

Master Services Agreement

The “Parties” to this Agreement agree that 1) any ordering document between Customer and MacStadium, Inc., (each, a “Service Order”), 2) Exhibit A – the Service Level Agreement (“SLA”), 3) Exhibit B – the Acceptable Use Policy (“AUP”), and 4) any other 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, or 2) using the Services. If the individual accepting this Agreement is accepting on behalf of a company or other legal entity, such individual represents and warrants that they have the authority to bind such entity and its affiliates to the terms and conditions herein.

The Parties agree as follows:

1. DEFINITIONS

1.1 “Commencement Date” means the date when the Services are operational and ready for use by Customer according to the requirements of the applicable Service Order.

1.2 “Customer” and “you” and “your” refers to the Party to this Agreement and applicable Service Order(s) that is ordering Services from MacStadium.

1.3 “Effective Date” means the later date this Agreement or any Service Order(s) is signed.

1.4 “Initial Service Term” begins on the Commencement Date of the applicable Service Order and continues for twelve (12) months thereafter, unless otherwise stated in the Service Order.

1.5 “Orka®” is a virtualization layer for Mac build infrastructure based on Docker and Kubernetes technology that provides access for developers and DevOps teams to orchestrate macOS and is designed and optimized for running on scalable clouds built on Apple Mac computers.

1.6 “Renewal Service Term” means the twelve (12) month period following either the Initial Service Term or a Renewal Service Term, unless stated otherwise in a Service Order.

1.7 “Services” refers to the infrastructure services you ordered pursuant to a Service Order.

1.8 “Service Term” is a general reference to either the Initial Service Term or any Renewal Service Term.

1.9 “User” means you and your authorized individual Users of the Services, including but not limited to your affiliates 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, Users shall have the non-exclusive, non-assignable, non-transferable, revocable, limited right to access and use the Services purchased through a Service Order, solely for business operations.

2.2 Registration. One or more usernames and passwords may be generated in connection with providing your access to the Services and authenticating the User(s) (“Credentials”). You are solely responsible for maintaining the confidentiality of the Credentials and may not transfer or

share the Credentials with any third party 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 will promptly notify MacStadium of any unauthorized use of any Credentials, account or any other known or suspected breach of security.

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 e-mail at least ten (10) business days prior to any Scheduled Maintenance (“Scheduled Maintenance”). For clarity, you must register in order to receive maintenance update notification e-mails via the statuspage.io service. Without limiting the foregoing, MacStadium provides status updates regarding any maintenance at the publicly available website: <https://status.macstadium.com/>.

2.4 Use Restrictions. In addition to any use restrictions in the AUP attached in Exhibit B hereto, you shall not conduct a penetration test of any kind within any production environment provided by MacStadium. You may only conduct a penetration test within the dedicated testing environment provided to you by MacStadium upon receipt of express written consent from MacStadium’s Chief Information Security Officer. Additionally, such penetration test must be performed in compliance with all restrictions stated in the instructions that will be provided to you. Any breach by Customer of this section 2.4 shall be considered a material breach of the Agreement.

2.5 Third-Party Technology & Your Software. 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 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.

2.6 Changes & Modifications. During the Initial Service Term, you shall not be obligated to accept any upgrade, enhancement, change or modification of the Services (“Service Modification”) if it causes a degradation in the performance or functionality or increases the cost of the Services.

2.7 Suspension of Services. MacStadium may suspend the Services under an applicable Service Order if

a) MacStadium reasonably believes that your User's use of the Services has or will subject MacStadium to civil or criminal liability, b) MacStadium finds that the Services are being used in violation of the AUP, c) MacStadium is required to suspend Services by law, d) activity on your User's servers poses a reasonable threat to the integrity of MacStadium's network, e) your User(s) 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 to you, or f) you fail to pay any undisputed fees within thirty (30) days after the Invoice Date (defined in 4.2) of any Service Order(s). MacStadium may not exercise its suspension rights regarding your failure to timely pay fees if disputed in accordance with section 4.4. The following applies to MacStadium suspension rights for Mac mini Services only: After ten (10) days of non-payment for any undisputed fees for Mac mini Services, MacStadium a) will suspend your access to such Mac mini(s) and b) such Mac mini(s) may be decommissioned and reclaimed by MacStadium

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 as long as there is an active Service Order in place.

3.2 Term of Service Orders or Services.

a. Service Orders. The Services provided under any applicable Service Order will begin on the Commencement Date and continue for a term defined between the Parties. If the Initial Service Term is not defined, the Services shall have a term a) that is the same as 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. A Service Order will automatically renew for a Renewal Service Term on the first day of the calendar month following the end of such Service Term, unless you provide written notice to MacStadium at least ninety (90) days prior to the end of such Service Term.

b. Services Added Without a Service Order. If you authorize MacStadium to add new Services to your environment(s) without signing a new Service Order, i) MacStadium will track such new orders by a mutually agreed upon method, ii) the Initial Service Term shall be twelve (12) months, unless otherwise agreed and iii) all the other terms of this Agreement shall govern the newly ordered Services.

3.3 Termination by MacStadium. MacStadium may terminate this Agreement and the applicable Service Order(s) in the event of: a) a material breach of this Agreement or the applicable Service Order that remains uncured for thirty (30) days following the date notification was sent to you, b) requests by law enforcement or other government agencies, c) MacStadium being threatened with a legal claim relating to your use of the Services, d) 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 e) if Users materially violate the AUP. Termination includes removal of User access to all the Services.

3.4 Termination by You. You may terminate a Service Order if MacStadium materially breaches any provision of

this Agreement with respect to a Service Order and fails to cure such breach within thirty (30) days of receiving your written notice.

3.5 Effect of Termination. Upon expiration or termination of this Agreement or any applicable Service Order, all rights to access or use the Services shall terminate. In the event of a termination pursuant to section 3.3, you shall pay all fees that would have been owed had the applicable Service Order(s) not been terminated prior to the end of the applicable 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). Upon the termination or expiration of this Agreement or the applicable Service Order, the Customer is solely responsible for the sanitization of any Customer data.

3.6 Survival. Sections 1 "Definitions", 2.4 "Use Restrictions," 3.5 "Effect of Termination," 4 "Fees and Payment Terms," 6 "Intellectual Property Ownership and Rights," 7 "Indemnification," 8 "Disclaimer of Warranties," 9 "Limitation of Liability," 10 "Confidentiality," 13 "Export," 16 "General" along with this section will survive any termination or expiration of this Agreement.

4. FEES AND PAYMENT TERMS.

4.1 Services Fees. You will pay MacStadium the fees for any Services and any other applicable fees in the amounts set forth in the applicable Service Order(s) or online order(s). 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. If applicable, MacStadium may delay setup for a Service Order until all setup fees associated with such Service Order are paid in full. After the Initial Service Term, MacStadium may adjust the fees at the beginning of each Renewal Service Term upon sixty (60) days prior written notice 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 Payment Terms. Except as otherwise set forth in a Service Order, all invoices submitted by MacStadium are due and payable upon receipt via credit card or direct payment, or, if upon prior written approval by MacStadium, no later than thirty (30) days from the date upon which the invoice was sent ("**Invoice Date**"). 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.

4.3 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. If a payment is late, MacStadium may apply all future payments to the most recent invoice first. If MacStadium institutes any type of legal or administrative proceeding against you arising out of or related to this Agreement and is the prevailing Party, 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.

4.4 Disputed Fees. Customer shall provide written notice to MacStadium within seven (7) days of the Invoice Date containing a good faith dispute of the applicable fees.

4.5 Taxes. Any fees and expenses due to MacStadium 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 or otherwise due under this Agreement. This section will not apply to taxes based solely on MacStadium's income.

4.6 Offset. Customer shall not withhold or offset any undisputed fees due to MacStadium for any reason.

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.

5.2 Data and Access Provided by You. You represent and warrant that a) you or your Users own or have the right to use the data that is used as a part of the Services, b) data you or your Users use on MacStadium servers 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 are solely responsible for the data that you or your Users transmit through or store on MacStadium's servers and MacStadium will not be liable for any errors or omissions in any such data. You must a) manage any firewall(s) including any applicable MacStadium dedicated firewall(s) and User access to the Services, b) encrypt all your data at-rest and in transit, 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.

5.3 Technical Requirements. You must have the required equipment, software, and internet access to be able to use the Services.

5.4 Configuration. You are solely responsible for: a) determining whether the equipment, internet access and software provided as specified in the Service Order(s) (collectively, the "Configuration") is suitable, b) whether it meets and will continue to meet your and your User's capacity, performance and scalability needs, c) the results of implementing any MacStadium recommendations regarding use of the Configuration, and d) requesting any upgrades and modifications to the Configuration.

5.5 Users. You agree all Users shall comply with the applicable provisions of this Agreement. If MacStadium provides written notice concerning your Users' violation of this Agreement or a Service Order, and you fail to promptly remediate compliance or terminate such User's access, you shall be fully responsible and liable for such User's violation(s).

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 and all feedback relating to the Services. You own all intellectual property rights in and to your data, software, 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 access your configuration as necessary 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 Customer, its employees, officers, directors, and agents ("Customer Indemnitees") against any claims or 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, liabilities, and costs (including reasonable attorneys' fees) awarded in favor of such third party; provided however, MacStadium is not obligated to indemnify Customer with respect to any intellectual property infringement or misappropriation claim to the extent (ix) such Claim arises from your or your Users' data residing in the Services or otherwise on MacStadium's computer systems or hardware or (x) the damages in connection with the Claim could have been avoided, or reduced by using a more current version of the Services made available by MacStadium.

b. 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 such claim(s), 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, or (iii) terminate your rights to the affected Services and refund any unused pre-paid fees.

THIS SECTION 7.1 STATES MACSTADIUM'S SOLE LIABILITY TO YOU, AND YOUR EXCLUSIVE REMEDY AGAINST MACSTADIUM, FOR A CLAIM OF INFRINGEMENT OR MISAPPROPRIATION.

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

7.3 Procedure. The indemnifying Party shall provide the other Party: a) prompt written notice of any such Claim, b) assistance, at the indemnifying Party's expense, to help

the indemnifying Party to defend such Claims, and c) sole control of the defense and settlement of the Claim. The indemnifying Party will not have any right, without the indemnified Party's written consent, to settle any such Claim if such settlement arises from or is part of any criminal action or contains an admission or acknowledgment of, any liability, infringement or wrongdoing 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 EXPRESSLY STATED UNDER THIS AGREEMENT, AND TO THE GREATEST EXTENT UNDER THE LAW, ALL USERS UNDERSTAND AND AGREE THAT THE 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 (EXCEPT AS COVERED IN SECTION 7). MACSTADIUM DOES NOT WARRANT THAT a) THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, b) THE SERVICES WILL BE UNINTERRUPTED, SECURE, OR ERROR-FREE, c) ANY RESULTS OBTAINED FROM USING THE SERVICES WILL BE ACCURATE OR RELIABLE. YOU ACKNOWLEDGE THAT MACSTADIUM DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES AND MACSTADIUM IS NOT RESPONSIBLE FOR ANY LIMITATIONS, DELAYS, AND OTHER DAMAGE THAT MAY BE INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES.

9. LIMITATION OF LIABILITY.

9.1 Limitation of Remedy. TO THE EXTENT PERMITTED BY LAW, NEITHER PARTY 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 OR ANY SERVICE ORDER, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST DATA OR CONTENT, OR LOSS OF BUSINESS, EVEN IF ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES, INCLUDING FOR UNAUTHORIZED ACCESS (I.E., HACKING) INTO MACSTADIUM'S OR YOUR TRANSMISSION FACILITIES, PREMISES OR EQUIPMENT, OR FOR UNAUTHORIZED ACCESS TO YOUR DATA; PROVIDED, HOWEVER, THAT THIS LIMITATION APPLIES ONLY TO THE EXTENT THAT THE UNAUTHORIZED ACCESS IS NOT 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 PARTY'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY SERVICE ORDER (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE GREATER OF A) AMOUNTS PAID UNDER THE APPLICABLE SERVICE ORDER DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM OR B) USD \$50,000.

10. CONFIDENTIALITY.

The Parties may disclose to one another Confidential Information during the term of this Agreement. For purposes of this Agreement, a) "**Confidential Information**" means trade secrets, technical, business, financial information and other materials that is of value to its owner or any information marked as confidential or due to the nature of the information, confidentiality is implied, b) the "**Disclosing Party**" refers to the Party disclosing Confidential Information, and c) "**Recipient**" refers to the Party receiving any Confidential Information. Subject to section 11, Recipient agrees to hold the Disclosing Party's Confidential Information in confidence and will not, directly or indirectly disclose or transfer the Disclosing Party's Confidential Information to any third party, or utilize such Confidential Information for any purpose whatsoever other than as expressly contemplated by this Agreement. You acknowledge and agree that the Services are the Confidential Information of MacStadium. The obligations in this section 10 shall continue for so long as such shared information constitutes Confidential Information. The foregoing obligations shall not apply if Recipient establishes that the shared information was publicly known at the time of Recipient's receipt or has become publicly known other than by a breach of this Agreement. MacStadium may have to share your Confidential Information if compelled by law or a governmental body of competent jurisdiction to disclose such information. MacStadium will notify you of any compelled disclosure unless such notification would violate applicable law or a binding order of a governmental body.

11. 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, the Parties shall be bound by the publicly available Privacy Notice, Data Privacy Agreement and both Shared Responsibility Models on MacStadium's website at <https://www.macstadium.com/legal>, to the extent such agreements are applicable.

12. EXPORT.

MacStadium acknowledges that the Services delivered under this Agreement may be subject to the export and import control laws of various countries (altogether referred to as "**Export Regulations**"). Customer will cooperate with MacStadium as reasonably necessary to ensure compliance with Export Regulations and agrees that you and each of your employees, subcontractors, agents, and consultants who has access to the Services or any other technical materials (collectively, "**Export Materials**") is not a) an individual, business or government of a "**Restricted Nation**" as set forth by applicable regulations or statutes or b) 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.

13. 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 to add you as an additional insured or provide insurance coverage for any equipment, data or content owned by you on the MacStadium premises.

14. GENERAL.

14.1 Audits. During the term of a Service Order and 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 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. If such verification process reveals any material noncompliance by Customer, you shall reimburse MacStadium for the reasonable costs and expenses of such verification process incurred by MacStadium. For clarity, such audit will be remotely performed.

14.2 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.

14.3 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.

14.4 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.

14.5 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.

14.6 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, MacStadium personnel not being reasonably able to access communication facilities or data center(s) due to governmental orders or CDC, WHO or similar health guidelines, terrorism, riots, labor strikes, communication or utility failures or casualties or the failures or acts of you or third parties.

14.7 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.

14.8 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 full force and effect.

14.9 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.

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 governs and supersedes all previous oral and written communications regarding its subject matter. MacStadium will not be bound by and specifically objects to any other provision that is different from or in addition to this Agreement that is proffered solely by Customer. 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.



Exhibit A

Service Level Agreement

This SLA constitutes MacStadium’s commitments regarding availability of the Services. This SLA is subject to change at MacStadium’s reasonable discretion. We will not apply the terms of a modified SLA during your Initial Service Term; however, upon renewal, the version of MacStadium’s SLA that is current at the time of renewal will apply throughout your Renewal Service Term(s). The most current version of MacStadium’s SLA is publicly available at <https://www.macstadium.com/legal>.

SLA General Terms:

1. DEFINITIONS

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

1.2 **“Outage”** shall mean you are reasonably unable to conduct activities while using the Services. Outage does not mean Scheduled Maintenance or emergency maintenance.

1.3 **“Service Credit”** shall mean the monetary amount credited to you on the following months’ invoice for the affected Services following claim approval by MacStadium.

1.4 **“Service Level”** shall mean the monthly uptime percentage as described herein for the Services outside of emergency maintenance and Scheduled Maintenance.

1.5 **“Severity”** shall mean an assessment of the degree of impact to the Customer.

1.6 **“Unavailable”** or **“Unavailability”** shall mean whenever the availability of the Services does not meet the Service Level of at least 99.9% uptime in a calendar month as set forth in section 8.1 due to a failure of MacStadium’s infrastructure or systems that is wholly within MacStadium’s control.

2. MAINTENANCE

Scheduled Maintenance and emergency maintenance will not cause a loss of availability of the Services unless it is beyond the reasonable control of MacStadium. In any event, MacStadium shall use reasonable efforts to ensure any loss of availability arising from Scheduled Maintenance is limited to the shortest period of time practical and will not occur during the business hours where your data center is located. MacStadium may also perform emergency maintenance, including the installation of critical patches, as needed, but shall use reasonable efforts to notify you within four (4) hours of initiating such emergency maintenance. You can review all maintenance updates by visiting <https://status.macstadium.com/>. As a part of maintenance, MacStadium may install patches that address security vulnerabilities, but 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 coordinate with you for the application of any noncritical patches as they are released.

3. NOTIFICATION AND RESPONSE TIME

In the event of an incident that leads to the Unavailability or any Non-Compliance, Customer shall notify MacStadium

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 all Unavailability and Non-Compliance incidents in the shortest time feasible, but no longer than as stated in the chart below:

Severity Levels	Description	Maximum Initial Response Time
Severity Level 1	An Outage incident affecting multiple customers	10 minutes
Severity Level 2	An Outage incident affecting a single customer	10 minutes
Severity Level 3	A non-Outage incident that adversely affects one or more customers (e.g. network latency)	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

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 each varying issue may require.

4. 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.

5. EXCLUSIONS

Causes for Unavailability and Non-Compliance do not include: a) Scheduled or emergency Maintenance or a suspension of Services, b) 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 a User’s data or content, d) your or your agents or representatives acts or omissions, including all of your or a third party’s testing of the servers, e) 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, f) MacStadium’s blocking of content that MacStadium deems in its sole discretion to be in violation of the AUP, g) any equipment or hardware downtime not hosted in MacStadium data centers, h) any force majeure event, as detailed in section 14.6 of the Agreement and any other circumstances, events, actions, or inactions not within MacStadium’s reasonable control, i) a denial of service attack or unauthorized access (i.e., hacking), k) your failure to meet the terms and conditions of this SLA, j) co-located devices, k) downtime not reported by you within seven (7) days of the day the downtime first began, l) time required to format or reformat disks or a RAID array, m) time required to load, reload, configure or reconfigure an operating system or applications, n) time required for Customer to restore from backup, and o) any customer initiated changes to their firewall.

6. LIMITATIONS

You shall not receive a Service Credit under the terms of this SLA 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, d) you disable or modify any software installed by MacStadium for the purposes of monitoring or server maintenance, e) you violate any material terms of this Agreement, f) you fail to request a Service Credit in the manner provided in this Agreement, and g) you have an undisputed balance in accounts receivable over sixty (60) days past due.

7. GENERAL

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

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

7.2 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 (1) month’s fees for the applicable Services. For the avoidance of doubt, any approved Service Credit shall solely apply to the affected, specific of piece of infrastructure Services stated in the applicable Service Order. In no event, shall a Service Credit be awarded (i) for any unaffected infrastructure Services or (ii) that aggregates monthly fees from more than one (1) Service Order.

7.3 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 to be used towards a portion of your monthly fees on

the following months’ 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.

7.4 Monitoring. MacStadium reserves the right to monitor certain protocols and configurations necessary to maintain the availability of the Services. The protocols required may include, but are not limited to, SNMP, API, and SSH. Monitoring may also require, but is not limited to, configuration changes to the Services, configuration, User accounts, service start sequence, and firewall. MacStadium may also passively access the infrastructure providing the Services via port scans and ICMP. End-users may opt-out or change these passive settings at any time. If Customer orders Orka® Services, Customer grants consent to MacStadium to troubleshoot any technical issues that may arise as a part of your Orka® Services. MacStadium shall promptly notify you if and when there is a need to troubleshoot. You have the right to withdraw consent upon ten (10) days prior written notice sent to MacStadium at legal@macstadium.com; however, if you experience technical issues with Orka® that require troubleshooting, MacStadium will not be able to fix such issue until we receive your consent. Performance of any troubleshooting shall not degrade or materially change Orka® Services in any way.

Service Specific Terms:

8. DESCRIPTION OF SERVICES & AVAILABILITY

MacStadium shall use commercially reasonable efforts to ensure meeting the Service Levels described herein. If you experience Unavailability, you may be entitled to a Service Credit upon MacStadium claim review. As a note, MacStadium is not a public cloud provider, nor do we offer public clouds for purchase. The Services provide a means for you to run your own cloud software environment. **MacStadium recommends the placement of servers in two or more data centers as a preventative measure against the failure of a single data center.**

8.1 Service Level. The Services shall have a Service Level of at least 99.9% uptime in a calendar month, which is calculated using the following formula:

$$\frac{\text{Total Available Minutes in One Month} - \text{Outage time}}{\text{Total Available Minutes in One Month}} \times 100$$

8.2 Service Credits. The following Service Levels and Service Credits are applicable to Customer’s use of MacStadium Services including single bare metal Mac mini or Mac pro, Mac private cloud services, and Orka® virtualization software:

Service Level	Service Credit
< 99.9%	10%
< 99.0%	25%
< 98.0%	50%

Exhibit B**Acceptable Use Policy**

To protect the interests of MacStadium's customers and ensure optimal Service Levels, MacStadium has developed this AUP, which applies to you and your Users of MacStadium's Services. 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 at any time in MacStadium's discretion. Your continued use of MacStadium's Services after such revisions will constitute your acceptance.

1. PROHIBITED ACTIONS. Customers may only use our servers and the Services for lawful purposes, in compliance with all applicable laws or regulations and in compliance with this AUP. In addition to the restrictions described in section 2.4 of the Agreement, activities that are specifically prohibited include, but are not limited to:

- Removing or modifying any program markings or any notice of MacStadium or its licensors' proprietary rights (except when providing a SaaS offering to your Users).
- Making 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.
- Modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Services.
- 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 in this Agreement.
- License, sell, rent, lease, transfer, assign, distribute, display, host, disclose, permit timesharing, 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.
- Except as expressly provided herein, copy, reproduce, distribute, download, display, post or transmit any portion of the Services, in any form or by any means.
- Any attempt to gain unauthorized access to the Services or related systems or networks.
- Intentionally providing untruthful information regarding Customer's identity as requested on any documentation required by MacStadium.
- 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.
- 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 regardless of whether the Services provided to Customer would violate such economic sanctions, prohibitions or restrictions.
- Interfering with the legitimate use by other 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
- Mine bitcoins and other cryptocurrencies.
- Use the Services in any manner that would disparage MacStadium in any way

2. SPAM AND UNSOLICITED COMMERCIAL E-MAIL. The Customer must comply with the CAN-SPAM Act of 2003 and all relevant regulations and legislation on bulk and commercial e-mail. MacStadium takes a zero-tolerance approach to the sending of mass Unsolicited Commercial E-mail ("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. In order to prevent unnecessary blacklisting due to spam, we reserve the right to occasionally sample bulk e-mail being sent from servers. 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 e-mail through remote SOCKS, HTTP or other similar proxies who in turn make a SMTP connection to the destination mail servers, c) forging e-mail 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 e-mail 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 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, e-mail, 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 e-mail 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 e-mail, the Customer of the work performed or the action taken.

7. MONITORING. To determine compliance with this 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 to monitor Customer use of MacStadium Services. For clarity, MacStadium will not have access to view any customer data as a part of any monitoring under this section.

8. CUSTOMER'S RESPONSIBILITY FOR ITS USERS. Any act or omission by a User will be a breach of this AUP if the act or omission committed by the 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. Any Customer violation of 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 AUP 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.