

Master Services Agreement

THIS MASTER SERVICES AGREEMENT (this "**Agreement**") is entered into by and between Wow Technologies, Inc., a Washington corporation ("**ServerStadium**") and Customer ("**Customer**") identified in any Order (as defined below) referencing this Agreement, and provides as follows:

- 1. Agreement and Online "Click to Accept" Acceptance.** This Agreement includes and incorporates by reference all of the following: (1) any Wow Technologies, Inc. Service Contract (a "**Service Contract**"); (2) any separate written or online purchase order (each, a "**Purchase Order**"); (3) any mutual exchange of e-mails confirming an order of Products or Services (an "**E-Mail Exchange**"); (4) any privacy policy included herein or posted on www.serverstadium.com (the "**Privacy Policy**"); (5) any usage policy included herein or posted on www.serverstadium.com (the "**Usage Policy**"); (6) any rules and regulations all rules and regulations for any data center usage imposed by ServerStadium or any data center owner in which the Infrastructure (as defined below) is located or posted on www.serverstadium.com (the "**Rules and Regulations**"); (7) any service level agreement incorporated herein or posted on www.serverstadium.com (the "**SLA**"); (8) any other policies, rules or regulations as ServerStadium may impose from time to time; and (9) all Exhibits to this Agreement. If Customer is considering this Agreement and the purchase of ServerStadium Products and Services online, then by clicking the "accept" button for this Agreement, Customer agrees to be bound by the terms and conditions of this Agreement. If Customer does not agree with the terms and conditions of this Agreement, Customer must select the "decline" button and Customer may not use the Products or Services.
- 2. Applicability and Orders.** This Agreement applies to any provisioning of Products or Services (as defined below) by ServerStadium, whether pursuant to a Service Contract, Purchase Order, or E-Mail Exchange. For purposes of this Agreement, all Service Contracts, Purchase Orders, or E-Mail Exchanges entered into from time to time by Customer and ServerStadium are herein referred to collectively as the "**Orders**". Each Order shall be provided pursuant to ServerStadium 's standard service offering for such Product or Service, as shown on www.serverstadium.com. In the event of any conflict between this Agreement and the Orders, the terms of the Orders shall control. All Orders must be in writing and signed by Customer and ServerStadium, except that E-Mail Exchanges shall constitute an Order for purposes of this Agreement. Under no circumstances will any Order survive the expiration or earlier termination of this Agreement.
- 3. Products and Services.** ServerStadium agrees to provide the products and/or services described in this Agreement and in the Orders (the "**Products**" and "**Services**").
- 4. Term.** This Agreement shall have a term (the "**Term**") that commences on the date of the first Order between ServerStadium and Customer (the "**Effective Date**") and will terminate on the date the last Order between ServerStadium and Customer expires or is terminated, unless this Agreement is terminated earlier as set forth herein. Unless otherwise stated therein, each Order will have an initial term of one (1) month commencing on the date of the Order. All Orders will renew automatically for additional terms equal in length to the initial term, unless either party notifies the other party in writing at least five (5) days prior to the end of the then-current term

that it does not desire for the Order to be automatically renewed, in which event the Order will terminate at the end of such then-current term. Orders for Products and Services that are ancillary to an existing Order (as determined by ServerStadium in its sole discretion) that has a different initial or renewal term shall have an initial or renewal term that is the same as the then-existing remaining initial term or renewal term of the existing Order. Notwithstanding anything herein to the contrary, no Order will survive the termination of this Agreement.

5. **Charges and Payment.** Customer shall pay all Monthly Recurring Charges described in the Orders monthly in advance on the first business day of each calendar month of the Term. Customer will pay all Non-Recurring Charges described in the Orders within thirty (30) days of the date of the invoice for such Non-Recurring Charges. The Monthly Recurring Charges, the Non-Recurring Charges, any other Charges for Products or Services, and any other charges that become due under this Agreement or any Order are sometimes hereinafter referred to as the "**Charges**". Charges for any partial month shall be prorated. Charges for any renewal term shall be the greater of (a) the then current Charges described in the applicable Order; or (b) ServerStadium 's then current standard Charges. If the Charge for a Product or Service is not specifically set forth in an Order, then the Charges shall be at ServerStadium 's then-current standard rates for such Product or Service. Each Order may specify the date for which Monthly Recurring Charges under such Order will commence, and if no date is specified, the Monthly Recurring Charges shall commence immediately. Unless otherwise specified in an Order, ServerStadium may include Taxes in its charges, but Customer is responsible for paying Taxes on Products and Services.
6. **Late Fees, Interest and Disputes.** If any amount due under this Agreement is not received by its respective due date, in addition to its other available remedies, ServerStadium may impose a late charge equal to five percent (5%) of the amount due. In addition, any past due amounts will accrue interest at the lesser of one and a half percent (1.5%) per month or the highest rate permitted by applicable law. If Customer reasonably disputes a Charge, Customer agrees to pay the undisputed balance to ServerStadium according to the terms outlined in this Section. All disputes or requests for billing adjustments must be submitted in writing by the due date and submitted with payment of undisputed amounts due in order to be considered a valid dispute. Customer is responsible for paying all Charges even if such Charges are the result of an unauthorized use of the Products or Services by an employee or customer of Customer, any person to whom Customer has given access to the Services, any person who gains access to the Services as a result of Customer's failure to properly secure the Services, or any other third party acting by or under Customer. In the event Customer disputes a Charge, and the dispute is resolved against Customer, then Customer will pay the disputed amount together with interest at the rate set forth above from the date the Charge was originally due.
7. **ServerStadium Reserved Rights.** ServerStadium reserves the right to add, modify or eliminate Products or Services at any time. ServerStadium also reserves the right to cause any Products or Services to be delivered or performed by third party providers. ServerStadium will endeavor to invoice Customer on a monthly basis, but reserves the right to bill at such later time or times as may be reasonably necessary in the discretion of ServerStadium. ServerStadium reserves the right to change its standard Charges at any time. ServerStadium reserves the right to make changes to its policies, the Usage Policy, and the Rules and Regulations from time to time at its reasonable discretion. Changes to the Agreement will be effective as to Customer

upon notice to Customer, or upon posting on www.serverstadium.com or at the data center where the Infrastructure is located.

8. **Network and Infrastructure.** As used herein, "**Network**" shall mean all ServerStadium network infrastructure, including network hardware such as routers, firewalls, switches and cabling that is essential to the provisioning of Services hereunder. The space in which the Products and Services are offered, together with all infrastructure and building systems, and power capacity and systems relating thereto are collectively hereinafter referred to as the "**Infrastructure**". ServerStadium reserves the right to expand, contract or change the definitions of Network or Infrastructure at any time during the term of this Agreement. If specified in an Order or if access is a standard part of a Services offering, subject to this Agreement, Customer will have key card access to the Network and Infrastructure twenty-four (24) hours per day, three hundred sixty-five (365) days per year. Customer shall not use the Network and Infrastructure for any other purpose. Customer shall not use the Network or Infrastructure, or allow access thereto or use thereof, except in accordance with the terms of this Agreement. Neither Customer nor its employees, agents, contractors or invitees (each, a "**Customer Authorized Person**") shall damage any part of the Network and Infrastructure or any property or equipment located in or about the Network and Infrastructure, or allow any debris or supplies to be left in or about the Network and Infrastructure. Customer shall not maintain or permit any nuisances with respect to the Network and Infrastructure. Neither Customer nor its Customer Authorized Persons shall permit any explosive, toxic, flammable or combustible material or any hazardous or toxic materials, as defined under applicable law, to be located in or about the Network and Infrastructure, except in compliance with all applicable law. Customer is responsible for all costs associated with the clean up or remediation of such materials.
9. **"As Is" Network and Infrastructure and No Representations.** The use of the Network or Infrastructure, and/or the installation of Customer Equipment (as defined below) by Customer or by ServerStadium at Customer's request, at the Network and Infrastructure shall be conclusive evidence that Customer accepts the Network and Infrastructure "as is and with all faults", and that the Network and Infrastructure is suitable for the use intended by Customer and is in satisfactory condition. Customer acknowledges that no representation has been made by ServerStadium as to the fitness of the Network and Infrastructure for Customer's intended purpose. Customer acknowledges that ServerStadium has made no warranties, whether express, implied, oral, or written, relating to this Agreement, including but not limited to, any implied warranty of merchantability or fitness for a particular purpose, except as specifically set forth herein. All Services are provided or performed on an "as is", "as available" basis, and Customer's use of the Network, Infrastructure, Products and Services is solely at its own risk.
10. **Compliance with Laws and Agreement,** Customer represents and warrants to ServerStadium that Customer is and will remain at all times during the Term in full compliance with all applicable law. Customer acknowledges that ServerStadium reserves the right to cooperate at all times during the term of this Agreement with law enforcement or other governmental agencies, that ServerStadium has no obligation to inform Customer of any ongoing subpoenas or other investigative inquiries of such agencies, and that ServerStadium has no liability to Customer for any such cooperation or such failure to inform Customer. At all times during the Term, Customer agrees to comply with this Agreement.

- 11. Customer Authorized Persons.** Customer assumes full responsibility and liability for all acts or omissions of Customer's Authorized Persons while using or physically located in or around the Network and Infrastructure. Prior to any access to the Network and Infrastructure by a Customer Authorized Person, Customer shall deliver a written request to ServerStadium, specifying: (a) the names and addresses of each proposed Customer Authorized Person; (b) a summary of the qualifications and experience of each Customer Authorized Person; (c) a description of the services to be performed by such Customer Authorized Person; (d) the planned dates and times of such activities; and (e) that Customer has provided each Customer Authorized Person with a copy of ServerStadium 's policies, the Usage Policy, and the Rules and Regulations. Customer shall cause each Customer Authorized Person to agree to comply with such policies, said Usage Policy and Rules and Regulations. No Customer Authorized Person can bring any other individuals into a ServerStadium data center (each a "**Data Center**"), or otherwise in or around the Network or the Infrastructure, without ServerStadium 's consent. Customer may provide ServerStadium with a list of Customer Authorized Persons for pre-approval. ServerStadium shall have the right to disapprove of or restrict any Customer Approved Person 's access to the Network and Infrastructure at any time and for any reason.
- 12. No Liens.** Customer shall pay all costs and charges: (a) for work done by Customer or any Customer Authorized Person on or about the Network and Infrastructure; and (b) for all materials furnished by Customer for or in connection with such work. Customer shall keep any Data Center and the Network and Infrastructure free and clear from all mechanics' liens and claims of liens, and all other liabilities, liens, claims and demands on account of such work done by or on behalf of Customer or any Customer Authorized Person, and shall indemnify ServerStadium against and hold ServerStadium, ServerStadium's landlord, and any mortgagee or holder of a deed of trust or similar encumbrance on the Network and Infrastructure or Data Center, harmless from any loss or damage associated therewith. If any such lien is filed at any time against the Network and Infrastructure or Data Center, or any part thereof, Customer will immediately give ServerStadium notice of such occurrence and shall remove, discharge or bond any such lien within thirty (30) days of its filing. If Customer fails to remove, discharge or bond at 150% of such lien within such time period (or such shorter period as may be required by a mortgagee or holder of a deed of trust or similar encumbrance on the Network and Infrastructure or Data Center, notice of which shorter period is given to Customer), ServerStadium shall have the right, but not the obligation, to remove, discharge or bond such lien at Customer 's cost, and Customer shall reimburse ServerStadium for such costs upon invoice therefor. Nothing contained in this Agreement shall be deemed to constitute a consent or agreement of ServerStadium to subject the Network and Infrastructure or any Data Center to liability under any mechanics ' or other lien law. Customer expressly disclaims any right, title, or interest in or to any of ServerStadium 's equipment or property, or in that of any of ServerStadium 's affiliates, customers, agents or customers, whether located in the Data Center, within the Network and Infrastructure or elsewhere.
- 13. Taxes.** Customer will pay all taxes, governmental fees, and third-party charges related to the ownership and operation of Customer Equipment, Customer 's usage of the Network and Infrastructure, and the activities of Customer at the Network and Infrastructure. Without limiting the foregoing, Customer is responsible for timely paying in full all sales, use, transfer, privilege, excise, and all other taxes and duties which are levied, assessed or imposed by reason of the performance by

ServerStadium or Customer under this Agreement or by Customer with respect to its operations and use of the Data Center, Network and Infrastructure and Customer Equipment ("**Taxes**"); but the term "Taxes" excludes any income taxes on ServerStadium 's profits.

14. **ServerStadium Indemnification.** ServerStadium will indemnify defend and hold harmless Customer and its affiliates, owners, officers, directors, employees, contractors and agents (collectively, the "**Customer Parties**") from any and all third party actions, liability, damages, costs and expenses (including reasonable attorneys ' fees and expenses) arising from personal injury or property damage resulting solely from the gross negligence or willful misconduct of ServerStadium. Customer hereby waives and releases all claims against ServerStadium, its agents, employees, officers, directors, affiliates, and owners (collectively, the "**ServerStadium Parties**"), and agrees that the ServerStadium Parties shall not be liable for injury to person or damage to property sustained by Customer or any Customer Parties occurring in or about the Data Center, the Network and Infrastructure or otherwise relating to this Agreement, except such injury or damage resulting solely from the gross negligence or willful misconduct by ServerStadium.
15. **Customer Indemnification.** Customer will indemnify defend and hold harmless the ServerStadium Parties, as well as ServerStadium 's landlord and ServerStadium 's landlord 's lender, from any and all third party actions, liability, damages, costs and expenses (including reasonable attorneys' fees and expenses) arising from or relating to (a) personal injury or property damage resulting from any act of Customer, any Customer Party, or any other person accessing the Data Center, Network and Infrastructure due to the actions of Customer; (b) any claim by Customer, Customer Parties or any of Customer 's Authorized Persons other than a claim based solely on the gross negligence or willful misconduct of ServerStadium; (c) any claim by a customer or end-user of Customer relating to, or arising out of, Customer 's or any of its customers ' services or the Services provided under this Agreement (including claims relating to interruptions, suspensions, failures, defects, delays, impairments or inadequacies in any of the aforementioned services, including the Services from ServerStadium); (d) any claim that Customer has failed to fulfill a contractual obligation with a third party; and (e) any claim resulting from Customer 's failure to obtain any consents required to be obtained by Customer hereunder; and (f) any claim by a party claiming by through or under Customer or any Customer Authorized Person to the extent that such claim, if sustained, would result in any greater obligation or liability of ServerStadium to such party than ServerStadium has undertaken to Customer under this Agreement.
16. **Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, LOSS OF BUSINESS, LOSS OF REVENUES, LOSS OF DATA, SERVICE INTERRUPTION, OR TRANSMISSION PROBLEMS OR CORRUPTION OF DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR ANY OTHER TYPE OF DAMAGES OTHER THAN DIRECT DAMAGES (AND WITH DIRECT DAMAGES, ONLY TO THE EXTENT PERMITTED IN THIS AGREEMENT). NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, SERVERSTADIUM 'S TOTAL LIABILITY IN THE AGGREGATE (INCLUDING ATTORNEYS ' FEES) ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT WILL BE LIMITED TO, AND WILL NOT EXCEED, THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR RECURRING CHARGES FOR THE MONTH IMMEDIATELY PRIOR TO THE MONTH IN WHICH THE FIRST CLAIM BROUGHT BY CUSTOMER

AGAINST SERVERSTADIUM RELATING TO THIS AGREEMENT AROSE. AS A FURTHER LIMITATION, SERVERSTADIUM 'S MAXIMUM LIABILITY RELATING TO ANY SERVICE THAT HAS A NON-RECURRING CHARGE WILL EQUAL THE AMOUNT OF THE NON-RECURRING CHARGE FOR SUCH SERVICE ON THE OCCASION GIVING RISE TO THE CLAIM. THE LIMITATIONS SET FORTH IN THIS SECTION APPLY TO ANY CLAIMS AND CAUSES OF ACTION WHATSOEVER, REGARDLESS OF THE FORMS OF THE ACTIONS, AND WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY.

17. **Service Level Terms.** ServerStadium guarantees that the Services will be provided in accordance with the ServerStadium 's then-current SLA, as the same is posted on www.serverstadium.com from time to time.
18. **Confidentiality.** ServerStadium and Customer agree that if either party (the "**Disclosing Party**") provides confidential or proprietary information ("**Confidential Information**") to the other party (the "**Recipient Party**"), such Confidential Information shall be held in confidence, and the Recipient Party shall afford Confidential Information the same care and protection as it affords generally to its own confidential and proprietary information (which in any case shall be not less than reasonable care) in order to avoid disclosure to or unauthorized use by any third party. This Agreement, including its existence and all of the terms, conditions and provisions, constitutes Confidential Information. In addition, notwithstanding anything in this Agreement to the contrary, (i) this Agreement will be deemed Confidential Information of each party; and (ii) the design of the Network and Infrastructure, the Products and Services provided and equipment used at the Network and Infrastructure and the configuration, interconnection, switching and routing of cables, equipment, networks and services at the Network and Infrastructure will be considered Confidential Information of ServerStadium. All information disclosed by either party to the other in connection with or pursuant to this Agreement shall also be deemed to be Confidential Information, provided that written information is clearly marked in a conspicuous place as confidential or proprietary, and verbal information is indicated as being confidential or proprietary when given or promptly confirmed in writing as such thereafter. All Confidential Information, unless otherwise specified in writing, shall remain the property of the Disclosing Party, shall be used by the Recipient Party only for its intended purpose. All Confidential Information, including all copies thereof, shall be returned to the Disclosing Party or destroyed after the Recipient Party 's need for it has expired or upon the request of the Disclosing Party. Confidential Information shall not be reproduced except to the extent necessary to accomplish the purpose and intent of this Agreement, or as otherwise may be permitted in writing by the Disclosing Party. The foregoing provisions of this Section shall not apply to any Confidential Information which: (i) becomes publicly available other than through disclosure by the Recipient Party; (ii) is required to be disclosed by any governmental authority, applicable law or by court order; (iii) is independently developed by the Recipient Party; (iv) becomes available to the Recipient Party without restriction from a third party; or (v) becomes relevant to the settlement of any dispute or enforcement of either party 's rights under this Agreement in accordance with its terms and conditions. If any Confidential Information is required to be disclosed pursuant to this Section, the party required to make such disclosure shall immediately inform the other party of the requirements of such disclosure and take all reasonable protective measures to preserve the confidentiality of such Confidential Information as fully as possible in the context of such permitted disclosure. Each party is responsible for ensuring that any Confidential Information of the other party that the first party

discloses is kept confidential by the person receiving the disclosure. Notwithstanding the foregoing, (i) ServerStadium may issue a press release announcing Customer 's entry into the Network and Infrastructure without obtaining Customer 's consent; and (ii) either party may publicly refer to the other party, orally and in writing, as a customer or vendor of services of or to the other party, as the case may be, without obtaining consent from such party. Notwithstanding the foregoing, either party may disclose Confidential Information to its employees or agents, its legal, financial, and accounting advisors, and to its lenders with a need to know such Confidential Information, provided that the Disclosing Party notifies any recipient of its confidential and proprietary nature.

19. **Default, Remedies and Termination.** It shall be a default under this Agreement if a party fails to perform its obligations under this Agreement, and then fails to cure such failure within ten (10) days (for monetary defaults) or thirty (30) days (for non-monetary defaults). Upon a default by Customer, ServerStadium shall have all rights and remedies under applicable law or in equity, including, without limitation, the following: (a) the right to suspend or refuse to continue to provide any Products or Services without any liability to Customer for loss or damage until the default is cured in full; (b) the right to terminate any Order or this Agreement by notice to Customer; (c) the right to demand, and receive from Customer upon demand, the entire Charges due ServerStadium for the unexpired Term, together with all costs, attorney 's fees, and damages which may have been suffered or incurred by ServerStadium as a result of Customer's default. In addition, ServerStadium may terminate this Agreement and any Orders with Customer, effective immediately upon notice, if Customer becomes the subject of a bankruptcy proceeding or other insolvency proceeding. Upon any termination, Customer will remain liable to ServerStadium for any accrued amounts owed prior to the effective date of termination. Customer expressly waives all legal notice to vacate the Network and Infrastructure after expiration of cure period.
20. **Effect of Termination.** Upon expiration or termination of an Order (or a portion thereof), with respect to the Network and Infrastructure covered by that Order, the license and all other rights of Customer with respect to such Network and Infrastructure, and the right to receive Services associated with such Network and Infrastructure, will terminate, and Customer will, subject to the terms of this Agreement, immediately remove all of Customer Equipment and other property belonging to Customer or Customer 's Authorized Persons, but excluding any wiring, cable or other equipment or property owned, leased or licensed by ServerStadium, from such Network and Infrastructure, no later than the effective date of such termination. Customer shall surrender the Network and Infrastructure in good condition, reasonable wear and tear excepted. If Customer fails to remove any such property by the effective date of termination, ServerStadium will be entitled to pursue all available legal remedies against Customer, including one or more of the following remedies: immediately removing any or all such property and storing it at Customer 's expense at an on-site or off-site location, shipping such property to Customer at Customer 's expense, or liquidating such property in any commercially reasonable manner and charging Customer for all costs associated with the liquidation. In the event of any such liquidation, ServerStadium shall not be responsible for data privacy or security associated with any content located on Customer 's property. If Customer has not removed its equipment, due to no fault of ServerStadium, by such 30th day following such expiration or termination, Customer shall be liable for continued Charges at the Network and Infrastructure, prorated to

the date of removal. Upon expiration or termination of this Agreement, Customer shall promptly discontinue use of the Services and relinquish use of the IP addresses and server names assigned to Customer by ServerStadium in connection with the Services, including pointing any DNS for Customer 's domain name(s) away from ServerStadium.

21. **ServerStadium 's Security Interest.** In addition to any other remedies available under this Agreement or applicable law, Customer grants ServerStadium a security interest in all Equipment now or hereafter located at the Network and Infrastructure, to secure payment of all amounts and satisfaction of all obligations due under this Agreement. Furthermore, effective upon Customer's failure to comply with this Agreement, Customer authorizes ServerStadium (in addition to any other remedies available under this Agreement or applicable law) to file one or more financing statements, and Customer will sign such financing statements, and take such other actions as ServerStadium reasonably requests, to perfect or continue such security interest.
22. **Representations.** Each party represents, warrants and covenants that as of the Effective Date, and as of the date of commencement of each Service to be provided hereunder, that: (a) it has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement; (b) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors ' rights and general equitable principles; (c) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court or body of any country or any contract or other agreement the party is subject to; (d) it is a corporation, partnership or limited liability company duly organized, validly existing and in good standing under the applicable law of its state of incorporation; (e) it has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement; (f) its execution of and performance of this Agreement will not result in a breach of any agreement it may have with third parties or a violation of applicable law; (g) it is qualified to do business in all jurisdictions where such qualification is required by applicable law; and (h) it shall perform its obligations under this Agreement and use the Network and Infrastructure in a manner consistent with applicable law, and shall not use, or knowingly permit the Network and Infrastructure to be used, for any illegal purpose or in any other unlawful manner. Customer represents and warrants that it is not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons.
23. **Provisions Specific to Dedicated Server Customers.** If Customer uses ServerStadium 's dedicated server Services and Products, then the following additional terms and conditions shall apply:
 - a. ServerStadium's "Dedicated Server Service" refers to the equipment, facilities, programming, data files, software, services and resources provided by ServerStadium to enable Customer to outsource its data and internet requirements with access through the ServerStadium Network and Infrastructure.
 - b. Customer shall provide to ServerStadium, in the format and within the timeframe set forth in the schedule provided by ServerStadium for implementing the Dedicated Server Service, any material that is required for customization of Customer's Dedicated Server Service, including, as such is

applicable, computer files, images, logos, icons and other information (the "**Dedicated Server Material**"). ServerStadium shall not be liable for any delay due to Customer's inability to respect the timeframe indicated in any implementation schedule or to perform one of the covenants of this Agreement. To the best of Customer's knowledge the Dedicated Server Material is free from any design and operational defect as well as from any virus. Customer warrants and represents to the best of Customer's knowledge that the Dedicated Server Material does not infringe on any third party patent, copyright, trademark or trade secret. Customer shall provide, upon request, the proof of its right or title to or interest in any patent, copyright, trademark or other intellectual property right related to the Dedicated Server Material.

- c. Customer shall provide to ServerStadium, administrative access (or root access) to Customer's operating system on the servers related to the Dedicated Server Service.
- d. ServerStadium will promptly replace any faulty hardware that has a material and adverse effect on the Products or Services with functionally equivalent hardware.
- e. ServerStadium will contract with third-party vendors to procure the requisite number of server-side licenses as enumerated in the Master Hosting Services Form. Such licenses will be owned and maintained by ServerStadium unless separately agreed to by ServerStadium and Customer in writing. Customer agrees to adhere to the terms and conditions of the manufacturer's software license agreement (available upon request.) ServerStadium provides no warranties or guarantees with respect to third party software.
- f. The Dedicated Server Service may only be used for lawful purposes and the content of the Dedicated Server Material shall comply with all applicable laws. Customer shall not knowingly post, permit access or display information containing any defamatory, offensive, threatening, obscene or otherwise illegal content or material protected by copyright, trade secret, patent or any other intellectual property laws. ServerStadium reserves its right to terminate the Agreement and cease providing the Dedicated Server Service in the event that it determines that the Dedicated Server Material violates the terms of this Agreement.
- g. ServerStadium reserves the right to relocate a Customer and any Customer Equipment at any time on thirty (30) days notice at ServerStadium's expense. In the event of any such relocation, ServerStadium will cooperate with Customer in taking steps to ensure that Customer's connectivity and services are not materially affected.

24. Provisions Specific to Managed Services Customers. If Customer uses ServerStadium's managed services Services and Products, then the following additional terms and conditions shall apply:

- a. ServerStadium "**Managed Services**" refers to the operation and maintenance of a Customer's infrastructure, equipment, facilities, programming, data files, software, services and resources, as specified in an Order. Managed Services may include improving the performance, availability and security of Customer's applications, including leased hardware and software and managed services for security, server availability, storage, backup and recovery services, server management and maintenance services, software upgrades and patches, hardware upgrades and replacements, data

- recovery services, load balancing services, backup services, monitoring, optimization, storage, professional services, capacity management services, network intrusion detection, firewalls, VPN services, and vulnerability scanning.
- b. ServerStadium will monitor the network, physical infrastructure and servers and applications on a 24 x 7 basis.
 - c. ServerStadium will provide professional services on a time and materials basis. Professional services can include project management of the installation and configuration of a Customer 's new environment, application consulting and management, security consulting, engineering services, network consulting, storage consulting, server clustering and Customer-caused fault repair.
 - d. Customer shall provide to ServerStadium, in the format and within the timeframe set forth in the schedule provided by ServerStadium for implementing the Managed Hosting Service, any material that is required for ServerStadium to perform the Managed Services, including, as such is applicable, computer files, images, logos, icons and other information (the "**Managed Hosting Material**"). ServerStadium shall not be liable for any delay due to Customer 's inability to respect the timeframe indicated in any implementation schedule or to perform one of the covenants of this Agreement. To the best of Customer 's knowledge the Managed Hosting Material is free from any design and operational defect as well as from any virus. Customer warrants and represents to the best of Customer 's knowledge that the Managed Hosting Material does not infringe on any third party patent, copyright, trademark or trade secret. Customer shall provide, upon request, the proof of its right or title to or interest in any patent, copyright, trademark or other intellectual property right related to the Material.
 - e. Customer acknowledges and agrees that: (i) the performance of the Managed Services is subject to industry best practices, the technical limitations of the devices being managed and the equipment and infrastructure of Customer; (ii) certain Managed Services may expose vulnerabilities and could result in the disruption of services in some circumstances.
 - f. ServerStadium will contract with third-party vendors to procure the requisite number of server-side licenses. Such licenses will be owned and maintained by ServerStadium unless separately agreed to by ServerStadium and Customer in writing. Customer agrees to adhere to the terms and conditions of the manufacturer 's software license agreement (available upon request.) ServerStadium provides no warranties or guarantees with respect to third party software.
 - g. The Service may only be used for lawful purposes and the content of the Managed Hosting Material shall comply with all applicable laws. Customer shall not knowingly post, permit access or display information containing any defamatory, offensive, threatening, obscene or otherwise illegal content or material protected by copyright, trade secret, patent or any other intellectual property laws. ServerStadium reserves its right to terminate the Agreement and cease providing the Service in the event that it determines that the Managed Hosting Material violates any applicable law or regulation.
 - h. If back-up services are included in the Managed Services offering or are included on an Order, ServerStadium will use reasonable efforts to comply

with Customer 's back-up preferences. Under no circumstances will ServerStadium have any liability or responsibility for the loss of back-up data, content, or other information, unless caused by the negligence or willful misconduct of ServerStadium. In addition, Customer grants to ServerStadium a non-exclusive royalty-free, worldwide right and license to digitize, convert, make copies of, and archive Customer 's data, content and information for the purpose of performing their obligations under this Agreement.

- i. Under no circumstances is ServerStadium liable or responsible for security breaches, viruses, hacked servers, worms, lost or stolen data, or corrupted data, unless caused by the negligence or willful misconduct of ServerStadium.

25. Miscellaneous.

- a. Except where otherwise expressly stated in this Agreement, all notices, consents, or approvals required by this Agreement will only be effective if in writing and sent by (i) certified or registered air mail, postage prepaid, or (ii) overnight delivery, to the parties at the respective street addresses, (iii) electronic mail addresses, to the address set forth below:

ServerStadium:
12201 Tukwila International Blvd, Suite #100
Seattle, WA 98168
e-mail: billing@serverstadium.com

or such other addresses or facsimile numbers as may be designated in writing by the respective parties. Notices, consents and approvals will be deemed effective on the date of receipt.

- b. This Agreement will be governed in all respects by the internal laws of the State of Washington, without regard to principles of conflicts of laws. Jurisdiction and venue for all purposes related to this Agreement shall be in the state and federal courts of the State of Washington. Neither party will have any claim against the other party arising under or in any way relating to this Agreement unless the party asserting such claim gives written notice of such claim to the other party not later than six months after the date this Agreement expires or is early terminated. This Agreement shall not be governed by the United Nations Convention on the International Sale of Goods.
- c. In the event of any dispute relating to this Agreement, for thirty (30) days ServerStadium and Customer shall attempt to resolve such dispute. If such dispute shall not be resolved in writing within such thirty (30) day period, the dispute shall be resolved by arbitration as follows: the party desiring arbitration (the "**First Party**") shall give notice to that effect to the other party, and shall in such notice appoint a person as arbitrator on its behalf. Within fifteen (15) days after its receipt of such notice, the other party by notice to the First Party shall appoint an arbitrator on its behalf, if the second arbitrator shall not be so appointed within such fifteen (15) days, the First Party may give a second notice to the other party demanding that the other party appoint an arbitrator within ten (10) days of its receipt of such second

notice and if the other party shall not do so within such ten (10) day period, then the arbitrator appointed by the First Party shall appoint the second arbitrator. The two arbitrators appointed pursuant to the above shall try to appoint the third arbitrator. If, within twenty (20) days after the appointment of the second arbitrator, they shall not have agreed upon the appointment of the third arbitrator, either of the parties upon notice to the other party may request such appointment by the Office of the American Arbitration Association (the "**AAA**") closest to the Property, or in its absence, refusal, failure or inability to act, may apply to the presiding judge of the King County Superior Court (the "**Court**") for the appointment of such third arbitrator and the other party shall not raise any question as to the Court's power and jurisdiction to entertain the application and make the appointment. Each arbitrator shall be a qualified person who shall have at least ten (10) years experience in a calling connected with the matter of the dispute. The arbitration shall be conducted in accordance with the then prevailing, rules of the AAA, under the auspices of the office of the AAA closest to the Property, The arbitrators shall render their decision and award in writing upon concurrence of at least two (2) of their members, within thirty (30) days after the appointment of the third arbitrator. Such decision and award shall be binding and conclusive on the parties, shall constitute an "award" of the arbitrators within the meaning of the AAA rules and applicable law, and counterpart copies thereof shall be delivered to each of the parties. In rendering such decision and award, the arbitrators shall not add to, subtract from, or otherwise modify the provisions of this Agreement and shall apply applicable law. Judgment may be had under the decision and award of the arbitrators so rendered in any court of competent jurisdiction. Each party shall pay the fees and expenses of the arbitrator appointed by or for it. The fees and expenses of the third arbitrator, and all other expenses of the arbitration (other than the fees and disbursements of attorneys or witnesses for each party), shall be borne by the parties equally.

- d. Except as may be specifically otherwise agreed by an affiliate or subsidiary of a party, neither party 's directors, officers, affiliates, subsidiaries, employees, or contractors will have any liability to the other party with respect to this Agreement.
- e. This Agreement as described in Section 1 above constitutes the complete and entire agreement between the parties with respect to the subject matter hereof. Each party hereby warrants and represents that the person signing this Agreement has full authority to execute this Agreement for the party on whose behalf he or she is signing. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement may be amended only in writing by an instrument signed by all parties. Each party acknowledges and agrees that it has reviewed, and has had an opportunity to have reviewed, this Agreement, and it is the parties ' intent that this Agreement will not be construed against either party. All section headings and captions are for convenience and reference only, and will not be used to construe this Agreement. If any provision of this Agreement is adjudged by a court or arbitrator to be invalid, illegal or unenforceable, the same will not affect the validity, legality, or enforceability of the portion of the provision, if any, that is not invalid, illegal or unenforceable, the application of such

- provision in any other circumstances, or the validity, legality, or enforceability of any other provision of this Agreement. All terms and conditions of this Agreement will be construed to be enforceable to the fullest extent permissible under applicable law, and, when necessary, the court or arbitrator in any action between the parties is requested to reform any and all terms or conditions to give them as much effect as possible.
- f. No waiver of any breach of any provision of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party and clearly understood by the waiving party to be such a waiver.
 - g. Sections 5-6, 8-10, 13, 15-18, 20-25 and 28 of this Agreement will survive the termination of this Agreement. In addition, all provisions of this Agreement that can only be given proper effect if they survive the termination of this Agreement will survive the termination of this Agreement. This Agreement will be valid as to any obligation incurred prior to termination of this Agreement.
 - h. This Term does not establish any relationship of partnership, joint venture, employment, franchise or agency between ServerStadium and Customer. Neither ServerStadium nor Customer has the power to bind the other or incur obligations on the other 's behalf without the other 's prior written consent. Except as specifically provided herein, neither Customer nor ServerStadium grants the other the right to use its trademarks, service marks, trade names, logos, copyrights, or other intellectual property rights or other designations in any promotion, publication, or press release without the prior written consent of the other party in each case. Any intellectual property developed by ServerStadium during the performance of the Services shall belong to ServerStadium unless ServerStadium has otherwise agreed with Customer in advance in writing that Customer shall have an interest in such intellectual property.
 - i. This Agreement does not provide and is not intended to provide any third party beneficiaries, including but not limited to Customer 's end users or customers, with any remedy, claim, reimbursement, cause of action or other right or privilege.
 - j. This Agreement, and the rights of Customer hereunder, are, without any further action by any party, subject and subordinate to the leases for the Network and Infrastructure and all superior instruments to such leases (including, without limitation, mortgages or ground leases for the Network and Infrastructure and the Data Centers, including, without limitation, all rights of access and maintenance granted to the owner of a Data Center. This Term is a services agreement and is not intended to and will not constitute a lease of any real or personal property. Customer acknowledges and agrees that (i) if it is a colocation customer, it has been granted only a license to use the Network and Infrastructure in accordance with this Agreement; (ii) Customer has not been granted any real property interest in any portion of the Network and Infrastructure (including, without limitation, the Network and Infrastructure); (iii) Customer has no rights as a tenant or otherwise under any real property or landlord/tenant applicable law; (iv) Customer has no right, title or interest in or to the Network, the Infrastructure, or any equipment or property located in the Data Center other than Customer

- Equipment. ServerStadium hereby reserves, with respect to the Network and Infrastructure, all rights not specifically granted to Customer in this Agreement, including, without limitation, the right (i) of access to and use of the Network and Infrastructure for its own use or the use of others; (ii) to grant additional licenses to other persons or co-location customers for the use of portions of the Network and Infrastructure; and (iii) to exercise or grant other rights not inconsistent with the rights granted in this Agreement.
- k. ServerStadium may assign, delegate or transfer its rights and obligations under this Agreement and any Order to any person or entity, and in the event of any such assignment, transfer or delegation, and the assumption by the transferee of the obligations of ServerStadium hereunder, ServerStadium will be released from any further liability or obligation under this Agreement. Except as otherwise expressly set forth herein, Customer will not assign, delegate, transfer or sublicense any of its rights under this Agreement. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of all successors and permitted assigns of ServerStadium and Customer.
- l. ServerStadium will not be responsible or in any way liable or responsible for any loss or damage to any party, and Customer will not have any termination or other rights (including any rights to a credit under the Service Level Agreement set forth above), arising out of or relating to a Force Majeure Event. As used herein, a "**Force Majeure Event**" shall mean any failure by ServerStadium to perform its obligations under this Agreement or any other interruption of Services provided hereunder if such failure or interruption is caused by events or circumstances beyond ServerStadium 's control, including, without limitation, acts of God, war, labor strike, terrorist act, fire, flood, earthquake, any applicable law or other action of any governing authority or agency thereof, interruption in traffic or transportation, interruption or delay in telecommunication or third party services, in the ability to obtain raw material or supplies, inability to obtain third party software and hardware, failure of a carrier to provide telecommunications services to the Network and Infrastructure, failure of the primary power supply to the Network and Infrastructure, scheduled and emergency network maintenance or software / hardware upgrades, Network or Internet security breaches including virus/worm attack, denial of service & misuse of service by authorized/unauthorized users, DNS or email issues beyond direct control of ServerStadium, failure of Customer's own equipment, inaccessible servers or accounts due to Customer password change, or failure or interruption of the internet.
- m. Each party hereto shall indemnify the other for any brokerage or similar fees payable to brokers retained by said party that relate to the subject matter of this Agreement.