

**SONIC FOUNDRY, INC.**

**MASTER PURCHASE AGREEMENT**

This MASTER PURCHASE AGREEMENT ("Agreement") effective Jan 11, 2019 (the "Effective Date") is made and entered into between Sonic Foundry Media Systems, Inc. ("Sonic Foundry") 222 W. Washington Avenue, Madison, WI 53703 and Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas ("Customer"), located at 400 Bizzell St, College Station, TX 77843.

**RECITAL**

Sonic Foundry licenses computer software products and delivers services for use in rich media applications, Customer desires to purchase such products and services over the Term and Sonic Foundry desires to provide Customer with enterprise pricing on such products.

NOW, THEREFORE, intending to be legally bound hereby, Sonic Foundry and Customer agree as follows:

**1. DEFINITIONS**

Defined terms used in this Agreement shall have the meanings set forth below:

**1.1. "Confidential Information"** shall mean confidential or other proprietary information that Sonic Foundry discloses to Customer under, or pursuant to, this Agreement, including without limitation, hardware and software designs, software source code, product specifications and documentation, business and product plans, and other confidential business information. Confidential Information shall not include information which: (i) is or becomes publicly known or available without any action by, or involvement of, Customer; (ii) is disclosed by Customer with the prior written approval of Sonic Foundry; (iii) is disclosed pursuant to any judicial or governmental order, provided that Customer gives Sonic Foundry sufficient prior notice to contest such order; (iv) is independently developed by the Customer without using the Confidential Information; or (v) is rightfully received by Customer from a third party without a duty of confidentiality.

**1.2. "Cloud Service"** shall mean the Mediasite service provided customer to host customer content for the period and pricing outlined in Exhibit A and terms and conditions outlined in Exhibit C.

**1.2. "Documentation"** shall mean user manuals, training materials, product descriptions and specifications, technical manuals and supporting materials and other information in printed or digital form relating to the Sonic Foundry Products, generally provided to End-Users as of the date Sonic Foundry Product is shipped to Customer.

**1.3. "Effective Date"** shall mean the date identified above as the Effective Date.

**1.4. "Sonic Foundry Products or Products"** shall mean the products, including Hardware and Software that are listed in Exhibit A, or any written revision thereto approved by Sonic Foundry. Sonic Foundry Products may be modified, discontinued or introduced by Sonic Foundry under the provisions of Section 6.3.

**1.5. "Hardware"** shall mean the Sonic Foundry Mediasite recorders (or whatever Mark under which Sonic Foundry is then marketing such system) (not including the Software) included as part of the Sonic Foundry Products.

**1.6. "Initial Term"** shall have the meaning set forth in Section 6.1.

**1.7. "Intellectual Property Rights"** shall mean all forms of intellectual property rights and protections that may be obtained for, or may pertain to, the Sonic Foundry Products, Confidential Information, Documentation and Marks and may include, without limitation:

(i) All right, title and interest in and to all patents and all filed, pending or potential applications for patents, including any reissue, reexamination, division, continuation or continuation-in-part applications throughout the world now or hereafter filed;

(ii) All right, title and interest in and to all trade secrets, and all trade secret rights and equivalent rights arising under the common law, state law, federal law and laws of foreign countries;

(iii) All right, title and interest in and to all mask works, copyrights, other literary property or author's rights, whether or not protected by copyright or as a mask work, arising under common law, state law, federal law and laws of foreign countries; and

(iv) All right, title and interest in and to all Marks.

**1.8. "Marks"** shall mean all proprietary indicia, trademarks, service marks, trade names, trade dress, symbols, logos and/or brand names Sonic Foundry may adopt from time to time to identify Sonic Foundry, the Sonic Foundry Products or any related parties or materials.

**1.9. "Material Defect"** shall mean any reported malfunction, error or other defect in a Sonic Foundry Product that: (i) can be reproduced by Customer and Sonic Foundry, and (ii) in Sonic Foundry's reasonable discretion, constitutes a material nonconformity with the Documentation for such Sonic Foundry Product.

**1.10. "Parties"** shall mean Sonic Foundry and Customer.

**1.11. "Party"** shall mean either Sonic Foundry or Customer.

**1.12. "Purchase Order"** shall mean a written purchase order in a form acceptable to Sonic Foundry that is delivered to Sonic Foundry.

**1.13. "Purchase Price"** shall mean the amount to be paid by Customer for the Sonic Foundry Products and services as determined in accordance with Section 2.2.

**1.14. "Renewal Term"** shall have the meaning set forth in Section 6.1.

**1.15. "Software"** shall mean the version as of the Effective Date of the Mediasite Video Platform software or other software products licensed by Sonic Foundry in Object Code form included as part of the Sonic Foundry Products.

**1.16. "Support Services"** shall mean Sonic Foundry's Customer Care program which provides those maintenance and support services purchased by Customer as described and set forth in the then-current Exhibit B.

**1.17. "Support Services Fees"** shall mean the periodic fees to be paid by Customer as specified in the then-current Exhibit B for Support Services provided by Sonic Foundry. The Support Services Fees may be amended from time to time upon thirty (30) days prior notice to Customer.

**1.18. "Term"** shall mean the period beginning on the Effective Date and terminating on the date this Agreement is terminated under Article 6.

## **2. TERMS OF PURCHASE OF SONIC FOUNDRY PRODUCTS AND SERVICES BY CUSTOMER**

**2.1. Terms and Conditions.** All purchases of Sonic Foundry Products by Customer from Sonic Foundry during the Term shall be subject to the terms and conditions of this Agreement.

**2.2. Purchase Prices.** All Purchase Prices are F.O.B. - Sonic Foundry's designated facility. The Purchase Price for any Sonic Foundry Product or service purchased hereunder is the price for such Sonic Foundry Product as set forth in Exhibit A, whether direct from Sonic Foundry or through a Sonic Foundry authorized reseller.

**2.3. Taxes.** Customer's Purchase Price does not include any foreign, federal, state or local sales, use or other similar taxes, however designated, levied against the sale, licensing, delivery or use of the Sonic Foundry Products. Customer shall pay, or reimburse Sonic Foundry for, all such applicable taxes imposed on Customer or Sonic Foundry, provided, however,

that Customer shall not be liable for any taxes based on Sonic Foundry's income. When Sonic Foundry has the legal obligation to collect such taxes, the appropriate amount shall be added to Customer's invoice and paid by Customer unless Customer provides Sonic Foundry with a valid tax exemption certificate authorized by the appropriate taxing authority. Customer shall promptly notify Sonic Foundry of any amendment or revocation of such certificate and, to the extent permitted by the Constitution and laws of the State of Texas, will hold Sonic Foundry harmless from and against any taxes or other monies resulting from the failure to hold a certificate recognized as valid by the appropriate tax jurisdiction.

**2.4. Orders.** All orders for Sonic Foundry Products submitted by Customer shall be initiated by a Purchase Order sent to Sonic Foundry and requesting a delivery date during the Term.

**2.5. Terms of Purchase Orders.** Customer's Purchase Orders submitted to Sonic Foundry from time to time with respect to Sonic Foundry Products to be purchased hereunder shall be governed by the terms of this Agreement. Nothing contained in any such Purchase Order shall in any way modify or enlarge such terms of purchase or add any additional terms or conditions except as otherwise agreed in a separate writing (other than a Purchase Order) signed by an authorized representative of each of the Parties.

**2.6. Initial Order.** Customer will purchase upon the effective date the products and services listed on Exhibit A.

**2.7. Payment.** Customer shall pay in full the Purchase Price for each Sonic Foundry Product and Support Services Fees for Support Services (including any freight, taxes or other applicable costs initially paid by Sonic Foundry but to be borne by Customer) to Sonic Foundry in United States dollars, net thirty (30) days from the date of Sonic Foundry's invoice. Any invoiced amount that is not paid when due will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, *Texas Government Code*. Sonic Foundry reserves the right to withhold additional shipments to Customer, and/or impose additional credit terms. To the extent permitted by the Constitution and laws of the State of Texas, Customer shall pay all of Sonic Foundry's costs and expenses (including reasonable attorneys' fees) to enforce Sonic Foundry's rights under this Section 2.7.

**2.8. Shipping.** All Sonic Foundry Products delivered pursuant to the terms of this Agreement shall be packed for air freight shipment in Sonic Foundry's standard shipping cartons, marked for shipment to Customer's address set forth above, and delivered to a carrier designated by Customer (subject to Sonic Foundry's reasonable pre-approval) or if not designated by Customer, to a carrier chosen by Sonic Foundry, F.O.B. - Sonic Foundry's designated facility. Upon delivery to the carrier, risk of loss with respect to the Sonic Foundry Products (and title to the Hardware included in such Sonic Foundry Products) shall pass to Customer. Unless otherwise instructed in writing by Customer, Sonic Foundry shall select the carrier. All freight, insurance, and other shipping expenses, as well as any special packing expense, shall be paid by Customer. Sonic Foundry will ship to Customer's primary place of business unless Sonic Foundry has agreed in writing to ship to another location.

**2.9. Cancellation and Reschedule Charges.** If Customer: (i) cancels all or any part of any Purchase Order; (ii) fails to meet any obligation hereunder, causing cancellation or rescheduling of any Purchase Order or portion thereof; (iii) requests a rescheduling of the delivery of Sonic Foundry Products and the request is accepted by Sonic Foundry, or (iv) requests a configuration change causing rescheduling of the delivery of Sonic Foundry Products, and Sonic Foundry is unable by using reasonable commercial efforts to re-deploy the cancelled or rescheduled order or obtain the waiver of rescheduling or cancellation charges from third party manufacturers, then Customer agrees to pay to Sonic Foundry the following cancellation/reschedule charges:

<b>Cancellation or Reschedule Notice is Received</b>	<b>Cancellation/Reschedule Charge (% of Sonic Foundry Product List Price)</b>
15 or more business days before scheduled shipment date	0%
14 business days or less before scheduled shipment date	10%

In addition, Sonic Foundry may advise Customer at the time it submits one or more Purchase Orders that, based on the number of Sonic Foundry Products being ordered, the required cancellation notice and charge may be greater than that listed above. In such event however, Sonic Foundry will provide Customer with written notice of what such greater amounts will be. Additionally, in the event of such cancellation or rescheduling of any Purchase Order, Sonic Foundry, in addition to any other rights and remedies available to it, may seek injunctive or equitable relief. There shall be no cancellation/rescheduling

charges for correcting any typographical or clerical errors or change in location for delivery that Customer provides to Sonic Foundry before the date of shipping.

**2.10. Deposit for Sonic Foundry Products.** At Sonic Foundry's discretion, Sonic Foundry may require a Customer to make a deposit towards the Sonic Foundry Products being purchased, at the time Customer submits its Purchase Order (each a "Deposit.") Such decision shall take into account several factors, including, without limitation, the amount of Sonic Foundry Products being ordered, Customer's credit history, the size and ageing of Seller's accounts receivable to Sonic Foundry and the lead time provided. Any Deposit made will be credited towards Customer's Purchase Orders.

### **3. LICENSING RIGHTS.**

Customer is granted a license to use the Software only under the terms and restrictions applicable at the time of license.

### **4. LIMITED WARRANTY**

**Sonic Foundry Products.** Sonic Foundry warrants to Customer solely that each Sonic Foundry Product will be free from Material Defects for a period of ninety (90) days from the date of shipment to Customer, which may be extended pursuant to the terms of any Customer Care support contract in place in accordance with Exhibit B.

### **5. ADDITIONAL OBLIGATIONS OF SONIC FOUNDRY**

**5.1. Sonic Foundry Products.** Sonic Foundry, in its sole discretion, shall have the right to modify, discontinue or introduce Sonic Foundry Products at any time during the Term provided that Sonic Foundry gives thirty (30) days prior written notice of such discontinuance or modification. Except for Purchase Orders accepted by Sonic Foundry before the date of such notice, Sonic Foundry shall be under no obligation to continue the production of any Sonic Foundry Product.

**5.2 Training.** Sonic Foundry shall provide training on Sonic Foundry Products described upon Customer's request and at Sonic Foundry's prevailing rates. The training shall take place at Sonic Foundry's Madison facility and Customer shall be responsible for all out-of-pocket expenses, including travel and living expenses of Customer personnel in Madison, Wisconsin.

**5.3. Additional Services.** Customer may request Sonic Foundry to perform consulting and support services in addition to the services set forth in this Article 5. Sonic Foundry may, at its sole option, agree to provide such services at its prevailing rates then in effect for such services, plus reimbursement for all reasonable out-of-pocket expenses.

### **6. TERM AND TERMINATION**

**6.1. Term.** This Agreement shall continue in force for an initial term of five (5) years from the Effective Date ("Initial Term") unless terminated earlier under the provisions of this Article 6. Upon the expiration of this Initial Term, this Agreement may be renewed by written agreement of the Parties.

**6.2. Termination for Convenience.** Following the Initial Term, this Agreement may be terminated by either Party for any reason or no reason by giving thirty (30) days prior written notice of termination to the other Party.

**6.3. Termination for Cause.** If either party shall elect to terminate this Agreement for cause, or any applicable law provides that cause or good cause is required for the termination or expiration of this Agreement, each of the following, without limitation, shall constitute cause or good cause and sufficient grounds for such termination or expiration as follows:

A. By either party, effective immediately, in the event that the other party fails to perform any of its obligations under this Agreement (other than those obligations set forth in subparagraph (F) below) and fails to remedy such failure within thirty (30) calendar days after receiving written demand to remedy such failure, or in the event such other party should fail to perform the same obligation more than once during the term of this Agreement.

B. By either party, effective immediately, if any force majeure described in Section 8.4 of this Agreement remains in effect so as to delay or prohibit the performance of any obligation under this Agreement by the other party for a period of ninety (90) days or longer.



C. By either party, effective immediately, if the other party attempts to sell, assign, delegate or transfer any of its rights and obligations under this Agreement in violation of Section 8.5, or if there should occur any material change in the management, ownership, control, sales personnel, sales and marketing capability or financial conditions of Customer.

D. By either party, effective immediately, if the other party becomes the subject of any voluntary or involuntary bankruptcy, receivership or other insolvency proceedings or makes an assignment or other arrangement for the benefit of its creditors, or if such other party is nationalized or has any of its material assets expropriated.

E. By Sonic Foundry, effective immediately, upon any breach of Sections 2.7, 3, 7 or 9.5 of this Agreement by Customer and Customer fails to remedy such failure within thirty (30) calendar days after receiving written demand to remedy such breach.

F. By Sonic Foundry, effective immediately, if Customer fails to pay any amounts owed to Sonic Foundry when due and Customer fails to remedy such failure within thirty (30) calendar days after receiving written demand to remedy such failure.

G. By Sonic Foundry, effective immediately, if Customer submits to Sonic Foundry any false or fraudulent claim, or statement in support thereof, for payment, for parts, for compensation or for any discount, allowance, refund or credit, warranty claim, or any claim made by Customer to Sonic Foundry.

H. By Sonic Foundry, effective immediately, if Sonic Foundry unilaterally determines to: (i) discontinue the manufacture or sale of any of the Sonic Foundry Products; (ii) withdraw from all or a substantial portion of the Territory; or (iii) sell, convey, merge or otherwise transfer all or a substantial portion of the part or parts of the business of Sonic Foundry responsible for the Sonic Foundry Products.

I. By Sonic Foundry, effective immediately, if Sonic Foundry unilaterally determines that the manufacture, sale or distribution of any of the Sonic Foundry Products infringes upon, or is at risk of infringing upon, the intellectual property rights of any other party.

**6.4. Fulfillment of Orders upon Termination.** Upon termination of this Agreement for other than Customer's material default or insolvency, Sonic Foundry shall continue to fulfill, subject to the terms of Article 2, all Purchase Orders accepted by Sonic Foundry before the date of termination.

**6.5. Further Effects of Termination.** All obligations of Customer to Sonic Foundry shall become immediately due and payable without further notice or demand, which is hereby expressly waived, and Sonic Foundry shall be entitled, to the extent authorized under Texas law, to reimbursement for any reasonable attorneys' fees that it may incur in collecting or enforcing payment of such obligations. Termination of this Agreement shall not relieve Customer of any obligations incurred before such termination.

**6.6. Survival.** The provisions of Sections 1.1, 2.7, 2.9, 3 or 7 shall survive the termination of this Agreement for any reason for a period of two years after termination.

## **7. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**

**Intellectual Property Rights.** Customer hereby recognizes that, except as explicitly stated in this Agreement, Customer has no Intellectual Property Rights in the Sonic Foundry Products, Documentation, Marks and Confidential Information. Except for rights specifically provided in this Agreement, Customer hereby assigns to Sonic Foundry all other Intellectual Property Rights it may now or hereafter possess in the Sonic Foundry Products, Documentation, Marks and Confidential Information, and all derivative works and improvements thereof, and agrees, at the written request of Sonic Foundry, to execute all documents necessary to confirm such rights. Customer also agrees to retain all proprietary marks, legends and patent and copyright notices that appear on Sonic Foundry Products, Documentation, Marks and Confidential Information delivered to Customer by Sonic Foundry and all whole or partial copies thereof. Nothing in this Agreement grants Sonic Foundry any rights to any Customer Intellectual Property in existence prior to the initiation of this Agreement or developed outside the scope of this Agreement.

Sonic Foundry shall not provide to Customer any Products, Support Services, Documentation, or Confidential Information that infringe any Intellectual Property, privacy, or other right of any party. If Sonic Foundry becomes aware of any possible infringement claims, Sonic Foundry shall immediately notify Customer in writing. As to any judicial, administrative, or other action, suit, claim, investigation, or proceeding (each a "Proceeding") alleging that any Products, Support Services, Documentation, or Confidential Information infringe any Intellectual Property, privacy, or other right, Sonic Foundry shall indemnify and defend Customer, The Texas A&M University System, and their regents, officers, employees, representatives, agents, and students against all: (a) amounts awarded in, or paid in settlement of, that Proceeding, including any interest, and (b) out-of-pocket expenses incurred in defending that Proceeding or in any related investigation or negotiation, including court costs, witness fees, and attorneys' and other professionals' fees and disbursements arising out of that Proceeding.

## **8. GENERAL PROVISIONS**

**8.1. Governing Law; Exclusive Jurisdiction.** This Agreement shall be interpreted, construed, enforced and performed in accordance with the internal laws of the State of Texas, U.S.A. THE RIGHTS AND OBLIGATIONS OF THE PARTIES IN CONNECTION WITH THIS AGREEMENT AND ANY PURCHASE OF THE PRODUCTS SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 U.N. CONVENTION FOR THE INTERNATIONAL SALE OF GOODS. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against Customer shall be in Brazos County, Texas.

**8.2. Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the Parties relating to the subject matter herein and merges all prior discussions between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the Party to be charged.

**8.3. Notices.** All notices and other communications hereunder shall be in writing and shall be deemed effective when delivered by hand or upon receipt when mailed by registered or certified mail (return receipt requested), postage prepaid, or by bonded overnight courier to the Parties at the addresses first listed above (or at such other address for a Party as shall be specified by like notice).

**8.4. Force Majeure.** Except for the obligation to make payments, nonperformance of either Party shall be excused to the extent the performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers or any other reason where failure to perform is beyond the reasonable control of and is not caused by the negligence of the non-performing Party.

**8.5. Non-Assignability and Binding Effect.** Customer may not assign this Agreement to any third party without the prior written consent of Sonic Foundry. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns.

**8.6. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

**8.7. Disputes.** The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Customer and Sonic Foundry to attempt to resolve any claim for breach of contract made by Sonic Foundry that cannot be resolved in the ordinary course of business. Sonic Foundry shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer of Customer, who shall examine Sonic Foundry's claim and any counterclaim and negotiate with Sonic Foundry in an effort to resolve the claim.

### **8.8 State Contracting.**

**A. Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract,

bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.”

**B. Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Sonic Foundry agrees that any payments owing to Sonic Foundry under this Agreement may be applied directly toward certain debts or delinquencies that Sonic Foundry owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

**C. Public Information.** Sonic Foundry acknowledges that Customer is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon Customer’s written request, Sonic Foundry will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under Chapter 552, *Texas Government Code*, to Customer in a non-proprietary format acceptable to Customer. As used in this provision, “public information” has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which Customer has a right of access. Sonic Foundry acknowledges that Customer may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

**D. Conflict of Interest.** By executing and/or accepting this Agreement, Sonic Foundry and each person signing on behalf of Sonic Foundry certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System (“TAMUS”) or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by Customer or TAMUS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

**E. Access by Individuals with Disabilities.** Sonic Foundry represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to Customer under this Agreement (collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*). To the extent Sonic Foundry becomes aware that the EIRs, or any portion thereof, do not comply then Sonic Foundry represents and warrants that it will, at no cost to Customer, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.

**F. Certification regarding Boycotting Israel.** Pursuant to Chapter 2270, *Texas Government Code*, Sonic Foundry certifies Sonic Foundry (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Sonic Foundry acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**G. Certification regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, Sonic Foundry certifies Sonic Foundry is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Sonic Foundry acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**H. Franchise Tax Certification.** If Sonic Foundry is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then Sonic Foundry certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Sonic Foundry is exempt from the payment of franchise (margin) taxes.

**I. Loss of Funding.** Performance by Customer under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”). If the Legislature fails to appropriate or allot the necessary funds, Customer will issue written notice to Sonic Foundry and Customer may terminate this Agreement without further duty or obligation hereunder. Sonic Foundry acknowledges that appropriation of funds is beyond the control of Customer.

**J. State Auditor’s Office.** Sonic Foundry understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor’s Office, or any successor agency (collectively, “Auditor”), to

conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. Sonic Foundry agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Sonic Foundry will include this provision in all contracts with permitted subcontractors.

**K. Non-Waiver.** Sonic Foundry expressly acknowledges that Customer is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Customer of its right to claim such exemptions, privileges, and immunities as may be provided by law.

IN WITNESS WHEREOF the Parties have entered into this Agreement as of the Effective Date set forth below.

Sonic Foundry, Inc.

Texas A&M University

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

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

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

Printed Name: Jerry R. Strawser

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

Title: Executive Vice President and CFO

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

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



Mediasite 5 yr Contract Pricing						
Item #	Item Description	Year 1	Year 2	Year 3	Year 4	Year 5
1	Mediasite Video Platform Enterprise License and cloud storage and On-Premises supporting up to 150 Recorders, Unlimited Users & Unlimited Hours of Viewing. <ul style="list-style-type: none"> <li>• Includes Blackboard Building Block Integration Module</li> <li>• Includes Multi-Site License</li> <li>• Includes High-Availability License</li> </ul> <p style="text-align: right;">TAMU Extended Price</p>	\$ 96,300.00				
2	Premium Maintenance & Support for Mediasite Campus Enterprise Video Platform License for On-Premises supporting up to 150 Recorders, Unlimited Users & Viewers. <ul style="list-style-type: none"> <li>• Named SE to directly train and assist TAMU virtually and onsite 4 times a year</li> <li>• Enterprise Account Status in CRM: calls and emails immediately bypassing all non Enterprise customers</li> <li>• Unlimited technical support via phone or email</li> <li>• Software upgrades and maintenance releases</li> <li>• Support Portal access</li> <li>• Includes Blackboard Building Block Integration Module</li> <li>• Includes Multi-Site License</li> <li>• Includes High-Availability License</li> </ul> <p style="text-align: right;">TAMU Extended Price</p>	\$ 37,500.00	\$ 37,500.00	\$ 37,500.00	\$ 37,500.00	\$ 37,500.00
3	Cloud Storage * billed at actual usage in one TB increments/pro-rated to end of each contract year \$760/TB/Month \$9,120/TB/Year \$45,600/5 TB/Year <p style="text-align: right;">TAMU Extended Price</p>	(5 TB) \$ 45,600.00	(10 TB) \$ 91,200.00	(14 TB) \$ 127,680.00	(17 TB) \$ 155,040.00	(20 TB) \$ 182,400.00
4	Annual License of My_Mediasite Desktop Recorder & Video Upload Module Non-Perpetual License - TAMU Campus <p style="text-align: right;">TAMU Extended Price</p>	\$ 15,000.00	\$ 15,000.00	\$ 15,000.00	\$ 15,000.00	\$ 15,000.00
5	5 Days for On-Site Professional Services for Installation, Configuration and Training Services (Travel Included) - Cloud, My_Mediasite and Blackboard Building Block Setup & Training <p style="text-align: right;">TAMU Extended Price</p>	\$ 10,000.00				
TOTAL		\$ 204,400.00	\$ 143,700.00	\$ 180,180.00	\$ 207,540.00	\$ 234,900.00



## End User Terms & Conditions

These terms and conditions apply to the “Customer Care” support and maintenance service plan offered by Sonic Foundry, Inc. Customer Care is an annually renewable, fee-based program that provides End Users of Sonic Foundry Products additional support benefits for their Mediasite hardware and software systems as detailed below. By accepting and/or using any of the services described below, the End User agrees to be bound by these terms and conditions.

*You must register your Customer Care contract to activate the services detailed below. (See Section 3.) Read these Terms & Conditions carefully as they contain important information regarding the services that you have purchased from Sonic Foundry.*

### 1. Definitions

“Sonic Foundry Products” means the Mediasite Recorder hardware (not including any peripherals) and software thereon, and/or the Mediasite Video Platform software.

“Purchase Notification” means the document and/or email from Sonic Foundry to the End User which references the Customer Care contract purchased and includes the contract registration information.

“Reseller” means any authorized party who purchases Sonic Foundry Products for resale.

“End User” means any party who purchases Sonic Foundry Products from an authorized Reseller or Sonic Foundry for their own use and not for redistribution.

“1<sup>st</sup>-Level Support” means support provided by an authorized Sonic Foundry Reseller directly to the End User, if applicable, to assist in the configuration, operation and diagnosis of Sonic Foundry Products.

“2<sup>nd</sup>-Level Support” means support provided by Sonic Foundry Technical Support Center to the End User or Reseller in the configuration, operation and diagnosis of Sonic Foundry Products.

### 2. Sonic Foundry Service Responsibilities

For the term of the Customer Care contract, Sonic Foundry or one of its authorized Resellers will provide the following services:

- Extension of the Mediasite Recorder hardware warranty from the standard 90-day warranty period to 12 months of warranty coverage from the date of purchase on parts and labor for all Recorder hardware and supplied cables
- Technical product support (1<sup>st</sup>-Level Support and/or 2<sup>nd</sup>-Level Support) via phone, or online case submission via the Customer Care Portal. 2<sup>nd</sup> Level Support prioritization and case escalation is determined by End User's Customer Care contract type (Standard Customer Care, Enhanced Customer Care or Premium Customer Care.)
- Software maintenance upgrades, updates and fixes, if any, as released by Sonic Foundry and made available for download from the Customer Care Portal
- Advance replacement of failed or defective Sonic Foundry Product(s) with a certified refurbished Recorder or components. (Advanced Replacement is only available within the Continental United States following Sonic Foundry approval and determination of Sonic Foundry Product failure.)
- Anytime access on the Mediasite Customer Care Portal which provides access to: downloads, online case submission and status tracking, documentation, release notes, searchable knowledge base and Customer Care contract coverage details.

### ***3. End User Responsibilities***

For the term of the Customer Care contract, the End User agrees to:

- Register their Customer Care Contract
- Pay for all services requested including additional costs, if applicable, such as travel and on-site support.
- Provide reasonable access to the Sonic Foundry Product through the Internet so Sonic Foundry Technical Support can diagnose or correct problems remotely.
- Use the latest release of software, where Sonic Foundry advises that this will correct a reported problem.
- Notify Sonic Foundry of any change in contact information.
- Retain all original hardware and software configurations unless authorized by Sonic Foundry.
- Return any end-of-warranty Recorders to Sonic Foundry within 15 days of receiving a replacement Recorder. (Additional Recorder refresh fees apply.)

### ***4. Accessing Support***

1<sup>st</sup>-Level Support, when applicable, can be obtained by contacting the authorized Sonic Foundry Reseller from which the End User purchased the Customer Assurance contract. 1<sup>st</sup>-Level Support is available during regular business hours, but in no event less than Monday through Friday, 9:00a.m.—5:00pm in the time zone of the End User (excluding holidays).

When 1<sup>st</sup> – Level Support does not resolve the problem, 2<sup>nd</sup>-Level Support can be obtained from Sonic Foundry by calling (877) 783-7987 or (608) 443-1600 Monday through Friday 7 a.m. – 7 p.m. CT (excluding Sonic Foundry recognized holidays).

### ***5. Case Resolution***

Sonic Foundry works to resolve all submitted cases as quickly as possible. Resources will be dedicated to problem resolution within standard operating hours. For matters of extreme severity such as system-wide outages, resources may be dedicated outside of standard operating hours, at Sonic Foundry's discretion. Case prioritization and escalation is determined by End User's Customer Care contract type (Standard Customer Care, Enhanced Customer Care or Premium Customer Care.) Sonic Foundry will extend its best efforts when providing technical support services to the End Customer. However, Sonic Foundry does not guarantee that it can or will correct all problems or errors.

### ***6. Field Systems Engineering***

If on-site support is required, Sonic Foundry has post-sales field resources and authorized Resellers available to assist End Users with Sonic Foundry Product support issues. These engineering resources are deployed by Sonic Foundry on a case-by-case basis for an additional fee.

### ***7. Exclusions***

Sonic Foundry is not obligated to provide technical support related to the following:

- Any customization of, or labor to install, software.
- Electrical or site work external to the Sonic Foundry Product.
- Support or replacement of the Sonic Foundry Product that is altered, modified, mishandled, destroyed or damaged by one or more of the following: (i) natural causes; (ii) environmental effects; (iii) failure to take any required actions; (iv) misuse of the product or use other than as specified in the applicable Sonic Foundry-supplied documentation; (v) an act or omission of a third party; or (vi) installation of third-party hardware or software or modification of existing hardware.
- Services to resolve software or hardware problems resulting from third party products or causes beyond Sonic Foundry control.
- Services for non-Sonic Foundry software or hardware.
- Services for any personal computer hardware, software or related components whether or not Sonic Foundry software is installed.
- Any hardware and/or memory upgrade required to run new or updated software.

- Major, minor and maintenance release of Microsoft® operating system, middleware or application software platforms. End User should contact their Microsoft software provider directly to obtain information on acquiring releases and/or bug fixes relates to Microsoft software platforms.
- Sonic Foundry Products for which the End User is unable to provide a valid and applicable serial number. In the event that you are unable to provide a valid and applicable serial number(s) and Sonic Foundry agrees to provide services, the fees payable by the End User shall be Sonic Foundry's then-current time and materials rates.
- Sonic Foundry Product for which Customer Care support has lapsed. Continuation of support services are subject to Sonic Foundry's then current reinstatement fees. (See Section 8.)
- Any expenses incurred by Sonic Foundry to visit the End User's location, except as required during escalation of problems by Sonic Foundry.

## ***8. Customer Care Renewals***

Each Customer Care contract is for the period indicated on the Purchase Notification and is renewable annually. Renewal charges for subsequent years are calculated based on the prevailing support rate on the contract anniversary date.

If a Customer Care contract is not renewed or is terminated, and the End User subsequently requests support services, Sonic Foundry may, in its sole discretion, reinstate the Customer Care support services, but the End User will incur a reinstatement penalty. Reinstatement fees for lapsed or terminated contracts take into account retro-active payment for the months of unpaid Customer Care support services. Reinstatement fees are calculated using the prevailing Customer Care support rate plus a 25% penalty. Late renewals retain the original contract anniversary date. Two examples:

- End User purchases a Customer Care contract on January 1, 2017 valued at \$3,950, but does not renew the contract by its anniversary date of December 31, 2017. On July 1, 2018, End User requests support services for their product under contract. In order to receive support services, the contract needs to be reinstated. Since the contract lapsed for 6 months, the Customer Care reinstatement fee is calculated as \$3,950 (the prevailing annual support rate) plus \$987.50 (25% penalty), for a total of \$4,937.50. The reinstated contract still expires on its original anniversary date of December 31. Therefore, it expires on December 31, 2018.
- End User purchases Customer Care contract on January 1, 2017 valued at \$3,950, but does not renew the contract by its anniversary date of December 31, 2017. On July 1, 2019, the End User requests support services for their product under contract. In order to receive support services, the contract needs to be reinstated. Since the contract lapsed for one and one-half years, the Customer Care reinstatement fee is calculated as \$3,950 (the prevailing annual support rate for the first year of lapsed support services through December 31, 2018), plus \$3,950 (the prevailing annual support rate for the new year of Customer Care services through December 31, 2019), plus \$1,975 (25% penalty for the lapsed period), for a total of \$9,875. The reinstated contract still expires on its original anniversary date of December 31. Therefore, it expires on December 31, 2019.

## ***9. Limited Warranty***

Sonic Foundry warrants that the services provided under this agreement shall be performed with that degree of skill and judgment normally exercised by recognized software companies performing services of the same or substantially similar nature. EXCEPT AS PROVIDED IN THE MASTER PURCHASE AGREEMENT, SONIC FOUNDRY MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED UNDER CUSTOMER CARE AND EXPRESSLY DISCLAIMS ANY AND ALL SUCH WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## ***10. Limitation of Liability***

Excluding Sonic Foundry's indemnity obligation under the Master Purchase Agreement, under no circumstances and under no legal theory, tort, contract, or otherwise, shall Sonic Foundry be liable to End User or any other person for any indirect, special, incidental, or consequential damages of any character including, without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses, or for any damages in excess of the fees paid to Sonic Foundry by End User for the then-current Customer Care term even if Sonic Foundry shall have been informed of the possibility of such damages, or for any claim by any other party. This limitation of liability shall not apply to liability for death or personal injury to the extent applicable law prohibits such limitation. Some states and/or countries do not allow the exclusion or limitation of incidental or consequential damages, so this limitation and exclusion may not apply to End User.

## ***11. General Provisions***

### **Assignment**

End User may only assign its rights and obligations in regard to Customer Care as part of the sale or transfer to an acquiring entity of substantially all of the assets of End User's business operations in which the Sonic Foundry Product is deployed.

### **Governing Law**

The terms and conditions herein shall be governed, construed, and enforced in accordance with the laws of the State of Texas.

### **Independent Contractor**

At all times the relationship of Sonic Foundry to End User shall be that of an independent contractor. Nothing in this document shall be construed to create any partnership, association, joint venture, or employment between the parties.

### **Force Majeure**

Neither party shall be responsible for delays or failure of performance resulting from acts beyond the reasonable control of such party. Such acts shall include, but not be limited to, acts of God, strikes, walkouts, riots, acts of war, epidemics, failure of suppliers to perform, governmental regulations, power failures, earthquakes, or other disasters.

### **Complete Agreement**

This document and the Master Purchase Agreement represent the complete agreement between the parties and supersede all prior agreements and representations between them, including but not limited to End User's purchase orders. It may only be modified or superseded by a written amendment executed in writing by both parties.

## ***12. Contact Information***

If you have any questions regarding your Customer Care contract, please email [mediasite@sonicfoundry.com](mailto:mediasite@sonicfoundry.com).



Exhibit C  
Sonic Foundry, Inc. Hosting Terms and Conditions

## 1. Services and Payments

Sonic Foundry shall provide to Client the services described in this Agreement that are ordered by Client (collectively, the "Services").

## 2. Responsibilities

Client Responsibilities: The Client will be responsible for:

- (a) the configuration, conversion, encoding, and performance of the Client Data;
- (b) installing and maintaining communications and interfaces between the Client Data and remote terminals; and
- (c) input and processing of Client Data.

Sonic Foundry Responsibilities: Sonic Foundry will be responsible for:

- (a) the support and performance of the System;
- (b) management of the Software;
- (c) procurement and maintenance of insurance on the System and its operation;
- (d) all remedial and preventive maintenance of the System including, without limitation, the responsibility for technical support maintenance on the System, unless otherwise expressly agreed to by the parties; and
- (e) system security and safeguarding the Client Data.

## 3. Term and Termination

This Agreement shall be effective for the period described in a quotation and/or Client purchase order (the "Initial Term"), unless earlier terminated as otherwise provided in this Agreement. Client shall have the right to extend the Initial Term for additional periods, as agreed, by so-notifying Sonic Foundry in writing (each, a "Renewal Term"). Pricing for any Renewal Term will depend on Client usage and reflect an increase in standard pricing consistent with the change in the Consumer Price Index. In the event of a termination, Client shall not be entitled to any refund of any payments made to Sonic Foundry by Client and shall pay all fees due up to the effective date of termination. Either party may terminate this Agreement if the other party materially breaches any of its representations, warranties, or obligations under this Agreement and, except as otherwise provided in this Agreement, such breach is not cured within (14) days of receipt of written notice specifying the breach.

## 4. Relationship and Nature of Agreement

This Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between Sonic Foundry and Client. Neither Sonic Foundry nor Client will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. The parties agree that this Agreement is a hosting and services agreement, and this Agreement does not constitute a lease of any property. Client acknowledges and agrees that it has been granted only the rights to use the System in accordance with this Agreement, and Client has not been granted any real property interest in any portion of the Sonic Foundry data center. Sonic Foundry acknowledges and agrees that all right, title, and interest in and to the Client Data remains with Client.

## 5. Confidentiality

Each party ("Receiving Party") agrees to keep confidential and not disclose or use, except in performance of its obligations under this Agreement, confidential or proprietary information ("Confidential Information") relating to the other party's ("Disclosing Party") technology or business that the Receiving Party learns in connection with this Agreement. Confidential Information includes, without limitation, information relating to:

- products or technology of the Disclosing Party or the properties, composition, structure, use, processing, or systems thereof;
- the Disclosing Party's intellectual property including computer programs, code, algorithms, schematics, data, know-how, trade secrets, processes, ideas, and inventions;
- the Disclosing Party's business including names and expertise of employees and consultants, all information relating to clients and clients transactions, and other technical, business, financial, client, and product development plans, forecasts, and strategies
- the terms of this Agreement; and
- any proprietary or confidential information owned by a third party that is available pursuant to a non-disclosure agreement with such third party.

Each party shall use reasonable precautions to protect the other's Confidential Information and employ at least those precautions that the party employs to protect its own confidential or proprietary information. However, in no event shall the standard of care be less than the standard of care which a reasonable business person would use in protecting its own confidential information.

"Confidential Information" shall not include information the Receiving Party can document:

- (a) is publicly known or available (through no improper action or inaction by the Receiving Party or any affiliate, agent, or employee);
- (b) was rightfully in its possession or known by it prior to receipt from the Disclosing Party, as evidenced by the Receiving Party's written records in existence prior to the disclosure by the Disclosing Party;
- (c) was rightfully disclosed to it by another person without restriction; or
- (d) was independently developed by it by persons without access to such information and without use of any Confidential Information of the Disclosing Party.

If the Receiving Party is legally required to disclose Confidential Information, the Receiving Party shall, to the extent allowed by law, promptly give the Disclosing Party written notice of the requirement so as to provide the Disclosing Party a reasonable opportunity to pursue appropriate process to prevent or limit the disclosure. If the Receiving Party complies with the terms of this paragraph, disclosure by the Receiving Party of that portion of the Confidential Information which the Receiving Party is legally required to disclose will not constitute a breach of this Agreement. The Receiving Party is not required to pursue any claim, defense, cause of action, or legal process or proceeding on the Disclosing Party's behalf..

"Protected Information" means employment records, medical records, education records, personal financial records and other personally identifying information, research data, mission critical information (information designated by Client to be essential to the continued performance of the mission of Client, the unavailability of which would result in consequences to Client), and other Client Data that has been designated as private, protected, or confidential by law or by Client. "Protected Information" does not include public records that by law must be made available to the general public. If Sonic Foundry is uncertain as to whether any Client Data constitutes Protected Information, Sonic Foundry shall treat the Client Data in question as Protected Information until a determination is made by Client.

Client hereby designates Sonic Foundry as a Client "official" with a legitimate educational interest in Client's education records as defined in the Family Education Rights and Privacy Act ("FERPA"). Such designation is solely for the purposes of FERPA compliance and for no other purpose, and to the extent Client has policies, rules, and procedures binding on Client officials generally, such policies, rules, and procedures will apply to Sonic Foundry only insofar as such compliance is relevant to compliance by Sonic Foundry and Client with FERPA.

Sonic Foundry shall hold Protected Information in confidence. Sonic Foundry may not use or disclose Protected Information except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by Client. Sonic Foundry may not use Protected Information for any purpose other than the purpose for which the disclosure was made. Sonic Foundry may allow only Sonic Foundry's employees who have a legitimate business need in performing the Agreement to have access to Protected Information.

Sonic Foundry shall develop, implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity, and availability of all electronically maintained or transmitted Protected Information. Sonic Foundry shall extend these measures by contract to all subcontractors used by Sonic Foundry.

Upon termination of the Agreement, Sonic Foundry shall return all Protected Information to Client within 30 days or, if return is not feasible, destroy all Protected Information. At least 20 days before destruction of any Protected Information, Sonic Foundry shall provide Client with written notice of Sonic Foundry's intent to destroy Protected Information. Within seven days after destruction, Sonic Foundry shall confirm to Client in writing the destruction of Protected Information.

If Client reasonably determines in good faith that Sonic Foundry has materially breached any of its obligations under this Addendum or has violated FERPA, Client, in its sole discretion, may require Sonic Foundry to submit to a plan of monitoring and reporting; provide Sonic Foundry with a 15-day period to cure the breach; or terminate the Agreement immediately. Before exercising any of these options, Client shall provide written notice to Sonic Foundry describing the violation and the action it intends to take. Sonic Foundry acknowledges that if the Family Policy Compliance Office of the U.S. Department of Education determines that Sonic Foundry improperly disclosed personally identifiable information obtained from Client's education records, Client may not allow Sonic Foundry access to education records for at least five years.

Sonic Foundry shall, within one day of discovery, report to Client any use or disclosure of Protected Information not authorized by the Agreement or in writing by Client. Sonic Foundry's report shall identify: (a) the nature of the unauthorized use or disclosure, (b) the Protected Information used or disclosed, (c) who made the unauthorized use or received the unauthorized disclosure, (d) what Sonic Foundry has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (e) what corrective action Sonic Foundry has taken or will take to prevent future similar unauthorized use or disclosure. Sonic Foundry shall provide such other information, including a written report, as reasonably requested by Client.

The restrictions and obligations as to Protected Information will survive the expiration or termination of this Agreement.

#### 6. Client Warranties

Client represents and warrants that:

- (a) Client has the legal right and authority throughout the term of this Agreement to the Client Data;
- (b) Client has the power and authority to enter into and fully perform its obligations under this Agreement;
- (c) to the best of its knowledge, the Client Data do not contain any material that violates any applicable law, rule, or regulation (including export laws) or that infringes upon any common law or statutory right of any person or entity including, without limitation, any proprietary, contract, moral, privacy or publicity right, copyright, patent, trademark, or trade secret; and
- (d) the Client Data do not contain any material that, in Client's good faith judgment, is obscene, threatening, malicious, defamatory, libelous, slanderous, or pornographic.

## 7. Sonic Foundry's Warranties

Sonic Foundry represents and warrants that:

- (a) Sonic Foundry owns or has the legal right to use the System;
- (b) Sonic Foundry has the power and authority to enter into and fully perform its obligations under this Agreement;
- (c) all Services to be provided by this Agreement will be performed in a professional, industry standard, competent, and timely manner;
- (d) the System does not infringe the intellectual property rights of any third party including, without limitation, patents, trademarks, copyrights, and trade secrets; and
- (e) there are no existing or threatened legal proceedings against Sonic Foundry that would have an adverse effect on its ability to perform its obligations under this Agreement, or on its financial condition or operations.

SONIC FOUNDRY DOES NOT WARRANT THAT THE SERVICES PROVIDED WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. SONIC FOUNDRY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL SERVICES PROVIDED PURSUANT TO THIS AGREEMENT ARE PROVIDED OR PERFORMED ON AN "AS IS" BASIS, AND CLIENT'S USE OF THE SERVICES IS SOLELY AT ITS OWN RISK.

## 8. LIMITATION OF LIABILITY

TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT IN CONNECTION WITH SONIC FOUNDRY'S INDEMNIFICATION OBLIGATIONS IN THE MASTER PURCHASE AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR:

- (A) LOSSES, LOST PROFITS, LOSS OF BUSINESS, LOST REVENUES, LOST DATA (DUE TO VIRUSES OR OTHERWISE), DELAYS, OR LOSS OF TECHNOLOGY, RIGHTS, OR SERVICES;
- (B) CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY, OR PUNITIVE DAMAGES; OR
- (C) ANY OTHER TYPE OF DAMAGES, OTHER THAN DIRECT DAMAGES, ARISING OUT OF OR RELATED TO THIS AGREEMENT (AND WITH DIRECT DAMAGES, ONLY TO THE EXTENT PERMITTED IN THIS AGREEMENT).

TO THE EXTENT PERMITTED BY LAW, SONIC FOUNDRY WILL NOT HAVE ANY LIABILITY FOR ANY HARM OR PERSONAL INJURY TO CLIENT, ITS PRESENT OR FORMER OWNERS, PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS, AGENTS, OR CLIENT'S AUTHORIZED PERSONS, UNLESS SUCH INJURY OR HARM IS CAUSED BY SONIC FOUNDRY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT DURING SUCH PERSON'S VISIT. ALL LIMITATIONS SET FORTH IN THIS SECTION APPLY TO ALL CAUSES OF ACTION AND CLAIMS.

SONIC FOUNDRY DOES NOT CONTROL, NOR CAN IT CONTROL, THE FLOW OF DATA TO OR FROM INTERNET SERVICE PROVIDERS, TELECOMMUNICATIONS PROVIDERS, AND OTHER PORTIONS OF THE INTERNET OR THE CLIENT'S OWN INTERNAL SYSTEMS, INCLUDING INTRANETS AND OTHER WIDE AND/OR LOCAL AREA NETWORKS (COLLECTIVELY, "INTERNAL SYSTEMS") AND ACCESS SYSTEMS. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET AND INTERNAL SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES INCLUDING, WITHOUT LIMITATION, THE CLIENT (COLLECTIVELY, FOR THE PURPOSES OF THIS DISCLAIMER, "THIRD PARTIES"). AT TIMES, ACTIONS OR INACTION CAUSED BY SUCH THIRD PARTIES MAY PRODUCE SITUATIONS IN WHICH A PARTY'S CONNECTIONS TO THE INTERNET, ACCESS SYSTEM, OR INTERNAL SYSTEMS (OR PORTIONS THEREOF) MAY BE IMPAIRED OR DISRUPTED, AND SONIC FOUNDRY CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, SONIC FOUNDRY DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, SONIC FOUNDRY SHALL NOT BE LIABLE TO THE CLIENT, ANY AUTHORIZED USER, OR ANY OTHER THIRD PARTY FOR ANY CLAIMS OR DAMAGES THAT MAY BE SUFFERED BY THE CLIENT, ANY AUTHORIZED USER, OR ANY SUCH THIRD PARTY INCLUDING, BUT NOT LIMITED TO, LOSSES OR DAMAGES OF ANY NATURE RESULTING FROM THE LOSS OF DATA, INABILITY TO ACCESS THE INTERNET OR INTERNAL SYSTEMS, OR INABILITY TO TRANSMIT OR RECEIVE INFORMATION CAUSED BY, OR RESULTING FROM, DELAYS, NON-DELIVERY, OR SERVICE INTERRUPTIONS, WHETHER OR NOT CAUSED BY THE FAULT OR NEGLIGENCE OF SONIC FOUNDRY. SONIC FOUNDRY SHALL NOT BE RESPONSIBLE FOR THE SERVERS NOT BEING ACCESSIBLE ON THE INTERNET OR ON ITS INTERNAL SYSTEMS DUE TO CIRCUMSTANCES NOT IN THE DIRECT

CONTROL OF SONIC FOUNDRY INCLUDING, WITHOUT LIMITATION, THE CLIENT'S OR ANY OTHER THIRD PARTY'S EQUIPMENT CAPABILITIES, INCLUDING THOSE OF AN INTERNET SERVICE PROVIDER.

9. Indemnification. To the extent permitted by applicable law, each party agrees to indemnify, defend, and forever hold the other (and each of its affiliates, and all of their respective present and former officers, members, shareholders, directors, employees, representatives, attorneys, insurers, and agents, and the successors, heirs, and assigns of any of these) harmless from any and all losses, liabilities, claims, costs, damages, and expenses (including, without limitation, fines, forfeitures, attorneys' fees, disbursements, and administrative or court costs) arising directly or indirectly out of any breach or alleged breach of its representations or warranties under this Agreement. The Indemnified Party shall promptly provide the Indemnifying Party with written notice of any claim which it believes falls within the scope of this paragraph and shall cooperate with Indemnifying Party in the investigation and defense of the same. The Indemnified Party may, at its own expense, assist in the defense if it so chooses, provided that the Indemnifying Party shall control such defense and all negotiations relative to the settlement of any such claim and that any settlement intended to bind the Indemnified Party shall not be final without the Indemnified Party's written consent, which shall not be unreasonably withheld. Sonic Foundry acknowledges that the defense of any claim on behalf of Client is subject to the prior approval of the Texas Attorney General.

#### 10. Force Majeure

Neither party shall be deemed in default, or otherwise liable, under this Agreement due to its inability to perform its obligations (except for the obligation to pay amounts owed under this Agreement) by reason of any fire, earthquake, flood, hurricane, tornado, substantial snowstorm, epidemic, accident explosions, casualty, strike, lockout, labor controversy, riot, civil disturbance, act of public enemy, embargo, war, act of God, or any municipal, county, state or national ordinance or law, or any executive, administrative or judicial order (which is not the result of any act or omission which would constitute a default hereunder), or any failure or delay of any transportation, power, or communications system or any other, or similar cause beyond that party's reasonable control provided, however, that if Sonic Foundry is unable to provide the Services for a period of ten (10) days or longer due to any of the foregoing events, Client shall have the right to terminate this Agreement, and receive a pro-rata refund of payments made by Client to Sonic Foundry covering the remainder of the Initial Term or any Renewal Term, immediately upon notice.

Sonic Foundry does not and cannot control the flow of data to or from Sonic Foundry's network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Client's access to the System and Client Data (or portions thereof). Although Sonic Foundry will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, Sonic Foundry cannot guarantee that such events will not occur. Accordingly, Sonic Foundry disclaims any and all liability resulting from or relating to such events.

#### 11. IP Addresses

Sonic Foundry will provide an Internet Protocol ("IP") address to allow Client to access the Client Data on the System. Sonic Foundry reserves the right to change the IP address, and Sonic Foundry will give Client reasonable notice of any such renumbering. Client agrees that it will have no right to IP Addresses upon termination of this Agreement, and that any renumbering required of Client after termination shall be the sole responsibility of Client.

#### 12. Payment Terms

Sonic Foundry will issue its invoices for each Initial Term and Renewal Term in advance, based on anticipated use of the system by Client, such as the amount of storage available for Client content. Sonic Foundry will monitor Client's use of the system and will provide notice to Client if such use exceeds the level purchased by Client. Upon notice, Client will have (60) days to reduce its usage below the limit purchased. If Client use remains in excess of the amount purchased at the end of the (60) day period, Sonic Foundry will invoice Client for the next level of usage above current usage from the period of notice through the end of the current Term. Client shall pay such invoices within (30) days of receipt, unless otherwise determined



by Sonic Foundry based on its credit evaluation. All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, *Texas Government Code*. Any objections by Client to an invoice must be made to Sonic Foundry within (30) days after receipt of the invoice. Client shall pay or reimburse Sonic Foundry for all sales, use, transfer, privilege, excise, and all other taxes and all duties, whether international, national, state, or local, however designated, which are levied or imposed by reason of the performance by Sonic Foundry under this Agreement; excluding, however, income taxes on profits which may be levied against Sonic Foundry.

### 13. Sonic Foundry Infrastructure Unavailability Credits and Termination Rights

Sonic Foundry guarantees that the Sonic Foundry System that supports the Client Data will be available 99.5% of each calendar month, as described in this Agreement. If Sonic Foundry fails to meet this guarantee due to "Sonic Foundry Infrastructure Unavailability", Sonic Foundry will credit the Client's account as follows:

- For each cumulative hour of Sonic Foundry Infrastructure Unavailability (or fraction thereof) within a calendar month, Client's account shall be credited with one day's worth of "Hosting Fees".
- Fees will be calculated on a pro rata basis from the actual fees billed at the end of the calendar month in which the Sonic Foundry Infrastructure Unavailability occurred.
- In any calendar month, credits provided to Client with respect to Sonic Foundry Infrastructure Unavailability may not exceed one month's "Hosting Fee" for the affected host(s).

Sonic Foundry Infrastructure Unavailability is defined as the number of minutes during which the Client Data is electronically unreachable either from outside or within the Sonic Foundry local network, but does not include any unavailability attributable to:

- (a) scheduled maintenance (whether by Sonic Foundry, a vendor, including telecommunications carriers, or by Client);
- (b) acts or omissions of Client or any user of the Client Data authorized by the Client; or
- (c) any of the force majeure events set forth in Section 10 of the Agreement.

**Sonic Foundry reserves a "scheduled maintenance" window Saturdays between the hours of 12:00 am and 4:00 am CST. During this time the system may be unavailable due to scheduled maintenance as required to meet the obligations in this Agreement. Any use of the scheduled maintenance window or other necessary scheduled maintenance activity will be communicated to the authorized technical contact of the Client at least 24 hours before start.**

In order for the Client to receive credit for Sonic Foundry Infrastructure Unavailability, claims by Client must be submitted by the Client's authorized technical contact within (10) calendar days of the end of the month in which the Sonic Foundry Infrastructure Unavailability occurred. All claims are subject to review and verification by Sonic Foundry prior to any credits being granted. Credit requests should be e-mailed to [hostingcreditrequest@sonicfoundry.com](mailto:hostingcreditrequest@sonicfoundry.com). Sonic Foundry will acknowledge credit requests within (2) business days of receipt and will inform Client via e-mail or U.S. Postal Mail within (10) days of this acknowledgment whether the claim request is approved or denied. Approved credits will appear on the Client's next hosting renewal.

In the event that Sonic Foundry Infrastructure Unavailability exceeds (30) hours in any calendar month, Client shall have the right to terminate this Agreement without penalty, effective upon (14) days prior written notice to Sonic Foundry.

### 14. Miscellaneous

14.1. This Agreement, the Master Purchase Agreement, and any attached exhibits, all of which are (or which will be when executed if subsequently executed) incorporated herein by reference into this Agreement, constitute the complete and entire agreement between the parties with respect to the subject matter of this Agreement, and supersede and replace any and all prior or contemporaneous discussions, negotiations, understandings, and agreements, written or oral, regarding such subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective, unless approved in writing by both parties.

14.2. This Agreement will be binding upon and inure to the benefit of all successors and permitted assigns of Sonic Foundry and Client, who will be bound by all of the obligations of their predecessors or assignors. Neither party may assign its rights or obligations under this Agreement without the written consent of the other party, except that if either party merges or consolidates with or into or transfers substantially all of its assets to another entity, this Agreement may be assigned to such successor. Without limiting the foregoing, under no circumstances will either party sublicense any or all of its rights and obligations under this Agreement.

14.3. The failure of either party at any time to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of either party thereafter to enforce each and every provision in accordance with its terms.

14.4. Notwithstanding anything in Section 5 of the Agreement to the contrary, Sonic Foundry may use the name and identity of Client as a Sonic Foundry Client in advertising, publicity, or similar materials, but may not use name of Client directly or indirectly to imply endorsement of Sonic Foundry Services.

14.5. This Agreement shall be construed in accordance with, and governed by, the laws of the state of Texas, without reference to the choice of law provisions thereof.

14.6. All of Sections 5, 6, 7, 8, and 9 of the 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. Without limiting the foregoing, Client must pay all amounts owed to Sonic Foundry under this Agreement including, without limitation, any amounts that are not due until after the expiration or early termination of this Agreement.

14.7. Each party 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. The section headings throughout this Agreement are for convenience and reference only, and will not be used to construe this Agreement.

14.8. Any notice, approval, request, authorization, direction, or other communication under this Agreement shall be given in writing to the persons identified by Client as their principal point of contact, in the case of Client, and shall be deemed to have been delivered and given for all purposes:

- (a) on the delivery date if delivered personally to the party to whom the same is directed or sent by e-mail;
- (b) on the delivery date if sent by confirmed facsimile, followed up with an original sent by one of the other methods set forth herein;
- (c) one business day after deposit with a commercial overnight carrier, with written verification of receipt; or
- (d) five business days after the mailing date, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available.

## EXHIBIT A

## SONIC FOUNDRY MEDIASITE HOSTING INFRASTRUCTURE DESCRIPTION

## 1. SYSTEM INFRASTRUCTURE DETAILS.

**Robust Telecommunications Infrastructure**

In order to accommodate the high amount of traffic that our Internet sites generate, Sonic Foundry has obtained redundant telecommunication services via multiple Gigabit connections. All connections provide for large Internet capacity as well as unparalleled reliability. In the event of a failure on either connection, traffic automatically reroutes itself until the connection is restored.

**Independent Internet Connections**

Sonic Foundry maintains and balances our Internet traffic across multiple Gigabit connections to multiple Tier One and Tier Two providers. The combination of these connections allows for reliable and swift delivery of content for even the most demanding bandwidth needs. Border Gateway Protocol (BGP) routing guarantees the end-user the best possible Internet experience regardless of geographic location.

On an automated basis, trace-route functions are performed which identify response time delays with all Internet connections. Should one connection fail or experience unacceptable response time delay, the other connections have sufficient capacity to handle our full workload.

**Highly Available Server Infrastructure**

Internet applications hosted by Sonic Foundry are powered by redundant servers running the most current platforms. Redundancy and load balancing across these servers is provided by our redundant core network.

**Power Failure Protection**

Sonic Foundry has multiple levels of power protection. Our facility sits on the same dual electric power grid that powers the most important government facilities in Madison, Wisconsin. The building which our facility is located has not lost power in over 20 years. We also have an Uninterruptible Power Supply (UPS) that immediately provides power to the data center if power is lost. This UPS is backed up by a diesel generator that starts operating shortly after power has been lost.

**24x7 Monitoring**

Our network staff monitor all aspects of our network and are alerted in the event of component failure 24 hours a day, 7 days a week. They are also well-trained to assist our customers with a wide range of issues and problems. Support is available during our normal business hours.

**Environmental Controls**

To further ensure that environmental conditions are controlled and maintained, monitoring hardware has been implemented within Sonic Foundry's data center. The hardware monitors for temperature, humidity and airflow. Alerts are generated when conditions in the data center exceed predetermined thresholds.

**Fire Suppression**

Sonic Foundry's data center is equipped with a complete smoke detection system and FM-200 fire suppression system. The FM 200 system utilizes heptafluoropropane gas, an environmentally friendly alternative to Halon, that is both safe and non-corrosive to electrical equipment. This gas deploys after a 30-second countdown and slows the fire by chemically preventing combustion.

#### Physical Security

Sonic Foundry places a great deal of importance on physical security. Our facility is completely free of glass and unsecured entry points. Only a select group of our network staff has security clearance into the data center

#### Network Security

Sonic Foundry's customers can take advantage of our focus on security to protect their critical systems. Our security engineers have a tremendous amount of experience with security measures such as firewall configuration, intrusion detection, and using encrypted tunnels for safe transmission of data. All systems in Sonic Foundry's data center are protected by redundant firewalls.

#### Data Storage

All content is stored on extremely fast and highly reliable storage. The storage features N+2 redundancy on all parts. Data is replicated in near real time to our disaster recovery site, where a mirrored infrastructure is installed to take over operations in the event of a catastrophic event.

#### Usage Reporting

Site usage statistics are provided utilizing Sonic Foundry's Mediasite Report Manager Service. Statistics are stored at real-time in a reliable Microsoft SQL server database and can be accessed in an easy-to-use web interface

## 2. INTERNET BANDWIDTHUSAGE.

Sonic Foundry will provide access to the Internet through multiple Internet connections. For the hosting fee, Client is allowed up to the agreed upon concurrent viewer sessions.

## 3. SYSTEM BACKUP SERVICES.

Data in Sonic Foundry's facility is backed up nightly to reliable media and is located off site at our disaster recovery site. Our hosting customer data is also mirrored in near real time to our disaster recovery site.

## 4. TECHNICAL SUPPORT AND INSTALLATION SERVICES.

Sonic Foundry will provide technical support to customers who have active Mediasite Customer Assurance plans for the recorders they are using in conjunction with the Rich Media Enabling Services. Those customers without a Mediasite Customer Assurance plan can obtain support on a time and materials basis:

#### Pricing

Service	Hourly Services Rates (Normal Business Hours)
System, Network, and Application Server Engineering	\$ 160
Minimum Billing Increment	1 Hour

Normal Business Hours are Monday through Friday, 7 a.m. to 7 p.m., Central Time Zone (excluding holidays).