

**JOYENT, INC. MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT  
FOR ACADEMIC INSTITUTIONS**

**Contract No.:** \_\_\_\_\_ **Customer:** \_\_\_\_\_  
**Effective Date:** \_\_\_\_\_ **Street Address:** \_\_\_\_\_  
**Town/City:** \_\_\_\_\_  
**Country/Zip Code:** \_\_\_\_\_

This **MASTER SOFTWARE LICENSE AND 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 having its principle place of business at One Embarcadero Center, 9th Floor, San Francisco, CA 94111 ("Joyent") and the entity named above ("Customer").

**TERMS AND CONDITIONS**

**1. DEFINITIONS**

The following capitalized terms shall have the meaning set forth below. Other defined terms shall have the meanings set forth where they are first underlined.

1.1 "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.

1.2 "Documentation" means the documentation provided with the Joyent Software to Customer hereunder, together with any and all new releases, corrections, updates and applicable training materials furnished by Joyent to Customer under this Agreement.

1.3 "Joyent Software" means the Joyent SmartDataCenter software, Version 6.5 for which Customer has been granted a license herein to use an unlimited number of Software License(s), in object code format only, along with any Updates thereto provided to Customer hereunder.

1.4 "License" means Customer's right to use, for the License Term, the specific edition of the Joyent Software .

1.5 "License Term" means the term of this Agreement for which a License is valid.

1.6 INTENTIONALLY LEFT BLANK

1.7 "Open Source Software" means individual software components that are provided with the Joyent Software, for which the source code is made generally available, and that are licensed under the terms of various published open source software license agreements or copyright notices accompanying such software components.

1.8 "Order Form" means a Joyent order form substantially in the form attached as Attachment C hereto (as the same may be modified by Joyent from time to time), pursuant to which Customer may order Additional Support Services, Training Services and/or Professional Services from Joyent.

1.9 "Professional Services" means the consulting services, if any, to be performed by Joyent for Customer, as further described below and as specifically set forth on an applicable Order Form approved and accepted by Joyent.

1.10 "Services" means collectively, Basic Support Services, Professional Services, Training Services and/or Additional Support Services.

1.11 "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-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3703(5)].

1.12 "Additional Support Services" means the up-graded technical support services related to the use of the Joyent Software that is offered at an additional cost to the Customer and as further described in Attachment B.

1.13 "Basic Support s" means the technical support services related to the use of the Joyent Software that is offered at no cost to the Customer and as further described in Attachment B.

1.14 "Training Services" means the training services, if any, as further described below and specifically set forth on an applicable Order Form approved and accepted by Joyent.

1.15 "Update" means any update, upgrade, bug fix, enhancement or revision to the Joyent Software made generally available by Joyent to customers during the term of this Agreement.

## 2. SOFTWARE LICENSE, DELIVERY, ACCEPTANCE AND RESTRICTIONS

### 2.1 License Grants.

(a) This Agreement is a master agreement that provides for (1) the use of an unlimited number of Joyent Software Licenses, Documentation and Basic Support Services pursuant to the terms set forth herein, at no cost to Customer and (2) the provision by Joyent to Customer of Additional Support Services, Training Services and Professional Services ordered by Customer pursuant to, and at the price set forth in, an Order Form(s) submitted by Customer and accepted by Joyent.

(b) Subject to the terms and conditions of this Agreement, Joyent agrees to grant, and does hereby grant to Customer during the applicable License Term, a limited, non-exclusive, non-transferable right and license (without the right to grant or authorize sublicenses) to install an unlimited number of Joyent Software and use such Joyent Software on its servers solely for Customer's own business operations and for Customer's operations as a service provider when Customer is providing services to other Qualified Academic Institution(s). For the avoidance of doubt, Customer may use the Joyent Software to provide "cloud" computing services to Qualified Academic Institution-related third parties, including any business start-up companies that are current members of a business incubator program sponsored by a Qualified Academic Institution. Customer may make a reasonable number of copies of the Joyent Software for backup and/or archival purposes.

(c) Customer may use, reproduce and distribute internally a reasonable number of copies of the Documentation solely for internal use, and provided that Customer must include on such copies all Joyent trademarks, trade names, logos and notices present on the Documentation as originally provided by Joyent, and the same shall be preserved and not deliberately defaced, modified or obliterated except by normal wear and tear.

(d) Customer may permit third party contractors performing Services on Customer's behalf to use the Joyent Software and Documentation, provided that (i) such use must be solely for the purpose of Customer exercising its rights in accordance with this Agreement and (ii) Customer shall be responsible for all acts and omissions of such contractors.

2.2 Delivery of Software. The Joyent Software is only available electronically via download and will not be available in any other format. Joyent Software shall be deemed delivered to Customer upon Joyent making available to Customer the software download location. The Joyent Software will be deemed accepted upon delivery.

2.3 Other Software. In the event that in the future the parties desire to license additional software other than the Licensed Software, such as subsequent new versions or upgrades, the parties may execute an amendment to this Agreement covering such software license grant.

2.4 Restrictions. Customer agrees not to: (i) copy or use the Joyent Software in any manner except as expressly permitted in this Agreement; (ii) attempt to reverse engineer, disassemble or otherwise derive source code from the Joyent Software, (iii) transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Joyent Software to any third party; (iv) use the Joyent Software for providing time-sharing services, service bureau services or as part of an application services provider or as a service offering except as set forth in Section 2.1(b) above to provide a cloud computing service (v) alter or remove any proprietary notices in the Joyent Software; or (vi) make available to any third party any analysis of the results of operation of the Joyent Software, including benchmarking results, without the prior written consent of Joyent.

2.5 Government Rights. The Joyent Software licensed under this Agreement is "commercial computer Products" as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer Product and/or commercial computer Products documentation subject to the terms and conditions of this Agreement as specified in 48C.F.R. 12.212 (Computer Products) and 12.11 (Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer Products and/or commercial computer Products documentation subject to the terms and conditions of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors. Customer will not export the Products in violation of the export laws of the United States or of any other country.

2.6 Protection Against Unauthorized Use. Customer shall promptly notify Joyent of any unauthorized use, reproduction or distribution of the Joyent Software or Documentation of which it becomes aware. In the event of any unauthorized use, reproduction or distribution by any of Customer's employees, agents or representatives, Customer shall use commercially reasonable efforts to terminate any such unauthorized use and to retrieve any unauthorized copy of the Joyent Software or Documentation in the possession or control of the person or entity engaging in such unauthorized use. Joyent may, at its option and expense, participate in any such proceeding and, in such an event, Customer shall provide such authority, information and assistance related to such proceeding as Joyent may reasonably request.

2.7 Books and Records; Audit Rights. Customer shall keep accurate records regarding its compliance with the terms and conditions of this Agreement and the number copies of the Joyent Software and Documentation reproduced and the location of each copy. Upon fifteen (15) business days prior notice, Joyent or its designee may audit Customer's records to verify Customer's compliance with this Agreement; provided, however that Customer may require such accounting firm to execute a confidentiality agreement reasonably satisfactory to Customer. Any such audit shall be performed at Customer's facilities during normal business hours and no more than one (1) time in any twelve (12) month period. This Section 2.7 shall survive for a period of two (2) years from the termination or expiration of this Agreement.

## 3. SERVICES

3.1 Professional Services. Joyent agrees to use its commercially reasonable efforts to provide Customer with the Professional Services, if any, pursuant to an applicable Order Form and in accordance with the following:

(a) Unless otherwise expressly specified in the applicable Order Form, Professional Services shall be provided on a time and material ("T&M") basis pursuant to the T&M rates that are current at the time the Professional Services are performed. A standard working day shall be 8 hours, including lunch. Joyent will only charge for those hours actually worked by the consultant(s). Any additional hours worked by the consultant(s) over and above the standard working day will be charged at the agreed hourly/daily rate in one hour increments. Professional Services performed on weekends (Saturday or Sunday) or Bank/National Holiday, will be charged at 1.5 the agreed daily rate. Any estimate of time or number of days required to perform Professional Services, or any monetary amount stated in the applicable Order Form for T&M

Professional Services, shall be deemed an estimate for Customer's budgeting and Joyent's resource scheduling purposes. After any such estimate of time, days or monetary limit is expended, Joyent will continue to provide the applicable Professional Services on a T&M basis, unless otherwise set forth in the applicable Order .

(b) Cancelling or rescheduling of Professional Services must be done in writing. There is a \$1,500 cancellation/rescheduling fee per consultant if Professional Services are cancelled or rescheduled less than five (5) Business days prior to the engagement commencing, and Customer shall reimburse Joyent for any non-refundable travel expenses that have been incurred by Joyent prior to such cancellation. To cancel an engagement which is in progress, either party must give ten (10) days written notice of cancellation, and Joyent shall have the right to collect fees for the Services performed during such ten (10) day period.

(c) Joyent reserves the right to use subcontractors to perform Professional Services on Joyent's behalf, provided that Joyent shall remain responsible for the performance of such Professional Services.

3.2 Basic Support Services. During the Term of this Agreement and at no cost to Customer, Joyent will provide Customer with Basic Support Services as defined in Attachment B. All Services are provided to Customer solely for Customer's internal use and Customer may not use the Services to supply any consulting, support or training services to any third party. Joyent reserves the right to modify reasonably its Support Services Policy from time to time, provided that in no event will Joyent materially degrade the Services provided to Customer during the term of this Agreement.

3.3 Training Services. Subject to the payment by Customer to Joyent of applicable fees, Joyent agrees to provide Customer with the Training Services, if any, set forth on an applicable Order Form.

3.4 Additional Support Services. In the event that in the future Customer desires to obtain from Joyent Additional Support Services as defined in Exhibit A, the parties may execute one or more additional Order Forms, setting forth the Additional Support Services to be provided by Joyent to Customer, along with the applicable additional fees to be paid by Customer to Joyent.

### 3.5 Customer Obligations.

(a) Cooperation. Customer agrees to provide Joyent with such cooperation, materials, information, access and support which Joyent deems to be reasonably required to allow Joyent to successfully provide the Services, including, without limitation, as may be set forth in an applicable Order Form. Customer understands and agrees that Joyent's obligations under this Section 3 are expressly conditioned upon Customer providing such cooperation, materials, information, access and support.

(b) Data Collection. Customer agrees that Joyent may, through a module in the Joyent Software, collect, use and transmit technical and related data about Customer's use of the Joyent Software, including hardware and operating environment, IP addresses and other information about Customer's use of the Joyent Software, in order to ensure compliance with the terms and conditions of this Agreement and facilitate the provision of Support Services.

3.6 Customer Policies. While on premises owned, controlled or hired by Customer, all Joyent personnel shall conduct themselves in accordance with the standard health, safety and security policies of Customer applicable to its staff generally.

### 3.7 Ownership of Work Product and Other Materials.

(a) Work Product. In the course of performing Services, Joyent may create software or other works of authorship (collectively "Work Product"). Subject to Customer's rights in its Confidential Information, Joyent shall own all right title and interest in and to all 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 Services (a "Work Product Deliverable"), Joyent hereby grants to Customer a license to such Work Product Deliverable under the same terms and conditions as Customer's license to Joyent Software set forth in Section 2.1 above, provided that the license to such Deliverables shall be royalty-free.

(b) Other Materials. Customer agrees and acknowledges that Customer is not obtaining any intellectual property right in or to any materials provided by Joyent to Customer in connection with the provision to Customer of Services ("Materials"), other than the rights of use specifically granted in this Agreement. Customer shall be entitled to keep and use all Materials provided by Joyent to Customer, but without any other license to exercise any of the intellectual property rights therein, all of which are hereby strictly reserved to Joyent. In particular and without limitation, Materials may not be copied electronically or otherwise whether or not for archival purposes, modified including translated, re-distributed, disclosed to third parties, lent, hired out, made available to the public, sold, offered for sale, shared, or transferred in any other way. The use of any Materials will be limited to use by the specific persons to whom the applicable Services are provided. All Joyent trademarks, trade names, logos and notices present on the Materials shall be preserved and not deliberately defaced, modified or obliterated except by normal wear and tear. Customer shall not use any Joyent trademarks without Joyent's express written authorization.

## 4. FEES, PAYMENT AND TAXES

### 4.1 Fees.

(a) License and Services Fees. Joyent is offering licenses to the Joyent Software and Basic Support Services to Customer free of charge.

(b) Additional Support Services, Professional Services and Training Services Fees and Expenses. Fees for Services other than the Basic Support Services shall be Joyent's then-current rates for such applicable Services, unless otherwise set forth in the applicable Order Form.. Unless specifically stated otherwise, the Client shall reimburse Joyent for reasonable travel, accommodation, communications, equipment and out-of-pocket expenses incurred in conjunction with the Services ("Expenses").

4.2 Payment. If applicable and unless otherwise specified on an Order Form, all invoices will be paid in U.S dollars and are due upon receipt and will be paid within thirty (30) days of the date of the invoice. Payments will be made without right of set-off or chargeback. All monetary amounts are specified and shall be paid in the lawful currency of the United States of America. Customer shall pay all amounts due under this Agreement to Joyent at the address set forth herein or such other location as Joyent designates in writing. Any amount not paid when

due will bear interest at the rate of one and one half percent (1.5%) per month or the maximum rate permitted by law, whichever is less, determined and compounded on a daily basis from the date due until the date paid.

4.3 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, possession or use of the Joyent Software, the provision of Services, the execution or performance of this Agreement or otherwise, 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. If, as a result of any tax or levy, Customer is required to withhold any amount on any payment to Joyent, then the amount of the payment to Joyent shall be automatically increased to totally offset such tax, so that the amount actually remitted to Joyent, net of all taxes, equals the amount invoiced or otherwise due. Customer will promptly furnish Joyent with the official receipt of payment of these taxes to the appropriate taxing authority. Customer will pay all other taxes, levies or similar government charges or provide Joyent with a certificate of exemption acceptable to the taxing authority.

## 5. TERM AND TERMINATION

### 5.1 Term.

(a) Initial Term. The term of this Agreement shall commence on the Effective Date and shall continue for one year unless terminated by either party upon thirty (30) days prior written notice. With respect to additional Services, each Order Form submitted by Customer and accepted by Joyent hereunder shall have a term which expires upon the completion by Joyent of its Services obligation(s) set forth therein.

(b) Follow-on Term. The Term of this Agreement shall automatically renew for additional one (1) year periods unless either party gives written notice to the other of its intention not to renew the Agreement at least thirty (30) days prior to the expiration of the then-current term. The initial term of this Agreement, plus any subsequent renewal term shall be the "Term" of this Agreement.

5.2 Termination. Either party may, upon written notice to the other party, terminate this Agreement for material breach by the other party if such party has failed to cure such material breach within thirty (30) days of receiving written notice of such material breach from the non-breaching party. Notwithstanding the foregoing, Joyent may terminate this Agreement upon written notice, and without giving Customer the opportunity to cure, in the event that Customer breaches the scope of the license granted in Section 2.1 of this Agreement through gross negligence or willful misconduct.

5.3 Post Termination. Upon termination of this Agreement, for any reason, Customer shall promptly cease the use of the Joyent Software and Documentation and destroy (and certify to Joyent in writing the fact of such destruction), or return to Joyent, all copies of the Joyent Software and Documentation then in Customer's possession or under Customer's control.

5.4 Survival. All payment obligations under Section 4, plus Sections 2.5, 2.7, 3.7, 5.3, 5.4 and 6-10 of this Agreement shall survive any termination or expiration of this Agreement.

## 6. CONFIDENTIALITY

6.1 Confidential Information. Both parties acknowledge that, in the course of performing this Agreement, they may obtain information relating to products (such as goods, services, and software) of the other party, or relating to the parties themselves, which is of a confidential and proprietary nature ("Confidential Information"). Confidential Information includes, Joyent Software, Documentation and all communications concerning Joyent's or Customer's business and marketing strategies including but not limited to employee and customer lists, customer profiles, project plans, design documents, product strategies and pricing data, research, advertising plans, leads and sources of supply, development activities, design and coding, interfaces with Joyent Software, anything provided by Joyent in connection with its support or warranty obligations under this Agreement, including, without limitation, computer programs, technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical plans and other information of the parties which by its nature can be reasonably expected to be proprietary and confidential, whether it is presented in oral, printed, written, graphic or photographic or other tangible form (including information received, stored or transmitted electronically) even though specific designation as Confidential Information has not been made.

6.2 Non-use and Non-disclosure. The parties shall at all times, both during the term of this Agreement and thereafter keep in trust and confidence all Confidential Information of the other party and shall not use such Confidential Information other than as necessary to carry out its duties under this Agreement, nor shall either party disclose any such Confidential Information to third parties without the other party's prior written consent.

6.3 Non-Applicability. The obligations of confidentiality shall not apply to information which (i) has entered the public domain except where such entry is the result of a party's breach of this Agreement; (ii) prior to disclosure hereunder was already in the receiving party's possession without restriction; (iii) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information; or (iv) was developed by the receiving party without use of the Confidential Information. In addition, nothing in this Section 6 shall be deemed to prevent a party from disclosing information as required by law, regulation or a court order.

6.4 Terms of this Agreement. Except as required by law or governmental regulation, neither party shall disclose, advertise, or publish the terms and conditions of this Agreement without the prior written consent of the other party, except that either party may disclose the terms of this Agreement to potential acquirers, accountants, attorneys and parent organizations pursuant to the terms of a non-disclosure or confidentiality agreement, or to potential investors.

6.5 Disclosure Required by Law. Notwithstanding anything to the contrary herein, each party 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 only if such party: (i) gives the other party prior notice to such disclosure if the time between that order and such disclosure reasonably permits or, if time does not permit, gives the other party notice of such disclosure promptly after complying with that order and (ii) fully cooperates with the other party, at the other party's cost and expense, in seeking a protective order, confidential treatment, or taking other measures to oppose or limit such disclosure. Each party must not release any more of the other party's Confidential Information than is reasonably necessary to comply with an applicable order.

## 7. WARRANTIES AND REMEDIES

7.1 Services Warranty and Remedy. Joyent warrants that during the Term it will perform the Services in a workmanlike manner consistent with generally accepted industry standards and that for a period of thirty (30) days from completion of the Professional Services, any Deliverables will perform in all material respects in accordance with any applicable specifications therefore. In the event of a breach of the foregoing warranty, Joyent's sole obligation, and Customer's exclusive remedy shall be for Joyent to re-perform the applicable Services.

7.2 Warranty Disclaimer and Limitations. EXCEPT AS SET FORTH IN SECTIONS 7.1, THE PROFESSIONAL SERVICES, SUPPORT SERVICES, AND THE JOYENT SOFTWARE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND JOYENT AND ITS LICENSORS MAKE NO WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE JOYENT SOFTWARE, DOCUMENTATION, DELIVERABLES, MATERIALS OR SERVICES FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, JOYENT AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE JOYENT SOFTWARE, DOCUMENTATION, DELIVERABLES AND SERVICES PROVIDED BY JOYENT HEREUNDER, AND WITH RESPECT TO THE USE OF THE FOREGOING. FURTHER, JOYENT DOES NOT WARRANT RESULTS OF USE OR THAT THE JOYENT SOFTWARE WILL BE ERROR FREE OR THAT THE CUSTOMER'S USE OF THE JOYENT SOFTWARE OR DELIVERABLES WILL BE UNINTERRUPTED.

## 8. INDEMNIFICATION

8.1 Mutual. Each party ("Indemnitor") shall indemnify, defend and hold the other party and its directors, officers, employees, agents and independent contractors ("Indemnitee") harmless from and against, any and all suits, actions and proceedings, claims, liabilities, losses, damages, expenses (including attorneys' fees) and costs (collectively, "Claims"), made against an Indemnitee by a third party for personal injury or tangible property damage to the extent arising solely from: (i) any gross negligence or reckless act, or any intentional misconduct of the Indemnitor, or its directors, officers, employees, agents or independent contractors in the performance of this Agreement; or (ii) any violation of any laws, statutes or governmental regulation.

8.2 By Customer. Subject to Joyent's obligations under Section 9 of this Agreement, Customer ("Indemnitor") shall indemnify, defend and hold Joyent and its directors, officers, employees, agents and independent contractors ("Indemnitee") harmless from and against, any and all Claims, made against an Indemnitee by a third party arising out of any use by Customer of the Joyent Software, including, without limitation, any service offering by Customer that is based in whole or in part on the use of the Joyent Software.

8.3 Conditions. The indemnification obligations of the parties in this Section 8 are contingent upon: (i) the Indemnitee promptly notifying the Indemnitor in writing of any claim which may give rise to a Claim for indemnification hereunder; (ii) the Indemnitor being allowed to control the defense and settlement of such Claim; and (iii) the Indemnitee cooperating with all reasonable requests of the Indemnitor (at Indemnitor's expense) in defending or settling a Claim. The Indemnitee shall have the right, at its option and expense, to participate in the defense of any suit or proceeding through a counsel of its own choosing.

## 9. LIMITATION OF LIABILITY

9.1 Disclaimer of Certain Damages. IN NO EVENT SHALL CUSTOMER OR JOYENT OR ITS LICENSORS BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE USE OR INABILITY TO USE THE JOYENT SOFTWARE, OR THE PERFORMANCE OF OR FAILURE TO PERFORM THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, JOYENT SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN THE DELIVERY OR FURNISHING OF THE JOYENT SOFTWARE, DOCUMENTATION, DELIVERABLES OR SERVICES. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 9.1 SHALL NOT APPLY TO A BREACH BY CUSTOMER OF ANY BREACH OF JOYENT'S INTELLECTUAL PROPERTY RIGHTS OR TO A BREACH BY EITHER PARTY OF ITS OBLIGATIONS UNDER SECTION 6 OF THIS AGREEMENT.

9.2 Damages Cap. IN NO EVENT SHALL CUSTOMER'S, OR JOYENT'S OR ITS LICENSORS' AGGREGATE, CUMULATIVE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNTS CUSTOMER WAS REQUIRED TO PAY JOYENT UNDER THIS AGREEMENT FOR THE JOYENT SOFTWARE OR SERVICES GIVING RISE TO SUCH LIABILITY, IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO LIABILITY. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 9.2 SHALL BE IN ADDITION TO AMOUNTS OWED BY CUSTOMER TO JOYENT FOR SOFTWARE OR SERVICES, AND SHALL NOT APPLY TO A BREACH BY CUSTOMER OF THE SCOPE OF THE LICENSE GRANTED IN SECTION 2.1 OF THIS AGREEMENT OR A BREACH BY EITHER PARTY OF ITS OBLIGATIONS UNDER SECTION 6 OF THIS AGREEMENT.

9.3 CUSTOMER AGREES THAT THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS ARE A BARGAINED FOR REASONABLE ALLOCATION OF THE RISK BETWEEN THE PARTIES AND WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

## 10. MISCELLANEOUS

10.1 Assignment. Customer may not assign this Agreement, in whole or in part, without the prior written consent of Joyent, which shall not be unreasonably withheld. Any assignment in violation of this Section 10.1 shall be void ab initio and of no effect. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by the parties and their respective successors and assigns.

10.2 Customer Identification. Customer consents to Joyent's identification of Customer as a user of the Joyent Software and/or the Services, as applicable, on its website, through a press release issued by Joyent and in other promotion materials. Customer also agrees to cooperate with Joyent in writing a case study exposing how the Joyent Software and/or the Services are being used and the benefits the Customer is deriving from this use.

10.3 Export Control. Customer acknowledges that the goods, software and technology acquired from Joyent are subject to U.S. export control laws and regulations, including but not limited to the International Traffic In Arms Regulations ("ITAR") (22 C.F.R. Parts 120-130 (2010)); the

Export Administration Regulations ("EAR") (15 C.F.R. Parts 730-774 (2010)); the U.S. antiboycott regulations in the EAR and U.S. Department of the Treasury regulations; the economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control, and the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended. Customer is now and will remain in the future compliant with all such export control laws and regulations, and will not export, re-export, otherwise transfer any Joyent goods, software or technology or disclose any Joyent software or technology to any person contrary to such laws or regulations. Customer acknowledges that remote access to Joyent software may in certain circumstances be considered a re-export of Joyent software, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

10.4 Fees. In any judicial proceeding between Customer and Joyent arising out of or relating to this Agreement, the prevailing party shall be entitled to recover all reasonable expenses incurred as a result of the proceeding, including reasonable attorneys' fees.

10.5 Force Majeure. Neither party will be liable for, or be considered to be in breach of or default under this Agreement, other than monetary obligations, as a result of any cause or condition beyond such party's reasonable control.

10.6 Governing Law. This Agreement will be governed by the laws of the State of California, without regard to its conflict of laws principles. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. All suits hereunder will be brought solely in Federal Court for the Northern District of California, or if that court lacks subject matter jurisdiction, in any California State Court located in San Mateo County. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any such action or proceeding in any of such courts based upon any alleged lack of personal jurisdiction, improper venue, forum non conveniens or any similar claim or defense. A breach by either party of Section 6 would cause irreparable harm for which the non-breaching party shall be entitled to seek injunctive relief.

10.7 Language. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall not be binding to the parties hereto. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

10.8 Notices. Any notice or other communication under this Agreement given by either party to the other will be deemed to be properly given if given in writing and delivered in person or facsimile, if acknowledged received by return facsimile or followed within one day by a delivered or mailed copy of such notice, or if mailed, properly addressed and stamped with the required postage, to the intended recipient at its address specified below the signatures on this Agreement. Either party may from time to time change its address for notices under this Section by giving the other party notice of the change in accordance with this Section 11.8.

10.9 Non-waiver. Any failure of either party to insist upon or enforce performance by the other party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be interpreted or construed as a waiver or relinquishment of such party's right to assert or rely upon such provision, right or remedy in that or any other instance.

10.10 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then: (i) such provision shall be excluded from this Agreement; (ii) the remainder of the Agreement shall be interpreted as if such provision were so excluded; and (iii) the remainder of the Agreement shall be enforceable in accordance with its terms.

10.11 Entire Agreement. This Agreement, together with any Exhibits (including all URLs reference therein) and Order Forms, 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 the subject matter herein, and supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. For the avoidance of doubt, this Agreement replaces, and its terms and conditions apply in lieu of, the Joyent Software License Agreement referenced on any Order Form signed by the parties, and any terms or conditions on any Customer purchase order or similar document are expressly excluded from this Agreement. 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.

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 POLICY FOR ACADEMIC INSTITUTIONS**

1. BASIC SERVICES.

During the term of this Agreement, the Customer is provided Basic Level software support. Basic Level software support is more fully defined in Joyent's software support policy as set forth at the following URL location: <http://www.joyent.com/about/policies/support/> ("Support Services Policy").

2. ADDITIONAL SUPPORT SERVICES.

In the event that Customer intends to upgrade to a higher level of Services, the additional levels of Services can be purchased from Joyent using the Order form in Exhibit B. The additional levels of Services are more fully defined in Joyent's software support policy as set forth at the following URL location: <http://www.joyent.com/about/policies/support/> ("Support Services Policy").

3. PROFESSIONAL SERVICES.

In the event that Customer intends to purchase Professional Services, the Professional Services can be purchased from Joyent using the Order form in Exhibit B.

4. TRAINING SERVICES.

In the event that Customer intends to purchase Training Services, the Training Services can be purchased from Joyent using the Order form in Exhibit B.

/End of Document/

**EXHIBIT B  
JOYENT, INC. ORDER FORM FOR ACADEMIC INSTITUTIONS**

**Order Form**

Joyent, Inc.  
345 California Street, Suite 2000  
San Francisco, CA 94104  
Tel: (415) 400-0600  
Email: sales@joyent.com

Order Number:

<b>Customer:</b> <b>Address:</b>	<b>Bill To:</b> <b>Address:</b>
<b>Contact:</b> <b>Tel:</b>	<b>Contact:</b> <b>Tel:</b>
<b>Sales Contact:</b>	<b>Payment Terms:</b> <b>Early Payment Discount:</b> <b>Term Start Date:</b> _____ <b>Term End Date:</b> _____ or One (1) year from the Term Start Date, whichever is shorter.

Ref	Software Description	Number of Authorized Servers	Unit Price	Total Price For License Fees
1	SmartDataCenter 6.5 Server License and Basic Software Support	Unlimited	No Cost	No Cost
2				
Ref	Services Description	Qty.	Unit Price	Total or Fixed Price For Services
3	Professional Services			
4	Training Services			
5	Additional Support Services			

**Order Form Terms and Conditions:**

CUSTOMER HEREBY ORDERS AND JOYENT, INC. (JOYENT) AGREES TO PROVIDE THE SOFTWARE AND/OR SERVICES DESCRIBED IN THIS ORDER FORM. THE SOFTWARE AND SERVICES ARE PROVIDED PURSUANT TO THE TERMS AND CONDITIONS OF THIS ORDER FORM AND THE MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT FOR ACADEMIC INSTITUTIONS BETWEEN JOYENT AND CUSTOMER ("AGREEMENT") WHICH AGREEMENT IS INCORPORATED BY REFERENCE AND MADE A PART OF THIS ORDER FORM.

The Customer representative signing below hereby acknowledges and agrees that in the event that the Customer does not issue a purchase order within five (5) days of the date on which this Order Form is executed by Customer, this Order Form shall serve as Customer's purchase order and shall be effective upon the date of Customer's signature below. Customer further acknowledges that any additional or conflicting terms and conditions contained in Customer's purchase order shall not be applicable to the Software or Services to be provided hereunder, even if Joyent uses such purchase order for invoicing purposes.

By signing below, Customer representative acknowledges that he/she is an authorized representative of Customer.

**Customer**  
Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

**JOYENT, INC.**  
Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_