



## Master Services Agreement

In consideration of the mutual promises, covenants, and representations herein, and upon the terms and conditions set forth below, the parties agree that 1) any online order, 2) any ordering document between “**Customer**” and MacStadium, Inc., (each, a “**Service Order**”), 3) Exhibit A – the Service Level Agreement (“**SLA**”), and 4) Exhibit B – the Acceptable Use Policy (“**AUP**”), including any other exhibits or attachments to either this Agreement or the applicable Service Order, constitute the “**Agreement**” between Customer and MacStadium, Inc., a Georgia corporation, and our affiliates and subsidiaries (“**MacStadium**”). Capitalized terms have the definitions set forth herein.

Customer accepts and agrees to the terms of this Agreement by 1) following the click-through prompts on MacStadium’s website by clicking ‘I agree to the MSA, Terms of Service, and Acceptable Use Policy’ indicating acceptance, 2) executing this Agreement, or 3) executing an online order or Service Order. If the individual accepting this Agreement is accepting on behalf of a company or other legal entity, such individual represents and warrants that he or she has the authority to bind such entity and its affiliates to the terms and conditions herein. If the individual accepting this Agreement does not have such authority or does not agree with the terms and conditions herein, such individual must not accept this Agreement and may not use the Services.

The parties agree as follows:

### 1. DEFINITIONS.

1.1 “**Additional Services**” means any additional hourly work or Services ordered in a Service Order, online order or signed writing between the parties.

1.2 “**Commencement Date**” means, unless otherwise agreed in writing, Services will commence on the date when the Services are operational and ready for use by Customer according to the requirements of the applicable Service Order or online order.

1.3 “**Customer**” and “**you**” and “**your**” refers to a) the individual or entity and its affiliates that has ordered Services from MacStadium by executing a Service Order or online order, or b) any other individual or entity that accesses or uses the Services.

1.4 “**Effective Date**” means the date you accept and agree to the terms and conditions of this Agreement, a Service Order or an online order by a) clicking a box indicating your acceptance of this Agreement, b) signing this Agreement, or c) signing a Service Order that references this Agreement.

1.5 “**Evaluation Period**” means the time period you have to evaluate any applicable Trial Offerings and it begins on the Commencement Date and ends seven (7) days thereafter unless extended as indicated in the first fully executed Service Order or first online order.

1.6 “**Initial Service Term**” means, unless otherwise stated in a Service Order, online order or agreed to in a signed writing by both parties, the time period that begins on the Commencement Date of the applicable Service Order or online order and continues for twelve (12) months thereafter.

1.7 “**Renewal Service Term**” means, unless otherwise stated in a Service Order, online order or agreed to in a signed writing by both parties, the twelve (12) month renewal term following either the Initial Service Term, or a previous Renewal Service Term.

1.8 “**SaaS Service**” falls under the Services and is a non-exclusive, non-assignable, non-transferable, limited right to access and use certain software functionality, in accordance with the terms and conditions of this Agreement and Exhibit C – SaaS Supplemental Terms and shall only be applicable if specifically ordered in an online order or a Service Order.

1.9 “**Services**” means any service you have a Subscription to pursuant to a Service Order, online order or have otherwise been authorized to use.

1.10 “**Service Term**” is a general reference to the Initial Service Term and/or any Renewal Service Term.

1.11 “**Subscription**” means you have an active online order or a Service Order that describes the Services ordered and you are current in paying all applicable fees to MacStadium for such Services.

1.12 “**Trial Offerings**” are available to new Customers only and refer to your first server under the Services or your first SaaS Service as described in your first Service Order or first online order, whichever is applicable.

1.13 “**User**” means you and your individual Users of the Services, including but not limited to your affiliates and your affiliates’ respective customers and including all of such customers’ end users, who you permit to use the Services and to whom you have, or MacStadium at your request has, supplied Credentials (defined below).

## 2. SERVICES.

2.1 Use of Services. Subject to the terms and conditions of this Agreement, you and your Users shall have the non-exclusive, non-assignable, non-transferable, revocable, limited right to access and use the Services purchased through a Service Order or otherwise, solely for your business operations. If applicable, Exhibit C – SaaS Supplemental Terms shall be in addition to the terms specified in this Agreement. You are responsible for your Users’ compliance with this Agreement. Unless otherwise agreed in a signed writing, Services will commence on the Commencement Date.

2.2 Registration. To access and use the Services, you must have an active Subscription for the Services. Upon the establishment of a Subscription, one or more usernames and passwords may be generated in connection with such Subscription (“**Credentials**”). The Credentials are used to authenticate the User and thereby allow access to the Services, including any of your data or content stored as part of the Services. You are solely responsible for maintaining the confidentiality of the Credentials and may not transfer or share the Credentials with any third parties other than your Users. You acknowledge and agree that MacStadium and its licensors and suppliers may rely on the Credentials as the sole test to control whether Users accessing and using the Services on your behalf are authorized to do so. You are fully liable for any act or omission of any Users that access or use the Services with the Credentials or otherwise through your account. You will notify MacStadium immediately of any unauthorized use of any Credentials or account or any other known or suspected breach of security and not impersonate another User or provide false identity information to gain access to or use the Services.

2.3 Maintenance. Unless otherwise stated in the applicable Service Order, MacStadium shall perform scheduled maintenance from time to time. If you are registered with the statuspage.io service, MacStadium shall notify you by email of all maintenance scheduled to take place at least ten (10) business days in advance (“**Scheduled Maintenance**”). For clarity, you must register in order to receive maintenance update notification emails. Without limiting the foregoing, MacStadium provides status updates regarding any maintenance at the publicly available website: <https://status.macstadium.com/>. Scheduled Maintenance shall not cause a loss of availability of the Services unless necessary to complete the Scheduled Maintenance. MacStadium shall use reasonable efforts to ensure any loss of availability of

Services arising from Scheduled Maintenance is limited to the shortest period of time practical. MacStadium may perform emergency maintenance, including the installation of critical patches, as needed and without prior notice, but shall use reasonable efforts to notify you within four (4) hours of initiating any such emergency maintenance. Emergency maintenance will not cause a loss of availability of the Services unless it is beyond the reasonable control of MacStadium. MacStadium will use reasonable efforts, with equitable consideration to its Customers, to ensure that maintenance is completed as quickly as practical. As a part of regular maintenance, MacStadium may install patches that address security vulnerabilities. MacStadium will not be liable for any inability, delay, failure or omission in identifying the need for a security upgrade or patch, or for the implementation of any security upgrade or patch. MacStadium will use reasonable efforts to coordinate with you for the application of noncritical patches as they are released.

2.4 Use Restrictions. In addition to any use restrictions in the AUP attached in Exhibit B hereto, you shall not:

- a. except when providing a SaaS offering to your Users, remove or modify any program markings or any notice of MacStadium or its licensors' proprietary rights,
- b. make the Services, or any materials relating thereto, available in any manner to any third party for use in the third party's business operations other than as otherwise expressly agreed upon between the parties,
- c. modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Services,
- d. access or use the Services in order to build or support, or assist a third party in building or supporting, products, or services competitive to the Services,
- e. license, sell, rent, lease, transfer, assign, distribute, display, host, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the Services, or related materials, available to any third party other than as part of a SaaS offering to your Users or as expressly permitted under the terms of this Agreement,
- f. except as expressly provided herein, copy, reproduce, distribute, republish, download, display, post or transmit the Services, or any portion thereof, in any form or by any means, or
- g. attempt to gain unauthorized access to the Services or related systems or networks.

2.5 Protection against Unauthorized Use. You will use your best efforts to prevent any unauthorized use of the Services and will immediately notify MacStadium in writing of any unauthorized use that comes to your attention. If you cause any direct or indirect unauthorized use of the Services or access to the Services, you will take all steps reasonably necessary to terminate the unauthorized use and access. You will cooperate and assist with any actions taken by MacStadium to prevent or terminate unauthorized use of and access to the Services.

2.6 Service Levels. MacStadium shall provide the Service Levels described in the SLA attached hereto in Exhibit A regarding the Services ordered in a fully executed Service Order or online order.

2.7 Third-Party Technology & Your Software. You represent and warrant that all software you or your Users install on the Configuration, as defined in section 5.5 below, provided to you as part of the Services is licensed for its intended use and for access by both parties. MACSTADIUM MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER REGARDING ANY THIRD-PARTY PRODUCTS, INCLUDING OPERATING SYSTEMS, HARDWARE, SOFTWARE, SERVICES, AND ALL RELATED SUPPORT SERVICES, AND THEY ARE PROVIDED "AS IS". Finally, MacStadium assumes no responsibility, and you shall

be fully responsible, for any SaaS offerings to your Users or other products or services you may provide to your Users in connection with your use of the Services.

2.8 Changes & Modifications. Subject to fulfillment of obligations under a Service Order, MacStadium and its licensors and providers may notify you in writing of an upgrade, enhancement, change or modification of the Services ("**Service Modification**") that may be available during or after a Service Term. During the Initial Service Term, you shall not be obligated to accept any Service Modification if such Service Modification degrades the performance or functionality or increases the cost of the Services.

2.9 Suspension of Services. MacStadium may suspend the Services under an applicable Service Order or online order if a) MacStadium reasonably believes that your or your User's use of the Services or Additional Services has or will subject MacStadium to civil or criminal liability provided that such suspension is limited to the User(s) or parties causing the potential liability, b) MacStadium finds that the Services are being used in violation of the AUP and you have not cured such violation within one (1) business day of the date written notice was sent from MacStadium to you and provided that such suspension is limited to the User(s) or parties violating the AUP, c) MacStadium is required to suspend your or your User's Services by a law enforcement agency, government agency or court order, d) activity on your or your User's servers (such as a denial of service attack or unauthorized access) poses a reasonable threat to the integrity of MacStadium's network, or e) you or your User materially breaches any provision of any Service Order or this Agreement and you have not cured such breach within thirty (30) days of the date written notice was sent from MacStadium to you.

In addition, MacStadium may suspend Services and Additional Services under all Service Orders or, in MacStadium's reasonable discretion, only the applicable Service Order, by giving five (5) business days' notice if you fail to pay any fees or charges within thirty (30) days after the invoice date of any Service Order(s). Additionally, MacStadium will suspend Services for Customers who have a Mac mini colocation environment Subscription(s) after ten (10) days of non-payment from the invoice date and the Mac mini may be decommissioned and reclaimed after fourteen (14) days of non-payment, if not sooner. Services will not be available in whole or in part during a suspension and any applicable fees regarding suspended Services shall be governed in accordance with section 4.1. MacStadium may not exercise its suspension rights regarding any failure to timely pay fees you have disputed in good faith prior to their due date as long as you are cooperating with MacStadium diligently and in good faith to resolve the dispute.

### **3. TERM & TERMINATION.**

3.1 Term of Agreement. Except as otherwise provided in a Service Order, the term of this Agreement shall commence on the Effective Date and shall continue until all Subscriptions to Services pursuant to a fully executed Service Order have expired or terminated pursuant to sections 3.3 and 3.4.

3.2 Term of Service Orders. The Services provided under any applicable Service Order will begin on the Commencement Date and continue for a term defined in the applicable Service Order. If the Initial Service Term is not defined in the applicable Service Order, the Service Order shall have a term a) concurrent with the longest Service Order term then in effect among the other Service Order(s) between the parties or b) of twelve (12) months from the Commencement Date if no other Service Order exists. Unless a party provides written notice to the other party at least thirty (30) days prior to the end of the Initial Service Term or the then-current Renewal Service Term, the Service Order will automatically renew for successive Renewal Term on the first day of each calendar month following the end of the Initial Service Term or then-current Renewal Service Term.

3.3 Termination by MacStadium. MacStadium may terminate this Agreement, the applicable Service Order(s) and online orders in the event of: a) a material breach of this Agreement or other incorporated agreements or guidelines by you or your User(s) that remains uncured for thirty (30) days following the date notice was sent by MacStadium to you detailing such breach, b) requests by law enforcement or other government agencies, c) a request by you (self-initiated account deletions), d) MacStadium being threatened with a legal claim relating to your or your User's use of the Services, e) if you become the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, or f) if you or your Users violate the AUP more than twice. Termination includes removal of access to all the Services and may also bar you from further use of the Services. Furthermore, all terminations shall be made in MacStadium's sole and reasonable discretion, and MacStadium shall neither be liable to you nor any third-party for any termination of your account or access to the Services.

3.4 Termination by You. You may terminate a Service Order or online order if MacStadium materially breaches any provision of this Agreement with respect to such Service Order or online order and fails to cure such breach within thirty (30) days of receiving a notice from you that reasonably identifies the material breach.

3.5 Effect of Termination. Upon expiration or termination of this Agreement or any applicable Service Order or online order, all rights to access or use the Services shall terminate. In the event of a termination other than pursuant to section 3.4, you shall be responsible for and pay all fees that would have been owed had the applicable Service Order(s) or online order(s) not been terminated prior to the end of their then-current Service Term. In the event of a termination pursuant to section 3.4, MacStadium will refund Customer any pre-paid fees for the terminated Services pursuant to the applicable Service Order(s) or online order(s). All provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement shall survive the termination or expiration of this Agreement. Upon the termination or the expiration of this Agreement, an applicable Service Order, or online order MacStadium will decommission the equipment in the applicable data center used as a part of the Services, if applicable. However, sanitization of any data or content the Customer used as a part of the Services is solely the responsibility of the Customer upon termination or expiration of this Agreement and/or the applicable Service Order(s) or online order(s).

#### **4. FEES AND PAYMENT TERMS.**

4.1 Services Fees. For the Services provided under this Agreement, you will pay MacStadium the fees for any Services and other applicable fees (including, without limitation, excess usage fees, upgrade fees, setup fees, and deposits) in the amounts set forth in the applicable Service Order(s), online order(s) or otherwise agreed upon by the parties. Applicable fees will be invoiced to you upon execution of a Service Order. Unless otherwise set forth in the applicable Service Order, the fees for any Services shall be monthly recurring charges ("**MRC**"), which may be invoiced by MacStadium at the beginning of each calendar month. MacStadium may delay setup for a Service Order or online order until all setup fees associated with such Service Order or online order are paid in full. After the Initial Service Term, and at the beginning of each Renewal Service Term thereafter, MacStadium may adjust the fees applicable for the upcoming Renewal Service Term upon written notice provided at least sixty (60) days prior to the end of the Initial Service Term or applicable Renewal Service Term. The MRC will accrue during any suspension of the Services, and MacStadium may charge a reasonable reinstatement fee following any suspension of Services.

4.2 Additional Services Fees. Additional Services are billed in one (1) hour increments. The scope and hourly cost of Additional Services must be agreed to by the parties in advance in writing, except where Additional Services are performed: a) in order to return the Configuration to proper working order

after an act or omission by you or your Users which causes the Services to malfunction or become unavailable, b) in connection with a violation by you or your Users of the AUP, c) to eliminate a security threat caused by your or your Users' use of the Services, or d) as otherwise provided in this Agreement. The parties may agree in a Service Order to an hourly rate that will apply to any future Additional Services performed by MacStadium during the Service Term related to the applicable Service Order. Otherwise, you shall pay MacStadium's then-current published hourly rates for Additional Services.

4.3 Payment Terms. Except as otherwise set forth in a Service Order, all invoices submitted by MacStadium are due and payable immediately upon receipt via credit card or direct payment, or, if upon prior written approval by MacStadium, no later than within thirty (30) days of the date of your receipt of the invoice. All fees not objected to in writing within forty-five (45) days of an invoice date will be deemed accurate. Fees are non-cancelable. All fees paid and expenses reimbursed under this Agreement will be in USD, unless mutually agreed upon in the Service Order. It is your sole responsibility to provide accurate billing contact information and to notify MacStadium of any changes to your billing contact information.

4.4 Late Payment & Attorney's fees. You will pay a late fee of 1.5% per month (not to exceed the maximum allowed under state law) on all balances not paid when due. MacStadium, in its reasonable discretion, may suspend the Services or Additional Services pursuant to section 2.9. If a payment is late, MacStadium may apply all future payments to the most recent invoice first. If MacStadium institutes any action, suit, or other legal or administrative proceeding against you arising out of or related to this Agreement, including for the collection of past due fees and expenses, and is the prevailing party to such action, MacStadium will be entitled to recover, in addition to any other amounts awarded in such action, its reasonable attorneys' fees and court costs from you.

4.5 Disputed Fees. Customer shall a) provide written notice to MacStadium within seven (7) days of the invoice date containing the fees disputed in good faith, b) include the reason for the good faith dispute, c) a description of the amount being disputed in good faith, and d) agree to work with MacStadium to resolve such good faith dispute within thirty (30) days of the date upon which the aforementioned written notice was sent to from Customer to MacStadium. If after thirty (30) days the fees disputed in good faith cannot be mutually resolved by the parties pursuant to this section, the issue will default to the terms specified in section 15.

4.6 Taxes. Any fees and expenses due to MacStadium as set forth in this Agreement are net amounts to be received by MacStadium, exclusive of all sales, use, withholding, excise, value added, ad valorem taxes or duties incurred by you or imposed on MacStadium in the performance of this Agreement or otherwise due as a result of this Agreement. This section will not apply to taxes based solely on MacStadium's income.

4.7 Offset. Fees and expenses due from you under this Agreement may not be withheld or offset by you against other amounts for any reason.

4.8 Money Back Guarantee for New Customers Only. If you submit a ticket via the MacStadium management portal before the end of the Evaluation Period indicating that you no longer want to use the Services or SaaS Service, whichever is applicable, you shall be entitled to a refund of the pre-paid fees you made to MacStadium solely for your Trial Offering. Accordingly, all access to the Services or SaaS Service, whichever is applicable, shall end on the date such notice is sent to MacStadium ("**Evaluation Termination Date**") and this Agreement along with any and all accompanying Service Order(s) or online orders shall also terminate on the Evaluation Termination Date. For the avoidance of doubt, the money-back guarantee shall only be available to new customers and only apply to your first server or first SaaS Service order, whichever is applicable, within your first Service Order or first online

order only. You will not be entitled to any refund for any Services or SaaS Service beyond your Trial Offering. Any subsequent Service Order or online order made at the start of or during the Evaluation Period will not be eligible for the money-back guarantee pursuant to this section.

## 5. YOUR OBLIGATIONS AND WARRANTIES.

5.1 Acceptable Use Policy. You agree to the terms of the AUP as contained in Exhibit B to this Agreement. Your continued access or use of the Services following notice of a revised AUP shall constitute your acceptance of the AUP.

5.2 Compliance. The parties shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with the provision and use of the Services (e.g. privacy and security laws and regulations, CAN-SPAM ACT, copyright laws, international communications, and the transmission of technical or personal data). You agree to provide any notices and obtain any consents related to your use of the Services, including those related to the collection, use, processing, transfer and disclosure of personal information.

5.3 Information and Access Provided by You. You represent and warrant that a) you or your Users own and control all of the rights to the content or data that you store, post or transmit through the Services, or you or your Users otherwise have the right to use such content or data, b) the use of the content or data you supply does not violate this Agreement, will not violate any rights of or cause injury to any person or entity, and will not otherwise create any harm or liability of any type for MacStadium or for third parties. You understand that all content or data publicly posted or privately transmitted through the Services is your sole responsibility and that MacStadium will not be liable for any errors or omissions in any such data or content. Without limiting the foregoing, you are solely responsible for the selection, compatibility, licensing, accuracy, performance, maintenance, and support of all information, software, content and data that you or your Users transmit through or store on MacStadium's servers, including any hypertext markup language files, scripts, programs, recordings, sound, music, graphics, images, applets or servlets that you or your Users create, install, upload or transfer on, from or through the Configuration. You are responsible for managing the firewall, User access to the Services, and encrypting your data or content while at-rest and in transit. MacStadium shall not be responsible for restricting its own access. You must a) block MacStadium from having access to your unencrypted data or content, b) encrypt your data or content, and c) not provide MacStadium with the encryption keys thereto. However, if you block MacStadium's access in any way that prevents MacStadium from performing its obligations as a part of the Services, such performance shall be excused and no Service Levels or other related obligations shall apply. MacStadium is not responsible for performing the Services in accordance with your privacy rules or policies. You are responsible for properly configuring and using the Services and otherwise taking appropriate action described in this section to secure, protect and backup your accounts and your data or content in a manner that will provide appropriate security and protection, which might also include routinely archiving your data or content.

5.4 Technical Requirements. You must have the required equipment, software, and internet access to be able to use the Services. Acquiring, installing, maintaining and operating equipment and internet access is solely your responsibility. MacStadium neither represents nor warrants that the Services will be accessible through all web browser releases or all versions of computing devices.

5.5 Configuration. You are solely responsible for determining whether the equipment, internet access and software provided by MacStadium to you as specified in the Service Order(s) or online order(s) (collectively, the "**Configuration**") is suitable, and whether it meets and will continue to meet your and your User's capacity, performance and scalability needs. You are also responsible for the results of implementing any MacStadium recommendations regarding use of the Configuration. You are

responsible for requesting all required upgrades and modifications to the Configuration, including but not limited to one of the following: a) a spike or change in system resource utilization, b) processing requirements, c) storage requirements, or d) hardware or software deprecation. MacStadium will not be required to make any upgrade unless it is set forth in a Service Order signed by both parties.

5.6 Users. You shall enter into, and reasonably enforce, contracts with all Users that obligate such Users to comply with the provisions of this Agreement that are applicable to Users' use of the Services. Additionally, if MacStadium provides you with reasonably detailed written notice of your Users' acts or omissions that violate the provisions of this Agreement, a Service Order or an online order, and you have not taken prompt, effective steps to ensure compliance or terminate such User's access, you shall be fully responsible and liable for all acts and omissions of your Users as if such acts or omissions were your own.

## 6. INTELLECTUAL PROPERTY OWNERSHIP AND RIGHTS.

MacStadium, and its licensors and providers, own all right, title and interest, including all related intellectual property rights in and to the Services, MacStadium's (and its providers') trademarks, and you assign to MacStadium any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Services. You own all right, title and interest, including all related intellectual property rights in and to your content, data, software and configurations and any other trade secrets qualifying as Confidential Information. You shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, ownership and right to use all of your data or content submitted by you in the course of receiving the Services. You grant MacStadium a worldwide, limited right and license to copy, transmit, view, modify, reformat, translate, transfer and display your data or content as necessary or appropriate for MacStadium to provide the Services in accordance with this Agreement.

## 7. INDEMNIFICATION.

### 7.1 MacStadium Indemnity.

a. MacStadium shall at its expense (i) defend you and your Users and any respective employees, officers, directors, suppliers, providers, licensors and agents ("**Customer Indemnitees**") against any claims, actions, suits, demands, obligations, and proceedings ("**Claims**") made or brought against Customer Indemnitees by a third party alleging that the use of the Services in accordance with this Agreement infringes or misappropriates any right or interest of such third party, and (ii) indemnify you against any and all damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees, witness fees, and court costs) awarded in favor of such third party by the court adjudicating such Claims.

b. MacStadium shall have no obligations with respect to any intellectual property infringement or misappropriation claim to the extent (i) such Claim arises from your or your Users' data, content, or information residing in the Services or otherwise on MacStadium's computer systems or hardware or (ii) the damages or losses in connection with the Claim that would have been avoided, reduced or lessened by the use of the most current version of the Services made available by MacStadium, including with respect to any Service Modifications.

c. If MacStadium receives information about an infringement or misappropriation claim related to the Services or otherwise reasonably believes any part of the Services may be subject to a potential infringement or misappropriation claim, MacStadium may in its reasonable discretion (i) modify the affected Services so that they no longer infringe or misappropriate, (ii) obtain a license for your continued use of the affected Services in accordance with this Agreement, or (iii) terminate your rights to



the affected Services and refund to you any unused pre-paid fees covering the remainder of the term of the terminated Services.

THIS SECTION STATES MACSTADIUM'S SOLE LIABILITY TO YOU, AND YOUR EXCLUSIVE REMEDY AGAINST MACSTADIUM, FOR A CLAIM OF INFRINGEMENT OR MISAPPROPRIATION.

7.2 Indemnity by You. You shall at your expense a) defend MacStadium and its affiliates, and their respective employees, officers, directors, suppliers, providers, licensors and agents ("**MacStadium Indemnitees**") from and against any and all Claims of any kind threatened, asserted, or filed against MacStadium Indemnitees by a third party, and b) indemnify the MacStadium Indemnitees against any and all damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees, witness fees, and court costs) awarded in favor of such third party by the court adjudicating such Claims to the extent such Claim arises out of or relates to: (i) a breach by you or your User pursuant to this Agreement, (ii) any actual or alleged infringement or violation of any right or interest of any third party by you or any User, or (iii) your or your User's data or content, any SaaS offering or other products or services offered by you or your Users.

7.3 Procedure. The indemnifying party's obligations in sections 7.1 and 7.2 are subject to the party seeking to be indemnified: a) providing the other party reasonably prompt notice in writing of any such Claim, b) providing the other party information, assistance, and authority, at the indemnifying party's expense, to help the indemnifying party to defend such Claims, and c) giving the other party sole control of the defense and settlement of the Claim. The indemnified party will not have any right, without the other party's written consent, to settle any such Claim if such settlement arises from or is part of any criminal action, suit, or proceeding or contains a stipulation to or admission or acknowledgment of, any liability, infringement, blame, or wrongdoing (whether in contract, tort, or otherwise) on the part of the indemnified party or otherwise requires the indemnified party to take or refrain from taking any material action (such as the payment of fees).

## **8. DISCLAIMER OF WARRANTIES.**

EXCEPT AS PROVIDED UNDER THE SLA AND THIS AGREEMENT, YOU AND ALL USERS UNDERSTAND AND AGREE THAT THE SERVICES AND ADDITIONAL SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. MACSTADIUM EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. MACSTADIUM DOES NOT WARRANT THAT a) THE SERVICES AND ADDITIONAL SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, b) THE SERVICES AND ADDITIONAL SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, OR c) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES OR ADDITIONAL SERVICES WILL BE ACCURATE OR RELIABLE. YOU ACKNOWLEDGE THAT MACSTADIUM DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. MACSTADIUM IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. MACSTADIUM SHALL MAKE REASONABLE EFFORTS TO RESOLVE, BUT IS UNDER NO OBLIGATION TO RESOLVE, A PROBLEM BEYOND THE REASONABLE CONTROL OF MACSTADIUM, INCLUDING, WITHOUT LIMITATION: a) CIRCUMSTANCES CAUSED BY YOU OR YOUR FAILURE TO FULFILL YOUR RESPONSIBILITIES UNDER THE APPLICABLE SERVICE ORDER, AN ONLINE ORDER, OR THIS AGREEMENT, b) YOUR COMPUTERS OR NETWORK EQUIPMENT, OR USE OF ANY EQUIPMENT WHICH DOES NOT MEET THE MINIMUM SPECIFICATIONS AS INSTRUCTED BY MACSTADIUM, c) YOUR INTERNET SERVICE PROVIDER AND CABLE OR INTERNET SERVICE PROVIDER, AND d) YOUR FIREWALL OR LACK THEREOF.

## 9. LIMITATION OF LIABILITY.

9.1 Limitation of Remedy. TO THE EXTENT PERMITTED BY LAW, NEITHER YOU NOR MACSTADIUM, AND ITS SUPPLIERS AND PROVIDERS, WILL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO ONE ANOTHER OR A USER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, INDIRECT, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY SERVICE ORDER, OR ONLINE ORDER INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST DATA OR CONTENT, OR LOSS OF BUSINESS, EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING, INCLUDING FOR UNAUTHORIZED ACCESS (I.E., HACKING) INTO MACSTADIUM'S OR YOUR TRANSMISSION FACILITIES, PREMISES OR EQUIPMENT, OR FOR UNAUTHORIZED ACCESS TO YOUR DATA FILES, CONTENT, PROGRAMS, PROCEDURES OR INFORMATION; PROVIDED, HOWEVER, THAT THIS LIMITATION SHALL NOT APPLY ONLY TO THE EXTENT THAT THE UNAUTHORIZED ACCESS IS CAUSED BY MACSTADIUM'S GROSS NEGLIGENCE OR INTENTIONAL TORTIOUS MISCONDUCT.

9.2 Maximum Liability. EXCEPT RELATING TO THE INDEMNIFICATION OBLIGATIONS UNDER SECTION 7, OBLIGATIONS OF CONFIDENTIALITY UNDER SECTION 10, OR LIABILITY FOR GROSS NEGLIGENCE OR INTENTIONAL TORTIOUS MISCONDUCT, TO THE EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES WILL EITHER YOUR OR MACSTADIUM'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY SERVICE ORDER, OR ONLINE ORDER (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE GREATER OF A) AMOUNTS PAID TO MACSTADIUM BY YOU UNDER THE APPLICABLE SERVICE ORDER OR ONLINE ORDER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM OR B) USD \$50,000.

9.3 Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS PROVIDED TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY MACSTADIUM TO YOU AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION 9 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT.

## 10. CONFIDENTIALITY.

Each party may disclose to the other party certain Confidential Information of such party or of such party's associated companies, distributors, licensors, suppliers, or customers. For purposes of this Agreement, a) "**Trade Secrets**" means information that is a trade secret as defined under applicable law, b) "**Confidential Information**" means information, including but not limited to Trade Secrets, that is of value to its owner and is marked as confidential or due to the nature of the information, confidentiality is implied, c) the "**Disclosing Party**" refers to the party disclosing Confidential Information hereunder, whether such disclosure is directly from Disclosing Party or through Disclosing Party's employees or agents, and d) "**Recipient**" refers to the party receiving any Confidential Information hereunder, whether such disclosure is received directly or through Recipient's employees, providers or agents. Subject to section 11, Recipient agrees to hold the Confidential Information disclosed by Disclosing Party in confidence and not to, directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed, or otherwise transfer the Confidential Information disclosed by Disclosing Party to any third party, or utilize the Confidential Information disclosed by Disclosing Party for any purpose whatsoever other than as expressly contemplated by this Agreement. You acknowledge that the Services are the Confidential Information of MacStadium or its licensors and other providers. Additionally, Customer may not release to any third party the results of any evaluation of the Trial Offerings performed by or on behalf of Customer for purposes of monitoring its availability,

performance or functionality, or for any other benchmarking or other competitive purposes. The obligations in this section 10 shall continue for so long as such information constitutes Confidential Information. The foregoing obligations shall not apply if and to the extent that Recipient establishes that the information communicated was publicly known at the time of Recipient's receipt or has become publicly known other than by a breach of this Agreement.

#### **11. COMPELLED DISCLOSURE.**

You acknowledge and agree that MacStadium may have to provide your Confidential Information or other information if MacStadium or its licensors or providers are compelled by law, an administrative agency or other governmental body of competent jurisdiction to disclose such information. Unless it would violate applicable law or a binding order of a governmental body, MacStadium will give you notice of any legal requirement or order referred to in this section 11.

#### **12. PRIVACY.**

MacStadium acknowledges that your privacy is important. Accordingly, MacStadium will maintain appropriate administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of the Services. Notwithstanding anything to the contrary in this Agreement, you acknowledge and agree that the parties to this Agreement shall be bound by the publicly available Privacy Notice on MacStadium's website at <https://www.macstadium.com/legal>, to the extent the Privacy Notice is applicable. To the extent the Privacy Notice applies and conflicts with this Agreement, the Privacy Notice shall control. The Privacy Notice is subject to change at MacStadium's reasonable discretion. Your continued access or use of the Services following notice of a revised Privacy Notice shall constitute your acceptance of the Privacy Notice. The Privacy Notice governs only information collected through the Services or the administration thereof. If applicable, you shall specify the data center in which your use of the Services will occur and you consent to the storage of your data or content and transfer of your data or content into the data center you select. MacStadium cannot access or use any of your data or content that is used as a part of the Services, except as necessary to maintain or provide the Services to you, or as necessary to comply with the law or a binding order of a governmental body pursuant to section 11.

#### **13. EXPORT.**

You shall not, without prior written consent, if required, of the office of Export Administration of the U.S. Department of Commerce, or other applicable U.S. governmental agency or department, export, re-export, allow the re-export, transship, download, or transmit any of the Services or any other technical materials (collectively, "**Export Materials**") to any country ("**Restricted Nation**"), person or entity to which such transmission is restricted by applicable regulations or statutes, including to any individual, group or organization on the U.S. Department of Treasury's Office of Foreign Assets Control's list of Specially Designated Nationals or the U.S. Department of Commerce's Bureau of Export Administration's List of Denied Persons, as each may be amended from time to time, including any of your Users. You represent and warrant that you and each of your employees, contractors, agents, and consultants who has access to the Export Materials a) is not an individual located in a Restricted Nation, b) is not a business or organization owned, controlled by or acting on behalf of an individual, business or organization in a Restricted Nation, c) is not a government of a Restricted Nation, d) is not a business or organization owned, controlled by or acting on behalf of a government of a Restricted Nation, and e) is not an individual, group or organization on the U.S. Department of Treasury's Office of Foreign Assets Control's list of Specially Designated Nationals or the U.S. Department of Commerce's Bureau of Export Administration's List of Denied Persons. You will defend, indemnify, and hold MacStadium, and its directors, employees, shareholders, agents, suppliers, or representatives harmless from and against any

and all losses, damages, costs, and expenses, including legal fees, incurred directly or indirectly as a consequence of your failure to comply with this section 13.

#### **14. INSURANCE.**

MacStadium will maintain sufficient insurance coverage for its assets and operating infrastructure that meets MacStadium's obligations pursuant to this Agreement and by law, with insurance carriers rated A- or better by A.M. Best Company. MacStadium may make reasonable changes to its insurance coverages from time to time. Under no circumstances will MacStadium be obligated add you as an additional insured or provide insurance coverage for any equipment or content owned by you on the MacStadium premises.

#### **15. DISPUTE RESOLUTION.**

All disputes of every kind and nature between Customer and MacStadium arising out of or in connection with this Agreement shall be addressed first in an informal dispute process. If an informal dispute process is unsuccessful in resolving a dispute, the dispute shall be submitted to binding arbitration pursuant to the then existing Commercial Arbitration Rules of the American Arbitration Association ("**Rules**"), which are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. Unless otherwise mutually agreed, the arbitration shall be conducted with a single arbitrator, selected in accordance with the Rules. Each party shall bear its own costs of arbitration. Arbitration hearings shall be conducted in metropolitan Atlanta, Georgia and the award rendered by the arbitrator shall be final and binding on all parties to the proceeding. Judgment on any award may be entered by either party in any court of competent jurisdiction. Nothing contained herein shall be deemed to give the arbitrator any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

#### **16. GENERAL.**

16.1 Audits. During the term of a Service Order or online order, upon ten (10) days prior written notice MacStadium may audit your use of the Services where reasonable cause exists to verify your compliance with the terms of the applicable Service Order or online order and this Agreement; provided, that such audit shall be performed no more than once in any twelve (12) month period, during regular business hours and subject to your reasonable confidentiality requirements. MacStadium shall conduct such audit in a reasonable way and you agree to cooperate with MacStadium's audit and provide reasonable assistance and access to information. You agree that MacStadium shall not be responsible for any of your costs incurred in cooperating with the audit. If such verification process reveals any material noncompliance by Customer of this Agreement or the applicable Service Order or online order for any reason, you shall reimburse MacStadium for the reasonable costs and expenses of such verification process (including, but not limited to the fees of an independent auditor) incurred by MacStadium.

16.2 Independent Contractors. MacStadium will be and act as an independent contractor (and not as your agent or representative) in the performance of this Agreement and no joint venture, partnership, or agency relationship exists between the parties.

16.3 Publicity. MacStadium may include you in a case study at MacStadium's expense and use your name and logo(s) in listings of MacStadium's Customers for promotional, marketing, and advertising purposes in a manner that accurately reflects the relationship of the parties.

16.4 Non-solicitation. Neither party shall hire any employee of the other party as an employee, contractor or in any other workforce capacity during the term of this Agreement, any Service Order, or any online order until six (6) months thereafter, without such party's written consent. These restrictions shall not apply to employees who independently respond to a general solicitation of employment through an advertisement not specifically targeted at the other party or its employees.

16.5 Assignment. The parties may not assign or delegate any of their rights or obligations under this Agreement, whether by operation of law or otherwise, without the respective other party's prior written consent, except that a party may assign all of its rights and obligations under this Agreement to any corporation or other entity without consent in connection with a merger or the sale of all or substantially all of its assets. Subject to the foregoing, this Agreement shall inure to the benefit of the parties and their respective successors and permitted assigns.

16.6 Notices. All notices, authorizations, and requests in connection with this Agreement will be deemed given: a) three (3) days after they are deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested, b) one (1) day after they are sent by air express courier, charges prepaid, or c) on the day of transmittal if sent by e-mail, to such address of the party to receive the notice as such party designates by written notice to the other.

16.7 Force Majeure. MacStadium will not be liable for, or in breach of this Agreement due to any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond MacStadium's reasonable control, including, but not limited to, an act of God, war, man-made and natural disasters, governmental regulations, official orders from judicial, law or civil authorities, terrorism, riots, labor strikes, communication or utility failures or casualties or the failures or acts of you or third parties.

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

16.9 Severability. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

16.10 Mutually Drafted. This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. This Agreement will be construed as though all parties had drafted it.

16.11 Entire Agreement and Order of Precedence. This Agreement is the final and complete expression of the agreement between the parties regarding the Services. This Agreement supersedes, and the terms of this Agreement govern all previous oral and written communications regarding its subject matter. MacStadium will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to this Agreement that is proffered solely by Customer in any receipt, acceptance, confirmation, correspondence, or otherwise. This Agreement may be updated by MacStadium in its reasonable discretion from time to time and unless otherwise stated by MacStadium in writing, such updates shall come into effect on the commencement of the Customer's or its Users next billing period. This Agreement is in addition to any other terms and conditions stated in the applicable Service Order, if any; provided, however, in the event of a conflict between this Agreement and the Service Order, the Service Order shall control. Furthermore, a subsequent Service Order shall control over a prior Service Order in the event of a conflict.

## Exhibit A

### **Service Level Agreement**

This Exhibit A - SLA is attached to and made a part of the Agreement made by and between Customer and MacStadium. Capitalized terms used but not defined in this SLA will have the meaning assigned to them in the Agreement.

This SLA constitutes MacStadium's commitments regarding availability of the Services. Notwithstanding the terms in the Agreement, this SLA is subject to change at MacStadium's reasonable discretion. If we do not achieve and maintain the Service Levels as described in this SLA, you may be eligible for a Service Credit to be used towards a portion of your monthly fees on the following months' invoice. We will not modify the terms of your SLA during the Initial Service Term; however, upon renewal, the version of this SLA that is current at the time of renewal will apply throughout your Service Renewal Term. We will provide at least sixty (60) days' notice for material changes to this SLA. You can review the most current version of this SLA at any time by visiting <https://www.macstadium.com/legal>. Your continued access to or use of the Services following notice of a revised SLA shall constitute your acceptance of the SLA.

#### **1. DEFINITIONS**

1.1. **"Infrastructure Services Threshold"** is a Service Level that means for each twelve (12) month period, MacStadium will have at least 99.99% availability for the Services outside of emergency maintenance and Scheduled Maintenance (if applicable).

1.2. **"Non-Compliance"** shall mean any act or inaction by the Customer that is not in compliance with the material terms of this SLA.

1.3. **"Outage"** shall mean, from the Customer's perspective, you are reasonably unable to conduct activities while using the Services.

1.4. **"Service Credit"** shall mean the monetary amount, based on a percentage of the MRC, credited to you on the following months' invoice for the Services affected following claim approval by MacStadium.

1.5. **"Service Level"** shall mean the availability metric(s) set forth in this SLA that MacStadium agrees to meet in the delivery of the Services.

1.6. **"Severity"** shall mean an assessment of the degree of impact to the end-user.

1.7. **"Unavailable"** or **"Unavailability"** shall mean whenever the Services actual availability does not meet the applicable Service Level as set forth in this SLA due to a failure of MacStadium's infrastructure or systems that is wholly within MacStadium's control.

#### **2. SERVICE AVAILABILITY**

MacStadium shall use commercially reasonable efforts to ensure its infrastructure will meet the Service Levels specified in this SLA, except to the extent that the parties agree otherwise in a signed writing. **MacStadium recommends the placement of servers in two or more data centers as a preventative measure against the failure of a single data center.**

2.1. Private Cloud Services. The Infrastructure Services Threshold is calculated by the amount of time within a twelve (12) month period that the Services are available to you pursuant to the terms in

this SLA. Pursuant to the Infrastructure Services Threshold, if you experience Unavailability in excess of four (4) minutes and nineteen (19) seconds in a calendar month, upon MacStadium claim review, you may be entitled to a Service Credit. Such Service Credit will be equal to 1/30th of the MRC for the affected Services. If the Services are Unavailable for any continuous twenty-four (24) hour period or more, MacStadium shall issue a Service Credit equivalent to one (1) month's fees for the applicable affected Services.

### 3. MAINTENANCE

As provided in section 2.3 of the Agreement and this SLA, MacStadium may perform emergency maintenance and Scheduled Maintenance from time to time unless otherwise stated in the applicable Service Order. You can review all maintenance updates by visiting <https://status.macstadium.com/>.

### 4. NOTIFICATION AND RESPONSE TIME

In the event of an incident that leads to the Unavailability of a Service Level or any Non-Compliance with this SLA, you shall notify MacStadium immediately so as to reduce any periods of Unavailability or Non-Compliance. Customer shall notify MacStadium concerning Unavailability or Non-Compliance within seven (7) days of the date that the Unavailability or Non-Compliance occurred via submitting a ticket in the MacStadium management portal. Once you have submitted a ticket you may elect to call the support line as well: 1-855-288-2260. MacStadium will respond to you concerning Unavailability and Non-Compliance incidents in the shortest time feasible, but in no event no longer than as stated in the chart below:

Severity Levels	Description	Maximum Initial Response Time
Severity Level 1	An outage incident effecting multiple customers	5 – 10 minutes
Severity Level 2	An outage incident effecting a single customer	5 – 10 minutes
Severity Level 3	A non-outage incident that adversely effects one or more customers (e.g. network latency)	1 – 2 hours
Severity Level 4	A non-outage incident related to a redundant component failure	3 hours
Severity Level 5	A false alarm	3 hours

As a note, MacStadium cannot provide any specified resolution time(s) for any incident(s) before the incident occurs because we cannot accurately state the exact time frame or range of time each varying issue may require to be resolved.

### 5. REQUEST FOR SERVICE CREDIT

After the incident has been remedied you MUST request a Service Credit from MacStadium in writing by submitting a ticket in the MacStadium management portal within seven (7) days. If you do not request a Service Credit in this manner, you WILL NOT be entitled to a Service Credit. MacStadium will evaluate all information reasonably available to us and use commercially reasonable efforts to process your claim to make a good faith determination of whether a Service Credit is owed to you.

### 6. EXCLUSIONS

Causes for Unavailability and Non-Compliance do not include: a) Scheduled or Emergency Maintenance or a suspension of Services, b) your or a User's data or content related other than to scalability or volume, c) the incompatibility of any operating system, application or vendor supplied security patches with your or a User's data or content, d) your or your agents acts or omissions, including

all of your or a third party's testing of the servers, e) your or your representatives' equipment, actions or inactions, f) the failure of servers or services outside of a data center on which the Services are dependent, including, but not limited to, inaccessibility on the internet that is not caused by MacStadium's network or network providers, g) MacStadium's blocking of data or content that MacStadium deems in its sole discretion to be in violation of the AUP, h) hardware downtime for hardware not hosted in MacStadium data centers, i) any force majeure event, as detailed in section 16.7 of the Agreement and any other circumstances, events, actions, or inactions not within MacStadium's reasonable control, j) a denial of service attack or unauthorized access (i.e., hacking), k) your failure to meet the terms and conditions of this SLA, l) co-located devices, m) downtime not reported by you within seven (7) days of the day the downtime first began, n) time required to format or reformat disks or a RAID array, o) time required to load, reload, configure or reconfigure an operating system, p) time required to load, reload, configure or reconfigure applications, q) time required to restore from backup, and r) your failure to provide accurate and current contact information for the purposes of this SLA.

## **7. LIMITATIONS.**

The guarantees in this SLA will not apply if: a) you disable or block (either intentionally or unintentionally) MacStadium's administrative access in any way that prevents MacStadium from performing its obligations, b) you make any modifications that prohibit a device from rebooting properly, c) you modify or delete the contents of MacStadium's administrative directories, or disables or modifies any software installed by MacStadium for the purposes of monitoring or server maintenance, d) you violate any material terms of this Agreement and any incorporated attachments, e) you become ineligible for Service Credits pursuant to any other provision of this Agreement, f) you fail to provide MacStadium with current and accurate information for the purposes of this Agreement, g) you fail to request a Service Credit in the manner provided in this Agreement, and h) you have an undisputed balance in accounts receivable over sixty (60) days past due.

## **8. GENERAL TERMS**

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

8.1 SOLE REMEDY. APPROVED SERVICE CREDITS ARE YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY PERFORMANCE OR UNAVAILABILITY ISSUES FOR ANY SERVICES UNDER THE AGREEMENT AND THIS SLA. YOU MAY NOT UNILATERALLY OFFSET ANY FEES FOR APPLICABLE SERVICES FOR ANY PERFORMANCE OR AVAILABILITY ISSUES.

8.2 Maximum Credit. In any calendar month the maximum Service Credit to which you shall be entitled shall NOT, under any circumstance, exceed the total amount of one month's fees for the applicable Services. For the avoidance of doubt, any approved Service Credit shall solely apply to the affected Services ordered in such Service Order. In no event, shall a Service Credit be awarded that aggregates monthly fees from more than one (1) Service Order.

8.3 Verification. All periods of Unavailability and Non-Compliance must be verified by MacStadium, and approved Service Credits will be applied by MacStadium as a credit on the next month's invoice. The period of Unavailability or Non-Compliance is measured from your notification to MacStadium of the incident to the time the Unavailability or Non-Compliance has been remedied as confirmed by MacStadium.



**Exhibit B****ACCEPTABLE USE POLICY**

This Exhibit B - AUP is attached to and made a part of the Agreement made by and between Customer and MacStadium. Capitalized terms used but not defined in this AUP will have the meaning assigned to them in the Agreement.

To protect the interests of all Customers and ensure optimal Service Levels, MacStadium has developed this AUP, which applies to you, your Users, and all other Customers (and their respective Users) use of the Services offered by MacStadium. Use of any Services offered by MacStadium will constitute acknowledgment of, and agreement to, the terms outlined in this AUP. This AUP may be revised in part or in full at any time by MacStadium. Your continued use of MacStadium's Services after such changes have been made to the AUP will constitute acceptance of any revisions to the AUP.

**1. PROHIBITED ACTIONS**

Customers may only use our servers for lawful purposes, in compliance with all applicable federal, state and local laws or regulations and in compliance with this AUP. In addition to the restrictions concerning use of the Services pursuant to 2.4 of the Agreement, specific activities that are also prohibited include, but are not limited to:

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

- Hosting, storage or transmittal of any material that sponsors, assists in or encourages the unlawful use or threatened use of force or violence against persons or property to intimidate or coerce a government, any civilian population or any segment thereof, in furtherance of political or social objectives.
- Managing a proxy server on MacStadium's network.
- Being subject to economic sanctions, prohibitions or restrictions on trade or export imposed by any governmental authority having jurisdiction over Customer or MacStadium, or in any jurisdiction where MacStadium or any of its affiliates are located, and whether or not the Services provided to Customers by MacStadium or such affiliate would violate such economic sanctions, prohibitions or restrictions.
- Interfering with the legitimate use by Customers or other third parties of resources on the MacStadium network or any of MacStadium's Services.
- Storage, transmittal or use of any malicious code, such as viruses, worms, time bombs, Trojan horses and other harmful or malicious files, scripts, agents or programs
- Imitating or impersonating MacStadium or any of its employees, any other person or his or her email address or creating false accounts for the purpose of sending spam or phishing or any other violation pursuant to the CAN-SPAM Act.
- Sell, distribute or export illegal or prescription drugs or other controlled substances or paraphernalia.
- Intentional storage, transmittal or use of any materials that violates, encourages or furthers conduct that would violate any applicable laws, including any criminal laws, or any third-party rights, including publicity or privacy rights.
- Mine bitcoins and other cryptocurrencies.
- Use the Services in any manner that would disparage MacStadium in any way.
- Facilitating, aiding or encouraging any of the above prohibited activities, whether using MacStadium's network or any other network.

## 2. SPAM AND UNSOLICITED COMMERCIAL EMAIL

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

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

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

- General Prohibitions. a) Using the MacStadium network to send or receive replies from UCE, hosting sites or information that is advertised by UCE from other networks, b) transmitting bulk email through remote SOCKS, HTTP or other similar proxies who in turn make a SMTP connection to the destination mail servers, c) forging email headers (i.e., 'spoofing'), d) spamming using third-

party proxy, aggregation of proxy lists, or proxy mailing software installation, and e) or hosting any web pages or providing any services that support spam.

- Landing Sites. The hosting of any web site or other content in any form intended to be intentionally or unintentionally retrieved or viewed by any recipient of any unsolicited email sent in violation of the terms defined in this AUP, whether sent from our network or any other network.
- Newsgroup Spamming. The posting of commercial messages to any newsgroup or discussion forum not chartered or organized for that specific purpose.

### **3. U.S. DIGITAL MILLENNIUM COPYRIGHT ACT OR SIMILAR STATUTORY OBLIGATIONS**

To the extent a Customer uses the Services for hosting, advertising, sending electronic messages or for the creation and hosting of, or for posting material on, websites, each Customer must a) comply with any notices received under Title II of the Digital Millennium Copyright Act of 1998 (Section 512 of the U.S. Copyright Act) or similar statute in other countries (the "DMCA"), b) set up a process to expeditiously respond to notices of alleged infringement that comply with the DMCA and to implement a DMCA-compliant repeat infringers policy, and c) comply with such processes and policy(ies).

In appropriate circumstances, MacStadium will terminate the accounts of Customers who MacStadium suspects to be repeatedly or blatantly infringing copyrights. If MacStadium receives a notice alleging that Customer or Customer's Users are infringing another party's intellectual property, MacStadium may disable that Customer's access to the Service or remove the alleged infringing material. If MacStadium receives more than one such notice for the same customer, MacStadium reserves the right to immediately terminate such Customer's Subscriptions to the Services as deemed necessary by MacStadium to ensure continued protection under the safe harbor provisions under the DMCA or to prevent violations of other applicable laws or third parties' rights.

### **4. SYSTEM AND NETWORK SECURITY**

The Customer is required to protect the security of its internet accounts (e.g. ftp, email, etc.) and usage to ensure the security of the MacStadium network and every MacStadium network object, including without limitation, routers, switches and workstations. Further, the Customer is responsible for validating the integrity of the information and data it receives or transmits over the internet and reporting any weaknesses in the MacStadium network and any incidents of possible misuse or violation of this AUP.

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

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

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

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

## **5. IP ALLOCATIONS**

All IP addresses which are assigned to Customer must be justified per ARIN Guidelines at <http://www.arin.net/policy/nrpm.html>. If it is determined that IP addresses which have been assigned to Customer are not being used in accordance with these guidelines, they may be revoked.

## **6. IMMEDIATE THREATS**

If, in the reasonable determination of MacStadium, the equipment, software or hosted applications used by the Customer or the activities of the Customer poses an immediate threat to the physical integrity of MacStadium premises or the physical integrity or performance of the equipment or network of MacStadium or any other user of the premises, or poses an immediate threat to the safety of any person, then MacStadium may perform such work and take such other actions deemed necessary without prior notice to the Customer and without liability for damage to the equipment or data for any interruption of the Customer's (or its Customers') businesses. As soon as practical after performing such work, MacStadium will advise, by email, the Customer of the work performed or the action taken.

## **7. MONITORING**

To determine compliance with this AUP and our Agreement, MacStadium reserves the right to monitor Customer usage of the MacStadium network. Customer hereby consents to such monitoring and agrees that MacStadium is under no duty under this AUP, the Agreement, or otherwise, to monitor Customer use of MacStadium Services.

## **8. CUSTOMER'S RESPONSIBILITY FOR ITS USERS**

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

## **9. VIOLATION**

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

If a Customer is found to be in violation of this AUP, MacStadium may, at its sole and reasonable discretion, restrict, suspend or terminate such Customer's account. MacStadium has no obligation to

provide warnings under any circumstances and can terminate the Customer's account without prior notification upon a finding that the Customer has violated this AUP. Further, MacStadium may pursue civil remedies for any costs associated with the investigation of a substantiated policy violation. MacStadium will notify law enforcement officials if the violation is believed to be a criminal offense and will cooperate fully with law enforcement authorities in investigating the alleged criminal offense.

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

**Exhibit C****SaaS SUPPLEMENTAL TERMS***(if applicable)*

If applicable, This Exhibit C – SaaS Supplemental Terms is attached to and made a part of the Agreement made by and between Customer and MacStadium. Capitalized terms used but not defined in this SaaS Supplemental Terms Exhibit will have the meaning assigned to them in the Agreement.

**1. LICENSE.**

1.1 SaaS Service. Any use of the SaaS Service shall be a) for your business use only b) used only by you and your Users, c) in accordance with the Agreement and this Exhibit C, and d) subject to the other restrictions set forth in the Agreement and this Exhibit C.

1.2 Revocation. MacStadium may revoke or suspend your or your User's license(s) to the SaaS Service in its absolute discretion for any reason, including for breach of the Agreement or this Exhibit C by Customer or its Users.

1.3 Availability. MacStadium will make available the SaaS Service to you via the internet during a Service Term and shall use commercially reasonable efforts to make the SaaS Service generally available pursuant to the Service Levels provided in the SLA.

**2. DATA.**

2.1 MacStadium Protection of Your Data. MacStadium will maintain administrative, physical, and technical safeguards for the protection of the security and confidentiality of your data that MacStadium has access to. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of your data by MacStadium's personnel except a) to provide the SaaS Service, b) in case of any needed support, and c) for preventing or addressing service or technical problems, (d) as compelled by law, or (e) as Customer expressly permits in writing.

2.2 Transmission. MacStadium shall reasonably ensure that the transmission of data occurs according to industry standards. It is up to you and your Users to ensure that any transmission(s) meet proper operating and legal requirements pursuant to this Agreement and the Exhibits incorporated hereto.

2.3 Storage. MacStadium may limit the amount of data that you or your Users store while using the SaaS Service, and shall advise you of such limitation, if applicable.

2.4 Backup. MacStadium shall perform backups of its internal systems in a reasonable manner and at such times and intervals that are reasonable for its business purposes. MacStadium does not warrant that it is able to backup or recover any specific Customer data from any period of time, whatsoever.

**3. PRODUCT MAINTENANCE AND SUPPORT.**

3.1 Maintenance. As a part of the SaaS Service, MacStadium will provide Scheduled Maintenance and emergency maintenance pursuant to section 2.3 of the Agreement.

3.2 Support. MacStadium shall provide support to you to address any technical issues or inquiries via the MacStadium management portal or via telephone.

#### 4. YOUR OBLIGATIONS.

4.1 License to Client System Data. You grant MacStadium a limited-term license to host, copy, transmit and display your data as necessary for MacStadium to provide the SaaS Service, any support, and maintenance to you.

4.2 Security. MacStadium takes the security of the SaaS Service very seriously. You agree that you and your Users shall not do anything to prejudice the security or privacy of MacStadium's systems or the information on them. You shall maintain all levels of security specified in this Agreement and abide by the terms specified in the AUP.

4.3 Subscription Service Use Restrictions. Where the Customer or its User does not accept or can no longer comply with the terms and conditions of the Agreement and all applicable Exhibits and attachments, the User must immediately cease using the SaaS Service.

**5. WARRANTY & DISCLAIMERS.** In addition to the warranties, disclaimers and exclusive remedies of the Agreement:

5.1 Subscription Services Warranty. MacStadium warrants that a) each SaaS Service will materially perform in accordance with the terms described in this Exhibit C, and b) MacStadium will not materially decrease the SaaS Service functionality described in the applicable Service Order or online order during the Service Term. Your remedy for a breach of this warranty shall be the correction by MacStadium of the deficiency that caused the breach of warranty. MacStadium shall correct within a reasonable time upon your notice to MacStadium of the deficiency within thirty (30) days of your discovery of the breach. Notices may be made by submission of client support ticket to MacStadium's management portal. If MacStadium is unable to correct the deficiency within a reasonable time, you may terminate the applicable SaaS Service upon thirty (30) days prior written notice to MacStadium and MacStadium will refund any pre-paid fees for such SaaS Service.

5.2 Disclaimers. MacStadium is not responsible for a failure of the SaaS Service to perform because of a) a failure by you or your User(s) to use the SaaS Service according to the terms in this Agreement or any other documentation specifying proper use of the SaaS Service, b) the use of the SaaS Service by someone (other than a person authorized by MacStadium or one of your Users) with your knowledge or resulting from your failure to exercise your obligations regarding system security, c) interactivity with or data received from a computer system that is not provided by MacStadium.