

Master Services Agreement

The Terms set out herein are made part of the ordering document executed on the Effective Date between you and MacStadium (each, a “Service Order”) and together with such Service Order, including any exhibits or attachments to either these terms or the applicable Service Order, constitute the “Agreement” between you and MacStadium. Capitalized terms not defined herein shall have their same meaning as set out in the applicable Service Order.

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 executing a Service Order that incorporates the terms set out herein; 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 or any services set out in a written statement of work between you and MacStadium. “User” means you and your individual users of the Services, including but not limited to your affiliates and your and your affiliates’ respective customers and including all of such customers’ end users, who you permit to use the Services and to whom you have, or MacStadium at your request has, supplied Credentials (defined below). “MacStadium” means the MacStadium legal entity that executes a Service Order with you.

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, which may include providing a commercial accessible software-as-a-service (“SaaS Offering”) to your Users. 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 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 other than your Users. 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.

2.3 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 Customers, 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.

2.4 Use Restrictions. You may not:

- a. except when providing a SaaS Offering to your Users, 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 part of a SaaS offering or 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.

2.5 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.

2.6 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 attached as Exhibit A (the “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 1 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).

2.7 Third-Party Technology; Your Software. You represent and warrant that all software you or your Users install on the Configuration, as defined in section 5.5 below, provided to you as part of the Services is licensed for its intended use and for access by both parties. 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 SaaS Offerings or other products or services you may provide in connection with your use of the Services.

2.8 Changes; Modifications. Subject to fulfillment of obligations under a Service Order, MacStadium and its licensors and providers may notify you in writing of an upgrade, enhancement, change or modification of the Services (“Service Modification”) that may be available during or after a Service Order Term. During a Service Order Term, you shall not be obligated to accept any Service Modification if such Service Modification degrades the performance or functionality, or increases the cost of, such Service. Upon your written consent, MacStadium may amend this Agreement, including the SLA and Acceptable Use Policy.

2.9 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 provided that such suspension is limited to the User(s) or parties causing the potential 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 and provided that such suspension is limited to the User(s) or parties violating the Acceptable Use Policy; (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 materially breaches any provision of any Service Order or this Agreement and such breach 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. MacStadium may not exercise its suspension rights under this section with respect to any failure or alleged failure to timely pay fees to the extent you have disputed in good faith such fees prior to their due date and are cooperating with MacStadium diligently and in good faith to resolve the dispute. 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 commence on the Effective Date of the first Service Order incorporating these terms and 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 thirty (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. MacStadium may terminate this Agreement or suspend the Services in the event of: (a) a material breach 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 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, all terminations shall be made in MacStadium's sole discretion, and MacStadium shall neither 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 2.8 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 sixty (60) 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. 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 Late Payment; Attorney's fees. 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. If MacStadium institutes any action, suit, or other legal or administrative proceeding against you arising out of or related to this Agreement, including for the collection of past due fees and expenses, and is the prevailing party to such action, MacStadium will be entitled to recover, in addition to any other amounts awarded in such action, its reasonable attorneys' fees and court costs from you.

4.5 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.

4.6 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” as contained in Exhibit B to this Agreement. 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. The parties shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with the provision and 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, User access to the Services, and encrypting your data or content. You must block MacStadium from having access to your unencrypted data and content, including by encrypting your data and content not providing MacStadium with the encryption keys thereto, 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 or policies.

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 Configuration. You are solely responsible for determining whether the equipment, internet access 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.

5.6 Users. You shall enter into, and reasonably enforce, contracts with all Users that obligate such Users to comply with the provisions of this Agreement that are applicable to Users' use of the Services. Additionally, if MacStadium provides you with reasonably detailed written notice of your Users' acts or omissions that violate the provisions of this Agreement or a Service Order, and you have not taken prompt, effective steps to ensure compliance or terminate such User's access, 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 you assign to MacStadium any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Services. You own all right, title and interest, including all related intellectual property rights in and to your SaaS Offering, content, data, software and configurations and any other trade secrets or knowhow qualifying as Confidential Information. 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 shall at its expense (a) defend 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 (b) indemnify you against any and all damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees, witness fees, and court costs) awarded in favor of such third party by the court adjudicating such Claims. MacStadium shall have no obligations with respect to any intellectual property infringement or misappropriation claim to the extent (y) such Claim arises from your or your Users' data, materials, or information residing in the Services or otherwise on MacStadium's computer systems or hardware or (z) of the damages or losses in connection with the Claim that would have been avoided or reduced or lessened by the use of the most current version of the Services made available by MacStadium, including with respect to any Service Modifications. 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 shall at your expense (a) defend 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 (b) indemnify the MacStadium Indemnitees against any

and all damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees, witness fees, and court costs) awarded in favor of such third party by the court adjudicating such Claims to the extent such Claim arises out of or relates to (i) a breach by you or a User of this Agreement; (ii) any actual or alleged infringement or violation of any right or interest of any third party by you or any User; or (iii) your or your User's data, any SaaS Offering or other products or services offered by you or your Users.

7.3 Procedure. The indemnifying party's obligations in Section 7 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. EXCEPT AS PROVIDED UNDER THE SLA, YOU AND ALL USERS UNDERSTAND AND AGREE 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, NEITHER YOU NOR MACSTADIUM, AND ITS SUPPLIERS AND PROVIDERS, WILL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO ONE ANOTHER OR A USER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST DATA, 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 TO THE EXTENT THAT THE UNAUTHORIZED ACCESS IS CAUSED BY MACSTADIUM'S GROSS NEGLIGENCE OR INTENTIONAL TORTIOUS MISCONDUCT.

9.2 Maximum Liability. EXCEPT RELATING TO ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 7, OBLIGATIONS OF CONFIDENTIALITY, OR LIABILITY FOR GROSS NEGLIGENCE OR INTENTIONAL TORTIOUS MISCONDUCT, TO THE EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES WILL EITHER YOUR OR 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 \$1,000.

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 2.8, 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.

13.1 Audits. MacStadium may audit your use of the Services where reasonable cause exists in a reasonable way. 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.

13.2 Independent Contractors. 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 Customers for promotional, marketing, and advertising purposes in a manner that accurately reflects the relationship of the parties.

13.3 Publicity. Subject to your prior written approval, which you may not unreasonably withhold, MacStadium may include you in a case study at MacStadium's expense or display your logo in marketing materials.

13.4 Non-solicitation. 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.

13.5 Assignment. 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.

13.6 Notices. 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.

13.7 Force Majeure. 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, including, but not limited to, an act of nature, war, man-made and natural disasters, governmental regulations, terrorism, communication or utility failures or casualties or the failures or acts of you or third parties.

13.8 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Georgia without giving effect to any choice or conflict of law provision or rule. Each Party submits to the exclusive jurisdiction of the courts of the State of Georgia (Fulton County) or the United States District Court for the Northern District of Georgia, and each Party waives any objection to venue with respect to the actions brought in those courts.

13.9 Severability. 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.

13.10 Mutually Drafted. 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.

13.11 Entire Agreement. 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.

Exhibit A**Service Level Agreement**

This SLA constitutes MacStadium's commitments regarding Service availability and Service conditions. Notwithstanding anything else in the Agreement, this SLA is subject to change at MacStadium's discretion. Your continued access to or use of the Services following notice of a revised SLA shall constitute your acceptance of the SLA. Capitalized terms not defined herein shall have their corresponding meanings set out elsewhere in the Agreement.

1. SERVICE AVAILABILITY

MacStadium shall use commercially reasonable efforts to ensure its infrastructure will have the availability set forth below, except to the extent that you and MacStadium agree otherwise. MacStadium recommends the placement of servers in two or more data centers as a preventative measure against the failure of a single data center. If a data center's actual availability is less than the applicable availability set forth below or in your Service Order, your sole remedy will be the corresponding financial credits ("Service Credits") provided in this SLA. "Unavailable" and "Non-Compliance" shall have the meanings given to them with respect to each applicable service level.

1.1 Private Cloud Service.

(a) *Private Cloud Service Level.* Each twelve (12) month period, MacStadium will have at least 99.99% availability for Private Cloud Services, if applicable, during which Private Cloud Services will be Unavailable no more than five (5) minutes per Customer agreement outside of scheduled and emergency maintenance ("Cloud Services Threshold"). For the purposes of this paragraph, Cloud Services are considered Unavailable when access to MacStadium's Cloud service is unavailable due to the failure of MacStadium's Cloud infrastructure or systems including servers, SAN storage, security, and virtualization systems.

(b) *Service Credit.* If Cloud Service Unavailability exceeds the Cloud Services Threshold, you will be entitled to a Service Credit equal to 1/30th of the MRC for the affected Cloud Services.

2. MAINTENANCE

As provided in MacStadium's Terms of Service, MacStadium reserves the right to perform maintenance from time to time in the methods set forth below.

2.1 **Scheduled 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.

2.2 Emergency Maintenance. 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.

2.3 All Maintenance. MacStadium will use reasonable efforts, with equitable consideration to its other Customers, 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.

3. **NOTIFICATION AND RESPONSE TIME**

In the event of an incident that leads to the Unavailability of the above service levels or the Non-Compliance with an above service condition, you shall notify MacStadium immediately so as to reduce any periods of Unavailability or Non-Compliance. Under this SLA, Unavailability and Non-Compliance shall not include Unavailability and Non-Compliance not reported by you within five (5) business days of the day the Unavailability and Non-Compliance first began. Upon receipt from you of a notification of an incident that leads to the unavailability or non-compliance of the above service availability, MacStadium will respond to the incident in the shortest time feasible so as to reduce any periods of Unavailability or Non-Compliance.

4. **REQUEST FOR SERVICE CREDIT**

You MUST request a Service Credit from MacStadium in writing by submitting a ticket in the MacStadium management portal within seven (7) days after the incident entitling you to a Service Credit has been remedied. If you do not request a Service Credit in this manner, you WILL NOT be entitled to a Service Credit.

5. **EXCLUSIONS**

Unavailability and Non-Compliance do not include Unavailability or Non-Compliance caused by: (a) Scheduled or Emergency Maintenance or a suspension of Services; (b) your or a User's content related other than to scalability or volume; (c) the incompatibility of any operating system, application or vendor supplied security patches with your or a User's data or content; (d) your or your agents acts or omissions, including all of your or a third party's testing of the servers; (e) your or your representatives' equipment, actions or inactions; (f) the failure of servers or services outside of a data center on which the Services are dependent, including, but not limited to, inaccessibility on the Internet that is not caused by MacStadium's network or network providers; (g) MacStadium's blocking of content that MacStadium deems in its sole discretion to be in violation of the Acceptable Use Policy; (h) hardware downtime for hardware not hosted in MacStadium data centers; (i) a force majeure such as an act of God, act of war, act of terrorism, fire, flood, earthquake, hurricane, typhoon, tsunami, volcanic eruption or other natural disaster, riot or civil unrest, labor strikes or other labor actions, official Service Orders from judicial, law or civil authorities, and any other circumstances, events, actions, or inactions not in MacStadium's reasonable control; (j) a denial of service attack or unauthorized access (i.e., hacking); (k) your failure to meet the terms and conditions of this SLA; (l) co-located devices; (m) downtime not reported by you within five (5) business

days of the day the downtime first began; (n) time required to format or reformat disks or a RAID array; (o) time required to load, reload, configure or reconfigure an operating system; (p) time required to load, reload, configure or reconfigure applications; (q) time required to restore from backup; and (r) your failure to provide accurate and current contact information for the purposes of this SLA.

6. **LIMITATIONS.**

The guarantees in this SLA will not apply if: (a) you disable or block (either intentionally or unintentionally) MacStadium's administrative access in any way that prevents MacStadium from performing its obligations; (b) you make any modifications that prohibit a device from rebooting properly; (c) you modify or delete the contents of MacStadium's administrative directories, or disables or modifies any software installed by MacStadium for the purposes of monitoring or server maintenance; (d) you violate the terms of this Agreement; (e) you become ineligible for Service Credits pursuant to any other provision of this Agreement; (f) you fail to provide MacStadium with current and accurate information for the purposes of this Agreement; (g) you fail to request a Service Credit in the manner provided in this Agreement.

7. **GENERAL TERMS**

Notwithstanding anything to the contrary in this Agreement or any Service Order, the following provisions apply to all Services:

7.1 SOLE REMEDY. 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.

7.2 Maximum Credit. In any calendar month the maximum Service Credit to which you shall be entitled for any service shall NOT exceed one hundred percent (100%) of the MRC for such service.

7.3 Verification. All periods of Unavailability and Non-Compliance must be verified by MacStadium, and approved Service Credits will be applied by MacStadium to the invoice for the month following the month in which the Service Credit was approved. The period of Unavailability or Non-Compliance is measured from your notification to MacStadium of the incident to the time the Unavailability or Non-Compliance has been remedied as confirmed by MacStadium.

Exhibit B**ACCEPTABLE USE POLICY**

To protect the interests of all Customers and ensure optimal service levels, MacStadium has developed the following Acceptable Use Policy (“AUP”), which applies to you, your users, and all other Customers and customers (and their respective users) (individually and collectively, as used in this Exhibit, “Customer” or “Customers”) of MacStadium. Use of any service offered by MacStadium by any Customer will constitute acknowledgment of, and agreement to, the terms outlined in this AUP. This AUP may be revised in part or in full at any time by MacStadium. Continued use of MacStadium’s services after such changes have been made to the AUP will constitute acceptance of any revisions to the AUP.

Customers may only use our servers for lawful purposes, in compliance with all applicable federal, state and local laws or regulations and in compliance with this AUP.

Specific activities that are prohibited include, but are not limited to:

- Hosting, storage or transmittal of any material in violation of any applicable law or regulation, including without limitation, libel, defamation of character, invasion of privacy and tortious interference.
- Hosting, storage or transmittal of any material protected by copyright, trademark, trade secret or any other intellectual property right without proper authorization.
- Hosting, storage or transmittal of any material legally judged to be threatening or obscene, pornography or sexually explicit material that is in violation of any applicable federal, state or local law or regulation, such as material that involves the depiction or use of underage persons.
- Transmitting adult content to juvenile users of the Internet.
- Exporting technical or military data to prohibited countries.
- Violating United States export control laws or regulations for software or technical information or violating United States laws or regulations concerning the doing of business with certain designated persons or entities.
- Failing to provide complete, truthful and accurate information regarding the Customer’s identity as
 - requested on all of MacStadium’s application forms.
- Misrepresenting or fraudulently representing products/services.
- Threatening harm to persons or property or otherwise harassing behavior.
- Abusing or harassing MacStadium employees, staff or agents, including without limitation, verbal harassment, yelling, swearing, rudeness, threats or any intentionally disruptive behavior.
- Hosting, storage or transmittal of any material that sponsors, assists in or encourages the unlawful use or threatened use of force or violence against persons or property to intimidate or coerce a government, any civilian population or any segment thereof, in furtherance of political or social objectives.

- Managing a proxy server on MacStadium’s network.
- Being subject to economic sanctions, prohibitions or restrictions on trade or export imposed by any governmental authority having jurisdiction over Customer or MacStadium, or in any jurisdiction where MacStadium or any of its affiliates are located, and whether or not the services provided to Customers by MacStadium or such affiliate would violate such economic sanctions, prohibitions or restrictions.
- Interfering with the legitimate use by Customers or other third parties of resources on the MacStadium network or any of MacStadium’s services.
- Facilitating, aiding or encouraging any of the above prohibited activities, whether using MacStadium’s network or any other network.

SPAM AND UNSOLICITED COMMERCIAL EMAIL

The Customer must comply with the CAN-SPAM Act of 2003 and all relevant regulations and legislation on bulk and commercial email. MacStadium takes a zero tolerance approach to the sending of mass Unsolicited Commercial Email (“UCE”) or spam over our network. UCE is any email message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service, which is sent to a recipient who has not requested it or opted out of such communication.

This means that Customers of MacStadium may not use or permit others to use our network to transact in UCE. In order to prevent unnecessary blacklisting due to spam, we reserve the right to occasionally sample bulk email being sent from servers.

To reiterate the strength of our zero tolerance approach to the sending of UCE or spam over our network, the following activities are strictly prohibited:

- General Prohibitions. Using the MacStadium network to send or receive replies from UCE; hosting sites or information that is advertised by UCE from other networks; transmitting bulk email through remote SOCKS, HTTP or other similar proxies who in turn make a SMTP connection to the destination mail servers; forging email headers (i.e., “spoofing”); spamming using third-party proxy, aggregation of proxy lists, or proxy mailing software installation; or hosting any web pages or providing any services that support spam.
- Landing Sites. The hosting of any web site or other content in any form intended to be intentionally or unintentionally retrieved or viewed by any recipient of any unsolicited email sent in violation of the spirit or letter of the terms defined in this document, whether sent from our network or any other network.
- Newsgroup Spamming. The posting of commercial messages to any newsgroup or discussion forum not chartered or organized for that specific purpose.

SYSTEM AND NETWORK SECURITY

The Customer is required to protect the security of its Internet accounts (ftp, email, etc.) and usage to ensure the security of the MacStadium network and every MacStadium network object, including without limitation, routers, switches and workstations. Further, the Customer is responsible for validating the

integrity of the information and data it receives or transmits over the Internet and reporting any weaknesses in the MacStadium network and any incidents of possible misuse or violation of this AUP.

To ensure the integrity of our network, the following activities are strictly prohibited:

- General Prohibitions. Using or distributing tools designed to compromise security; unauthorized monitoring of data or traffic on the MacStadium network or any other network without express authorization, deliberate attempts to overload the MacStadium network and broadcast attacks; forging of any TCP-IP packet header or any part of the header information in an email or intentionally or negligently transmitting files containing a computer virus or corrupted data.
- Denial of Service Attacks. The launching or facilitating the launch of a denial of service (“DoS”) attack on any host or computer on the MacStadium network for any reason whatsoever, or the use of any

MacStadium network resource to interfere with the legitimate use by Customers or other authorized users of resources of the MacStadium network or any other network. This includes the hosting of a Camfrog server or other server application that is a frequent target of DoS attacks or other types of attacks.

- Port Scanning. The scanning of the service ports of any host or computer on the MacStadium network or any other network, or the sniffing of packet traffic on the MacStadium network. The placing of any network interface into promiscuous mode is similarly prohibited.
- Unauthorized Access. Any unauthorized access to or unauthorized alteration of the files or operating system or other content of any host or network, any unauthorized attempt to obtain login credentials, such as username and/or password, of any host on the MacStadium network or any other network or any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures.
- IRC Networks. The hosting of an IRC server that is part of or connected to another IRC network or server. Servers found to be connecting to or part of these networks will be immediately removed from our network without notice. The server will not be reconnected to the network until such time that Customer agrees to completely remove any and all traces of the IRC server and agree to let us have access to Customer’s server to confirm that the content has been completely removed.

IP ALLOCATIONS

All IP addresses which are assigned to Customer 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 Customer are not being used in accordance with these guidelines, they may be revoked.

IMMEDIATE THREATS

If, in the reasonable determination of MacStadium, the equipment, software or hosted applications used by the Customer or the activities of the Customer poses an immediate threat to the physical integrity of MacStadium premises or the physical integrity or performance of the equipment or network of MacStadium or any other user of the premises, or poses an immediate threat to the safety of any person, then MacStadium may perform such work and take such other actions that it may consider necessary

without prior notice to the Customer and without liability for damage to the equipment or data for any interruption of the Customer's (or its Customers') businesses. As soon as practical after performing such work, MacStadium will advise, by email, the Customer of the work performed or the action taken.

MONITORING

To determine compliance with this AUP and our Terms of Service, MacStadium reserves the right to monitor Customer usage of the MacStadium network, including without limitation, occasionally sampling bulk email and monitoring bandwidth usage. Customer hereby consents to such monitoring and agrees that MacStadium is under no duty under this AUP, the Terms of Service, or otherwise, to monitor Customer use of MacStadium services.

CUSTOMER'S RESPONSIBILITY FOR ITS USERS

Any act or omission by a Customer's customers or users will be a breach of this AUP if the act committed by the customer or user would be deemed a breach of this AUP if committed by Customer.

VIOLATION

Violation of MacStadium's AUP will result in severe penalties. MacStadium may initiate an immediate investigation to substantiate the alleged violation. During the investigation, MacStadium may restrict Customer access to the network to prevent further violations. The designation of any materials and actions as prohibited as described in this AUP is left entirely to the discretion of MacStadium management.

If a Customer is found to be in violation of our AUP, MacStadium may, at its sole discretion, restrict, suspend or terminate such Customer's account. MacStadium has no obligation to provide warnings under any circumstances and can terminate the Customer's account without prior notification upon a finding that the Customer has violated this AUP. Further, MacStadium reserves the right to pursue civil remedies for any costs associated with the investigation of a substantiated policy violation. MacStadium will notify law enforcement officials if the violation is believed to be a criminal offense and will cooperate fully with law enforcement authorities in investigating the alleged criminal offense.

First violations of this policy will result in an "administrative fee" of \$250 and the Customer's account will be reviewed for possible immediate termination. A second violation will result in an administrative fee of \$500 and immediate termination of the Customer's account. Customers who violate this policy shall also be responsible for "research fees" in an amount of \$175 per hour for all time that MacStadium personnel must spend to investigate the matter.