



MASTER SERVICES AGREEMENT

This Master Services Agreement is between Hi-Link Technology Group LLC ("Service Provider") and the City of Mount Vernon NY ("Customer"). Service Provider and Customer agree as follows:

1. GOVERNING PROVISIONS.

1.1 This Agreement governs all orders executed by Customer and Service Provider ("Service Order(s)") providing for Customer's access to and use of any service ("Service") provided to it by Service Provider. The agreement ("Agreement") between Customer and Service Provider consists of this Master Services Agreement, Service Orders, and the Service Provider Addendum for each specific type of Service which Customer obtains from Service Provider ("Addendums"). Addendums for anticipated Services are attached hereto and incorporated herein by reference. Additional Addendums may be attached to Service Orders and shall be incorporated herein upon execution of such Service Orders. Note, if the terms are in direct conflict with other Agreement terms, the following order will prevail, Addendum terms, Customer Service Order, Amendments, Master Service Agreement, Statement of Work & Exhibits shall govern with respect to such Service to the extent required to resolve the conflict.

1.2. Customer may order additional Services pursuant to this Agreement. Service Provider may require execution of a Service Order for such additional Services which, upon execution by Customer and Service Provider, shall be deemed to be part of this Agreement. Service Provider may, at its option, permit Customer to add additional Services by Customer's e-mail request. Such additional Services shall be deemed to be provided pursuant to the terms of this Agreement upon Service Provider making such additional Service available to Customer. Unless otherwise specified by Service Provider or this Agreement, the price of such additional Services added without a Service Order shall be the Service Provider then standard rates and the Term of the Service shall not be affected.

1.3. Customer may purchase a support plan from Service Provider which will entitle Customer to specified support for issues which are not Service Interruptions as defined in the applicable addendums.

2. INVOICING AND PAYMENT.

2.1. CHARGES. Customer shall pay in U.S dollars for all charges for Services. Charges for a Service shall commence to accrue on the Billing Commencement Date for the Service (as specified in the applicable Addendum). Monthly recurring charges will be invoiced to Customer in advance at the beginning of the month for which the charges accrue. Payments for Monthly recurring charges are due upon receipt of invoice. Non-recurring charges are due upon Effective Date of this agreement.

2.2 TAXES. Customer shall pay applicable taxes imposed by any taxing authority with respect to the Services, excluding any tax on Service Provider's net income.

2.3. BILLING DISPUTES. If Customer believes a Service Provider bill contains an error, Customer shall notify Service Provider of the suspected error within sixty (60) days of the date of the disputed bill. Service Provider shall have no obligation to make any billing adjustment or refund for any errors for which Customer has not provided Service Provider timely notice. Disputed charges to the extent found to be in error shall not incur late fees.

2.4. LATE CHARGES AND COLLECTION COSTS. Charges not in dispute which are not paid by Customer within thirty (30) days of Service Provider's invoice shall accrue a late fee which shall accrue daily at the rate of one and one-half percent (1 1/2%) per month until paid. Customer shall pay Service Provider's reasonable costs of collection, including reasonable attorneys' fees, incurred by Service Provider in collecting any charges payable to it by Customer.

3. TERM AND TERMINATION OF SERVICES PURSUANT

TO A SERVICE ORDER.

3.1. TERM. The "Term" of Services provided pursuant to each Service Order shall initially be for the period specified in the applicable Service Order for such Services ("Initial Term"). The Initial Term of each Service Order shall commence on the date that Service Provider accepts the Service Order. Upon termination of its Term, the Service Order Term shall automatically renew for additional one-year Terms unless written notice of termination is provided by either party 30 days prior to the completion of a pending Term.

3.2. TERMINATION. Either Customer or Service Provider may terminate the Services pursuant to a Service Order for cause if: (1) the other party breaches a material term or condition of this Agreement or the Service Order and fails to cure the breach within thirty (30) days after receipt of written notice of the breach; (2) the other party fails to cure a payment default within five (5) days after written notice by Service Provider of the default; (3) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (4) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors if such petition or proceeding is not dismissed within sixty (60) days of filing.

3.3. EARLY TERMINATION FEE. Except in the event of termination by Customer pursuant to section 3.2 or at the end of the Term by providing notice in accordance with section 3.1, Customer shall pay Service Provider, as liquidated damages and not as a penalty, an early termination fee equal to one hundred percent (100%) of the monthly service fee for the remaining portion of the Term.

3.4. EFFECT OF TERMINATION. At the end of the Term or upon termination of the Services by either party for any reason, Service Provider shall cease providing the Service pursuant to the affected Service Order. Customer's obligations, including without limitation, to pay sums due and protect Proprietary Information, shall survive.

4. PROHIBITED USE OF SERVICES AND LAW

ENFORCEMENT ACTIVITIES. Customer shall not use any Service in a manner prohibited by law or that Service Provider reasonably determines may adversely affect a Service, Service Provider's systems, Service Provider suppliers or other Customers, the integrity and operation of Service Provider's business, or Service Provider's ability to provide Services to other Service Provider customers. Service Provider may terminate any Service without notification if Service Provider determines to its reasonable satisfaction that Customer has used the Service to engage in any prohibited activity or a situation exists which may result in a similar threat (e.g. a denial-of-service attack). Any such Service Provider action shall not be deemed to be a Service Interruption. Service Provider may cooperate with law enforcement agencies in any investigation related to the use of a Service Provider Service and investigate any complaint or reported violation of law or Service Provider's policies and take any action it deems is reasonably appropriate as a result of such investigations.

5. EMERGENCY AND SCHEDULED MAINTENANCE. In the event of any change in Service Provider standard scheduled maintenance window, Service Provider will provide reasonable notice by email to Customer of scheduled maintenance affecting the Services and will use reasonable efforts to notify Customer of emergency maintenance affecting the Services, provided that Service Provider may perform emergency maintenance at any time, without advance notice to Customer. During scheduled and emergency maintenance periods, Service Provider's Services may be unavailable to Customer. Service unavailability during maintenance periods shall not be considered a Service Interruption for purposes of service level provisions.

6. DISCLAIMER OF WARRANTY. SERVICE PROVIDER PROVIDES THE SERVICES "AS IS" AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED. SERVICE PROVIDER SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, INCLUDING ANY WARRANTIES THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS.

7. LIMITATIONS OF LIABILITY.

7.1 CUSTOMER'S EXCLUSIVE REMEDY FOR ANY FAILURE OF SERVICE PROVIDER'S OBLIGATIONS PURSUANT TO THIS AGREEMENT SHALL BE THE REMEDIES SET FORTH IN SECTION 3.2 ABOVE AND ANY CREDIT DUE PURSUANT TO ANY APPLICABLE SERVICE LEVEL AGREEMENT SET FORTH IN THE ADDENDUM FOR SUCH SERVICE.

7.2. IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE OR RESPONSIBLE TO CUSTOMER FOR ANY TYPE OF INCIDENTAL, PUNITIVE, DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

7.3. IN NO EVENT SHALL SERVICE PROVIDER LIABILITY TO ANY CUSTOMER OR ANY THIRD PARTY IN ANY CIRCUMSTANCE EXCEED THE AMOUNT OF FEES CUSTOMER ACTUALLY PAID TO SERVICE PROVIDER FOR SERVICES IN THE MONTH PERIOD DIRECTLY PRIOR TO THE ACTION GIVING RISE TO ALLEGED LIABILITY.

8. POLICIES AND STATEMENTS. The Service Provider Acceptable Use Policy as modified from time to time and The Service Provider Privacy Statement as modified from time to time.

9. USE OF NAME AND MARKS. Neither party will, without the prior written consent of the other party, use any trademark, service mark, brand name, copyright, patent or any other intellectual property of the other party or its respective affiliates. Service Provider's and Customer's name and trademarks are proprietary and nothing herein constitutes a license authorizing its use by the other party.

10. INDEMNIFICATION. Each party shall indemnify, defend, and hold harmless the other party, its officers, employees, and agents from and against any and all third-party claims, damages, liabilities, losses, and reasonable attorneys' fees to the extent arising out of the negligence or willful misconduct of the indemnifying party, bodily injury or tangible property damage caused by the indemnifying party, or the indemnifying party's violation of applicable law. In addition, Customer shall indemnify, defend, and hold harmless Service Provider from and against any and all third-party claims, damages, liabilities, losses, and reasonable attorneys' fees arising out of Customer's unauthorized use of the Services or violation of the Service Provider Acceptable Use Policy. The party seeking indemnification shall promptly provide written notice of any claim and shall reasonably cooperate in the defense. The indemnifying party shall have the right to control the defense and settlement of the claim, provided that no settlement imposing non-monetary obligations on the indemnified party shall be entered into without the indemnified party's prior written consent, which shall not be unreasonably withheld. The obligations set forth in this Section shall survive termination or expiration of this Agreement.

11. CONFIDENTIALITY. Customer acknowledges that the following Service Provider information is Service Provider proprietary information "Proprietary Information" whether or not reduced to writing and whether or not specifically identified as "proprietary" or "confidential:"

11.1. All information obtained by Customer as a result of access to the Service Provider colocation facilities, including without limitation information which could facilitate a security breach or disruption of or endanger Service Provider facilities, operations or systems; and

11.2. All Service Provider pricing and other provisions of this Agreement except to the extent information is posted by Service Provider on areas of its website which are publically accessible without restriction. Customer shall not disclose any Proprietary Information or use it for its own benefit except as required to perform its obligations under this Agreement. Customer shall limit disclosure of Proprietary Information only to its employees and consultants having the need to know and shall take all reasonable steps to prevent any inadvertent or wrongful disclosure or use by such employees and consultants.

12. PCI COMPLIANCE

Service Provider acknowledges that it is responsible for the security of cardholder data to the extent that Service Provider has control of that data, and is responsible for the physical security of the systems that house cardholder data stored there by the customer. The customer acknowledges that they are responsible for determining the PCI DSS requirements applicable to them and their unique workloads.

13. TRANSFER; ASSIGNMENT. Customer will acquire Services solely for its own account, and not for resale or distribution in any manner. Customer may not assign or transfer its rights and obligations under this Agreement without the prior written consent of Service Provider, which consent Service Provider may condition on Customer's agreement to remaining bound by the Agreement to pay Service Provider for Services utilized by Customer's assignee or transferee. Service Provider may assign or transfer its rights and obligations under this Agreement without Customer's consent.

14. NOTICES. Notices and other communications between Service Provider and Customer related to this Agreement or a Service governed by it may be delivered by email. Communications may be directed to Service Provider at info@hi-link.com Customer shall provide Service Provider with a valid email address to be used by Service Provider for communications related to this Agreement and shall update that address as needed. Service Provider shall fulfill its notice obligations by providing Customer with notice at the email address most recently provided to Service Provider by Customer for use in providing notices pursuant to this Agreement.

15. DISPUTE RESOLUTION. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of law principles. Any legal action or proceeding arising out of or relating to this Agreement shall be brought in a court of competent jurisdiction located in Westchester County, New York. Nothing herein shall be deemed a waiver of any rights, defenses, or immunities available to the City under applicable law.

16. FORCE MAJEURE. Service Provider shall not be in default under any provision of this Agreement or be liable for any delay, failure of performance or interruption of any Service resulting, directly or indirectly, from causes beyond Service Provider's reasonable control, including but not limited to any of the following: earthquake, lightning or other acts of God; fire or explosion; electrical faults; vandalism; cable cut; water; fire; fire suppression activities, flood; weather conditions; action of any governmental or military authority; national emergency; insurrection; riot; war; acts of terrorism or civil disturbance; strikes; lockouts; work stoppages or other labor difficulties; supplier failure; shortage; or telecommunication or other Internet provider failure.

17. SEVERABILITY. If any part of this Agreement is found to be unenforceable or unlawful, then that provision shall be deemed severable and shall not affect the validity and enforceability of any remaining provisions of the Agreement.

18. ENTIRE AGREEMENT. This Agreement, including all referenced documents, constitutes the entire agreement and understanding between the parties. It supersedes all prior or contemporaneous negotiations or agreements, whether oral or written, relating to its subject matter.

This Agreement shall be effective the ____ day of _____, 20__ (“Effective Date”).

Service Provider: Hi-Link Computer Technology Group.
Located at 60 Long Ridge Rd. Suite 205 Stamford, CT 06902
Hi-Link Technology Group LLC, a Connecticut limited liability company

By: _____

Name: _____

Title: _____

Date: _____

This Agreement shall be effective the ____ day of _____, 20__ (“Effective Date”).

Customer: City of Mount Vernon NY
Located at _____

By: _____

Name: _____

Title: _____

Date: _____