

Bixler Incorporated DataHost™ – Master Services Agreement

This Master Services Agreement (the "Agreement") between Bixler Incorporated ("Bixler") and the customer which is a signatory hereto ("Customer") is made effective as of the Service Commencement Date indicated above the Customer signature on the Bixler DataHost Services Order Form.

1 Overview. This Agreement states the terms and conditions by which Bixler will deliver and Customer will receive any or all of the web site and application hosting services provided by Bixler, including bandwidth, managed services, professional/support services and content delivery. Each Order Form submitted, accepted and executed by both parties is hereby incorporated by reference herein. This Agreement is intended to cover any and all hosting Services ordered by Customer and provided by Bixler. Capitalized terms shall have the meanings assigned to them herein or as defined in Section 10.

2 Delivery of Services; Terms; Fees.

2.1 Delivery of Services. By submitting an Order Forms(s), Customer agrees to take and pay for (i) the Service(s) during the Initial Term and for any Renewal Term, and (ii) certain limited services needed by Customer (e.g., bandwidth usage fees) where such services are not included within the scope of the Services as described in the Order Forms(s).

2.2 Term.

2.2.a Term Commencement. The term for each Service will commence on the Service Commencement Date.

2.2.b Renewal Term(s). Upon expiration of the Initial Term, the term shall be extended automatically for a period of thirty (30) days ("Renewal Term"), unless and until either party gives the other no less than thirty (30) days' written notice of a termination. The termination of any Service will not affect Customer's obligations to pay for other Service(s).

3 Fees and Payment Terms.

3.1 Fees and Expenses. Customer will pay all fees due according to the prices and terms listed in the Order Form(s) and all other fees incurred by Customer related to Supplemental Services and/or Professional Services all in accordance with then current Bixler prices and policies.

3.2 Payment Terms. On the Service Commencement Date for each Service, Customer will be billed (the "Initial Bill") an amount equal to (i) all non-recurring charges indicated in the Order Form(s) and (ii) the monthly recurring charges for the first month of the term prorated for the number of calendar days remaining in such month. Subsequent monthly billing will occur on the first day of each calendar month of the term. Monthly recurring charges for all months will be billed (the "Recurring Bill") in advance of the provision of Services. All other charges for Services received and expenses incurred for Supplemental or Professional Services during a month (e.g., bandwidth usage fees) will either be billed immediately or at the end of the month in which the Services were provided. Payment for all fees is due upon receipt of each Bixler invoice. All payments will be made in U.S. Dollars. Notwithstanding anything to the contrary in this Agreement, Bixler expressly reserves the right to alter, change or amend its billing practices in its sole discretion, including, but not limited to, the date on which such billing will occur and the types of charges that will be included in such bills.

3.3 Late payments. Any payment not received within thirty (30) days of the invoice date of the Initial Bill and forty-five (45) days of the invoice date of a Recurring Bill (respectively, a "Payment

Default") will accrue interest at a rate of one and one-half percent (1-1/2%) per month, or the highest rate allowed by applicable law, whichever is lower. Customer also shall pay to Bixler all expenses incurred by Bixler in exercising any of its rights under this Agreement or applicable law with respect to a Payment Default or other breach by Customer, including, but not limited to, reasonable attorneys' fees and the fees of any collection agency retained by Bixler.

4 Intellectual Property Ownership. This Agreement does not transfer from Bixler to Customer any Bixler Technology, and all right, title and interest in and to Bixler Technology will remain solely with Bixler. This Agreement does not transfer from Customer to Bixler any Customer Technology, and all right, title and interest in and to Customer Technology will remain solely with Customer. Bixler and Customer each agree that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the other party and/or its third party vendors.

5 Limited Warranties.

5.1 Limitation. Each of the guarantees in the Order Form(s) is null and void if Customer fails to follow Bixler's Rules and Regulations and other policies or otherwise breaches the Agreement in any respect.

5.2 No Other Warranty. USE OF THE SERVICES OR ANY INFORMATION THAT MAY BE OBTAINED THEREFROM IS AT CUSTOMER'S OWN RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. EXCEPT AS PROVIDED IN THE ORDER FORM(S), BIXLER DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. BIXLER DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

6 Customer Obligations.

6.1 Warranties of Customer.

6.1.a General. Customer represents and warrants that (i) Customer possesses the legal right and ability to enter into this Agreement, and (ii) the performance of its obligations and use of the Services (by Customer, its customers and users) will not violate any applicable laws, regulations or the Rules and Regulations or cause a breach of any agreements with any third parties or unreasonably interfere with other Bixler customers' use of Bixler services. Customer assumes all risks related to processing of transactions related to electronic commerce.

6.1.b Breach of Warranties. In the event of any breach of any of the foregoing warranties, in addition to any other remedies available at law or in equity, Bixler will have the right, in its sole discretion, to suspend or terminate immediately any Services.

6.2 Compliance with Law and Rules and Regulations. Customer agrees that it will use the Service(s) only for lawful purposes and in accordance with this Agreement. Customer will comply at all times with all applicable laws and regulations and the Rules and Regulations, as updated by Bixler from time to time. The Rules and Regulations are incorporated herein and made a part hereof by this reference. Bixler may change the Rules and Regulations upon fifteen (15) days' notice to Customer. Customer may request a current copy of the Rules and

Regulations by sending or faxing a request to Bixler. Customer agrees that it has received, read and understands the current version of the Rules and Regulations.

- 6.3 Third Party Rights. Customer shall not (i) remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any Bixler or Third Party Product (as defined in Section 7.4) or that appear during use of any Third Party Product; or (ii) reverse engineer, decompile, or disassemble any Third Party Product, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

7 Limitations of Liability.

- 7.1 Delays and Interruptions. BIXLER SHALL NOT BE LIABLE FOR ANY LOSS OF DATA RESULTING FROM DELAYS, CORRUPTION OF DATA, NONDELIVERIES, MISDELIVERIES OR SERVICE INTERRUPTIONS. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE AND SUITABILITY OF THE SERVICES, AND BIXLER SHALL HAVE NO LIABILITY THEREFOR.

- 7.2 Consequential Damages. EXCEPT FOR THE PARTIES' INDEMNITY OBLIGATIONS IN SECTION 8, IN NO EVENT WILL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER FOR ANY TYPE OF INCIDENTAL, PUNITIVE, 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), PRODUCT LIABILITY, STRICT LIABILITY OR OTHERWISE.

- 7.3 Notwithstanding anything else to the contrary contained in this Agreement, Bixler's maximum aggregate liability to Customer for any claim related to, or in connection with, this Agreement, whether in contract, tort or otherwise, shall be limited to the total amount of fees actually paid by Customer to Bixler for the prior three (3) months.

- 7.4 Bixler may provide Customer access to other third party software and/or services ("Third Party Products") (e.g., WebTrends) through reseller relationships Bixler has established with certain commercial vendors ("Third Party Vendors"). Unless otherwise notified, Customer understands that product support for Third Party Products is provided by Bixler and not by the Third Party Vendor. Neither Bixler nor any Third Party Vendor makes any representations or warranties, express or implied, regarding any Third Party Products. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THIRD PARTY PRODUCTS IS AT CUSTOMER'S SOLE RISK AND SUCH THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND FROM BIXLER OR ANY THIRD PARTY VENDOR, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF RESPONSES OR RESULTS, CORRESPONDENCE TO DESCRIPTION, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER BIXLER NOR ANY THIRD PARTY VENDOR WILL BE LEGALLY RESPONSIBLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, OR CONSEQUENTIAL, ARISING FROM THE USE OR INABILITY TO USE ANY THIRD PARTY PRODUCT. CUSTOMER AGREES TO OBSERVE THE TERMS OF ANY LICENSE AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENT FOR THIRD PARTY PRODUCTS AND THAT CUSTOMER SHALL BE FULLY LIABLE TO THIRD

PARTY VENDORS AND Bixler WITH RESPECT TO ANY IMPROPER USE OF SUCH THIRD PARTY PRODUCTS OR VIOLATION OF LICENSE AGREEMENTS WITH THEM AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENTS.

8 Indemnification. Each party agrees to indemnify and hold the other harmless against any losses, costs, expenses (including, but not limited to, reasonable attorneys' fees), claims, damages, liabilities, penalties, actions, proceedings or judgments (collectively, "Losses") resulting from any claim, suit, action, or proceeding brought by any third party against the other or its affiliates related to or arising out of (i) any infringement or misappropriation or alleged infringement or misappropriation of any United States copyright, trade secret, patent, trademark, or other proprietary right related to any hardware or software utilized in connection with any of the Services (but excluding any infringement contributorily caused by the other party) and (ii) any violation of or failure to comply with the Rules and Regulations. Customer further agrees to indemnify Bixler and its affiliates against any Losses which arise out of, or relate to any content provided by Customer or the customers/clients of Customer, and Customer will reimburse Bixler and its affiliates for all legal expenses, including reasonable attorneys' fees, incurred by Bixler and its affiliates in connection with any such Losses.

9 Termination.

9.1 Termination Without Cause During Renewal Term. This Agreement may be terminated by either party at any time during any Renewal Term for any or no reason upon either party giving to the other no less than thirty (30) days' prior written notice of termination. No matter which party terminates the Agreement pursuant to this Section 9.1, any and all payment obligations of Customer under this Agreement for Service(s) provided through the date of termination will immediately become due, and Customer shall be required to prepay for any portion of the Services that have not been paid for and are to be rendered during such thirty (30) day period.

9.2 Termination For Cause. In addition to any other rights it may have under this Agreement or applicable law, Bixler may immediately terminate this Agreement or suspend service, effective without notice, in the event of (i) a Payment Default, or (ii) Customer's breach or failure to comply with any other obligation of Customer under this Agreement including, but not limited to, its failure to comply with any of the terms of the Rules and Regulations or other policies of Bixler. Customer may terminate this Agreement if Bixler breaches any material term or condition of this Agreement and fails to cure such breach within ten (10) days after receipt of written notice of same. If this Agreement is terminated by Bixler under this Section 9.2, all remaining monthly recurring and other charges specified on the applicable Order Form(s) for the balance of the then current term shall immediately become due and payable. In addition to the foregoing, Bixler reserves the right to prohibit any conduct or to remove any materials or content in violation of the Rules and Regulations or which Bixler believes in its sole discretion to be illegal or potentially harmful to others or may expose Bixler to harm or liability.

9.3 No Liability for Termination. Neither party will be liable to the other for any termination or expiration of any Service or this Agreement in accordance with its terms.

9.4 Survival. The following provisions will survive any expiration or termination of the Agreement: Sections 3, 4, 5, 7, 8, 9, 10 and 11.

9.5 IP Addresses: Upon expiration, cancellation or termination of this Agreement, Customer shall relinquish any Internet protocol ("IP") numbers, addresses or address blocks, and URLs assigned to Customer by Bixler or its network services supplier. Bixler reserves, in its sole discretion, the right to change or remove any and all such IP numbers, addresses or address blocks, or URLs.

10 Definitions.

- 10.1 "Customer Technology" means Customer's proprietary technology, including Customer's Internet operations design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by Customer or licensed to Customer from a third party) and also including any derivatives, improvements, enhancements or extensions of Customer Technology conceived, reduced to practice, or developed during the term of this Agreement by Customer.
- 10.2 "Initial Term" means the minimum term for which Bixler will provide the Service(s) to Customer, as indicated on the Order Form(s).
- 10.3 "Professional Services" means any non-standard professional, consulting or support service provided by Bixler to Customer.
- 10.4 "Bixler Technology" means Bixler's proprietary technology or Bixler Services, or technology licensed to or services sub-contracted to Bixler by third parties, including software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by Bixler or licensed to Bixler from a third party) and also including any derivatives, improvements, enhancements or extensions of Bixler Technology conceived, reduced to practice, or developed during the term of this Agreement by Bixler.
- 10.5 "Renewal Term" means any service term following the Initial Term, as specified in Section 2.2.
- 10.6 "Rules and Regulations" means the Bixler general rules and regulations governing Customer's use of Services, including, but not limited to, Bixler's Terms of Use, which can be found at <http://www.bixler.com/section.cfm/14>.
- 10.7 "Service(s)" means the specific service(s) provided by Bixler pursuant to this Agreement.
- 10.8 "Service Commencement Date" means the date Bixler will begin providing the Service(s) to Customer as indicated on the Order Form(s).
- 10.9 "Web Content" means all materials provided or made accessible to Customer by Bixler hereunder including but not limited to software, text, graphics, audio, video or other materials generated in any form or media.
- 11 Use of Customer's Name for Marketing and Promotion. Customer agrees that during the term of this Agreement Bixler may publicly refer to Customer, orally and in writing, as a Customer of Bixler in resumes, client lists and in other promotional materials and communications, including, but not limited to, press releases, brochures, reports, letters and electronic media such as e-mail or Web pages.
- 12 Miscellaneous Provisions. Bixler shall not be deemed to be in default of any provision of this Agreement or be liable for any delay, failure of performance or interruption of the provision of Services to Customer resulting, directly or indirectly, from any unforeseen or force majeure event. Bixler and Customer agree that, except as otherwise expressly provided in this Agreement, the Order Form(s) or the terms and conditions of use of any third party software products, there shall be no third party beneficiaries to this Agreement, including but not limited to the insurance providers for either party or the customers of Customer. THIS AGREEMENT IS MADE UNDER AND WILL BE GOVERNED BY AND CONSTRUED IN

ACCORDANCE WITH THE LAWS OF THE STATE OF VIRGINIA (EXCEPT THAT BODY OF LAW CONTROLLING CONFLICTS OF LAW) AND SPECIFICALLY EXCLUDING FROM APPLICATION TO THIS AGREEMENT THAT LAW KNOWN AS THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS. EXCLUSIVE VENUE FOR ALL DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE THE FEDERAL COURTS IN THE STATE OF VIRGINIA, AND EACH PARTY IRREVOCABLY CONSENTS TO SUCH PERSONAL JURISDICTIONS AND WAIVES ALL OBJECTIONS THERETO. In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of this Agreement will remain in full force and effect. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party. Customer may not sell, assign or transfer its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of Bixler, and any attempted assignment or delegation without such consent will be void. Bixler may assign this Agreement in whole or part. Bixler also may delegate the performance of certain Services to third parties, including Bixler's wholly owned subsidiaries. All notices, demands, requests or other communications required or permitted under this Agreement shall be deemed given when delivered personally, sent by facsimile upon confirmation, sent and received by return receipt email, or upon receipt of delivery of overnight mail. Bixler and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Bixler and Customer. Neither Bixler nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein. This Agreement, including all documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. Once signed, any reproduction of this Agreement made by reliable means (e.g., photocopy, facsimile) is considered an original. Except as expressly provided in this Agreement, this Agreement may be changed only by a written document signed by authorized representatives of Bixler and Customer in accordance with this Section 11. Authorized representatives of Customer and Bixler have read the foregoing and all documents incorporated therein and, by executing the Order Form(s), agree and accept such terms effective as of the date indicated below the Customer signature on the initial Service Order Form.