability calculations shall be based for purposes of this SLA, beginning on the 1st day of such calendar month.
- 1.3 **“Maintenance Window”** means a defined time frame within which Opus and/or its vendors may carry out maintenance. Maintenance Windows are scheduled a minimum of 24 hours in advance. The purpose of a Maintenance Window is to perform maintenance activities such as changes or upgrades to shared infrastructure, core routing or switching equipment, or other data center facilities. Notifications of Maintenance Windows are sent via email to all Customer contacts on record. Opus's regular Maintenance Windows occur Wednesday night at midnight and Saturday night at midnight during off-peak hours. Notwithstanding anything contained in this SLA to the contrary, remedies in this SLA do not apply during performance of Maintenance Windows. Customer shall not be entitled to any service credits as a result of Maintenance Windows.
- 1.4 **“MRC”** means the Monthly Recurring Charges for the applicable Services.
- 1.5 **“Office Hours”, “Business Hours” or “Normal Business Hours”** means 8:00 am until 6:00 pm Pacific Time, Monday through Friday, excluding the holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
- 1.6 **“Response Time”** means the period of time between Customer reporting a service issue until the moment Opus actively begins responding to the information reported.
- 1.7 **“Scheduled Customer Maintenance”** includes the installation of hot fixes, service packs, software and software upgrades, pre-failure hardware replacement, hardware upgrades, etc. It also includes shutdowns or reboots that occur in the normal course of maintaining a server. Customer will be notified in advance of a Scheduled Customer Maintenance event unless specifically agreed to otherwise. Notification will take place via email, support ticket, or phone call to Customer's technical contact, or a combination of the above depending upon the nature of the maintenance issue. Notwithstanding anything contained in this SLA to the contrary,

remedies in this SLA do not apply to outages which result from Scheduled Customer Maintenance. Customer shall not be entitled to any service credits as a result of Scheduled Customer Maintenance. Opus reserves the right to perform emergency maintenance without notice and without incurring any obligations to provide service credits to Customer under the terms of this SLA if the maintenance is reasonably necessary to maintain the security any of the servers hosted or maintained by Opus.

- 1.8 “Scheduled Maintenance”** means activities during the Maintenance Window, announced by Opus at least 24 hours prior to commencement.
- 1.9 “Services”** has the meaning given in the MCA.
- 1.10 “Subscription Service”** means a pre-commitment of a RemoteHands or SmartHands block of hours where 1-hour maximum Response Time and 15-minute billing increments is realized. Pre-committed hours do not rollover month-to-month.
- 1.11 “Time to Repair”** means the period of between Customer reporting a Service issue and moment that the Service issue has been resolved.

SUMMARY OF SERVICE LEVELS

SERVICE LEVEL	SERVICE LEVEL TARGET	INCIDENT	SERVICE LEVEL CREDIT
Dedicated Server Hardware	4 Hour Hardware Replacement	Hardware not replaced within 4 Hours	1 day subscription per hour of downtime (after 4 Hours)
Cloud Hosting	100% Availability	Cloud Instance ‘unavailable’ during calendar month	1 day subscription per hour of downtime*
Co-location	100% Availability	Service ‘unavailable’ during calendar month	1 day subscription per hour of downtime*
Opus Network Availability	100% Availability	Network ‘unavailable’ during calendar month	1 day subscription per hour of downtime*
Telephone Support Response	Response to call within 15 minutes	Failure to respond within 15 minutes	1 day subscription per hour of delay*
Telephone Support – Access to Engineer	Engineer will commence dealing with issue within 30 minutes of call logged	Failure to commence within 30 minutes	1 day subscription per hour of delay (after 30 minutes)*

*Hour of downtime = hour or part thereof. MRC is the Monthly Recurring Charge for the applicable Service, as detailed on the Service Order. 1 day subscription is calculated as the MRC for the applicable Service divided by the number of days in the calendar month in which the incident occurs. The maximum service credit available in any calendar month is 50% of the MRC.

2. CO-LOCATION SERVICE LEVELS

2.1 POWER AVAILABILITY

Power to the outbound port on Customer serving power distribution unit (PDU) to be available 100% of the time in a calendar month.

2.2 ENVIRONMENTAL CONTROL

Opus shall use commercially reasonable efforts to maintain cold aisle conditions in the Premises, as measured at two (2) to five (5) feet above the floor level, in accordance with the “Recommended Level” set forth in the then-current ASHRAE TC 9.9 (American Society of Heating, Refrigeration and Air-Conditioning Engineers, Technical Committee 9.9) Design Considerations for Datacom Equipment Centers, for Class 1 buildings (the “ASHRAE Standards”), the current version of which is set forth in Table 2.2 below.

Table 2.2
2008 ASHRAE Environmental Guidelines for Datacom Equipment

Condition	Allowable Level	Recommended Level
Temperature Control Range	59° F - 90° F	64.4° F - 80.6°F
Maximum temperature rate of change	9° F per hour	
Relative humidity control range	20%-80%	
63° Max Dew point	25%-60%	

ASHRAE TC 9.9 Class 1: Typically a Datacom facility with tightly controlled environmental parameters (dew point, temperature, and relative humidity) and mission critical operations; types of products typically designed for this environment are enterprise servers and storage products.

In the event that:

1. (a) There is a failure of the HVAC system to maintain the Temperature Control Range of the cold aisle within the “Recommended Level” of the then-current ASHRAE Standards, Opus shall make the necessary adjustments to restore the “Recommended Level” conditions within twenty-four (24) hours of receiving notice from Customer of such failure to maintain such conditions, and (b) if such failure is not cured within twenty-four (24) hours after Opus receives notice of such failure, despite Opus using diligent efforts to cure the same, an “**Environmental SLA Violation**” shall be deemed to have occurred and Customer shall be entitled to receive a Service Level Credit as set forth in the Summary of Service Levels Table for this SLA, to the extent applicable.

2. Opus fails to maintain conditions within the then-current ASHRAE Standards “Allowable Level,” in the cold aisle, an “**Environmental SLA Violation**” shall be deemed to have occurred and Customer shall be entitled to receive a Service Level Credit as set forth in the Summary of Service Levels Table for this SLA, to the extent applicable.

2.3 NETWORK AVAILABILITY

Opus's data center Network Infrastructure will provide 100% Network Availability in each calendar month. **"Network Infrastructure"** is defined as the portion of the network extending from the outbound port on the Customer cabinet switch to the outbound port on the border router. **"Network Availability"** is defined as the ability to pass TCP/IP traffic with less than 10% packet loss and less than 50ms latency across the Network Infrastructure. If Opus fails to meet 100% Network Availability in a Time Measurement Period, Customer shall be entitled to receive a Service Level Credit as set forth in the Summary of Service Levels Table for this SLA.

3. CLOUD HOSTING – VMware® VIRTUAL DEDICATED SERVERS SERVICE LEVELS

3.1 Instance Availability. Customer's VMware® virtual machine instances will be Available 100% of each Measurement Time Period.

3.2 Storage Availability. Storage space connected to Customer's VMware® virtual machine instances will be Available 100% of each Measurement Time Period.

4. MANAGED SERVICES SERVICE LEVELS

4.1 DEDICATED SERVER HARDWARE

Server Hardware Replacement. All Server Hardware components provided by Opus will function properly in all material respects and Opus will replace any failed component at no cost to Customer. Server Hardware replacement will begin when an Opus technician identifies that a problem exists, and will be completed within four (4) hours. **"Server Hardware"** is defined as the processor(s), RAM, hard disk(s), motherboard and NIC card. This Service Level excludes the time required to rebuild a RAID array, reload the operating system, reload and configure applications, and/or restore from backup (if necessary).

Remedy: In the event that Opus fails to replace failing Server Hardware within four (4) hours of problem identification by an Opus technician and such failure directly and adversely affects Customer's hosted configuration, Customer is entitled to receive a Service Level Credit in the amount of 5% of the MRC for each hour of downtime (up to a maximum of 50% of MRC of the affected Services for the month in which the Service Level failure occurs) for the affected components.

4.2 NETWORK DEVICE MANAGEMENT

If Opus manages and maintains any advanced network devices in Customer's configuration, a default device configuration is implemented at the time of initial installation Customer's configuration unless otherwise specified by Customer. Changes to the default configuration must be specifically requested in writing by Customer.

Firewalls are managed and monitored 24/7/365 by Opus. The initial firewall rule-set adheres to a strict "default-deny" policy which means that only a select few TCP/UDP ports are open on

the firewall for remote management purposes. The opening of additional ports must be specifically requested in writing by Customer.

Basic, non-emergency configuration changes will be implemented within one (1) business day after receipt of a written request from Customer.

4.3 NETWORK DEVICE AVAILABILITY

High-Availability Network Devices. A high-availability network device solution typically requires two (2) devices configured in a fail-over configuration. Opus network devices configured for high availability will be Available 100% of each Measurement Time Period.

Remedy: In the event that Opus fails to maintain 100% Availability of network device(s) configured for high-availability during a Measurement Time Period and such failure directly and adversely affects Customer's hosted configuration, Customer is entitled to a Service Level Credit equal to 5% of the MRC for the affected Services for each hour of downtime (up to 50% of Customer's MRC for the affected Services for Measurement Time Period in which the downtime occurred) for the affected component(s).

Non-Redundant Network Devices. In the event of failure of a non-redundant Opus network device (i.e. a device not configured for high availability) which causes an outage in Customer's hosted configuration, the device will be repaired or replaced within eight (8) hours of problem identification by an Opus technician.

Remedy: In the event that Opus fails to repair or replace a non-redundant Opus network device and such failure directly and adversely affects Customer's hosted configuration, Customer is entitled to a Service Level Credit in an amount equal to 5% of the MRC for the affected Services for each hour of downtime (up to a maximum of 50% of Customer's MRC for the Measurement Time Period in which the network device failure occurs) for the affected component(s).

4.4 STORAGE AREA NETWORK (SAN) AVAILABILITY

Opus has built its SAN infrastructure on storage hardware from HP, a leader in enterprise storage. The SAN is built with redundancy in each component of the SAN infrastructure. The physical storage arrays have RAID 5 or better disk pools, redundant power, redundant connectivity, and cooling systems. The logical disk arrays are constructed using RAID striping technology network based RAID schemes. The storage targets and hosts are connected using trunked and multi-path networking. If there is a SAN failure, Opus will repair the SAN within two (2) hours of the time that the cause of the problem is identified by an Opus technician.

Remedy: In the event a failure of the SAN causes the Customer's application(s) to be unavailable, and the failure is not repaired within two (2) hours of the time a Opus technician identifies the cause of the problem, and such failure directly and adversely affects Customer's hosted configuration, Customer is entitled to a Service Level Credit in the amount of 5% of the MRC for the affected Services for the first hour of downtime and 5% of the MRC for the affected Services for each additional hour of downtime thereafter (up to a maximum of 50% of MRC for the affected Services for the Measurement Time Period in which the unavailability occurs) for the affected SAN storage.

4.5 OPERATING SYSTEM PATCHING

When software vulnerabilities are revealed and addressed by a vendor patch, Opus obtains the patches from the vendor and categorizes the urgency of application as either "critical" or "non-critical" in nature. The determination of the critical/non-critical nature of patches is solely at the discretion of Opus, and Opus shall have no liability to Customer or to any third party with respect to such determination. Opus will conduct testing for patches in its lab and in its internal production environment. Patches will be applied after they have been approved and qualified by Opus technicians. Non-critical patches are typically applied on a monthly basis whereas critical patches are applied on an "as needed" basis.

Opus will apply any vendor supplied patch to supported software within one (1) business day of receiving a written request from Customer. Patches will be applied with the understanding that the patch has not been fully tested by Opus, and no guarantees are made by Opus as to the outcome of application of such patches. Opus will only apply vendor supplied and vendor supported patches. Customer will be notified via support ticket prior to the application of patches, unless agreed to otherwise.

4.6 DATA BACKUP

Opus will only perform backups if Customer purchases the managed backup Services. Upon purchase, Opus will schedule, perform, monitor, and maintain Customer data backups.

Default Backup Policy. Opus will back up all files and file systems on each server in Customer's configuration included in within paid services. Default backup policy includes full backup of all files to a central disk repository. Data backups are retained onsite for 10 days unless otherwise agreed in writing.

Database Backups. Open database files cannot be backed up without the use of a software backup agent. Databases will only be backed up if such a backup software agent specific to Customer's database software is utilized, or if databases are dumped to flat files prior to scheduled backup. By default, if a database agent is not available, databases will be dumped to flat file daily for backup. Opus will not be held responsible for backing up or restoring any open files.

Remedy: In the event that Opus fails to perform data backups in accordance with the standards set forth above and such failure directly and adversely affects Customer's hosted configuration, Customer is entitled to a service credit of 5% of MRC for the affected Services for the first event, 5% of MRC for the affected Services for the second event, and 5% of MRC for the affected Services for the third and subsequent events (up to a maximum of 50% of MRC for the affected Services for the Measurement Time Period in which the event(s) occurs).

4.7 DATA RESTORATION

Local Restores. Opus will initiate restoration of Customer's data within one (1) hour of receipt of Customer's written request. Customer is allowed two (2) free local restoration events per calendar month. Additional restores will be billed at Opus's standard hourly rates.

Remedy: In the event that Opus fails to perform data restores in accordance with the standards set forth above, Customer is entitled to a service credit of 5% of MRC for the affected Services for the first event, 5% of MRC for the affected Services for the second event, and 5% of MRC for the affected Services for the third and subsequent events (up to a maximum of 50% of MRC for the affected Services for the Measurement Time Period in which the event(s) occurs).

NOTE: Due to the fact that backups are made over a period of hours and are not an instant point-in-time snapshot, a full server restore will likely provide inconsistent results. In the event of a complete server recovery ("full restore"), Opus cannot guarantee that the restore procedure will provide a fully functional operating system and/or application. Opus recommends that a partial restore be used to recover specific files necessary to rebuild a server, rather than performing a full restore. If a full restore is required and requested by Customer, Opus will undertake such restoration with the understanding that it does not guarantee the results. Opus recommends migrating to a new server as soon as possible after a full restore to ensure reliability and proper functionality of the operating system and applications.

4.8 MONITORING

Availability Monitoring. Opus will monitor up to ten (10) TCP ports (HTTP, HTTPS, SMTP, POP3, etc.) per server for service availability. General server availability is tested every five minutes via PING.

Fault Monitoring. Opus monitors status events on servers and network devices including network availability, process status, file system capacity, and backup success/failure.

Performance Monitoring. Opus monitors key performance metrics for operating system (i.e. CPU, RAM, Disk).

4.9 RESPONSE TIMES

When alerted of a potentially critical problem by any Opus monitoring systems, Opus will begin troubleshooting and addressing the problem and will initiate Customer contact via support ticket, telephone call, or both depending upon the severity of the situation or the rules of engagement according to the table below. Customer-initiated trouble tickets will receive responses in the same manner. Customer may choose the severity level for each incident (subject to Opus' mutual agreement). Once a severity level is mutually agreed upon by the parties, the parties may thereafter mutually agree to escalate or deescalate the severity level any issue at any time. In the event that the severity levels cannot be mutually agreed upon by the parties, Opus shall have final decision-making authority with respect to the severity levels, as determined by Opus in its reasonable, good faith discretion.

Priority/Severity Levels and Response Times

PRIORITY/ SEVERITY LEVEL	EXAMPLE SITUATION	SUPPORT	RESPONSE
Emergency Users cannot access your server or site	Server, switch or site down.	24x7	Within 15 minutes
Urgent Site effectively down due to severe performance degradation from the public Internet. Server or site functioning improperly or at less than optimal performance	Your server or site is generally accessible and functioning for most users but some portion of application requires troubleshooting	24x7	Within 1 Hour

Remedy: In the event that Opus fails to meet the Response Times set forth above, Customer is entitled to a service credit of 5% of MRC for the affected Services for the first event, 5% of MRC for the affected Services for the second event, and 5% of MRC for the affected Services for the third and subsequent events (up to a maximum of 50% of of MRC for the affected Services for the Measurement Time Period in which the failure(s) occurs).

RemoteHands & SmartHands SLA

RemoteHands & SmartHands requests are generally accommodated as quickly as possible. Depending on the type of request, Opus targets, but does not guarantee, a maximum Response Time of 15 minutes, Monday through Friday 9:00am to 6:00pm, and 1 hour all other times post receipt of the complete service request. A complete request is defined as a request originating from an authorized Customer contact via accepted means, and containing complete instructions as to what actions Customer wishes the Opus technician to perform. Customer will be informed via e-mail support ticket of both the receipt of the request, and the completion of the requested work.

5. SUPPORT & ESCALATION PROCEDURES AND CONTACTS

5.1 Acceptable methods and procedures for initiating non-critical service requests and general technical inquiries/consulting.

- **Support Portal:** <https://hosting.opusinteractive.com/portal/>
- **NMS Portal:** <https://nms.opusinteractive.com>
- **NOC Email:** support@opusinteractive.com
- **General Support Line:** 888-678-7001
- **NOC Line:** 503-972-4000

5.2 Escalation procedures and contacts for urgent/critical (outage or severely impacted performance).

	OFFICE HOURS	NON OFFICE HOURS
1	NOC Line: 503-972-4000	Dispatch Line: 503-972-6686
2	Dispatch Line: 503-972-6686	Thomas Alombro , Operations Team Lead 503.972.3994 direct 503.789.2796 cell Email: thomas@opusinteractive.com
3	Thomas Alombro , Operations Team Lead 503.972.3994 direct 503-789.2796 cell Email: thomas@opusinteractive.com	Jeremy Sherwood , VP of Operations 503.552.1492 direct 503.836.2030 cell Email: jeremy@opusinteractive.com
4	Jeremy Sherwood , VP of Operations 503.552.1492 direct 503.836.2030 cell Email: jeremy@opusinteractive.com	Brady Wilson , CTO 503.972.3983 direct 503.572.4583 cell Email: brady@opusinteractive.com
5	Brady Wilson , CTO 503.972.3983 direct 503.572.4583 cell Email: brady@opusinteractive.com	Eric Hulbert , President 503.972.3961 direct 503.572.4994 cell Email: eric@opusinteractive.com
6	Eric Hulbert , President 503.972.3961 direct 503.572.4994 cell Email: eric@opusinteractive.com	

6. LIMITATIONS

6.1 MAXIMUM CREDITS

Customer is limited to a maximum of 50% of the MRC for individual affected Service. Notwithstanding anything contained in the SLA to the contrary, the maximum total credit for any Measurement Time Period shall not exceed 50% of Customer's MRC (the "**MRC Cap**"). Any service level credits for a particular Measurement Time Period to which Customer would have been entitled except for the fact that such service level credits exceeded the MRC Cap shall not be carried over to any subsequest month, and Customer forfeits and shall have no right to receive any such service level credits. If a single event during a Measurement Time Period causes Opus's failure to meet more than one (1) of the service levels described in this SLA, Customer will be entitled to a service level credit for only the

service level failure with the highest dollar value of service level credits with respect to the affected Services. SERVICE LEVEL CREDITS WILL NOT BE GRANTED FOR CUSTOMER DOWNTIME OR OUTAGES RESULTING FROM DENIAL OF SERVICE ATTACKS, VIRUS ATTACKS, HACKING ATTEMPTS, OR ANY OTHER CIRCUMSTANCES THAT ARE NOT WITHIN THE DIRECT CONTROL OF OPUS.

Opus utilizes several tools and software products to deliver many of the Services described in this SLA. Customer retains complete administrative control over servers at the Premises and, therefore, has the capability of removing or disabling these software products on its servers, as well as altering or removing login accounts used by Opus to manage the servers. If Customer disables, removes, or otherwise blocks the functionality of any of the following products from its servers, Opus will not be responsible for meeting the service levels set forth in this SLA or providing certain key portions of the Service offering: VMware client, SNMP Agents, Veeam Agents and R1Soft Backup Agents. Unless Customer notifies Opus before disabling any of the Services listed above for periods longer than 30 minutes, the service levels for any related Services will not apply the applicable calendar month.

6.2 EXCLUSIONS

Customer will not be entitled to any service level credits described in this SLA if Opus's failure to provide the Services in accordance with the applicable service level is due, in whole or in part, to any of the following:

- Opus Scheduled Maintenance.
- Customer generated-matters, including:
 - Scheduled Customer Maintenance (including, without limitation, repairs, upgrades, or scheduled or requested Service interruptions or modifications to a Service).
 - Customer failing to provide Opus appropriate access to enable Opus to provide the Services and/or to remediate a failed Service.
 - Matters tied to Customer-provided equipment (including, without limitation, matters caused by or related to Customer's access circuits, network devices, applications, equipment, server hardware, operating system, facilities, or configuration changes).
 - Customer acts or omissions or the acts or omissions of Customer's end users or others engaged or authorized by Customer (including, without limitation any negligence or willful misconduct), or the acts of Opus that are not included in the Services performed at Customer's exclusive direction.
- Extraordinary events including without limitation, denial of service attacks, virus attacks, and hacking attempts.
- False failures such as an erroneously reported outage or issue, failures reported as a result of outages or errors of a Opus measurement system, or failures resulting from Services monitoring or testing performed to simulate a failure.
- Non-standard configuration matters, as defined by Opus, caused by a Customer-requested or Customer-installed non-standard or unsupported configuration, including, without limitation, failure of Customer to observe hot/cold aisle adherence.

- External network conditions caused by general network conditions outside the reasonable control of Opus.
- Non-impacting failure of a Service or feature that does not result in downtime of a Service including reporting, dashboard, FTP upload or statistics generation, and outages or downtime associated with Customer's designated non-production Service (e.g., staging, testing or development) that is unrelated to hardware or network failures.
- Expected performance matters caused by usage patterns, traffic or amperage draws that exceed the reasonable performance parameters of the affected Services.
- Transactional applications matters resulting from the state of transactional applications such as Microsoft SQL Server, Oracle or Exchange databases, other commercially available database systems including any open systems freeware products, and any other transactional software that provides a user-to-system or system-to-system data connection.

6.3 FORCE MAJEURE

If Opus fails to meet a service level as a result of an act of God, strikes, fire, riot, war (whether declared or not), terrorism, embargoes, export control, international restrictions, shortage of transport facilities, any order of any international authority, any court order, any requirements of any authority or other competent local authority, or any other circumstances whatsoever which are not within the reasonable control of Opus, then Opus will be deemed to have been relieved of the performance of its undertakings under this SLA to the extent that and for so long as it is so prevented from performing such undertakings, and this SLA will be deemed to have been suspended to such extent and for the period concerned.

7. CUSTOMER SERVICE LEVEL CREDIT REQUESTS

Customer must submit a written request within five (5) business days following a service level failure for which a service level credit is claimed to either (a) the Opus Account Manager assigned to its account, (b) by submitting a support ticket through Opus's customer portal at <https://hosting.opusinteractive.com/portal/>, or (c) via postal mail to 8135 NE Evergreen Parkway, Suite 1220, Hillsboro, OR 97124. Opus will contact Customer within two (2) business days of its receipt of the request to approve the claim or to request additional information to determine cause. If Customer's claim is approved, such service level credit will appear on Customer's monthly invoice following approval. Service level credits shall not be provided if Customer is in payment default or in violation of Opus's Acceptable Use Policy at the time the alleged service level failure occurred.

8. EXCLUSIVE REMEDIES

CUSTOMER'S RIGHT TO RECEIVE SERVICE LEVEL CREDITS AS DESCRIBED IN THIS SLA IS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND OPUS'S SOLE AND EXCLUSIVE LIABILITY FOR ANY FAILURE BY OPUS TO MEET THE SERVICE LEVELS PROVIDED HEREIN.