



MSA Academic No \_\_\_\_\_

**JOYENT, INC. MASTER SERVICES AGREEMENT FOR ACADEMIC INSTITUTIONS**

**Contract No.:** \_\_\_\_\_ **Customer:** \_\_\_\_\_

**Effective Date:** \_\_\_\_\_ **Street Address:** \_\_\_\_\_

**Town/City:** \_\_\_\_\_

**Country/Zip Code:** \_\_\_\_\_

This **JOYENT, INC. MASTER SERVICES AGREEMENT FOR ACADEMIC INSTITUTIONS** (this "Agreement") is entered into as of the date set forth above (the "Effective Date") by and between Joyent, Inc., a Delaware corporation, with principal offices at 345 California Street, 20<sup>th</sup> floor, San Francisco, California 94104 ("Joyent") and the entity named above ("Customer").

**1. AGREEMENT SCOPE.** This Agreement is a master agreement that provides for the supply by Joyent to Customer of certain cloud computing services (as further defined in Exhibit A, the "Cloud Service") ordered by Customer hereunder pursuant to one or more order forms executed by the parties and substantially in the form attached as Exhibit B hereto (each, an "Order Form"), and the provision by Joyent to Customer of related professional services (as further defined in Exhibit A, the "Professional Services") as may be set forth in one or more statements of work (each, an "SOW"). Accordingly, in addition to the initial Cloud Service(s) and Professional Services to be provided hereunder, the parties may subsequently enter into additional Order Forms and/or additional SOWs under which additional Cloud Services and/or Professional Services will be provided by Joyent to Customer. Each additional Order Form and SOW will be numbered sequentially (e.g., Order Form 1, 2, 3, etc...) and upon execution by both parties shall be deemed an amendment hereto and subject to all of the terms and conditions herein. The provision by Joyent of the Cloud Services and Professional Services is subject to the Joyent, Inc. Services Terms and Conditions set forth in Exhibit A hereto.

**2. ENTIRE AGREEMENT.** This Agreement, together with any Exhibits, Order Forms and SOWs attached hereto, or which are later executed by the parties and expressly reference this Agreement (all of which are hereby incorporated herein by this reference), along with any valid amendments hereto, completely and exclusively state the entire agreement of the parties regarding its subject matter, and supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter.

**IN WITNESS WHEREOF**, the parties have executed this Agreement by their duly authorized representatives.

**FOR AND ON BEHALF OF JOYENT, INC.:**

**FOR AND ON BEHALF OF CUSTOMER:**

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## EXHIBIT A

### JOYENT, INC. SERVICES TERMS AND CONDITIONS

#### 1. DEFINITIONS

1.1 Capitalized terms used in this Agreement are defined terms; the definitions are located where such terms are first underlined.

1.2 "Confidential Information" means information provided by either party to the other under this Agreement during the term of this Agreement in any form or format, including without limitation, technical, business, financial and marketing information, and descriptions of the existence or state of progress of that information. A party's Confidential Information includes, without limitation, any and all copies, notes, analyses, compilations, studies, interpretations, and summaries of that information prepared by or for the other party. The Cloud Service and all features and functions therein shall be the Confidential Information of Joyent.

1.3 "Customer" means the Qualified Academic Institution named on the cover page to this Agreement, and its affiliates. For purposes of this Agreement, "affiliate" means an entity that controls, is controlled by or under common control with the Qualified Academic Institution named above. The Qualified Academic Institution named above agrees to be responsible to Joyent for any costs or damages resulting from an act or omission by an affiliate that if attributable to Customer would constitute a breach of this Agreement.

1.4 "Customer Content" means any information or data provided by Customer to Joyent in connection with Customer's use of the Cloud Service, including, without limitation, any text, software, music, sound, photographs, graphics, video, messages, files, attachments, or other materials stored or used on the Cloud Service.

1.5 "Documentation" means the information made generally available online by Joyent to its customers that describes the form, features and/or operation of the Cloud Service, including any updates of Documentation that Joyent may make available to Customer pursuant to this Agreement.

1.6 "Cloud Service(s)" means those components of the Joyent cloud computing services offering described in any Order Form entered into under this Agreement, to the extent that such Order Form is then in force and effect.

1.7 "Implementation" means the implementation process and tasks described in SOW-1 attached as Exhibit C hereto.

1.8 "Implementation Date" means the date upon which Joyent provides the Customer with written notice that the Cloud Service is available for general production use, as set forth in Section 2.1 of this Agreement.

1.9 "Implementation Target Date" means the date for which Implementation is targeted to be complete, as set forth in Exhibit C hereto.

1.10 "Intellectual Property Rights" means any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing (i) rights associated with works of authorship throughout the universe, including, but not limited to, all exclusive exploitation rights, copyrights, neighboring rights, moral rights and mask-works, (ii) trademark, trade dress, and trade name rights and similar rights, (iii) trade secret rights, (iv) patents, designs, algorithms and other industrial property rights, (v) all other intellectual and industrial property and proprietary rights (of every kind and nature throughout the universe and however designated), whether arising by operation of law, contract, license or otherwise, and (vi) all registrations, applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force throughout the universe.

1.11 "Professional Services" means the professional services described in an SOW, to be performed for Customer by Joyent or its subcontractor.

1.12 "Protected Information" means any (i) "non-public personal information" as that term is defined in the Gramm-Leach-Bliley Act found at 15 USC Subchapter 1, Section 6809(4), (ii) "protected health information" as that term is defined in regulations promulgated pursuant to the Health Insurance Portability and Accountability Act found at 45 CFR § 164.501, (iii) any and all information identifying specific individuals, such as name, address, phone number, date of birth, mother's maiden name, e-mail address, social security number, and (iv) any other information that is the subject of special legal or regulatory security requirements, both in effect as of the Effective Date and as subsequently enacted.

1.13 "Qualified Academic Institution" means a public or private accredited institution for higher learning that provides facilities for teaching, researching, and is authorized to grant academic degrees, e.g., bachelor degrees, master degrees, and doctorates, as well as "research institutions" as that term is defined in the SBIR/STTR Statute [15 U.S.C. 638(e)(8)] and Section 4(5) of the Stevenson-Wylder Technology Innovation Act of 1980 [15 U.S.C. 3703(5)].

1.14 "Service Level Agreement" means, with respect to the Cloud Service, the description of service levels and support to be provided by Joyent to Customer, and the exclusive remedies of Customer in the event Joyent fails to achieve such levels of performance and support, all as more specifically set forth in Exhibit D hereto.

1.15 "Term" shall have the meaning set forth in Section 9.1 of this Agreement.

#### 2. CLOUD SERVICE

2.1 Implementation. Joyent shall use its commercially reasonable efforts to perform the Implementation by the Implementation Target Date; provided, however, that Customer shall cooperate with Joyent to carry out all tasks reasonably necessary for Implementation of the Cloud Service. Joyent shall consult with Customer and provide assistance as reasonably necessary for Customer to carry out such tasks. Joyent shall notify Customer in writing when the Cloud Service is available for access and use by Customer.

2.2 Right to Use the Cloud Service. Upon completion of the Implementation, and in consideration of all obligations of Customer hereunder, including, without limitation, the payment by Customer of any applicable fees, Joyent hereby grants to Customer, during the Term of this Agreement, a non-exclusive, non-transferable (except as otherwise provided for herein), right and license to access and use the Cloud Service, and to use the Documentation in connection with such use of the Cloud Service. The foregoing license does not permit Customer to, and Customer hereby agrees not to, resell, relicense, resyndicate or otherwise sublicense the Cloud Service to any third-party, except as may be expressly set forth herein.

2.3 Use Restrictions. Customer shall not: (i) access and/or use the Cloud Service if Customer is a direct competitor of Joyent, for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes, including in order to design, create or build a service or product that is competitive with the Cloud Service, or which uses ideas, features or functions that are similar to the Cloud Service; (ii) sell, resell, rent, lease, offer any time sharing arrangement, service bureau or any service based upon the Cloud Service on a stand-alone basis (for the avoidance of doubt, this subsection shall not be deemed to preclude Customer from offering services that use and rely upon the Cloud Service where Customer's other products or services add

substantial value as compared to the Cloud Service alone); (iii) interfere with or disrupt the integrity or performance of the Cloud Service, (iv) attempt to gain unauthorized access to the Cloud Service or any associated systems or networks; or (v) modify or make derivative works based upon the Cloud Service or any part thereof, or directly or indirectly disassemble, decompile, or otherwise reverse engineer the Cloud Service or any portion thereof.

2.4 Suspension of Access to Cloud Service. Joyent may suspend Customer's access to the Cloud Service at any time in order to: (i) prevent damages to, or degradation of, Joyent' network integrity; (ii) comply with any law, regulation, court order, or other governmental request or order which requires immediate action; or (iii) otherwise protect Joyent from potential legal liability; provided, however, Joyent will use commercially reasonable efforts to provide Customer with a minimum of five (5) business days' prior written notice of any such suspension. In addition, if Customer fails to pay, within ten (10) days of receiving written notice, when due any amounts owed hereunder, Joyent may suspend Customer's access to the Cloud Service. If Joyent suspends Customer's access to the Cloud Service, Joyent will promptly restore such access after the event giving rise to the suspension has been resolved to Joyent's reasonable satisfaction.

2.5 Proprietary Rights. The Cloud Service, including all Intellectual Property Rights therein and thereto, and any modification thereof, are and shall remain the exclusive property of Joyent and its licensors. Customer shall not take any action that jeopardizes Joyent's or its licensors' proprietary rights or acquire any right in the Cloud Service or Joyent's Confidential Information, except the limited rights expressly granted in this Agreement.

2.6 Third Party Software and Services. In connection with Customer's use of the Cloud Service, solely as a convenience for Customer and solely at Customer's election, Joyent may make available to Customer the use of certain third party software and/or services ("Third Party Software and Services"). Customer agrees that Joyent shall have no liability or responsibility for the performance or failure to perform of any Third Party Software and Services made available to Customer through the Cloud Service and that the terms and conditions of Customer's use of any such Third Party Software and Services are established between Customer and the applicable third party vendor, and Customer shall look solely to such third party vendor for any claim or complaint regarding Third Party Software and Services. Customer acknowledges that no purchase or license of any Third Party Software and Services is required to use the Cloud Service.

### 3. **OTHER CUSTOMER OBLIGATIONS**

3.1 Accounts and Passwords. Customer is responsible for establishing and maintaining its own account with the Cloud Service. Customer agrees that it is responsible for the conduct of all users of its account(s) and any Customer Content that is created, transmitted, stored, or displayed by, from, or within such account(s), and for any consequences thereof. Customer is responsible for maintaining the confidentiality of its account password(s), and for all activities that occur under Customer's account. Customer agrees to immediately notify Joyent of any unauthorized use of its password(s) or account(s), or any other breach of security related to the Cloud Services of which it becomes aware. Joyent shall not be liable for any loss or damage arising from Customer's failure to keep its password(s) secure.

3.3 Internet and Telecommunications Connections. Customer shall be responsible for obtaining any and all Internet and/or telecommunications connections used by Customer to access the Cloud Service. Joyent shall have no responsibility or liability for any interruption or delay in accessing or using the Cloud Service arising out of such Internet or telecommunications connections.

#### 3.4 Customer Content.

(a) Customer Obligations. Customer understands and agrees that the Customer Content is the sole responsibility of Customer. Joyent take such actions

with respect to Customer Content as may be required by law.

(b) License to Joyent. Customer hereby grants to Joyent a limited right and license, without the right to grant or authorize sublicenses, during the Term of this Agreement to use and reproduce Customer Content, solely for the purpose of facilitating the performance of Joyent's obligations under this Agreement.

(c) Return of Customer Content. In the event this Agreement expires or is terminated, Joyent will make available to Customer a file of the Customer Content within thirty (30) days of such termination or expiration if the Customer so requests at the time of termination or expiration. Upon termination for cause, Joyent shall have no obligation to maintain or to forward to Customer any Customer Content after thirty (30) days of the effective date of such termination.

3.5 Suggestions. Customer hereby grants to Joyent a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Cloud Service any suggestions, enhancement requests, recommendations or other feedback related to the Cloud Service provided by Customer to Joyent.

3.6 Protected Information. Customer agrees to use reasonable security precautions in connection with its use of the Cloud Service, including without limitation, encrypting any Protected Information transmitted to or from, or stored by Customer on, the Cloud Service, and requiring its customers to do the same.

3.7 Indemnification. Customer shall defend, at its cost and expense, Joyent against any third party claim, suit or proceeding: (i) alleging that any Customer Content or Customer's use of the Cloud Service (1) infringes or misappropriates any Intellectual Property Right of a third party, (2) violates applicable law, (3) is obscene, defamatory, libelous, indecent or otherwise sexually explicit, disturbing, offensive, profane, vulgar, abusive, insulting, threatening or hateful, or (4) violates the privacy or publicity rights of any person; and/or (ii) arising out of a breach by Customer of Section 3.6 above. Customer shall indemnify Joyent for any damages finally awarded against, and for reasonable attorney's fees incurred by, Joyent in connection with any such claim; provided, that Joyent (a) promptly gives Customer written notice of the claim, suit or proceeding; (b) gives Customer sole control of the defense and settlement of the claim, suit or proceeding (provided that Customer may not settle any claim, suit or proceeding unless the settlement unconditionally releases Joyent of all liability); and (c) provides to Customer, at Customer's expense, all reasonable assistance.

### 4. **PROFESSIONAL SERVICES.**

4.1 SOWs and Performance of Services. If Customer desires that Joyent provide Professional Services, then the parties may execute an SOW. Joyent shall use its commercially reasonable efforts to provide such Professional Services to Customer in accordance with the applicable SOW. Joyent reserves the right to provide Professional Services through an affiliate or third party subcontractor, provided that Joyent shall remain fully responsible for the provision of any Professional Services through any such third party.

4.2 Change Requests. Customer's request for any change in Professional Services or in the associated project schedule must be in writing. Joyent shall not be obligated to perform tasks or alter schedules described in Customer's change request until the parties agree in writing to the proposed changes.

4.3 Customer's Obligations. Customer acknowledges that its timely provision to Joyent of reasonable access to (i) office accommodations at Customer's facilities, if applicable, (ii) assistance and cooperation as may be described in an applicable SOW, and (iii) suitably configured software (if applicable), may be essential to performance of any Professional Services, and that Joyent shall not be liable for any deficiency or delay in performing Professional

Services if such deficiency or delay results from Customer's failure to provide the foregoing.

4.4 Ownership of Work Product. Customer acknowledges that in the course of performing the Professional Services Joyent may (i) employ pre-existing technology and/or (ii) create software, designs or other work ((i) and (ii), collectively "Work Product"). Subject to Customer's rights in the Customer Confidential Information (as set forth in Section 8 below) and the Customer Content, Joyent shall own all right title and interest in such Work Product, including all intellectual property rights therein and thereto. If any Work Product is delivered to Customer pursuant to or in connection with the performance of Professional Services (a "Deliverable"), Joyent hereby grants to Customer a license to use such Deliverable during the term of this Agreement, solely for the purposes of this Agreement.

## 5. FEES; INVOICES; PAYMENT AND TAXES.

5.1 Fees. Fees and discounted rates for use of the Cloud Service and the provision of Professional Services are set forth in the applicable Order Form and/or SOW. Upon thirty (30) days written notice to Customer, Joyent shall have the right to change fees effective any time after the first anniversary of the Effective Date.

5.2 Invoices and Payment. Joyent shall invoice Customer in advance at the beginning of each calendar month during the term of this Agreement for fees for access to the Cloud Service. All upfront fees set forth on an Order Form will be invoiced on the Effective Date. All payments must be made in U.S. dollars within thirty (30) days of the date of an applicable invoice. Late payments hereunder will be subject to a monthly charge of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower. In the event of non-payment (subject to the cure period in Section 9.2), Joyent may terminate Customer's access to the Cloud Hosting Services at any time upon notice to Customer.

5.3 Early Termination. Customer understands and agrees that the monthly recurring fee for the Cloud Service set forth in the applicable Order Form is based on Customer's agreement to pay such fees for the entire Term. Accordingly, and without limiting any other remedy that may be available to Joyent hereunder, at law or in equity, Customer agrees that in the event this Agreement is terminated by Joyent for Customer's breach, or in the event that Customer terminates this Agreement other than in accordance with its terms, all fees due under this Agreement, including the monthly recurring fees for the remaining part of the Term, shall immediately become due and payable upon any such termination of this Agreement.

5.4 Taxes. All amounts payable by Customer to Joyent under this Agreement are exclusive of any tax, levy or similar governmental charge that may be assessed by any jurisdiction, whether based on gross revenue, the delivery, sale or use of Cloud Service, the provision of Professional Services, or otherwise arising out of the execution or performance of this Agreement, and including without limitation all sales, use, excise, import or export, value added, governmental permit fees, license fees, and customs; provided, however, that Customer shall have no liability for any net income, net worth or franchise taxes assessed on Joyent by the United States or any state thereof.

## 6. REPRESENTATIONS AND WARRANTIES

6.1 Mutual Warranties. Each party represents and warrants the following to the other party: (i) such party has the full right, power, and authority to enter into this Agreement, to perform the acts required of it hereunder; (ii) the execution of this Agreement by such party, and the performance by such party of its obligations and duties hereunder, do not and will not violate any agreement to which such party is a party or by which it is otherwise bound; and (iii) when executed and delivered by such party, this Agreement will constitute

the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

6.2 Customer Warranties. Customer represents and warrants to Joyent that: (i) the information Customer has provided for the purpose of establishing an account with Joyent is accurate; (ii) Customer will not use the Cloud Service in violation of any applicable law rule or regulation, or for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, in a country listed in Country Groups D: 4 and D:3, as set forth in Supplement No.1 to Part 740 of the United States Export Administration Regulations, (iii) Customer shall not provide administrative access to the Cloud Service to any person (including any natural person or government or private entity) that is located in or is a national of any embargoed or highly restricted country under United States export regulations, which include, as of December 2007, Cuba, Iran, and Sudan, (iv) Customer is not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated Nationals and Blocked Persons; and (v) Customer shall perform its security and other obligations stated in this Agreement.

### 6.3 Joyent Warranties.

(a) The Cloud Service is subject to the Service Level Agreement, which sets forth Joyent's sole warranty with respect to the Cloud Service and Customer's exclusive remedy for any breach thereof.

(b) Joyent warrants that the Professional Services provided hereunder will be performed in a workmanlike manner in accordance with industry standards. If Customer reports to Joyent any breach of the warranty set forth in this Section 6.3(b), then Joyent, at its expense, shall re-perform the applicable Professional Services. The foregoing states Joyent's sole obligation, and Customer's exclusive remedy, in the event of the breach of the warranty set forth in this Section 6.3(b).

6.4 Disclaimer of Warranties. THE WARRANTIES SET FORTH IN SECTION 6.3 STATE JOYENT'S EXCLUSIVE WARRANTIES TO CUSTOMER AND ANY THIRD PARTY CONCERNING THE CLOUD SERVICE AND ANY PROFESSIONAL SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.3, JOYENT MAKES NO, AND HEREBY EXPRESSLY DISCLAIMS (TO THE GREATEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW) ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTE, AS TO THE CLOUD SERVICE, THE PROFESSIONAL SERVICES OR ANY MATTER WHATSOEVER. IN PARTICULAR, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXPRESSLY EXCLUDED. JOYENT DOES NOT WARRANT THAT THE OPERATION OF THE CLOUD SERVICE WILL BE COMPLETELY SECURE, ERROR FREE OR UNINTERRUPTED, OR THAT ALL ERRORS WILL BE CORRECTED. CUSTOMER ASSUMES ALL RISK OF DELAYS OR INTERRUPTIONS IN ACCESS TO OR USE OF THE CLOUD SERVICE RESULTING FROM USE OF THE INTERNET AND/OR TELECOMMUNICATIONS TO ACCESS THE CLOUD SERVICE, AND JOYENT SHALL HAVE NO LIABILITY FOR ANY SUCH DELAYS OR INTERRUPTION.

## 7. LIMITED LIABILITY

UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, OR FOR ANY COST OF COVER OR FOR COST OF PROCURMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT. SUCH LIMITATION ON

DAMAGES INCLUDES, BUT IS NOT LIMITED TO, LOST GOODWILL, LOST PROFITS, LOSS OF DATA OR SOFTWARE OR WORK STOPPAGE, REGARDLESS OF THE LEGAL THEORY ON WHICH THE CLAIM IS BROUGHT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY EXCLUSIVE REMEDY PROVIDED IN THIS AGREEMENT. JOYENT'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE CLOUD SERVICE OR ANY PROFESSIONAL SERVICES, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES CUSTOMER HAS PAID TO JOYENT UNDER THIS AGREEMENT IN THE PREVIOUS SIX (6) MONTHS. JOYENT SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR ANY CUSTOMER CONTENT OR THIRD PARTY SOFTWARE. THE FOREGOING LIMITATION OF LIABILITY IS INDEPENDENT OF, AND SHALL NOT BE DEEMED TO MODIFY JOYENT'S OBLIGATION UNDER, ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY SET FORTH IN THIS AGREEMENT.

## 8. CONFIDENTIAL INFORMATION

8.1 Identification of Confidential Information. Confidential Information entitled to protection under this Agreement may be disclosed in a tangible or intangible format and must be marked as "confidential" or with a similar legend, or if information is disclosed solely by oral or visual means, it must be identified as confidential at the time of disclosure. Failure to mark or designate information as "Confidential Information" at the time of disclosure, shall not relieve Recipient of its obligations hereunder if the nature of the information and/or the circumstances of disclosure are such that Recipient knew or should have known the information was "Confidential Information".

8.2 Non-use and Non-disclosure. The party receiving Confidential Information (the "Recipient") shall not use the Confidential Information other than for the performance of this Agreement. Recipient shall keep the other party's ("Discloser") Confidential Information in strict confidence. Recipient shall only disclose Confidential Information to its employees, including its temporary workers provided by a staffing agency and independent contractors, that are under Recipient's direct supervision and control, having: (i) a need to know that information to accomplish the purposes of this Agreement, and (ii) agreed in writing to non-disclosure obligations at least as restrictive as those in this Agreement. Recipient may disclose the other party's Confidential Information to its contracted suppliers under confidentiality terms on a need to know basis to accomplish the purposes of this Agreement. Recipient shall protect the Discloser's Confidential Information with at least the same degree of care Recipient uses to protect its own confidential information of like importance, but never using less than a reasonable standard of care.

8.3 Exclusions. Confidential Information does not include any information that: (i) was already known through lawful means by Recipient without an obligation of confidentiality before disclosure under this Agreement as evidenced by written records predating the disclosure; (ii) is readily accessible to the public on or after the date of disclosure other than through Recipient's breach of this Agreement; (iii) was rightfully received by Recipient without restriction on disclosure from a third party entitled to make such a disclosure (except that this exception applies only after Recipient receives the information from the third party); (iv) was independently developed by Recipient without using any of Discloser's Confidential Information as directly evidenced by Recipient's written records; or (v) is approved for release or disclosure by written authorization of the Discloser.

8.4 Disclosure Required by Law. Recipient may comply with an order from a court or other governmental body of competent jurisdiction and disclose the other party's Confidential Information in

compliance with that order provided that Recipient shall: (i) give the Discloser prior notice to such disclosure if the time between that order and such disclosure reasonably permits or, if time does not permit, gives the Discloser notice of such disclosure promptly after complying with that order and (ii) fully cooperate with the Discloser, at the Discloser's cost and expense, in seeking a protective order, confidential treatment, or taking other measures to oppose or limit such disclosure. Recipient must not release any more of the Discloser's Confidential Information than is, in Recipient's good faith judgment, reasonably necessary to comply with that order.

8.5 Retention of Rights; Return of Confidential Information. Discloser retains full ownership of all disclosed information, including Confidential Information. Except for Recipient's limited right to use Confidential Information as set forth in this Agreement, no license or rights, either express or implied, are granted under this Agreement, including without limitation, any intellectual property rights. Upon termination or expiration of this Agreement or Discloser's written request, Recipient shall immediately: (i) cease using all of Discloser's Confidential Information, and (ii) return or destroy all copies of Discloser's Confidential Information held or controlled by Recipient in tangible form, or if stored electronically, shall destroy or erase all such Confidential Information so stored, unless it has been archived on electronic backup media. Upon Discloser's request, Recipient shall certify to Discloser in writing that Recipient has fully complied with its obligations under this Section 8.5.

8.6 Agreement Confidential. The terms and conditions of this Agreement, and the existence hereof, shall be each party's Confidential Information, provided that either party may disclose such Confidential Information (i) as required by any court or other governmental body, (ii) as otherwise required by law, (iii) to legal counsel of such party, (iv) in connection with the requirements of an initial public offering or securities filing, (v) in confidence, to accountants, banks, and financing sources and their advisors, (vi) in confidence, in connection with the enforcement of this Agreement or rights under this Agreement or (vii) in confidence, in connection with a proposed or actual merger, acquisition or sale of assets.

## 9. TERM AND TERMINATION

9.1 Term. Unless earlier terminated by either party as hereinafter provided, this Agreement shall commence upon the Effective Date and remain in effect for a minimum period of one (1) year, or such longer period as may be set forth in the applicable Order Form. This Agreement shall automatically renew for consecutive one (1) year periods unless either party provides written notice to the other party of an intention not to renew at least sixty (60) days prior to the end of the original term or subsequent renewal term. The original term along with any renewal term(s) shall be the "Term" of this Agreement.

9.2 Termination for Cause. Either party may terminate this Agreement for a breach by the other party of any of its material terms, provided the non-breaching party provides to the breaching party thirty (30) days written notice describing such breach and offering the breaching party an opportunity to cure. Failure to cure a material breach within the notice period shall result in automatic termination of this Agreement.

9.3 Effect. Should this Agreement expire or be terminated for any reason, Customer's right to access and use the Cloud Service shall, subject to Section 3.4(c) above, immediately terminate.

9.4 Survival of Terms. All terms of this Agreement that contemplate performance or forbearance by either party after any expiration or termination of this Agreement shall survive expiration or termination of this Agreement, including Sections 2.5, 2.6, 3.4(c), 3.5, 3.7, 4.4, 5, 6, 7, 8, 9.3, 9.4, and 10.

## 10. GENERAL

10.1 Assignment. Neither this Agreement nor any rights or obligations of Customer hereunder may be assigned by Customer in whole or in part without the prior written consent of Joyent; provided that, without such prior written consent Customer may assign this

Agreement to a successor in interest or to an entity that acquires all or substantially all of Customer's assets in connection with a merger or acquisition.

10.2 Attorneys' Fees. In the event any proceeding or lawsuit is brought by Joyent or Customer in connection with this Agreement, the prevailing party in such proceeding shall be entitled to receive its costs, expert witness fees and reasonable attorneys' fees, including costs and fees on appeal.

10.3 Customer Indemnity of Joyent. Customer agrees to defend indemnify and hold Joyent harmless from and against any third party claim arising out of or related to Customer's use of the Cloud Service and/or the Professional Services.

10.4 Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause that is beyond the reasonable control of such party.

10.5 Governing Law; Jurisdiction and Venue. This Agreement and all matters arising under or related to its formation or performance whether sounding in contract, tort, or otherwise shall be governed in all respects by the laws of the of the State of California, without reference to conflict of laws principles and under the federal laws of the United States, as such may apply. If Federal jurisdiction exists, the parties hereby consent to exclusive venue and jurisdiction in the Federal Courts of San Francisco, California. If no Federal jurisdiction exists, the parties consent to exclusive venue and jurisdiction in the State Courts of San Francisco, California.

10.6 Headings. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect this Agreement.

10.7 Precedence of Terms. In the event of any conflict between the terms of this Agreement and the terms of any purchase order or acknowledgement, the terms of this Agreement shall control. Acceptance by Joyent of any purchase order placed by Customer is conditioned on Customer's assent to the terms set forth herein. Joyent's fulfillment of any purchase order shall not imply Joyent's acceptance of any pre-printed terms on such purchase order. Any such conflicting terms shall be of no force or effect.

10.8 No Agency. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

10.9 Non-solicitation. Neither party will knowingly, either directly or indirectly, solicit, hire or recruit the personnel of the other party during the term of this Agreement and for a period of one (1) year thereafter.

10.10 Notices. All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery or five (5) days after deposit in the mail. Notices shall be sent to the parties at the addresses set forth above or such other address as either party may designate for itself in writing.

10.11 Publicity. Neither party shall use the other party's name or the existence of this Agreement in any press releases and/or other publicity matters without the prior written consent of the other party. Customer consents to Joyent's identification of Customer as a user of the Cloud Service on its website.

10.12 Severability. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish

the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

10.13 Waiver and Modification. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. This Agreement shall not be modified except by a subsequently dated written amendment signed on behalf of Joyent and Customer by their duly authorized representatives.

10.14 Waiver of Rule of Construction. Each of the parties and their counsel have carefully reviewed this Agreement, and, accordingly, the normal rule of construction to the effect that any ambiguities in this Agreement are to be construed against the drafting party shall not apply in the interpretation of this Agreement.



MSA Academic No \_\_\_\_\_

**EXHIBIT B**

**ORDER FORM 1**

**SERVICE DESCRIPTION, PRICING AND PAYMENT TERMS**

This Order Form 1 (“Order Form”) to the Joyent, Inc. Master Services Agreement entered into by the parties (the “Agreement”) sets forth the Joyent Cloud Service components and any associated Professional Services (as may be further described in an applicable SOW) to be provided by Joyent to Customer for the fees set forth herein.

1. Initial Term. The initial term of the Agreement shall be (place an “x” next to the applicable term):

One (1) year

Two (2) years

Three (3) years

2. Selected Cloud Service Components; Professional Services and Fees .

Joyent System Software Services	Modules	Comments	Total Estimated Cost
Joyent Professional Services		Comments	Total Estimated Cost
	See attached SOW for Details		
		Comments	Total Estimated Cost
	n/a		

3. Invoices. Joyent will invoice the Fees as follows:

- (a) **Cloud Service Fees:**  
 Year 1: Invoiced in full upon the Effective Date of the Agreement  
 Year 2 +: Invoiced in full on anniversary of the Effective Date
- (b) **Professional Services Fees:**  
 50% of total Fees invoiced upon the Effective Date of the Agreement;  
 25% of total Fees invoiced immediately after the initial on-site visit to Customer’s facilities; and  
 25% of total Fees invoiced upon Implementation Date.
- (c) **Joyent** will submit invoices to the following address:

Address Line 1  
 Address Line 2

or to such other address as may be specified by Customer upon written notice to Joyent.

4. Travel Expenses. Customer will reimburse Joyent for all travel reasonable expenses incurred by Joyent personnel traveling to Customer sites.

5. Authorized Users. The following are Customer’s Authorized Users of the Cloud Service:

- (a) Customer project manager –
- (b) Customer employees –

\*Customer should send written notification to Joyent of any changes in specifically named Authorized Users.

**JOYENT, INC.**

\_\_\_\_\_  
 “Customer”

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Dated: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Dated: \_\_\_\_\_



**EXHIBIT C**

**SOW-1**

**IMPLEMENTATION STATEMENT OF WORK**

This Exhibit C to the Joyent, Inc. Master Services Agreement describes the Professional Services to be performed by Joyent in connection with the Implementation of the Joyent Cloud Service subscribed to by Customer.

**DOCUMENT HISTORY**

Version	Date	Author	Changes/Notes

**1. Objective.**

- (a) Project Background and Description

**2. Joyent Project Tasks and Deliverables.**

- (a) Functional Requirements
- (b) Use Cases {Based on Functional Requirements above}
- (c) Out of Scope {List specific items that are out of scope}
- (d) Acceptance of Deliverables: Unless otherwise specified in this Statement of Work, the following shall apply:
  - (i) Following receipt notification of each Milestone Deliverable, Customer will have thirty (30) days from the date of delivery in which to perform acceptance testing of that Deliverable.
  - (ii) If the Deliverable does not embody the mutually agreed characteristics set forth in this Statement of Work, Customer may reject such Deliverable by giving Joyent written notice rejecting the Deliverable, and the reasons therefore, within the thirty (30) day period. If Customer does not give Joyent written notice rejecting any Deliverable within the thirty (30) day period, such Deliverable shall conclusively be deemed accepted.
  - (iii) If Customer gives Joyent written notice rejecting any Deliverable within the thirty (30) day period, then within thirty (30) days after receipt of Customer’s notice Joyent will make any reasonable corrections or changes and resubmit the Deliverable to Customer for further acceptance testing.
  - (iv) Customer will cooperate with Joyent to isolate, identify and resolve any problems in the Deliverables.

**3. Customer Obligations.** Customer understands and agrees that Joyent’ ability to meet its schedule and cost obligations under this Statement of Work may be contingent on Customer’s timely fulfillment and/or provision of the following:

- (a) A Project Manager for the Customer will be identified. A secondary Project Manager is recommended in case the Project Manager is not available. All decisions or approvals on behalf of Customer must be made through, and communicated to Joyent by, these individuals.
- (b) The Project Manager will have the responsibility to respond to any change requests issued by Joyent. Any unreasonable delays in such response may affect the timeline of the project.
- (c) Make available on a timely basis the agreed upon technical and business personnel to work in conjunction with Joyent resources to ensure the ability to meet the deadlines set forth in this SOW or any project plan.
- (d) Reasonable work space while onsite (if necessary).
- (e) Reasonable access to Customer network and/or systems, as necessary.

- (f) Participation in any required validation activities.
- (g) Reasonable access to all source data will be available for Joyent consultants.
- (h) Timely review and sign-off on all project deliverables.
- (i) End user training in the usage of the Cloud Service.
- (j) Provide all Customer deliverables on time and as described in the Tasks and Deliverables, Section 2.

**4.Location.** Joyent’ activities for this Project will be performed at \_\_\_\_\_.

**5.Tentative Project Plan** {Insert a high level milestone Project Plan that coincides with the payment schedule as defined in Exhibit B}

**6. Change Control**

(a) CUSTOMER UNDERSTANDS THAT A REQUEST TO CHANGE SCHEDULED DATES, RESOURCES AND/OR WORK HOURS MAY CONSTITUTE A CHANGE TO THE SCOPE OF THIS STATEMENT OF WORK REQUIRING AMENDMENT OF ITS TERMS, INCLUDING TASKS, CONTENT OF DELIVERABLES, COMPLETION DATES, AND COMPENSATION.

(b) Customer will provide Joyent a minimum of ten (10) days’ notice of schedule change requests. If Customer requests a schedule change with fewer than ten (10) days’ notice and Joyent must cancel tasks in order to meet the Implementation Target Date, then, at Customer's option: (a) the term of this Statement of Work shall be extended to permit completion of all tasks; or (b) at no penalty to Joyent, Customer and Joyent shall cooperate to determine which tasks shall be canceled and Joyent shall be relieved of the responsibility of performing the canceled tasks. Customer understands and agrees that Joyent’ ability to reschedule work is contingent upon the availability of resources.

(c) If Customer requests that Joyent suspend work on the Project and subsequently requests that Joyent resume work, Customer understands and agrees that Joyent’ ability to resume work is contingent upon the availability of resources. Customer will cooperate with Joyent to determine a mutually agreeable revised schedule of work for Joyent Project activities.

(d) Joyent receives direction from Customer’s agent(s) that, in the reasonable opinion of Joyent, may result in an extension of the schedule, a change to the total fee, or any other deviation from the material terms and conditions of this Statement of Work, Joyent shall promptly notify Customer’s agent of the anticipated impact of such direction on the Project.

**7. Project Managers**

(a) Joyent’ *Project Manager* for this Statement of Work is \_\_\_\_\_.

(b) Customer’s Project Manager for this Statement of Work is:

Name:	_____	Title:	_____
Address-1:	_____	Dept.:	_____
Address-2:	_____	Email:	_____
City:	_____	Phone:	_____
State/Zip:	_____	Fax:	_____

Any change in Project Manager by either party shall be provided in writing at least five (5) business days before the change shall go into effect, provided that the parties agree to use commercially reasonable efforts to avoid changing Project Managers.

**8. Billing Information.** Customer's billing contact information is:

Name:	<input type="text"/>	Title:	<input type="text"/>
Address-1:	<input type="text"/>	Dept.:	<input type="text"/>
Address-2:	<input type="text"/>	Email:	<input type="text"/>
City:	<input type="text"/>	Phone:	<input type="text"/>
State/Zip:	<input type="text"/>	Fax:	<input type="text"/>

**9. Compensation**

(a) Pricing and payment for this SOW are set forth in Exhibit B.

(b) Customer shall be responsible for reimbursement of any expenses related to the completion of this Project, including, but not limited to, travel and lodging expenses, shipping, supplies, and rental equipment. Reimbursable expenditures will be included as separate items on the regular invoices.

(c)

Pricing, methodologies, and identities of Joyent personnel disclosed in this document are Joyent' Confidential Information furnished solely for Customer's internal use and may not be disclosed to a third party for engagement or quotation purposes.

(d) A change request or separate SOW is required for any work outside the scope of this SOW.

**Acknowledged and accepted:**

By signing below, the parties hereby agree to the foregoing description of Professional Services to be performed for Customer by Joyent for the Professional Services fee set forth in Exhibit B, and agree that the performance of such Professional Services shall be governed by the Joyent, Inc. Cloud Services Terms and Conditions attached hereto as Exhibit A.

**JOYENT, INC.**

\_\_\_\_\_  
"Customer"

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

## EXHIBIT D

### SERVICE LEVEL AGREEMENT

This Exhibit D to the Joyent, Inc. Master Services Agreement sets forth the service level agreement (“SLA”) between Joyent and Customer in connection with the provision of the Cloud Service by Joyent to the Customer.

**1. SUPPORT SERVICES.** Joyent agrees to provide to Customer the following Support Services with respect to the Cloud Services:

1.1 Telephone and Email. Customer’s Designated Contact(s) will be given the Joyent Support telephone number and email address. Joyent’s Customer Support Office is staffed for use during the hours between 8:00 a.m. and 5:00 p.m. Mountain time on regular business days, excluding Joyent holidays (i.e., national holidays on the date(s) observed, unless otherwise notified: New Years Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day (and the day after) and Christmas Day), for Customer’s Authorized Users to report Errors (as defined below), ask questions, or seek advice relating to the use and functioning of the Cloud Service. Joyent will assist the Authorized Users in utilizing the Cloud Service and in identifying and providing workarounds, if possible, for Errors in accordance with the terms and conditions of this SLA.

1.2 Emergency Support. Joyent will provide 24x7 support via mobile phone for Priority 1 Errors (see table below). Customer agrees to provide an appropriate point of contact and other necessary personnel during all after hours work.

1.3 Cloud Service Error Reporting. Customer may submit to Joyent reports concerning potential Errors in the Cloud Service or Documentation. Customer will provide Joyent all such data that Joyent may reasonably request and is reasonably available to Customer in order to reproduce operating conditions similar to those present when the potential Error was discovered. All Error reports submitted will include the following:

- (a) A full description of the problem and expected results.
- (b) A reproducible test case on the Cloud Service that demonstrates the specific sequence that causes the behavior being reported.
- (c) All applicable Error, trace and system files.
- (d) Exact wording of all Error messages.
- (e) Any special circumstances surrounding the discovery of the Error.

1.4 Procedure. For each potential Error reported by Customer in accordance with Section 1.3 above, Joyent will acknowledge and use commercially reasonable efforts to investigate and report findings and provide solutions in accordance with the following process:

(a) Acknowledgement and Review: Joyent Customer Support will acknowledge the Error report via either email or telephone to advise Customer of the receipt of the Error report, to request additional information, or to determine the steps to reproduce the Error. Joyent will review the reported Error and determine whether in Joyent’s reasonable judgment the reported problem is, in fact, an Error, and whether such Error is in the Cloud Service or in the Documentation.

(b) Documentation Errors: If Joyent determines that there is an Error in the Documentation, Joyent will correct the Documentation and supply a corrected copy or page(s) thereof to Customer.

(c) Hosed Service Errors: If Joyent determines there is an Error in the Cloud Service, Joyent Customer Support will use commercially reasonable efforts to provide a solution to Customer in the form of an interim resolution or a permanent fix, if available. If Customer Support cannot provide a solution, they will escalate the Error to Engineering, which will use commercially reasonable efforts to provide to Customer an interim resolution and/or a permanent fix.

1.5 Priority Levels. Joyent recognizes five Priority Levels of Cloud Service Errors and responds to support requests according to severity as follows:

(a) Priority 1 – Critical. Customer has experienced an Error that completely prevents the Cloud Service from functioning.

(b) Priority 2 – High. Customer has experienced an Error that materially impacts the functioning of the Cloud Service.

(c) Priority 3 – Medium. Customer has experienced an Error that does not materially impact the functioning of the Cloud Service.

(d) Priority 4 – Low. Customer has a question regarding the use of the Cloud Service.

(e) Priority 5 – Requests. Customer has a suggestion/request for enhancement.

1.6 Target Response Times. Customer and Joyent will cooperate to establish the priority level of reported Errors at the time of acknowledgement. Unless otherwise agreed to by Joyent and Customer, Joyent’ target response times for reported Errors are summarized as follows with the timeframes in the table below.

Service Level Guidelines	Priority 1 - Critical	Priority 2 – High	Priority 3 - Medium	Priorities 4 & 5 – Low/Requests
Acknowledgement	2 Hours	4 Hours	1 day	1 day
Interim Resolution	2 Days	5 Days	15 Days	To Be Determined
Permanent Fix	Interim Resolution or Next Update	Interim Resolution or Next Update	Interim Resolution or Next Update	Next Upgrade at the discretion of Joyent

All times listed in the table above are during Joyent’ Customer Support standard business hours/days - Mountain Time (holidays excluded).

2. **SYSTEM AVAILABILITY.** For any unscheduled system outages lasting more than 4 hours that are determined to be due to issues with the Cloud Service, Joyent will provide the following remedy:

Less than 4 hour outage: no credit

4-hours to 1 day: credit of the equivalent of one day’s Fees for the Cloud Service

1-day+: credit of the equivalent of one day’s Fees for each day of outage, not to exceed fifteen percent (15%) of the Fees paid in any given month.

**Acknowledged and accepted:**

By signing below, the parties hereby agree to the foregoing Service Level Agreement and remedies for breach thereof for the Cloud Service components described in Exhibit B of this Agreement, and agree that this Exhibit D shall be otherwise governed by the Joyent, Inc. Terms and Conditions attached as Exhibit A hereto.

**JOYENT, INC.**

\_\_\_\_\_  
“Customer”

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_