

MacStadium, Inc.

Master Service Agreement and Terms of Service

The parties agree as follows:

1. DEFINITIONS. “Customer” and “You” and “your” refers to (i) the individual or entity that has ordered Services from MacStadium by abiding by the terms and condition contained herein and executing a “Service Order” that accompanies and incorporates this Agreement; or (ii) any other individual or entity that accesses or uses the Services. “Services” means the services you have a Subscription (defined below) to pursuant to a Service Order or have otherwise been authorized to use or access. “User” means your affiliates and any user or customer of same (including all of such customer’s end users) who is authorized by you to use the Services and to whom you have, or MacStadium at your request has, supplied Credentials (defined below). “MacStadium” means MacStadium, Inc., and its affiliates. Unless the context otherwise requires, “Agreement” shall include any Service Order and the SLA (defined hereinafter).

2. SERVICES.

2.1 Use of Services. Subject to the terms and conditions of this Agreement, you and your Users shall have the nonexclusive, non-assignable, limited right to access and use the Services you have purchased through a Service Order or otherwise, solely for your internal business operations. You may allow Users to use the Services for this purpose and you are responsible for your Users’ compliance with this Agreement. This Agreement is in addition to the other terms and conditions of, or incorporated into, the Service Order, if any; provided, however, in the event of a conflict between this Agreement and the Service Order, the Service Order shall control. A subsequent Service Order shall control over a prior Service Order in the event of a conflict. Upon the termination or expiration of the Service Order or the Services thereunder, your right to access or use the Services shall terminate. Unless otherwise agreed in writing, Services will commence on the date when the Services are operational and ready for use according to the requirements of the applicable Service Order (the “Commencement Date”).

2.2 Resale of Services. In the normal course of your business, you may be able to resell to Users (subject to all the terms of this Agreement) certain of your designated physical space, resources and bandwidth services provided by MacStadium to you pursuant to this Agreement, except that you will not allow such Users to interconnect with other users in the MacStadium premises.

2.3 Additional Services. MacStadium may also perform technical and other professional services not listed in a Service Order that are requested by you or are required to perform the Services according to the applicable Service Order (“Additional Services”).

2.4 Registration. To access and use the Services, you must have an active subscription for the Services pursuant to a Service Order (a "Subscription"). Upon the establishment of a Subscription, one or more user names and passwords may be generated in connection with such Subscription ("Credentials"). The Credentials are used to authenticate the User and thereby allow access to the Services, including any of your data stored as part of the Services. You are solely responsible for maintaining the confidentiality of the Credentials and may not transfer or share the Credentials with any third parties. You acknowledge and agree that MacStadium and its licensors and suppliers may rely on the Credentials as the sole test to control whether Users accessing and using the Services on your behalf are authorized to do so. You are fully liable for any act or omission of any Users that access or use the Services with the Credentials or otherwise through your account. You will: (a) notify MacStadium immediately of any unauthorized use of any Credentials or account or any other known or suspected breach of security; (b) not impersonate another user or provide false identity information to gain access to or use the Service; and (c) be solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership and right to use all data submitted by you in the course of receiving the Services.

2.5 Maintenance. Unless otherwise stated in the applicable Service Order, MacStadium shall perform scheduled maintenance from time to time. MacStadium shall notify you by email of all maintenance scheduled to take place at least seventy-two (72) hours in advance ("Scheduled Maintenance"). Scheduled Maintenance shall not cause a loss of availability of the Services unless necessary to complete the Scheduled Maintenance. MacStadium shall use reasonable efforts to ensure any loss of availability of Services arising from Scheduled Maintenance is limited to the shortest period of time practical. MacStadium may perform emergency maintenance, including the installation of critical patches, as needed and without prior notice, but shall use reasonable efforts to notify you within four (4) hours of initiating any such emergency maintenance. Emergency maintenance will not cause a loss of availability of the Services unless it is beyond the reasonable control of MacStadium. MacStadium will use reasonable efforts, with equitable consideration to its other clients, to ensure that maintenance is completed as quickly as practical. MacStadium has the right to install patches that address security vulnerabilities. MacStadium will not be liable for any inability, delay, failure or mistake in identifying the need for a security upgrade or patch, or for the implementation of any security upgrade or patch. MacStadium will use reasonable efforts to coordinate with you for the application of noncritical patches as they are released by vendors.

2.6 Courtesy Transfer Service. MacStadium performs all account transfers, account moves, VMware transfers, server transfers and any other service which involves MacStadium copying your files from a third-party service to your MacStadium Service (for purposes of this Section 2.6, hereafter known as a "transfer") as a courtesy service only. You agree to indemnify and hold harmless MacStadium from any and all liability arising from the transfer or copying of your accounts. You also agree MacStadium is not responsible for any issues relating to the transfer of your accounts, both on your MacStadium Services and at any other third party service from which MacStadium may be transferring your accounts, including but not limited to, missing or corrupted files, improperly transferred accounts, any and all fees you may incur from third-party services such as bandwidth fees or charges from delays in transferring account, settings or files from third party providers which

may not transferred, any downtime or outages, DNS problems, accounts set up on incorrect IP addresses, any issues at third-party services which delay or prevent MacStadium from performing the service, or any other issues. MacStadium makes no guarantees regarding the availability of our transfer service or the amount of time it takes to perform transfers. MacStadium can only perform transfers from a service which uses the same control panel that is used on your MacStadium Service (e.g., VMware). MacStadium will provide general advice on file transfer and configurations.

2.7 Individual Server Colocation Space. This Section 2.7 applies to extent applicable under a corresponding Service Order. You will be responsible for the delivery of all equipment. MacStadium is responsible for the initial installation of the equipment in the individual server space. Access to the equipment is authorized during business hours upon previous notification from you so long as your representative is accompanied by a MacStadium staff member. Emergency access can be arranged outside business hours; you will pay for emergency access requests in accordance with the emergency hourly rate in effect.

2.8 Private Colocation Space. This Section 2.8 applies to the extent applicable under a corresponding Service Order. You will be responsible for the delivery and installation of the equipment in the private space. Upon request, you can obtain 24/7 access to the private space. MacStadium reserves the right to approve your technicians and other contractors and to require identification, fingerprints, and photos of each individual who has access to MacStadium premises. You shall cause your employees, agents, contractors, or invitees who have access to MacStadium premises to conform to all MacStadium terms, rules and regulations (as amended by MacStadium from time to time). Except with MacStadium's prior written approval and subject to the terms of this Agreement, you may only remove your equipment upon reasonable prior written notice to MacStadium and only during business days between 8:00 a.m. and 5:00 p.m. EST. You may only install or place equipment in your designated space.

2.9 Shipping. Mode of any shipment of equipment to MacStadium shall be agreed upon by the parties. Equipment owned by you will be shipped back to you within ten (10) business days of an applicable Service cancellation by ground service thru USPS, UPS, or Fedex at your sole expense.

2.10 Use Restrictions. You may not:

- a. remove or modify any program markings or any notice of MacStadium's or its licensors' proprietary rights;
- b. make the Services, or any materials relating thereto, available in any manner to any third party for use in the third party's business operations other than as otherwise expressly agreed upon between the parties;
- c. modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Services;
- d. access or use the Services in order to build or support, or assist a third party in building or supporting, products, or services competitive to the Services;

e. license, sell, rent, lease, transfer, assign, distribute, display, host, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the Services, or related materials, available to any third party other than as expressly permitted under the terms of this Agreement;

f. except as expressly provided herein, copy, reproduce, distribute, republish, download, display, post or transmit the Services, or any portion thereof, in any form or by any means; or

g. attempt to gain unauthorized access to the Services or related systems or networks.

2.11 Protection against Unauthorized Use. You will use your best efforts to prevent any unauthorized use of the Services and will immediately notify MacStadium in writing of any unauthorized use that comes to your attention. If there is unauthorized use by anyone who obtained access to the Services directly or indirectly through you, you will take all steps reasonably necessary to terminate the unauthorized use. You will cooperate and assist with any actions taken by MacStadium to prevent or terminate unauthorized use of the Services.

2.12 Service Levels. If expressly set forth and incorporated by a Service Order, MacStadium shall provide the Services under such Service Order in accordance with the MacStadium service level agreement provided with this Agreement (“SLA”). NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE SLA, EXCEPT FOR ANY “CRITICAL FAILURE TO PROVIDE SERVICES” (WHICH SHALL BE A MATERIAL BREACH INCAPABLE OF CURE UNDER THIS AGREEMENT), IN ALL INSTANCES WHERE SERVICE CREDITS ARE AVAILABLE, SUCH SERVICE CREDITS SHALL BE THE SOLE REMEDY FOR A BREACH OF THIS AGREEMENT RELATING TO THE SUBJECT MATTER COVERED BY SUCH SERVICE CREDIT. Any applicable service credits will be credited against amounts subsequently owed by you under the corresponding Service Order. Notwithstanding the foregoing, with respect to the terms and conditions of the SLA, the reference to “Non-Compliance” in Schedule A of the SLA, shall mean “Unavailability”. In this Agreement, a “Critical Failure to Provide Services” shall mean a failure relating to a subject matter covered by a service credit such that in respect of any applicable service the aggregate “Unavailability” for that service in any calendar month is at least three (3) times the initial threshold amount for any service credit for that service (e.g., for “Redundant Power Service”, fifteen (15) minutes or more in any calendar month).

2.13 Third-Party Technology; Your Software. The Services may contain links to websites not operated by MacStadium. MacStadium is not responsible for the content, products, materials, or practices (including privacy practices) of such websites. MacStadium makes no warranty, representation, endorsement, or guarantee regarding, and accepts no responsibility for, the quality, content, nature or reliability of third-party websites, products, or services accessible by hyperlink or otherwise from the Services. MacStadium’s inclusion of links to such websites does not imply any endorsement of the materials on such third-party websites or any association with their operators. You are responsible for reviewing the privacy policies and terms of use of any other website visited. You represent and warrant that all software you or your Users install on the Configuration (as defined below) is licensed for its intended use and for access by both parties. You represent and warrant that you have obtained all OS X licenses (including any server licenses or other licenses required for virtualization) and other licenses and rights required by Apple Inc., as well as other licenses required by third

parties, necessary for you and your Users to use and access the Services or any Additional Services. MacStadium may require you to provide copies of applicable license keys and certificates of authenticity. Your and your User's use of any third-party software provided as part of the Services is subject to that specific provider's use rights, as they may be amended by the third party provider from time to time. You shall, and shall require your Users to, comply with all such third-party terms of use, licenses, use rights or other agreements, including any license or terms imposed by Apple Inc. or its subsidiaries or affiliates. Your acceptance or use of any third-party software, service or product from MacStadium is deemed an acceptance by you of any agreement that governs the use of that software, service or product. MACSTADIUM MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER REGARDING ANY THIRD-PARTY PRODUCTS, INCLUDING OPERATING SYSTEMS, HARDWARE, SOFTWARE, SERVICES, AND ALL RELATED SUPPORT SERVICES, AND THEY ARE PROVIDED "AS IS". Finally, MacStadium assumes no responsibility, and you shall be fully responsible, for any software-as-a-service offerings you may provide in connection with your use of the Services.

2.14 Changes; Modifications. MacStadium and its licensors and providers may, in its sole discretion, upgrade, enhance, change and modify the Services, including by discontinuing a Service or any aspect or feature thereof. MacStadium further reserves the right to change and amend this Agreement, including the Privacy Notice, SLA, and Acceptable Use Policy. You will be notified of such changes and amendments, which may be made in MacStadium's sole and exclusive discretion, and thereafter such change or amendment to this Agreement will be effective as from the ninetieth (90th) day thereafter. If such changes and amendments to this Agreement are not acceptable to you and MacStadium does not waive the changes and amendments you object to, you may terminate your access to and use of the Services. Continued access or use of the Services by you or your Users after such ninetieth (90th) day shall be deemed acceptance by you of the amended or changed terms.

2.15 Suspension of Services. MacStadium may suspend the Services under an applicable Service Order if (a) MacStadium reasonably believes that your or your User's use of the Services or Additional Services has or will subject MacStadium to civil or criminal liability; (b) MacStadium finds that the Services are being used in violation of the Acceptable Use Policy and such violation is not cured within 1 business day of receipt of written notice by you; (c) MacStadium is required to suspend your or your User's Services by a law enforcement agency, government agency or court order; (d) activity on your or your User's servers (such as a denial of service attack or unauthorized access) poses a reasonable threat to the integrity of MacStadium's network; or (e) you or your User violates any provision of the Service Order or this Agreement and such violation is not cured within 30 days of receipt of written notice by you. In addition, MacStadium may suspend Services under all Service Orders or, at the option of MacStadium, only the applicable Service Order, by giving five (5) business days' notice if you fail to pay any fees or charges within thirty (30) days after the invoice date on any one of more of the Service Orders. Services will not be available in whole or in part during a suspension.

3. TERM; TERMINATION.

3.1 Term of Agreement. Except as otherwise provided in a Service Order, the term of this Agreement shall continue for so long as you have a Subscription to Services pursuant to a Service Order.

3.2 Term of Service Orders. The Services provided under any applicable Service Order will begin on the Commencement Date and continue for a period defined in the applicable Service Order (the “Service Order Term”). If no such period is defined in the applicable Service Order, the Service Order shall have a Service Order Term (a) concurrent with the longest Service Order Term then in effect among the other Service Order(s) between the parties or (b) of twelve (12) months from the Commencement Date if no other Service Order exists. Unless a party provides written notice to the other party at least 30 days prior to the end of the Service Order Term or the then-current renewal period, the Service Order will automatically renew for successive one month terms on the first day of each calendar month following the expiration of the Service Order Term.

3.3 Termination by MacStadium. You agree that MacStadium may terminate this Agreement or suspend the Services in the event of: (a) a breach or violation of this Agreement or other incorporated agreements or guidelines by you or your User that remains uncured for thirty (30) days following notice of such violation or breach, (b) requests by law enforcement or other government agencies, (c) a request by you (self-initiated account deletions), (d) MacStadium being threatened with a legal claim relating to your or your User’s use of the Services; or (e) if you or your Users violate the Acceptable Use Policy more than twice. Termination includes removal of access to all offerings within the Services and may also bar you from further use of the Services. Furthermore, you agree that all terminations shall be made in MacStadium’s sole discretion and that MacStadium shall not be liable to you nor any third-party for any termination of your account or access to the Services.

3.4 Termination by You. You may terminate a Service Order: (a) if MacStadium materially breaches any provision of this Agreement with respect to such Service Order and fails to cure that breach within thirty (30) days of receiving a notice from you that reasonably identifies the breach; or (b) in accordance with Section 2.14 or the Service Order.

3.5 Effect of Termination. Upon expiration or termination of the Agreement, all rights to access or use the Services terminate. All provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement shall survive the termination or expiration of this Agreement. Upon the termination or the expiration of this Agreement or an applicable Service Order, MacStadium will (a) return any and all data or content to you or your User(s), and (b) decommission the Hosting Equipment and permanently erase all content stored on it. In the event of a termination other than pursuant to Section 3.4, you shall be responsible for and pay all fees that would have been owed had the applicable Service Order(s) not been terminated prior to the end of their then-current Service Order Term.

4. FEES AND PAYMENT TERMS.

4.1 Services Fees. For the Services provided under this Agreement, you will pay MacStadium the subscription fee and other fees (including, without limitation, excess usage fees, upgrade fees, setup fees, and deposits) in the amounts set forth in the applicable Service Order(s) or otherwise agreed upon by the parties. Applicable fees will be invoiced to you upon execution of a Service Order. Unless otherwise set forth in the applicable Service Order, the subscription fees shall be recurring monthly fees, which may be invoiced by

MacStadium at the beginning of each calendar month. After the initial Service Order Term, and at the beginning of each renewal period thereafter, MacStadium may adjust the fees applicable during the upcoming renewal period upon written notice provided at least thirty (30) days prior to the end of the initial Service Order Term or applicable renewal period, as the case may be. MacStadium may delay setup for a Service Order until all setup fees associated with that Service Order are paid in full. Recurring fees will accrue during any suspension of the Services, and MacStadium may charge a reasonable reinstatement fee following any suspension of Services.

4.2 Additional Services Fees. Additional Services are billed in one (1) hour increments. The scope and hourly cost of Additional Services must be agreed to by the parties in advance in writing, except where Additional Services are performed (a) in order to return the Configuration to proper working order after an act or omission by you or your Users which causes the Services to malfunction or become unavailable; (b) in connection with a violation by you or your Users of the Acceptable Use Policy; (c) to eliminate a security threat caused by your or your Users' use of the Services; or (d) as otherwise provided in this Agreement. MacStadium and you may agree in a Service Order to an hourly rate that will apply to any future Additional Services performed by MacStadium during the Service Order Term related to the applicable Service Order. Otherwise, you shall pay MacStadium's then-current published hourly rates for Additional Services.

4.3 Payment Terms. Except as otherwise set forth in a Service Order, all invoices submitted by MacStadium are due and payable immediately upon receipt via credit card or direct payment, or, if upon prior written approval by MacStadium, no later than within thirty (30) days of the date of your receipt of the invoice. All fees not objected to in writing within forty-five (45) days of an invoice date will be deemed accurate. Fees are non-cancelable and non-refundable. All fees paid and expenses reimbursed under this Agreement will be in United States currency and to such MacStadium domestic (Ireland) account as separately indicated. It is your sole responsibility to provide accurate billing contact information and to notify MacStadium of any changes to your billing contact information.

4.4 Excess Usage; Unauthorized Fees. You shall pay MacStadium for all Services accessed through your account, including all fees resulting from unauthorized use, except where the unauthorized use results from a malfunction of the MacStadium system, the Services, or MacStadium's breach of this Agreement. In cases where MacStadium is supplying bandwidth, MacStadium will measure bandwidth usage at the public Ethernet ports on your and your Users' firewalls. Bandwidth calculated using the 95th percentile method will be billed to the nearest Megabits per Second (MBPS). A Service Order may specify the amount of bandwidth included in the recurring fees or the amount of bandwidth that will be billed at a committed rate ("Bandwidth Commitment"). You shall pay MacStadium for inbound and outbound bandwidth usage that exceeds the Bandwidth Commitment ("Excess Bandwidth") at the Excess Bandwidth rate identified in the applicable Service Order. If no such rate is identified, you shall pay for Excess Bandwidth at a twenty percent (20%) premium over the committed rate in your Service Order. If a committed rate is not identified in you're the applicable Service Order, Excess Bandwidth will be billed at MacStadium's then-current rate. Bandwidth usage will reset at the end of each calendar month.

4.5 Late Payment. You will pay a late fee of 1.5% per month (not to exceed the maximum allowed under state law) on all balances not paid when due. MacStadium, at its option, may suspend the Services or Additional Services, in whole or in part, if MacStadium does not receive all undisputed amounts due and owing under this Agreement within thirty (30) days after delivery of notice to you of your failure to pay such overdue balances. If a payment is late, MacStadium reserves the right to apply all future payments to the most recent invoice first. You are liable for MacStadium's reasonable costs of collection, including reasonable attorneys' fees and expenses actually incurred by MacStadium or approved or awarded by a court of competent jurisdiction.

4.6 Taxes. The fees and expenses due to MacStadium as set forth in this Agreement are net amounts to be received by MacStadium, exclusive of all sales, use, withholding, excise, value added, ad valorem taxes or duties incurred by you or imposed on MacStadium in the performance of this Agreement or otherwise due as a result of this Agreement. This section will not apply to taxes based solely on MacStadium's income.

4.7 Offset. Fees and expenses due from you under this Agreement may not be withheld or offset by you against other amounts for any reason.

5. YOUR OBLIGATIONS AND WARRANTIES.

5.1 Acceptable Use Policy. You agree to the terms of the "Acceptable Use Policy" available at <http://www.MacStadium.com/docs>. Subject to Section 2.14, the Acceptable Use Policy is subject to change at MacStadium's discretion. Your continued access or use of the Services following notice of a revised Acceptable Use Policy shall constitute your acceptance of the Acceptable Use Policy.

5.2 Compliance. You will abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Services (e.g. privacy and security laws and regulations, CAN-SPAM ACT, copyright laws, international communications, and the transmission of technical or personal data). You agree to provide any notices and obtain any consents related to your use of the Services, including those related to the collection, use, processing, transfer and disclosure of personal information.

5.3 Information and Access Provided by You. You represent and warrant that you or your Users own and control all of the rights to the information and materials that you store, post or transmit through the Services, or you or your Users otherwise have the right to use such information and materials, and the use of the information and materials you supply does not violate this Agreement, will not violate any rights of or cause injury to any person or entity, and will not otherwise create any harm or liability of any type for MacStadium or for third parties. You understand that all information publicly posted or privately transmitted through the Services is your sole responsibility and that MacStadium will not be liable for any errors or omissions in any content. Without limiting the foregoing, you are solely responsible for the selection, compatibility, licensing, accuracy, performance, maintenance, and support of all information, software, and data that you or your Users transmit through or store on MacStadium's servers, including any hypertext markup language files, scripts, programs, recordings, sound, music, graphics, images, applets or servlets that you or your Users create, install, upload or transfer on, from or through the Configuration. You are responsible for managing firewall and User access. You can block MacStadium from having access to your data and content, but MacStadium shall not be

responsible for restricting its own access. Additionally, if you block MacStadium's access in any way that prevents MacStadium from performing its obligations, such performance shall be excused and no service levels or other related obligations shall apply. MacStadium is not responsible for performing the Services in accordance with your privacy rules.

5.4 Technical Requirements. You must have the required equipment, software, and Internet access to be able to use the Services. Acquiring, installing, maintaining and operating equipment and Internet access is solely your responsibility. MacStadium neither represents nor warrants that the Services will be accessible through all web browser releases or all versions of computing devices.

5.5 IP Allocations. All IP addresses which are assigned to you or your Users must be justified per ARIN Guidelines at <http://www.arin.net/policy/nrpm.html>. If it is determined that IP addresses which have been assigned to you or your Users are not being used in accordance with these guidelines, they may be revoked.

5.6 Configuration. You are solely responsible for determining whether the Hosting Equipment (defined below), Internet access, bandwidth and software provided by MacStadium to you as specified in the Service Order(s) (collectively, the "Configuration") is suitable, and whether it meets and will continue to meet your and your User's capacity, performance and scalability needs. You are also responsible for the results of implementing any recommendations made by MacStadium regarding its use of the Configuration. You are responsible for requesting all required upgrades and modifications to the Configuration, including those required to address one or any combination of the following: (a) a spike or change in system resource utilization, (b) processing requirements, (c) storage requirements, or (d) hardware or software deprecation. MacStadium will not be required to make any upgrade unless it is set forth in a Service Order signed by both parties. Minor upgrades to Server Hardware (defined below), such as the installation of a new network card, memory upgrade, hard drive or power supply (but not a processor or chassis), may be subject to a one-time fee in addition to recurring fees. Any upgrade requested may, in MacStadium's discretion, require you to agree to a new Service Order Term. "Hosting Equipment" means the Server Hardware, cables, routers, switches and other hardware that MacStadium makes available to you as specified in a Service Order. "Server Hardware" means all internal server components, including processors, chassis, network cards, memory, hard drives, storage and power supplies.

5.7 Users. You shall enter into, and enforce, contracts with all Users that obligate such Users to comply with the provisions of this Agreement that are applicable to User's use of the Services. Additionally, you shall be fully responsible and liable for all acts and omissions of your Users as if such acts or omissions were your own.

6. INTELLECTUAL PROPERTY OWNERSHIP AND RIGHTS. MacStadium, and its licensors and providers, own all right, title and interest, including all related intellectual property rights in and to the Services, MacStadium's (and its providers') trademarks, and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Services. You retain all ownership and intellectual property rights in and to your data. You shall have sole responsibility for the

accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of your data. You grant MacStadium a worldwide, limited right and license to host, copy, transmit, view, modify, reformat, translate, transfer and display your data as necessary or appropriate for MacStadium to provide the Services in accordance with this Agreement.

7. INDEMNIFICATION.

7.1 MacStadium Indemnity.

MacStadium will defend, indemnify, and hold harmless you and your Users and each of your and any User's respective employees, officers, directors, suppliers, providers, licensors and agents ("Customer Indemnitees") against any claims, actions, suits, demands, obligations, and proceedings ("Claims") made or brought against Customer Indemnitees by a third party alleging that the use of the Services in accordance with this Agreement infringes or misappropriates any right or interest of such third party, and any and all damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees, witness fees, and court costs) incurred in connection with such Claims. If MacStadium receives information about an infringement or misappropriation claim related to the Services or otherwise reasonably believes any part of the Services may be subject to a potential infringement or misappropriation claim, MacStadium may in its discretion (i) modify the affected Services so that they no longer infringe or misappropriate, (ii) obtain a license for your continued use of the affected Services in accordance with this Agreement, or (iii) terminate your rights to the affected Services and refund to you any unused prepaid fees covering the remainder of the term of the terminated subscriptions. THIS SECTION STATES MACSTADIUM'S SOLE LIABILITY TO YOU, AND YOUR EXCLUSIVE REMEDY AGAINST MACSTADIUM, FOR A CLAIM OF INFRINGEMENT OR MISAPPROPRIATION.

7.2 Indemnity by You. You will, at your expense, defend, indemnify, and hold harmless MacStadium and its affiliates, and their respective employees, officers, directors, suppliers, providers, licensors and agents ("MacStadium Indemnitees") from and against any and all Claims of any kind threatened, asserted, or filed against MacStadium Indemnitees by a third party, and any and all damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees, witness fees, and court costs) incurred in connection with such Claims, arising out of or relating to (a) a breach by you or a User of this Agreement; (b) any actual or alleged infringement or violation of any right or interest of any third party by you or any User; (c) any act or omission by you, your User, or anyone acting on your or your User's behalf; or (d) your or your User's data; provided, however, that this Section shall not apply to the extent that any Claim is predicated on your or any User's use of the Services in accordance with this Agreement.

7.3 Procedure. The indemnifying party's obligations in Sections 7.1 and 7.2 are subject to the party seeking to be indemnified: (a) providing the other party reasonably prompt notice in writing of any such Claim; (b) providing the other party information, assistance, and authority, at the indemnifying party's expense, to help the indemnifying party to defend such Claims; and (c) giving the other party sole control of the defense and settlement of the Claim. The indemnified party will not have any right, without the other party's written consent, to settle any such Claim if such settlement arises from or is part of any criminal action, suit, or

proceeding or contains a stipulation to or admission or acknowledgment of, any liability, infringement, blame, or wrongdoing (whether in contract, tort, or otherwise) on the part of the indemnified party or otherwise requires the indemnified party to take or refrain from taking any material action (such as the payment of fees).

8. DISCLAIMER OF WARRANTIES. USER UNDERSTANDS AND AGREES THAT THE SERVICES AND ADDITIONAL SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. MACSTADIUM EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. MACSTADIUM DOES NOT WARRANT THAT (a) THE SERVICES AND ADDITIONAL SERVICES WILL MEET USER’S REQUIREMENTS, (b) THE SERVICES AND ADDITIONAL SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, OR (c) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES OR ADDITIONAL SERVICES WILL BE ACCURATE OR RELIABLE. YOU ACKNOWLEDGE THAT MACSTADIUM DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. MACSTADIUM IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

9. LIMITATION OF LIABILITY.

9.1 Limitation of Remedy. TO THE EXTENT PERMITTED BY LAW, MACSTADIUM, AND ITS SUPPLIERS AND PROVIDERS, WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO USER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING, INCLUDING FOR UNAUTHORIZED ACCESS (I.E., HACKING) INTO MACSTADIUM’S OR YOUR TRANSMISSION FACILITIES, PREMISES OR EQUIPMENT, OR FOR UNAUTHORIZED ACCESS TO YOUR DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION; PROVIDED, HOWEVER, THAT THIS LIMITATION SHALL NOT APPLY ONLY WHERE THE UNAUTHORIZED ACCESS IS CAUSED BY MACSTADIUM’S NEGLIGENCE OR INTENTIONAL MISCONDUCT.

9.2 Maximum Liability. EXCEPT RELATING TO ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 7.1, OBLIGATIONS OF CONFIDENTIALITY, OR LIABILITY FOR NEGLIGENCE OR INTENTIONAL MISCONDUCT, TO THE EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES WILL MACSTADIUM’S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE GREATER OF (A) AMOUNTS PAID TO MACSTADIUM BY YOU UNDER THE APPLICABLE SERVICE ORDER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM OR (B) US \$100.

9.3 Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS PROVIDED TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE

PRICING OFFERED BY MACSTADIUM TO YOU AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION 9 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT.

10. CONFIDENTIALITY; PRIVACY; SECURITY.

10.1 Confidentiality. Each party may disclose to the other party certain Confidential Information of such party or of such party's associated companies, distributors, licensors, suppliers, or customers. For purposes of this Agreement, "Trade Secrets" means information that is a trade secret under law; "Confidential Information" means information, including Trade Secrets, that is of value to its owner and is treated as confidential; the "Disclosing Party" refers to the party disclosing Confidential Information hereunder, whether such disclosure is directly from Disclosing Party or through Disclosing Party's employees or agents; and "Recipient" refers to the party receiving any Confidential Information hereunder, whether such disclosure is received directly or through Recipient's employees, providers or agents. Subject to Section 10.2, Recipient agrees to hold the Confidential Information disclosed by Disclosing Party in confidence and not to, directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed, or otherwise transfer the Confidential Information disclosed by Disclosing Party to any third party, or utilize the Confidential Information disclosed by Disclosing Party for any purpose whatsoever other than as expressly contemplated by this Agreement. You acknowledge that the Services and related materials are the Confidential Information of MacStadium or its licensors and other providers. The obligations in this Section 10.1 shall continue for so long as such information constitutes Confidential Information. The foregoing obligations shall not apply if and to the extent that Recipient establishes that the information communicated was publicly known at the time of Recipient's receipt or has become publicly known other than by a breach of this Agreement.

10.2 Disclosures Required by Law. You acknowledge and agree that MacStadium may have to provide your Confidential Information or other data or information if MacStadium or its licensors or providers are ordered by an administrative agency or other governmental body of competent jurisdiction to disclose such information.

10.3 Privacy Notice. MacStadium acknowledges that your privacy is important. Notwithstanding anything to the contrary in this Agreement, you and MacStadium acknowledge and agree that MacStadium shall be bound by the publically available MacStadium, Inc. Privacy Notice as MacStadium, Inc. is, to the extent the Privacy Notice is applicable. To the extent the Privacy Notice applies and conflicts with this Agreement, the Privacy Notice shall control. Subject to Section 2.14, the Privacy Notice is subject to change at MacStadium's discretion. Your continued access or use of the Services following notice of a revised Privacy Notice shall constitute your acceptance of the Privacy Notice. The Privacy Notice governs only information collected through the Services or the administration thereof.

11. EXPORT. You shall not, without prior written consent, if required, of the office of Export Administration of the U.S. Department of Commerce, or other applicable U.S. governmental agency or department, export, re-export, allow the re-export, transship, download, or transmit any of the Services or any other technical materials (collectively, "Export Materials") to any country ("Restricted Nation"), person or entity to which such transmission is restricted by applicable regulations or statutes, including to any individual, group or organization on the U.S. Department of Treasury's Office of Foreign Assets Control's list of Specially Designated Nationals or the U.S. Department of Commerce's Bureau of Export Administration's List of Denied Persons, as each may be amended from time to time, including any of your Users. You represent and warrant that you and each of your employees, contractors, agents, and consultants who has access to the Export Materials (i) is not an individual located in a Restricted Nation; (ii) is not a business or organization owned, controlled by or acting on behalf of an individual, business or organization in a Restricted Nation; (iii) is not a government of a Restricted Nation; (iv) is not a business or organization owned, controlled by or acting on behalf of a government of a Restricted Nation; and (v) is not an individual, group or organization on the U.S. Department of Treasury's Office of Foreign Assets Control's list of Specially Designated Nationals or the U.S. Department of Commerce's Bureau of Export Administration's List of Denied Persons. You will defend, indemnify, and hold MacStadium, and its directors, employees, shareholders, agents, suppliers, or representatives harmless from and against any and all losses, damages, costs, and expenses, including legal fees, incurred directly or indirectly as a consequence of your failure to comply with this Section 11.

12. INSURANCE. MacStadium currently maintains general property insurance coverage for its assets and operating infrastructure. MacStadium may make reasonable changes to its insurance coverages from time to time. Under no circumstances will MacStadium be obligated to provide insurance coverage for any equipment or data owned by you and hosted in the MacStadium premises.

13. GENERAL. MacStadium may audit your use of the Services. You agree to cooperate with MacStadium's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with your normal business operations. You agree that MacStadium shall not be responsible for any of your costs incurred in cooperating with the audit. MacStadium will be and act as an independent contractor (and not as your agent or representative) in the performance of this Agreement and no joint venture, partnership, or agency relationship exists between the parties. MacStadium may use your name and logos in listings of MacStadium's clients for promotional, marketing, and advertising purposes in a manner that accurately reflects the relationship of the parties. Subject to your prior written approval, which you may not unreasonably withhold, MacStadium may include you in a case study at MacStadium's expense. During and for a period of six (6) months after this Agreement, neither party shall directly solicit or assist any other person or entity in soliciting any employee or independent contractor of the other party to perform services for any person or entity, or attempt to induce any employee or independent contractor to leave the employment of that party. The parties may not assign or delegate any of their rights or obligations under this Agreement, whether by operation of law or otherwise, without the respective other party's prior written consent, except that a party may assign all of its rights and obligations under this Agreement to any corporation or other entity without consent in connection with a merger or the sale of all or substantially all of its assets as long as such party gives the respective other

party written notice of any such assignment no later than twenty (20) business days before such assignment; subject to the foregoing, this Agreement shall inure to the benefit of the parties and their respective successors and permitted assigns. All notices, authorizations, and requests in connection with this Agreement will be deemed given: (a) three (3) days after they are deposited in the U.S. mails, postage prepaid, certified or registered, return receipt requested; (b) one (1) day after they are sent by air express courier, charges prepaid; or (c) on the day of transmittal if sent by facsimile or by email, in each case to such address of the party to receive the notice or request set forth on the applicable Service Order or as such party so designates by written notice to the other. MacStadium will not be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond MacStadium's reasonable control. This Agreement is governed by and construed in accordance with the laws of the State of Georgia without regard to conflict of laws principles. All disputes arising out of or relating to this Agreement shall be resolved in the state and federal courts in the city of Atlanta and state of Georgia, and each party irrevocably consents to the exclusive venue and personal jurisdiction of those courts for the resolution of such disputes and waives all objections thereto. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect. This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. This Agreement will be construed as though all parties had drafted it. This Agreement (including information and other agreements incorporated into this Agreement by reference) is the final and complete expression of the agreement between the parties regarding the Services. This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement. MacStadium will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to this Agreement that is proffered by you in any receipt, acceptance, confirmation, correspondence, or otherwise.

[Remainder of page intentionally left blank.]